

AGENDA SUPPLEMENT 1



- Committee - **CABINET**
- Date & Time - Tuesday, 12 March 2019 at 10.00 am
- Venue - Council Chamber, Council Offices, Priory Road, Spalding

Membership of the Cabinet:

Councillors: The Lord Porter of Spalding CBE (Leader), C N Worth (Deputy Leader), M G Chandler (Deputy Leader), T A Carter, A Casson, P E Coupland, R Gambba-Jones, C N Johnson, C J Lawton and G J Taylor.

No substitutions permitted. Quorum 3.

Note: Cabinet reports may be referred to Council or Scrutiny Panels. They should therefore be kept for future reference during the current committee cycle.

Persons attending the meeting are requested to turn mobile telephones to silent mode

Democratic Services
Council Offices, Priory Road
Spalding, Lincs PE11 2XE

Date: 5 March 2019

Please ask for Democratic Services: Telephone 01775 764626
e-mail: demservices@sholland.gov.uk

AGENDA

13. HIMO Licensing Policy - To advise Members of the new HIMO Licensing Policy and to seek approval to implement the revised Policy (report of the Portfolio Holder Housing and Health and the Executive Director Place enclosed). (Pages 205 - 218)
14. Private Sector Housing Enforcement Policy - To consider the draft Private Sector Housing Enforcement Policy and to seek approval to implement the revised Policy (report of the Portfolio Holder Housing and Health and the Executive Director Place enclosed). (Pages 219 - 246)

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Portfolio Holder for Housing and Health & Executive Director - Place

To: Cabinet Tuesday, 12 March 2019

(Author: Phil Stacey, Jason King Housing Options Manager, Housing Landlord Services Manager)

Subject HIMO Licensing Policy

Purpose: To advise Members of the new HIMO Licencing Policy and to seek approval to implement the revised Policy.

Recommendation(s):

To note recent legislative changes affecting the Councils Private Sector Housing Team and give approval to the policy entitled HIMO Licencing Policy.

1.0 BACKGROUND

- 1.1 The Housing Act 2004 introduced a new mandatory licensing system for certain types of Houses in Multiple Occupation (“HIMO”). Following consultation by central government in late 2015, Statutory Instrument 2018 No 221 was issued. From 1st October 2018 the scope of licenses has been increased to include all HIMOs occupied by 5 or more people more than one household. This report and Appendix sets out how South Holland District Council meets the requirements of the new legislation.
- 1.2 The Policy and Procedure for licensing HIMO’s has not been updated since 2004 but was reviewed in 2009. The Policy replaces the previous policy taking into account the new regulatory requirements. The current draft Policy was considered by the Policy Development Panel at its meeting on 19 September 2018 and approved to be considered by Cabinet. .
- 1.3 A HIMO is any house or flat which is occupied by more than one household who share (or lack) kitchen, bathroom or toilet facilities. If these facilities are for exclusive use but they are not self-contained within the living accommodation, the property will still count as a HIMO. Self-contained flats in converted buildings may also be HIMOs if they were converted before 1991 and at least one third of the flats are occupied under short tenancies. HIMOs include bedsits, some shared houses, hostels and houses converted into flats. A household is made up of members of the same family.
- 1.4 From April 2006 the owners of certain types of HIMO must apply to the Council to have their property licensed. HIMO licensing will apply throughout the district. The Council must maintain a register of licensed HIMOs for the public to view.

A HIMO must have a licence if the following apply:

- It has five or more people in two or more households, and

- The occupants share amenities such as bathrooms, toilets or cooking facilities.

The following properties are exempt:

- Where the whole property is in self-contained flats
- Where it is owned or managed by a housing association, local authority, education authority, police or health services.

The responsibility for licensing rests with the person having control of, or the person managing the property. This is basically the owner, or the person who lets the property and collects the rent.

2.0 OPTIONS

- 2.1 Option 1 - That Members note the changes to legislation affecting HIMO's and grant approval to the implementation of the revised Policy- recommended.
- 2.2 Option 2:- Do nothing and continue with the existing Policy- not recommended.

3.0 REASONS FOR RECOMMENDATION(S)

- 3.1 South Holland District Council seeks to have a licencing policy which is compliant with current legislation and meets the needs of a responsive Private Sector Housing service.

4.0 EXPECTED BENEFITS

- 4.1 The Council recognises the importance of HIMO's in providing valuable good quality accommodation and meeting housing need. The Council is aware that the majority of landlords managing HIMO's maintain those properties to a good standard, however there are some who neglect their responsibilities and put their tenants at risk due to the poor condition and management of their properties. Substandard housing can have a profound impact on mental and physical health of its occupants, and poorly maintained and managed HIMO's also negatively impacts on its surrounding neighbourhood. The adoption of this policy will enable the Council to educate and tackle these issues and improve the standards of HIMO's within the district.

5.0 IMPLICATIONS

5.1 Constitution & Legal

- 5.1.1 If enforcement action is considered necessary there would be legal implications in taking these matters forward. The legal implications would be assessed on a case by case basis.

- 5.1.2 This is an executive function, and therefore is a decision for the Cabinet.

5.2 Corporate Priorities

- 5.2.1 There is a strong link between enforcement and our corporate priorities, notably 'to have pride in South Holland by supporting the district and residents to develop and thrive.

