

<b>Subject:</b>	Adoption of policies in relation to housing standards		<b>Status:</b>	For Publication	
<b>Report to:</b>	Overview and Scrutiny Cabinet		<b>Date:</b>	4 <sup>th</sup> December 2017 21 <sup>st</sup> February 2018	
<b>Report of:</b>	Head of Operations		<b>Portfolio Holder:</b>	Portfolio Holder for Health and Housing (including the housing element of Environmental Health)	
<b>Key Decision:</b>	<input checked="" type="checkbox"/>	Forward Plan	<input checked="" type="checkbox"/>	General Exception	<input type="checkbox"/> Special Urgency <input type="checkbox"/>
<b>Equality Impact Assessment:</b>	Required:		Yes for new policies	Attached:	No – to follow and be ready for the Cabinet meeting.
<b>Biodiversity Impact Assessment</b>	Required:		No	Attached:	No
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<b>1.</b>	<b>RECOMMENDATION(S)</b>
1.1	That the Overview and Scrutiny Committee recommends to Cabinet the following:
1.2	To authorise the Director of Communities to carry out functions under the Smoke and Carbon Monoxide (England) Regulations 2015.
1.3	To approve the Smoke and Carbon Monoxide (England) Regulations 2015 “Statement of principles for determining financial penalties”.
1.4	To authorise the Director of Communities to carry out functions under The Housing and Planning Act 2016.
1.5	To approve the Housing and Planning Act 2016 “Policy on civil penalties as an alternative to prosecution for relevant housing offences”.
1.5	To approve the “Rossendale Illegal Eviction and Harassment Policy 2018”.
1.6	To approve the Housing Enforcement Policy 2018.
1.7	To approve all future minor amendments to the policies named above and supporting protocols to be delegated to the relevant Director in consultation with the Portfolio Holder.

## 2. PURPOSE OF REPORT

- 2.1 This report explains new enforcement powers available to local housing authorities introduced by the Smoke and Carbon Monoxide (England) Regulations 2015 and the Housing and Planning Act 2016.
- 2.2 It seeks approval to adopt protocols when using the powers and at the same time the Council’s Housing Enforcement Policy and the Illegal Eviction and Harassment Policies have been updated and amended to reflect the new powers.

### 3. CORPORATE PRIORITIES

3.1 The matters discussed in this report impact directly on the following corporate priorities:

- **A clean and green Rossendale:** our priority is to keep Rossendale clean and green for all of Rossendale's residents and visitors, and to take available opportunities to recycle and use energy from renewable sources more efficiently.
- **A connected and successful Rossendale that welcomes sustainable growth:** our priority is to ensure that we are well connected to our residents, key partners and stakeholders. We want to make the most of every pound we spend and we are always looking for new and innovative ways to make the resources we do have, work harder for us.
- **A proud, healthy and vibrant Rossendale:** our priority is to ensure that we are creating and maintaining a healthy and vibrant place for people to live and visit.

### 4. RISK ASSESSMENT IMPLICATIONS

4.1 There are no specific risk issues for members to consider arising from this report.

### 5. BACKGROUND AND OPTIONS

5.1 Staff working in Rossendale Borough Council's Environmental Health Department use a range of methods to bring about improvements in housing standards for private rented sector tenants. These include offering verbal and written advice and guidance, service of improvement notices formally requiring work to be carried out to properties and issue of prohibition notices to stop of the use of dwellings found to be imminently dangerous. On rare occasions prosecutions are brought against those who persistently fail to comply with legislation designed to protect tenants.

The additional measures explained below will extend the options available for Environmental Health Officers to use to bring the housing conditions of private rented sector tenants up to the legal minimum required.

5.2 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 came into effect on 1 October 2015. The regulations require that residential premises occupied under a tenancy must have a smoke alarm on each storey and a carbon monoxide alarm in living areas containing a solid fuel combustion appliance.

The new powers allow for the service of a remedial notice requiring work to bring the property up to the required standard. If the work isn't carried out by the landlord within a reasonable timescale the Council can require payment of a penalty charge of up to £5,000. The Council would also carry out the work needed and charge those responsible for carrying out the work.

The legislation requires the Council to publish a statement of principles that it must follow in determining the amount of a penalty charge. The principles were agreed across east Lancashire Boroughs and are attached as [Appendix 1](#).

This statement of principles sets out the Council's position in relation to taking enforcement action and remedial works to ensure that the legislation designed to protect tenants is complied with. It will also provide a transparent guide for those who must comply with the legislation

Whilst most landlords do comply with the legislation, occasionally Environmental Health receives complaints about a lack of smoke or carbon monoxide detection present in properties.

However, tenants are not always aware of the rules about smoke and carbon monoxide alarms so it is expected that there is under reporting of the issue.

5.4 Part 2 of the Housing and Planning Act 2016 came into force on 6 April 2017. The Act introduces a range of measures to crack down on rogue landlords. The Act includes some measures which are already in force and some which will be introduced in the future.

