

Private Sector Housing Enforcement Policies

Cabinet

Date: 6th February 2019

Author: Cabinet Member for Housing and Public Safety

Director of Public Health

Wards: All Wards

Parishes Affected: All Parish Areas

1. Purpose and Reasons

- 1.1 As part of the Government's agenda on 'Rogue Landlords' a suite of new powers and duties has been given to Local Authorities.
- 1.2 This report seeks Cabinet approval to put in place a revised Private Sector Housing Enforcement Policy so that these new powers may be used to better protect the residents of Swindon from poor housing conditions and 'rogue landlords'.
- 1.3 This links to the Council's vision that Swindon will be a model of well managed housing growth that supports and improves new and existing communities, and to Priority One: Improve infrastructure and housing to support a growing, low-Carbon economy and protecting the most vulnerable Priority Three. This also supports the Housing Strategy 2015 – 2026 in helping to improve standards in private rented housing and Houses in Multiple Occupancy.

2. Recommendations

Cabinet is recommended to:

- 2.1 Approve the Private Sector Housing Enforcement Policy 2019 as set out in Appendix one.
- 2.2 Note that the Director of Public Health, under delegated powers and in consultation with the Cabinet Member for Housing and Public Safety, will make amendments to those Policies as required in the future.

3. Detail

History and recent legislative changes

- 3.1 The current Private Sector Housing Enforcement Policy 2006, available at <https://www.swindon.gov.uk/downloads/download/90/housing> was last refreshed in response to the Housing Act 2004 and the new system of housing enforcement that came about as a result.
 - 3.1.1 The Housing Act 2004 introduced a new way of assessing hazards in housing, the Housing Health and Safety Rating System, and a suite of new powers to enforce that.
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Further information on the subject of this report can be obtained from Damon Green, (01793) 466102, dgreen@swindon.gov.uk.

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- 3.1.2 It also introduced the Licensing of larger Houses in Multiple Occupation (HMOs).
- 3.2 Since that time and especially more recently, government has restated that housing is one of its main priorities, issuing a number of new Legislations and Statutory Instruments to further support Local Authorities in their work against so called 'Rogue Landlords':
- 3.2.1 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 has made it a requirement that all privately rented accommodation must have smoke alarms on each floor, and Carbon Monoxide alarms where appropriate. It also introduces a scheme of Remedial Notices and Penalty Charges where these requirements are not complied with.
- 3.2.2 The Housing and Planning Act 2016 amends the Housing Act 2004 to provide a suite of new sanctions and powers to deal with private sector landlords and agents that do not comply with the law.
- 3.3 Details of the Councils existing HMO space standards and local licencing scheme for HMOs are available on the web at:
https://www.swindon.gov.uk/info/20025/homes_and_property/236/houses_in_multiple_occupation/2
- New powers and sanctions
- 3.4 Local Authorities have the power to set a scale of penalty charges under the Smoke and Carbon Monoxide (England) Regulations 2015. This scale must be informed by an adopted Statement of Principles for the setting of the Penalty Charge amount in each case of breach of a Remedial Notice.
- 3.5 The scale of penalty charges should aim to change the behaviour of the landlord, to eliminate any financial gain or benefit from non-compliance, be proportionate to the nature of the breach, deter future non-compliance, and reimburse the costs incurred by the Council in undertaking the works the landlord should have.
- 3.6 A Statement of Principles, within the Smoke and Carbon Monoxide Regulations Policy 2019, implementing an escalating scale for initial and subsequent offences is proposed (see Appendix two).
- 3.7 The new sanctions introduced by the Housing and Planning Act 2016 are:
- 3.7.1 **Civil Penalties;** a monetary charge imposed by the Local Authority as an alternative disposal option to prosecution for some offences. The maximum Civil Penalty that may be imposed is £30,000 per offence.
- 3.7.2 The Local Authority decides the guilt of the offender to the criminal standard, whether to impose a Civil Penalty and if so how great a Civil
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Penalty to impose. A Policy must be put in place to allow the use of this sanction in Swindon.

- 3.7.3 A Civil Penalty is a non-criminal disposal of an offence which could otherwise be prosecuted through the Criminal Courts. No criminal record is produced as a result of receiving one.
- 3.7.4 **Rent Repayment Orders** - if rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be repaid to the local housing authority. If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, then the rent should be repaid on an equivalent pro-rata basis.
- 3.7.5 The revenue generated from both Civil Penalties and Rent Repayment Orders are ring fenced to support additional housing enforcement work. Any revenue not spent in this way must be returned to central government.
- 3.7.6 Statutory Guidance for Local Authorities on the use of Rent Repayment Orders may be found here: [Rent Repayment Orders Statutory Guidance](#)
- 3.7.7 **Banning Orders** are introduced, and a 'Rogue Landlords Database' set up by Government. Local Authorities must enter the details of any landlord or agent who becomes subject to a Banning Order onto the national database. Local Authorities may enter those details for any landlord who has been convicted of an offence which could lead to a Banning Order ('a Banning Order Offence'), or the landlord or agent receives two or more Civil Penalties within a period of 12 months.
- 3.7.8 Statutory Guidance on using Banning Orders may be found here: [Banning Orders Statutory Guidance](#)
- 3.7.9 Statutory Guidance on the Rogue Landlords Database may be found here: [Rogue Landlords Database Statutory Guidance](#)