5.3 Crime and Disorder

- 5.3.1 Tackling HIMO licencing should make a contribution to wider efforts to address anti-social behaviour.
- 5.4 Financial
 - 5.4.1 The Council has powers to set a fee for licences which are usually issued for a five year period. The Council can license properties for shorter periods when there is concern about the property or the manager. The fees charged by South Holland District Council were reviewed in October 2018.
- 5.5 Health & Wellbeing
 - 5.5.1 There is a positive link between increasing the supply of housing, along with investing into the condition of private housing in the district and the broader Health and Wellbeing agenda.
- 5.6 Risk Management
 - 5.6.1 There are risks to the authority associated with certain courses of action. Failing to ensure HIMO's are properly licenced could lead to an increase in enforcement action resulting in a potential increase in homelessness.
- 5.7 Safeguarding
 - 5.7.1 Enforcing landlords to ensure that private sector accommodation meets safe and legislative requirements will ensure residents of the district are safeguarded against poor quality accommodation.
- 5.8 Staffing
 - 5.8.1 Five Private Sector Housing Officers are within the current establishment and HIMO licencing is a generic function across all of these Officer roles.
- 5.9 Stakeholders / Consultation / Timescales
 - 5.9.1 There are no known implications for stakeholders. As this Policy relates to the licencing activities of South Holland District Council, wider consultation is not considered relevant. It is not considered necessary to conduct an Equality Impact Assessment.

6.0 WARDS/COMMUNITIES AFFECTED

- 6.1 All Wards

7.0 ACRONYMS

- 7.1 **HIMO – Houses in Multiple Occupation**

Background papers: - None

Lead Contact Officer

Name and Post: Phil Stacey, Jason King Housing Options Manager, Housing
Landlord Services Manager

Telephone Number

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Key Decision: No

Exempt Decision: No

This report refers to a Mandatory Service

Appendices attached to this report: None

Appendix A South Holland District Council HIMO Licencing Policy

Housing Act 2004 HMO Licensing Policy

1. Background

The Housing Act 2004 introduced a new mandatory licensing system for certain types of Houses in Multiple Occupation. Following the consultation by central government in late 2015 the Statutory Instrument 2018 No 221 was issued. From 1st October 2018 the scope of licenses has been increased to include all Houses in Multiple Occupation occupied by 5 or more people in 2 or more households. This paper sets out how South Holland District Council meets the requirements of the new legislation.

The Policy and Procedure for licensing HMO's has not been updated since 2004 but was reviewed in 2009. This Policy replaces the previous policy taking into account the regulatory requirements.

2. Houses in Multiple Occupation

A house in multiple occupation (HMO) is any house or flat which is occupied by more than one household who share (or lack) kitchen, bathroom or toilet facilities. If these facilities are for exclusive use but they are not self-contained within the living accommodation, the property will still count as an HMO. Self-contained flats in converted buildings may also be HMOs if they were converted before 1991 and at least one third of the flats are occupied under short tenancies. HMOs include bedsits, some shared houses, hostels and houses converted into flats. A household is made up of members of the same family.

This is a summary definition. Full definitions can be found in the Housing Act 2004 (sections 254 to 259).

3. HMO Licensing

From April 2006 the owners of certain types of HMOs must apply to the Council to have their property licensed. HMO licensing will apply throughout the district. The Council must maintain a register of licensed HMOs for the public to view.

An HMO must have a licence if the following apply:

- It has five or more people in two or more households, and
- The occupants share amenities such as bathrooms, toilets or cooking facilities.

The following properties are exempt:

- Where the whole property is in self-contained flats
- Where it is owned or managed by a housing association, local authority, education authority, police or health services.

The responsibility for licensing rests with the person having control of, or the person managing, the property. This is basically the owner, or the person who lets the property and collects the rent.

The full definitions regarding licensing can be found in the Housing Act 2004 section 55 and the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 SI 2018 No 221.

4. Suitability for occupation

Licences must be granted if the Local Authority (LA) is satisfied that:

- The HMO is reasonably suitable for occupation by the number of persons permitted under the licence
 - The licence holder is a fit and proper person
 - The proposed licence holder is the most appropriate person to hold the licence the proposed manager, if not the licence holder, is fit and proper and
 - The proposed management arrangements are satisfactory, including that the person involved in the management of the house is competent and the funding for management is suitable.

5. Fit and proper person

The Council is required to assess whether the applicant and any manager or person associated with them or formerly associated with them are fit and proper people to own or manage an HMO. In making this assessment the LA must have regard to

- Any previous convictions relating to offences involving violence, sexual offences, drugs or fraud
- Whether the proposed licence holder has contravened any laws relating to housing or landlord and tenant issues
- Whether the person has been found guilty of unlawful discrimination practices whether the person has managed HMOs otherwise than in accordance with any approved code of practice

To help with our assessment of fit and proper person, we may require licence applicants to carry out a Disclosure and Barring Service (DBS) check and provide us with details of the results as part of their HMO licence application. Where a landlord is applying for a licence for more than one property, one DBS check will suffice.

