### Private Sector Housing Enforcement Policy Update

**The Reason for the Decision**
To provide members with an update on work to revise the existing Private Sector Housing Enforcement Policy.

**Summary of options considered**
Options for the adoption of additional legislation are set out in the report.

**Recommendations**
The Committee is asked to receive the report and the information provided.
The Committee provide any comments on the possible approaches being considered.

**Financial / Resource Implications**
Financial and resource implications relating to the adoption of this policy are set out in the report.

**Legal / Governance Implications**
Legal implications relating to the adoption of this policy are set out in the report.

**Community Safety Implications**
The adoption of additional enforcement powers as proposed would give the Council further tools with which to address poor housing standards and reduce associated crime and anti-social behaviour.

**Health and Safety and Risk Management Implications**
There are no additional risk management implications arising from adopting this policy.

**Equality Duty considered / Impact Assessment completed**
The revised policy will assist officers in seeking to improve housing conditions. This will have a beneficial impact in improving the quality of life for many vulnerable people across the Borough.

**Wards Affected**
All wards.

**The contribution this decision would make to the Council’s priorities**
The policy supports the drive to improve health and wellbeing, tackle inequality
and enhance our towns.

Is this a Key Decision No

Portfolio Holder Councillor Carni McCarron-Holmes

Lead Officer Emma Bundock
Private Sector Housing Manager
01900 702663
emma.bundock@allerdale.gov.uk

Report Implications

<table>
<thead>
<tr>
<th>Category</th>
<th>YES</th>
<th>YES/NO</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community Safety</td>
<td>Y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Financial</td>
<td>Y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal</td>
<td>Y</td>
<td></td>
<td>Y</td>
</tr>
<tr>
<td>Partnership</td>
<td></td>
<td></td>
<td>Y</td>
</tr>
<tr>
<td>Social Inclusion</td>
<td>Y</td>
<td></td>
<td>N</td>
</tr>
<tr>
<td>Asset Management</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Equality Duty</td>
<td>Y</td>
<td></td>
<td>N</td>
</tr>
<tr>
<td>Health and Safety</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employment (internal)</td>
<td>Y/N</td>
<td></td>
<td>N</td>
</tr>
<tr>
<td>(external to the Council)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employment (external)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Background Papers

Draft Allerdale Borough Council Private Sector Housing Enforcement Policy 2017

1.0 Introduction

1.1 This report is to provide members with a general update on work to revise the existing Private Sector Housing (PSH) Enforcement Policy.

1.2 The PSH Enforcement Policy sets out the way in which the Council intends to secure effective compliance with legislation to ensure that all private sector housing within the Borough is healthy, well managed and safe.

1.3 The Council’s existing PSH Enforcement Policy was adopted in 2004 and does not reflect current legislation, which has granted officers additional enforcement powers in relation to the private rented sector.

1.4 The Council has a statutory duty and powers to deal with poor housing conditions. Where required, the new enforcement powers will be used and the new policy will provide a clear framework in which to do this.

1.5 In conjunction with this, we are taking the opportunity to review our procedures in order to allow officers to concentrate on more proactive enforcement work.
1.6 We also plan to make greater use of IT platforms such as the Allerdale Borough Council website and the My Allerdale App to create a more streamlined customer experience.

2.0 Overview of legislation to be adopted – Housing and Planning Act 2016

2.1 Civil Penalties

2.1.1 The Housing and Planning Act 2016 introduced a number of amendments to the Housing Act 2004. Since 6 April 2017, local housing authorities have had the power to impose civil penalties of up to £30,000, as an alternative to prosecution for the following offences under the Housing Act 2004 (as amended):

a) Failure to comply with an Improvement Notice (section 30);
b) Offences in relation to licensing of HMOs (section 72);
c) Offences in relation to licensing of houses under Part 3 of the Act (section 95);
d) Offences of contravention of an overcrowding notice (section 139);
e) Failure to comply with management regulations in respect of HMOs (section 234);

2.1.2 The same criminal standard of proof is required for a civil penalty as for a criminal prosecution. This means that before a civil penalty can be imposed, the Council must be satisfied beyond reasonable doubt that the landlord committed the offence(s) and that if the matter were to be prosecuted in the magistrates’ court, there would be a realistic prospect of conviction.