The proposed policy

- 3.8 The Councils Private Sector Housing Enforcement Policy 2006 has been revised to bring it up to date and to take account of the new powers and sanctions recently introduced. The Policy seeks to describe how the council will express the intentions of Parliament locally.
- 3.9 A further Policy, including the required Statement of Principles which the Council will follow in implementing fixed penalties under the Smoke and Carbon Monoxide (England) Regulations 2015 is appended to it.
- 3.10 The Private Sector Housing Enforcement Policy 2019 describes all of the housing specific regulatory options available to the Council and how and when the Council may make use of them.

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- 3.11 The Policy sets clear expectations of full voluntary compliance, and outlines how the Council may respond when that is not found. It allows for the full range of powers to be used by officers to gain compliance in the sector, and gives broad guidance on when and how those powers will be used.
- 3.12 The principal and most complex addition is that of Civil Penalties. The proposed 2019 Policy will enable the Council to use this new power, which is expected to have a beneficial effect, both on compliance and on funding for housing enforcement over time.
- 3.13 Civil Penalties (up to the value of £30k currently) are an alternative disposal method to prosecution, and the burden of proof is therefore to the criminal standard.
- 3.14 The case is not disposed of through the Magistrates Court however, the guilt of the offender and the financial penalty to be imposed in disposal, is decided by the Council.
- 3.15 In setting a Civil Penalty for an offence and offender, the Council must consider a number of factors:
 - 3.15.1 The severity of the offence
 - 3.15.2 The culpability and track record of the offender
 - 3.15.3 The harm or potential harm caused to the tenant or member of the public
 - 3.15.4 The punishment of the offender
 - 3.15.5 The deterrence of further offending by the offender
 - 3.15.6 The deterrence of offending by others
 - 3.15.7 The removal of any financial benefit gained by the offender
- 3.16 A Civil Penalty once imposed is a civil debt which can be collected through the County Court. Means to recover such includes for the removal of the debtor's property and assets.
- 3.17 Civil Penalties may be appealed to the First Tier Tribunal.

4. Alternative Options

- 4.1 The Council has no option but to create a Private Sector Housing Enforcement Policy to allow these powers to be used, and the sanctions to be imposed.
- 4.2 It would be possible to draft a variant if the proposal does not meet with Cabinet's approval.

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5. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 5.1 Funds generated from the imposition of Civil Penalties and successful Rent Repayment Order applications are ring fenced to be used to further housing enforcement work and any surplus funds must be returned to Central Government. Effective implementation of this Policy will support housing enforcement work.
- 5.2 The new powers and sanctions are a tool aimed at improving compliance first and foremost and to encourage behaviour change. Although this should not be seen as a tool to increase income it is likely that income will rise allowing for better support of the housing enforcement function at zero cost. The proposal will be cost neutral.
- 5.3 The introduction of this Policy will give rise to a need for additional training for those who will enact it. The cost of this is expected to be relatively small, and can be accommodated from existing budgets and from funds generated by the new sanctions.

Legal and Human Rights Implications

- 5.4 The proposed policy seeks to ensure that legal and reputational risk for the Council is controlled by having a transparent and defensible Policy in place.
- 5.5 It is not considered to pose any Human Rights issues, as it stems from Primary Legislation.

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 5.6 As above any surplus funds will be used to support further housing enforcement work and therefore should there be a need for additional staff going forward this will be at zero nett cost.
- 5.7 The intent of the Policy is to improve compliance. Principally it is hoped that the Policy will change negative behaviours of landlords and agents in Swindon and improving housing conditions for some of the most vulnerable in our town.

Diversity Impact Assessment

- 5.8 A diversity Impact Assessment has not been completed for this report as this proposal aims to reduce inequalities by ensuring all landlords are compliant with required private sector housing standards. There are no known diversity issues arising from this proposal. Poor housing conditions, although most often encountered in low quality housing occupied by vulnerable or disadvantaged

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individuals, can affect anyone. The proposed Policy seeks to improve compliance and conditions in all housing and for all parts of our community.

Risk Management

- 5.9 The risk in failing to put in place a Policy to allow the use of these new sanctions and powers is that it would leave the Council exposed to allegations of failing to effectively protect those who find themselves in poor or dangerous housing

6. Consultees

- 6.1 The Director of Finance (Section 151 Officer) and the Director of Law and Democratic Services (Monitoring Officer) are consulted in respect of all Cabinet reports.

7. Background Papers

- 7.1 The current Private Sector Housing Enforcement Policy 2006 available at <https://www.swindon.gov.uk/downloads/download/90/housing>

8. Appendices

- 8.1 Appendix one: Private Sector Housing Enforcement Policy 2019
8.2 Appendix two: Smoke and Carbon Monoxide Alarm Regulations Policy 2019

9. Key Decision/Decision in Cabinet Work Programme and Forward Plan

- 9.1 This is not a Key Decision and is included in the Cabinet Work Programme and Forward Plan for February 2019.