LAs can take other relevant matters into account, and our assessment will consider whether the applicant has:

- been refused an HMO licence or been convicted of breaching the conditions of a licence
- been in control of a property subject to an Interim Management Order (IMO) or Final Management Order (FMO)
- been in control of a property where work in default was carried out by a local authority and the debt is outstanding
- been convicted of Housing Benefit fraud or subject to legal proceedings by a local authority for breaches of planning, compulsory purchase, environmental protection legislation or other relevant legislation;
- any outstanding debt with the Council in relation to Housing Service
- unsuitable management arrangements (e.g. long distance)
- not been deemed fit and proper by another LA or
- not been compliant with the Tenancy Deposit scheme (new national scheme).

6. Management arrangements

Satisfactory management arrangements under section 4 above will consist of

- a system for tenants to report defects (including emergencies) and arrangements for responding
- a system of periodic inspections to identify repair or maintenance matters
- a declaration from the owner, where he is not the manager, that adequate funding will be provided to the manager to deal with repairs
- compliance with The Management of Houses in Multiple Occupation (England) Regulations 2006 which include a requirement to for HMOs to be kept in a reasonable state of repair, all installations and appliances (including those for fire safety) to be in good working order and the common parts to be kept clean and in a reasonable state of decoration.

7. Duration of licences

Licences will usually be valid for five years and will specify the maximum number of occupiers or households. We may grant licences for shorter periods where there are concerns about the property or the manager.

8. Mandatory licence conditions

An HMO licence will specify the maximum number of occupants who may occupy an HMO. The occupancy number will depend on the number and size of rooms and the kitchen and bathroom facilities. It will also include conditions requiring the licence holder to

- Produce gas safety certificates obtained within the last year and on an annual basis
- Keep electrical appliances in a safe condition and supply on demand to the LA a declaration to that effect
- Keep furniture made available by the licence holder in a safe condition and supply on demand to the LA a declaration to that effect
- Ensure that smoke alarms are installed and keep them in proper working order and supply on demand to the LA a declaration as to the condition and positioning of such alarms
- Supply the occupiers with a written statement of the terms on which they occupy the property.

9. Discretionary licence conditions

In addition to the mandatory licensing conditions, the Council will apply the following discretionary conditions to all licences

- HMOs will comply with the Management of Houses in Multiple Occupation (England) Regulations 2006
- Owners or managers must provide copies of up to date reports of fire detection, alarm system and emergency lighting to the Council annually
- a requirement for regular maintenance of the property and facilities
- The name, address and telephone number of licensee or manager is to be displayed in the common parts of the HMO
A copy of the licence must be displayed in the common parts

- the building must be adequately insured
- Tenancy agreements must set out how owners or managers intend to deal with anti-social behaviour from tenants or visitors
- Any anti-social behaviour arising in the HMO is dealt with under the terms of the tenancy agreement.

Specific conditions relevant to particular properties may also be applied such as restrictions or prohibitions pertaining to parts of the property, requirements for facilities or equipment at the property, or works to be undertaken within a particular timescale.

10. HMO Space Standards

The standards for sharing of kitchen and bathroom facilities are set out in The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006. To comply with the regulations, each unit of living accommodation and all bathrooms must have adequate heating. One bathroom is required for every five sharing occupiers. Kitchen facilities are also required for each unit of accommodation or with adequate facilities for the number of occupiers sharing. Our policy requires a set of kitchen facilities for every five sharing occupiers.

The Council will determine the number of people an HMO is licensed for in accordance with our relevant HMO space standards for room sizes which are as follows and have not changed since they were determined in 1990. These standards relate to all HMOs, not just licensable properties.

Bedroom Requirements	1 Person Room	2 Person Room	3 Person Room	4 Person Room
Bedroom with no lounge/dining space elsewhere and cooking facilities not provided in bedroom	10 square metres	15 square metres	20 square metres	25 square metres
Bedroom with adequate lounge or dining space elsewhere and cooking facilities not provided in bedroom	8 square metres	12 square metres	17 square metres	22 square metres
Bedrooms with cooking facilities provided in the room	14 square metres	18 square metres	23 square metres	28 square metres

Kitchen Requirements	7 square metres if used by 1 to 5 persons
	For over 5 persons an additional 3 metre square per person sharing the kitchen
Dining Space Requirements	2 square metres per person for those sharing the space
	Any dining space shared or exclusive use shall be suitable and conveniently located

Licence applications will need to include dimensions of rooms and details of the kitchen and bathroom facilities to enable assessment of the number of occupiers permitted under the licence. This is for guidance only and each application will be assessed on its own merits.

11. Bed and Breakfast Hotels

The Council will regard bed and breakfast hotels as HMOs if they are housing any people who use the hotel as their main residence for more than 30 consecutive days. We believe that where this accommodation is used as a main residence, the same standards as for other HMOs should be met.

12. Inspection Policy

Officers will not always visit HMOs when an application is received, but they must inspect the property within five years of the application. Each application will be risk assessed on receipt and high risk HMOs and properties not previously known to the Council will be visited as priority.

Inspections will be carried out with regard to licensing requirements. If additional licence conditions are required after an inspection of an HMO, the licence will be varied to include such conditions.