2.1.3 We are proposing to adopt the use of civil penalties as we believe that it will provide the Council with a more cost-effective and proportionate alternative to prosecution for specified housing offences, whilst retaining the option to prosecute for the most serious housing offences.

2.1.4 The use of civil penalties will not only prevent unscrupulous and irresponsible landlords from profiting from letting unsafe properties, but it will also demonstrate the Council’s commitment to ensuring that it is offenders (rather than responsible landlords or the local council tax payers) who pay for the cost of housing enforcement.

2.1.5 A statutory framework for the implementation and use of civil penalties by local housing authorities has been published by the Department of Communities and Local Government (DCLG). This states that local housing authorities are expected to develop and document their own procedure on when to prosecute and when to impose a civil penalty.

2.1.6 Local housing authorities are also required to document their own policy on determining the appropriate level of civil penalty to be imposed.

2.1.7 As a result of this, we are developing a PSH Civil Penalties Policy which will be designed to ensure transparency, consistency and fairness in how and
when civil penalties are imposed. This policy will take into account statutory
guidance and should be read in conjunction with the Council’s PSH
Enforcement Policy.

2.1.8 Those persons upon whom a notice of civil penalties is served can appeal to
the First Tier Property Tribunal both in respect of the decision to issue any
fixed penalty and in respect of the amount imposed. The Tribunal has the
power to confirm, vary (increase or reduce) or cancel the civil penalty imposed
by the local housing authority. It is therefore important that the Council
produces a robust policy in accordance with the DCLG Guidance and
legislative provisions.

2.1.9 It is proposed that this policy will include a methodology to be used as a guide
by enforcement officers to set the civil penalty at an appropriate level, based
upon the individual circumstances of the case. This methodology will be used
to provide transparency and aid consistency in the enforcement process.

2.1.10 A number of factors will be taken into consideration when setting the level of
fine. These are:

a) Severity of the offence;
b) Culpability and track record of the offender;
c) The level of harm caused to the tenant;
d) Punishment of the offender;
e) Deterring the offender from repeating the offence;
f) Deterring others from committing similar offences;
g) Removing any financial benefit the offender may have obtained because
   of committing the offence.

2.1.11 Income received from a civil penalty can be retained by the local housing
authority, provided it is used solely to further the local authority’s statutory
function in relation to their enforcement activities covering the private rented
sector.

2.1.12 It is likely that there will be a significant number of appeals against any civil
penalties imposed. Additional legal costs may be incurred as part of the
Council being the respondent to any appeals against the issued civil
penalties.

2.1.13 We believe civil penalties will act as a powerful deterrent for those landlords
who might otherwise have considered that the financial benefits of non-
compliance outweighed the risk of enforcement action against them. They
enable the Council to penalise the worst landlords by direct economic
sanctions. We believe that this will lead to greater levels of compliance and
improved housing standards across the Borough.

2.2 Rent Repayment Orders

2.2.1 A rent repayment order is an order made by the First Tier Tribunal requiring a
landlord to repay a specified amount of rent.
2.2.2 The Housing Act 2004 introduced rent repayment orders specifically in relation to offences regarding the licensing of Houses in Multiple Occupation (HMOs).

2.2.3 The Housing and Planning Act 2016 has extended this to cover a much wider range of offences including:

a) Failure to comply with an Improvement Notice;
b) Failure to comply with a Prohibition Order;
c) Offences in relation to licensing of HMOs;
d) Illegal eviction or harassment of the occupiers;
e) Breach of a Banning Order.

2.2.4 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 basis.

2.2.5 The Government has made it clear that local housing authorities must always consider a rent repayment order after a civil penalty has been successfully imposed.

2.3 Banning Orders

2.3.1 A Banning Order is an order made by the First Tier Property Tribunal, banning a person from letting a house in England and/or engaging in English letting agency or property management work.

2.3.2 A local authority in England may apply for a banning order against a person who has been convicted of a banning order offence. These are yet to be confirmed.

2.3.3 The length of a banning order must be at least 12 months. There is no upper limit on the potential length of a banning order.

2.3.4 The local authority can impose a civil penalty of up to £30,000 for a breach of a banning order.

2.3.5 The power to apply for banning orders was supposed to come into force in October 2017 however this has been delayed. It is hoped that the new powers will now be implemented in April 2018.