The measures in force now are:

1. Civil penalties of up to £30,000 as an alternative to prosecution for certain offences such as failure to comply with improvement notices, offences relating to Houses in Multiple Occupation (HMO), licensing, overcrowding and failure to comply with the management regulations in respect of HMOs.
2. Rent repayment orders extended to cover illegal eviction or harassment of occupiers use of violence to secure entry to a property and failure to comply with improvement and prohibition notices issued under the Housing Act 2004.

Measures planned for phased introduction in the future are:

1. Banning orders for landlords
2. Setting up of a rogue landlord database.

## 5.5 Civil penalties

The Council is now permitted to impose a civil penalty as an alternative to prosecution for various housing standards related offences. It is necessary to have evidence of the offences which would be credible to present in the criminal courts, that is, an offence has been committed beyond reasonable doubt. In addition the Council must be satisfied that there is a reasonable prospect of conviction.

Where a Council wishes to make use of civil penalties as an alternative to prosecution it must publish its policy regarding their use.

The Association of Greater Manchester Authorities (AGMA) have jointly developed “Policy on civil penalties as an alternative to prosecution for relevant housing offences” attached as [Appendix 2](#). A number of Councils within Lancashire are looking to adopt the same policy. This is helpful for landlords who operate in more than one local authority area as it provides a consistent approach to the application of this legislation.

The Policy provides guidance about when it is and isn't appropriate to make use of civil penalty notices, the factors to be taken into account when determining the level of the civil penalty and the procedure to be followed when using civil penalties.

In determining the level of the civil penalty charge the policy requires the Council to take into account the actual or potential harm caused to tenants because of the offence and the culpability of the offender. Details of the factors to be taken into account are outlined in the policy. In the event the penalty charge is not paid within the specified time frame there is provision to recover the money by taking proceedings as per Regulation 12.

A matrix is used to determine which of 6 bands of civil penalty the offence falls into. Band 1 fines range from £0 to £4999 and band 6 from £25,000 to £30,000. Mitigating and aggravating factors are taken into account to determine where within the band the offence sits.

There is a route of representation within the Council against the imposition of the civil penalty.

If the Council proceeds with the civil penalty there is a right of appeal to the independent First Tier Tribunal (Property Chamber) administered by HM Courts and Tribunal Service as per Regulation 11 of the Act

The monies received through the imposition of civil penalties will be used for further enforcement work relating to housing standards.

## 5.6 Rent repayment orders

The Council's Housing Enforcement Policy has previously included the provision to use rent repayment orders where landlords have been prosecuted for operating an unlicensed HMO and other offences relating to HMOs. Rent repayment orders allow the Council to claim back any Housing Benefit paid whilst the HMO was unlicensed. In addition the Council would provide tenants with information and advice on how they can claim back the rent they paid whilst the HMO was unlicensed for up to a period of 12 months.

This provision has been rarely used by Rossendale Borough Council but the extension to cover illegal eviction or harassment of occupiers, use of violence/force by a landlord to secure entry to a property and failure to comply with improvement and prohibition notices issued under the Housing Act 2004 will be useful as an additional tool to tackle rogue landlords.

The Council's "Illegal Eviction and Harassment Policy" has been amended to include the new powers. See [Appendix 3](#). A tracked changes version of the policy adopted in 2011 with minor amendments made in 2016 is attached as [Appendix 4](#).

The main changes are:

- Legislation names updated
- New powers for dealing with retaliatory evictions
- Enforcement options updated
- References to general enforcement considerations already in the general Housing Enforcement Policy have been removed
- Contact details for other organisations have been removed

5.7 The Council last adopted a Housing Enforcement Policy in 2011. This policy has been amended in light of the changes to legislation noted above and is attached as [Appendix 5](#). A tracked changes version of the policy adopted in 2011 is attached as [Appendix 6](#).

The main changes are:

- Legislation names updated
- New powers and enforcement options updated
- References to outdated documents, guidance and strategies removed
- Contact details for other organisations have been removed

## COMMENTS FROM STATUTORY OFFICERS:

### 6. SECTION 151 OFFICER

6.1 Reference is made to financial matters in the report. Any further financial implications arising for the policies will be contained within existing budget resources.

### 7. MONITORING OFFICER

7.1 Legal implications have been addressed within the report.

## 8. POLICY IMPLICATIONS AND CONSULTATION CARRIED OUT

- 8.1 As part of the development and implementation of policies outlined above, consultation will be undertaken as appropriate.

This report provides an overview of existing policies and proposed changes. It is not determined therefore, the content of this report will not have any adverse or disproportionate impacts under the Council's Equality Policy or associated equality duties, and has not been assessed for equalities impacts.

Each policy will be given consideration to equalities in a relevant and proportionate manner.

## 9. CONCLUSION

- 9.1 The Council must make a decision based on all relevant information and following consideration of all relevant Council policies.

### Appendices

Appendix 1	Statement of Principles – Smoke Alarms
Appendix 2	Policy on Civil Penalties as an alternative to Prosecution under the Housing and Planning Act 2016
Appendix 3	Illegal Eviction and Harassment Policy 2018
Appendix 4	Illegal Eviction and Harassment Policy 2018 – with tracked changes
Appendix 5	Housing Enforcement Policy
Appendix 6	Housing Enforcement Policy – with tracked changes