An inspection of each HMO will also be carried out under the Housing Health and Safety Rating System (HHSRS), which is set out in the Housing Act 2004. This will include a risk assessment of the effect of housing conditions on the health and safety of occupiers. The HHSRS involves the assessment of 29 potential hazards and scoring their severity to decide whether improvements are needed. If more serious “category 1” hazards are found the Council has a duty to require the owner to remedy the defect. If less serious “category 2” hazards are found, the Council has discretionary power to require action.

Where category 1 or 2 hazards are found, informal action will be used to encourage owners to carry out works, but if this fails enforcement action will be taken in accordance with the Act and our enforcement policy.

13. Licence fees

LAs have powers to set a fee for licences which are usually issued for a five year period. The Council can license properties for shorter periods when there is concern about the property or the manager.

A full schedule of fees is set out on our website.

14. Interim and final management orders

Where there is no prospect of an HMO being licensed, the Act requires the Council to make an Interim Management Order. This enables the Council to take over the management of an HMO and become responsible for running the property and collecting rent for up to a year. In extreme cases this can be extended as a Final Management Order to five years with the Council also having the power to grant tenancies.

We will only use these powers in exceptional circumstances. Any proposed action will have to be agreed by the Head of Housing. In addition Orders can only be made with the authorisation of the First Tier Property Tribunal.

15. Temporary exemption notices

Where a landlord is, or shortly will be, taking steps to make an HMO non-licensable, the Council may serve a Temporary Exemption Notice (TEN). A TEN can only be granted for a maximum period of three months. A second three-month TEN can be served in exceptional circumstances. A TEN will be served where an owner of a licensable HMO states in writing that she/he is taking steps to make an HMO non- licensable and states that the HMO will not be licensable within three months.

The Council does not wish these notices to be used routinely, and a second notice will only be allowed in exceptional and unforeseen circumstances. Any exception to the policy will be agreed by the Head of Housing.

16. Penalties for non-compliance

The Housing Act 2004 makes it a criminal offence if a person controlling or managing an HMO does not have the required licence. A person found guilty of such an offence will be subject to a fine up to a maximum of £20,000. Breaching any condition of a licence is also an offence, punishable by a fine not exceeding level 5 on the present scale unlimited fine.

The Housing and Planning Act 2016 has amended the Act to introduce the ability for the Council to seek to impose a civil penalty as an alternative to prosecution. A maximum fine of £30,000 can be imposed for each individual breach of the HMO management regulations

We will encourage owners to apply for licensing through advice and persuasion, but where they fail to apply as a result of such informal action we will take legal proceedings with a view to prosecution by the courts and/or the issue of a civil penalty. Similarly any breach of conditions will initially be dealt with informally, but if the breach continues legal proceedings will be started.

Fuller details relating to penalties can be found in SHDC Private Sector Enforcement Policy

17. Rent Repayment Orders

The new legislation allows applications to the First Tier Property Tribunal for a Rent Repayment Order (RRO), under the Housing and Planning Act 2016. Please refer to the Private Sector Housing Enforcement Policy and the Rent Repayment Policy.

18. Discretionary HMO licensing

We do not intend to apply for additional discretionary powers to extend the licensing of all HMOs in a specific area where HMOs are so badly managed as to give rise to particular problems from tenants or members of the public, such as anti-social behaviour. Such powers are not necessary in this District at present as there are no areas where several HMOs are linked to anti-social behaviour.

Similarly we do not intend to apply for new powers to introduce selective licensing for all private sector housing (including non HMOs) in designated areas. These powers enable LAs to license properties in an area where there is low housing demand or anti-social behaviour. These additional powers are not necessary as there are no areas of low housing demand in the District and no problems with anti-social behaviour associated with particular types or areas of housing at present.

19. Appeals

The Council will enable licence applicants to make representation to the Head of Housing if they are aggrieved with an officer's decision to set particular conditions or to refuse, revoke or vary a licence. They will also be able to make representations against an intention to serve an IMO.

A landlord may appeal formally to the First Tier Property Tribunal if the Council decides to:

- Refuse a licence
- Grant a licence with conditions
- Revoke a licence
- Vary a licence or
- Refuse to vary a licence.

The Residential Property Tribunal has quasi-judicial status and is made up of housing lawyers, valuers, surveyors and lay people. Members qualified to chair committees and tribunals are appointed by the Lord Chancellor and other members are appointed by the ODPM. Three members usually sit on each committee or tribunal. An appeal against the decision of the First Tier Property Tribunal is to the Lands Tribunal and can only be made with the permission of the First Tier Property Tribunal or the Lands Tribunal.

20. Further development

This policy was developed following consultation and will be revised and reviewed as appropriate. It is linked to our private sector housing enforcement policy, and our private sector housing renewal policy. All of these policies are undergoing reviews as a result of the Housing Act 2004, Housing and Planning Act 2016 and Retaliatory Eviction and the Deregulation Act 2015, Smoke and Carbon Monoxide Alarm (England) Regulations 2015, Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015.

Policy Name:	HMO Licensing Policy		
Responsible Executive:		Date of signing:	
Responsible Office:		Date of signing:	
Policy Register Number:		Service Area:	
Adopted:		Reviewed:	

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SOUTH HOLLAND DISTRICT COUNCIL

Report of: Portfolio Holder Housing and Health and Executive Director - Place

To: Cabinet Tuesday, 12 March 2019.