2.4 Rogue Landlord Database

2.4.1 A landlords details will be entered onto the database if they receive a banning order, if they are convicted of a banning order offence or if they receive two or more civil penalties over a 12 month period.
2.4.2 The local housing authority is responsible for maintaining the content of the database.

2.4.3 We are currently awaiting a date for when the rogue landlord database will be implemented.

3.0 Other Legislation to be adopted.

3.1 The Redress Scheme for Lettings Agency Work (Requirement to belong to a scheme etc.) (England) Order 2014

3.1.1 This order requires a person who engages in property management work to be a member of a redress scheme for dealing with complaints in connection with that work.

3.1.2 Where the local authority is satisfied on the balance of probabilities that a person has failed to belong to a redress scheme, the authority may serve notice to require the person to pay a financial penalty.

3.1.3 The local authority has discretion to determine the amount of the fine, up to a maximum of £5000.

3.1.4 The legislation allows for appeals to the First Tier Property Tribunal against the imposition of a fine.

3.2 Energy Efficiency (Private Rented Properties) Regulations 2015

3.2.1 These regulations make it unlawful for landlords to grant a new tenancy or renew an existing tenancy of a private rented property with an energy performance certificate (EPC) rating of F or G from 1 April 2018.

3.2.2 From 1 April 2020, it will be unlawful to let any domestic private rented property with an EPC rating of F or G.

3.2.3 Where a property cannot be improved to EPC rating of E, the landlord will need to take steps to register an exemption on the national Private Rented Sector Exemptions Register.

3.2.4 Landlords who do not comply with the regulations face a fine of up to £5000. Local authorities have discretion to determine the level of fines in each case.

3.2.5 The legislation allows for appeals to the First Tier Property Tribunal against the imposition of a fine.

3.3 Smoke and Carbon Monoxide Alarm (England) Regulations 2015

3.3.1 Under this legislation, the Council may take enforcement action where there is not at least one smoke alarm on each storey of a rented property and/or where there is no carbon monoxide alarm in any room used as living accommodation where solid fuel is used.
3.3.2 The landlord must make sure the alarms are in working order at the start of each new tenancy.

3.3.3 Landlords who do not comply with the regulations face a fine of up to £5000. Local authorities have discretion to determine the level of fine.

3.3.4 Local authorities are required to publish a statement of principles which they will follow when determining the amount of a penalty charge.

3.3.5 The legislation allows for appeals to the First Tier Property Tribunal against the imposition of a fine.

4.0 Consultation

4.1 We plan to undertake a period of online consultation with internal and external partners to obtain the views of a wide range of stakeholders

4.2 We plan to host a Landlord Forum event to brief on the Council’s proposals.

5.0 Finance/Resource Implications

5.1 The Housing and Planning Act 2016 specifies that all of the income that a local authority receives from the imposition of civil penalties and the recovery of Housing Benefit through Rent Repayment Orders can be retained by the local authority to be spent on private sector housing enforcement work.

5.2 However, any income that a local authority receives from civil penalties and rent repayment orders but fails to spend, must be paid into the Government’s Consolidated Fund.

5.3 As previously mentioned, a right of appeal exists against any penalty imposed. Parties to an appeal are normally expected to bear their own costs and in most cases, it is unlikely that the Council will be able to recover any costs in relation to such appeals.

5.4 It is anticipated that enforcement will be undertaken utilising existing staff resources. In the event that the scale of enforcement activity necessitates additional staffing resources, these costs can be met from income generated through the imposition of civil penalties.

5.5 An increase in enforcement work is likely to result in a corresponding increase in the number of cases requiring legal advice and assistance. This may put additional pressure on existing staffing resources within the Council’s Legal team.

6.0 Legal Implications and Risks

6.1 The relevant legislation is shown in the Policies.
6.2 Failure to have an up to date PSH Enforcement Policy is likely to attract criticism and have an adverse effect on the reputation of the Council.

7.0 Recommendations

7.1 The Committee is asked to receive the contents of the report and the information provided by officers.

7.2 The Committee provide any comments on the possible approaches being considered.

Emma Bundock
Private Sector Housing Manager