(Author: Phil Stacey, Jason King Housing Options Manager, Housing Landlord Services Manager)

Subject Private Sector Housing Enforcement policy

Purpose: To consider the draft Private Sector Housing Enforcement Policy and to seek approval to implement the revised Policy.

Recommendation(s):

That the revised Private Sector Housing Enforcement Policy attached at Appendix A be approved and implemented.

1.0 BACKGROUND

- 1.1 The Housing and Planning Act 2016 introduced a number of legislative changes in respect of activities undertaken by the Council's Private Sector Housing Team. These include the licensing of Houses in Multiple Occupation, measures to tackle rogue landlords, new financial penalty procedures and banning orders.
- 1.2 Local authorities have powers and responsibilities to assess housing conditions and enforce minimum standards of living through a range of measures. South Holland District Council will seek to tackle poor housing conditions using actions that are appropriate to individual situations. The purpose of this policy is to outline how the Council will work to improve private sector housing standards by providing advice and guidance or, if necessary, by means of appropriate formal action to improve, repair, close or demolish dwellings that are not fit for purpose.
- 1.3 The Council's primary role is to educate and advise owners, landlords and agents on the standards they are expected to meet in their properties, to seek to assist tenants in understanding their rights and responsibilities, and to encourage dialogue between parties to resolve issues amicably and without recourse to formal action.
- 1.4 The draft Policy was considered by the Policy Development Panel in September 2018. It is acknowledged that the Corporate Enforcement Policy is the overarching policy for all enforcement functions of the Council. The Private Sector Housing Enforcement Policy covers specific functions in more detail but will at all times meet the overall aims and objectives of the Corporate Enforcement Policy.

2.0 **OPTIONS**

- 2.1 Option 1: It is recommended that approval of the Private Sector Housing Enforcement Policy is given which incorporates recent legislative changes.
- 2.2 Option 2:- Do nothing; Continue to operate without an updated formal Private Sector Housing Enforcement policy. This option is not recommended.

3.0 **REASONS FOR RECOMMENDATION(S)**

- 3.1 South Holland District Council seeks to have an enforcement policy which is compliant with current legislation and meets the needs of a responsive Private Sector Housing function.

4.0 **EXPECTED BENEFITS**

- 4.1 South Holland District Council recognises the importance of the private housing sector in providing valuable good quality accommodation and meeting housing need. The Council is aware that the majority of landlords maintain their properties to a good standard, however there are some who neglect their responsibilities and put their tenants at risk due to the poor condition of their properties. Substandard housing can have a profound impact on the mental and physical health of its occupants, and poorly maintained properties also negatively impacts on its surrounding neighbourhood. The adoption of this policy will enable the Council to educate and tackle these issues and improve the standards of privately rented accommodation within the district.

5.0 **IMPLICATIONS**

5.1 Constitution & Legal

- 5.1.1 This is an executive function and is therefore a Cabinet decision.
- 5.1.2 If enforcement action is considered necessary there would be legal implications in taking these matters forward. The legal implications would be assessed on a case by case basis.
- 5.1.3 The Private Sector Housing Enforcement policy is written in conjunction with the Councils overarching enforcement policy. It is therefore considered that adoption of this policy will work in conjunction with the Enforcement policy. It is not considered that an Equality Impact Assessment is required.

5.2 Corporate Priorities

- 5.2.1 There is a strong link between enforcement and our corporate priorities, notably 'to have pride in South Holland by supporting the district and residents to develop and thrive.

5.3 Crime and Disorder

- 5.3.1 Tackling rogue landlords should make a contribution to wider efforts to address anti-social behaviour within the district.

5.4 Financial

- 5.4.1 Enforcement options include; rent repayment orders, civil penalty notices and licencing fees all of which can generate income for the Council. In certain circumstances the Council may be able to recover its administrative expenses when seeking to enforce against a landlord.

The Council will make a reasonable charge as specified in section 49 of the Act, to recover certain administrative and other expenses incurred in taking enforcement action.

Fees will be charged in accordance with the Councils fees and charges lists. There will be an annual review of all notices served. Where suspended notices are served, the full charge will be liable on breach of the notice. Additional costs may also be payable if external specialist advice is needed, e.g. a structural report. All charges will be the subject of an annual review.

5.5 Health & Wellbeing

- 5.5.1 There is a positive link between increasing the supply of housing, along with investing into the condition of private housing in the district and the broader Health and Wellbeing agenda.

5.6 Risk Management

- 5.6.1 There are risks to the authority associated with certain courses of action designed to enforce in the privately rented sector; for example prohibition notices may result in an increase in homelessness.

5.7 Safeguarding

Enforcing landlords to ensure that private sector accommodation meets safe and legislative requirements will ensure residents of the district are safeguarded against poor quality accommodation.

5.8 Staffing

- 5.8.1 Five Private Sector Housing Officers are within the current establishment and Private Sector Enforcement is a generic function across all these officers' roles.

5.9 Stakeholders / Consultation / Timescales

- 5.9.1 There are no known implications for stakeholders.

6.0 WARDS/COMMUNITIES AFFECTED

- 6.1 All Wards

7.0 ACRONYMS

- 7.1 **None**

Background papers: - None

Lead Contact Officer

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Landlord Services Manager

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Key Decision: **No**

Exempt Decision: **No**

This report refers to a Mandatory Service

Appendices attached to this report: None

Appendix A South Holland District Council Private Sector Housing Enforcement
Policy

South Holland District Council

Private Sector Housing

Enforcement Policy

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1. Introduction

Local authorities have powers and responsibilities to assess housing conditions and enforce minimum standards through a range of measures. South Holland District Council (“The Council”) will seek to tackle poor housing conditions using actions that are appropriate to individual situations. The purpose of this policy is to outline how the Council will work to improve private sector housing standards, by providing advice and guidance or, if necessary, by means of appropriate formal action to improve, repair, close or demolish dwellings that are not fit for purpose.

The Council recognises the importance of the private rented housing sector in providing valuable good quality accommodation and meeting housing need. The Council recognises that the majority of landlords maintain their properties to a good standard, however there are some who neglect their responsibilities and put their tenants at risk due to the poor condition of their properties. Substandard housing can have a profound impact on mental and physical health of its occupants, and poorly maintained property also negatively impacts on its surrounding neighbourhood

The Council’s primary role is to educate and advise owners, landlords and agents on the standards they are expected to meet in their properties, to seek to assist tenants in understanding their rights and responsibilities, and to encourage dialogue between parties to resolve issues amicably and without recourse to formal action.

2. Scope of the policy and service standards

This policy details the way the Council will deliver private sector housing enforcement under respective legislation and what landlords and tenants can expect from the service.

The Corporate Enforcement Policy is the overarching policy for all enforcement functions of the Council. The Private Sector Housing Enforcement Policy covers specific functions in more detail but will at all times meet the overall aims and objectives of the Corporate Enforcement Policy.

Revisions to this policy and relevant dates are at Appendix C.

3. Providing assistance, information and education

The Council will work with our service users to help them comply with all relevant regulatory requirements before considering formal enforcement action. The Council will provide clear, accessible advice and guidance and provide contact details where further information is required. Information will be provided in a range of formats such as newsletters, guides, local events and on the Council’s website.

4. Accreditation

The Council will support and work closely with DASH (Decent and Safe Homes) landlord accreditation scheme and will actively encourage landlords to join the scheme. The scheme provides a number of industry relevant benefits including landlord newsletters, training, events, and guidance, so helping the Council to achieve the aim in section 3 above.

5. Housing Health and Safety Rating System

Assessment of housing standards shall be in accordance with the Housing Health and Safety Rating System (HHSRS). This is a risk based assessment which rates the extent of hazards to health and safety.

The underlying principle of HHSRS is that any residential premises should provide a safe and healthy environment for any potential occupier or visitor. An assessment of a dwelling will involve a physical survey that will include the identification and rating of hazards in the building. The technical guidance for the system includes a wealth of statistical information on the various hazards. The application of the system will result in a score which will be the basis of the Council's action to deal with the hazards identified.

Where a category 1 hazard exists (high risk of likely occurrence within the next 12 months resulting in harm) the Council has a duty to take enforcement action relating to the hazard.

Where a category 2 hazard exists (above average risk of a likely occurrence within the next 12 months resulting in harm) the Council has a discretionary power to take enforcement action. The Council will use this power in situations where there is a permanent and persistent risk to the health, safety and/or comfort of the occupiers, where the vulnerability of residents is a particular factor which needs to be considered or the number or extent of hazards are such that cumulatively, action to formally secure improvements are warranted.

6. Outline of enforcement options

The Council will start from the position of working with our service users to help them comply with their regulatory requirements. Subsequently the Housing Act 2004 ("the Act") gives housing enforcement authorities options to formally secure improvements. This will be on the basis of the principles set out in the Corporate Enforcement Policy. Enforcement can be affected by:

- Service of an improvement notice requiring remedial works in accordance with section 11 and/or section 12 of the Act.
- Making a prohibition order, preventing the use of the whole or part of a dwelling or restricting the number or class of permitted occupants in accordance with section 20 and/or section 21 of the Act.
- Suspension of either of the above until such time as directed in the order.

- Service of a hazard awareness notice in accordance with section 28 and/or section 29 of the Act.
- Making a demolition order in accordance with section 265 of the Housing Act 1985.
- Declaring a clearance area in accordance with section 289 of the Housing Act 1985.
- Taking emergency remedial action under section 40 of the Act.
- Service of an emergency prohibition order under section 43 of the Act.

7. Power to charge for enforcement action

The Council will make a reasonable charge as specified in section 49 of the Act, to recover certain administrative and other expenses incurred in taking enforcement action.

Fees will be charged in accordance with SHDC fees and charges lists. There will be an annual review of a notice. Where suspended notices are served, the full charge will be liable on breach of the notice. Additional costs may also be payable if external specialist advice is needed, e.g. a structural report. All charges will be the subject of annual review.

Details of current charges are given on the website. Enforcement action which will incur a charge are deemed to be:

- Serving an improvement notice
- Serving a prohibition order
- Notice of emergency remedial action
- Serving an emergency prohibition order
- Making a demolition order

The Council will charge for taking enforcement action unless there are extenuating circumstances. Where this occurs the Head of Housing will make the final decision. All requests for this consideration should be put in writing and a response will be given within 21 calendar days of receipt.

On appeal of any such notice, the charge will be suspended pending the outcome of the appeal. If the notice is upheld, charges will be pursued.

8. Additional charges

Should works in default be carried out, the Council will endeavor to ensure that the costs of works are reasonable and recovered from the relevant person. The costs will be in addition to the administrative and any other relevant expenses.

When the Council carries out work in default, an invoice requesting payment for the work will be sent to the appropriate person. If this is not paid within the required period the matter will be pursued through our corporate debt recovery processes and may result in County Court action.

9. Non-compliance with notices

If a notice is complied with, no further action will be necessary. However if the notice is not complied with the Council will consider the following options:

- Administering a simple caution
- Carrying out the works in default
- Civil penalty
- Prosecution
- A combination of the above
- Granting of additional time for compliance. This will only be for extenuating circumstances and must be requested and formally agreed with the Council.

Determination of the most appropriate course of action will be in accordance with this policy and the Corporate Enforcement Policy.

10. Enforcement

Where enforcement action is considered necessary, and in deciding the course of enforcement to take, the Council will have regard to circumstances including, but not restricted to, those listed below:

- The statutory obligations of the Council
- The seriousness of the offence committed
- The consequences of non-compliance
- The level of culpability of the offender
- The track record of the offender
- The likely effectiveness of the various enforcement options
- Whether the enforcement option is a proportionate response
- Public interest and concern
- The views of other relevant service departments within the Council
- The views of other organisations such as the Police and Fire and Rescue.

11. Civil penalties

The Housing and Planning Act 2016 has amended the Act to introduce the ability for the Council to seek to impose a civil penalty as an alternative to prosecution. The offences within the Act where a civil penalty can be imposed are:

- Failing to comply with an improvement notice under section 30
- Offences relating to the licensing of a house in multiple occupation under section 72
- Offences relating to the contravention of overcrowding notices (section 139)
- Failure to comply with the Management of Houses in Multiple Occupation (England) Regulations 2006 in respect of HMOs (section 234)

The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before taking formal action, the Council will be satisfied that if the case were to be prosecuted, there would be a realistic prospect of conviction, having regard to the Crown Prosecution's Service Code for Crown Prosecutors.

When making the decision to issue a civil penalty as an alternative to prosecution, and what level of penalty would be appropriate, the Council will make that determination in line with the guidance at Appendix A.

A civil penalty will not be applied if a person has already been convicted of that offence or where criminal proceedings have already been instigated. Income received from a civil penalty will be used to maintain the Council's statutory functions in relation to the private rented housing sector.

12. Owner occupiers

Where a charge is being considered for action against an owner occupier, hardship factors will be taken into consideration and payment of the fee may be considered at the discretion of the Head of Housing.

13. Outline of the licensing of houses in multiple occupation

The Act provides a mandatory system of licensing for all houses in multiple occupation (HMOs) of three or more stories and five or more occupants who constitute more than one household. This policy sets out how the Council will license relevant HMOs and how enforcement powers available to the Council will be used to ensure the health, safety and welfare of occupants.

To be eligible for licensing, the HMO must be reasonably suitable for occupation by the number of persons permitted under the license and having regard to the minimum prescribed standards of amenities and facilities. These include the number, type and quality of shared bathrooms, toilets and cooking facilities. Adopted standards will be advertised and communicated to landlords and agents. The Council may also attach additional conditions to a license to ensure the HMO is suitable for occupation. The license holder must also be a fit and proper person. Controlling or managing an HMO which ought to be licensed, but is not licensed, without a reasonable excuse for doing so, is a criminal offence and the Council will take action as detailed above.

13.1. Licensing and the HHSRS

The HHSRS does not need to be considered before a license is issued. The issue of a license does not imply that housing standards are acceptable and that no subsequent enforcement action will be taken to secure standards in health, safety or amenity of that property. If the Council becomes aware of potential hazards during the licensing process, action will be taken at the earliest opportunity as detailed in this policy.

The license will specify the conditions that the licensee must meet. A breach of conditions may result in the licence being withdrawn. The operation of an HMO in contravention of a licensing requirement is an offence.

The Council will consider whether any licence applicant is a 'fit and proper person' as required by the Act. Landlords applying for an HMO licence will be required to declare that they have no unspent convictions for relevant offences. The Council may investigate suspected breaches of this declaration. Written evidence in support of the declaration will be sought from the applicant where the Council has reasonable suspicion that an unspent conviction exists or in the case of particular property uses such as that provided for vulnerable adults. Where the Council has evidence that a landlord is no longer a fit and proper person, licence(s) will be revoked.

A licence fee will be charged to cover the administrative costs. The fee will be reviewed annually.

Enforcement of housing and management standards of all HMOs (including non-licensable HMOs) will be in accordance with this policy.

The Council will consider alternative works proposed by the responsible person for the property (as defined by legislation) where these will achieve the same end as those required by the Council.

13.2. Unlicensed HMOs

When an HMO is brought to the attention of the Council it will investigate whether the property should be licensed.

If properties with three or more stories, five or more persons in two or more households operate without a licence it is an offence. Where such premises are found, the owner/person having control will be invited to submit a valid licence application within 28 calendar days. All practical steps will be taken to assist the owner of the property to satisfy the licensing requirements except in the case of deliberate, repeat or persistent contravention where formal action will be pursued.

Licences will only be issued following receipt of a valid application and satisfactory fit and proper person checks.

13.3. Non-licensable HMOs

HMOs that do not require a licence are still subject to legislation governing how they are managed and standards that must be met. These type of properties can include houses made into bedsits and common areas of flats. All non-licensed HMOs known to the Council will be regularly inspected having regard to the management regulations. The frequency of inspections will be on the basis of an assessment of risk, taking into account such factors as property type and condition, number of households within the property, amenities, fire precautions, and confidence in management. The inspection frequency will be dependent on risk.

The regulations set out the expected standards of management in relation to providing information, standards of accommodation, safety measures and waste disposal facilities. The Council will inspect properties and carry out actions to ensure that HMO management standards are maintained.

13.4. Management Orders

If a property should be licensed, but there is no reasonable prospect of granting a licence, the Council may apply a Management Order. The Council will make an order where the health and safety condition as described in the Act is met.

The Council may consider using the same power to take over the management of an empty property or properties in order to bring them back into use. Management orders may also be made on properties where anti-social behaviour is occurring. Management orders will result in the Council (or an appointed agent) operating as if it were the landlord, including creating tenancies, collecting rents, carrying out improvements and repairs and other related management matters depending on the order granted. Relevant costs are recoverable. The following orders are available:

- An interim management order
- A final management order
- A special interim management order
- An interim or final empty dwelling management order

All orders can be varied or revoked in accordance with the provisions of the Act where determined necessary by the Council.

13.5. Selective licensing of other residential accommodation

Part 2 of the Act also gives a power for local authorities to introduce additional licensing of other HMOs as the local authority deems appropriate. In addition, under Part 3 of the Act, local authorities can introduce selective licensing to deal with particular issues in its area as the local authority deems necessary or desirable.

At the time of writing there are no additional or selective licensing requirements in place in the district. The introduction of any such schemes will only take place following, and in accordance with, the necessary consultations.

13.6. Overcrowding

The Act provides local authorities with power to investigate complaints in respect of overcrowded living conditions of any HMO where no interim or final management order is in force and it is not required to be licenced under Part 2. Such complaints may be received from private sector tenants, third parties concerned about children or vulnerable adults living in overcrowded conditions, or where overcrowded conditions are legitimately impacting on a neighbors' health, safety or welfare.

Council officers will liaise as necessary where enforcement action could likely result in a family having to move out of their home, to mitigate the impact of any subsequent action.

14. Rent Repayment Orders

The Housing and Planning Act 2016 confers power on the First-Tier Tribunal to make a rent repayment order where a landlord has committed one of the following offences:

- Have been prosecuted for operating an unlicensed HMO;
- Have failed to comply with an improvement notice;
- Has failed to comply with a prohibition order;
- Is in breach of a banning order;
- Has used violence to secure entry to a property; or
- Illegal eviction or harassment of the occupiers

A rent repayment order will require the landlord to repay an amount of rent paid by the tenant or pay the Council an amount in respect of a relevant award of Universal Credit/Housing Benefit paid.

If a person is convicted of an offence as a consequence of action brought by the Council, application for a rent repayment order will be considered. The Council may also help a tenant to apply for a rent repayment order where legislation permits.

15. Banning Orders

A Banning Order offence is an offence of a description specified in The Housing and Planning Act 2016 (Banning Order Offences) Regulation 2017.

Rogue Landlords who ignore their legal obligations and rent out accommodation which are substandard may find themselves receiving a Banning Order.

A banning order is an order by the First Tier Tribunal that bans a landlord from:

- Letting housing in England
- Engaging in English letting agency work
- Engaging in English property management work; or
- Doing two or more of those things

16. Database of Rogue Landlords and Letting Agents

The Housing and Planning Act 2016 (“The Act”) introduced a range of measures to help local housing authorities tackle rogue landlords and drive up standards in the private rented sector. These measures include establishing and operating a database of rogue landlords and property agents.

Local housing authorities must make an entry on the database for a person or organisation who has received a Banning Order. Section 30 of The Housing and Planning Act 2016 allows local authorities to make entries for a person who has:

- Been convicted of a banning order that has committed at a time when the person was a residential landlord or property agent; and/or
- Received two or more financial penalties in respect of a banning order offence within a period of 12 months committed at a time when the person was a residential landlord or a property agent

17. Energy efficiency in private rented property

Energy efficiency regulations (“the Regulations”) establish a minimum standard for domestic privately rented property, subject to certain requirements and exemptions:

- From the 1 April 2018, landlords of privately rented domestic and non-domestic property in England or Wales must ensure that their properties reach at least an Energy Performance Certificate (EPC) rating of E before granting a new tenancy to new or existing tenants. These requirements will then apply to all private rented properties in England and Wales – even where there has been no change in tenancy arrangements – from 1 April 2020 for domestic properties
- Where a landlord wishes to continue letting property which is sub-standard, they will need to ensure that energy efficiency improvements are made which raise the EPC rating to a minimum of E.

Under prescribed circumstances within the Regulations, the landlord may claim an exemption from prohibition on letting a sub-standard property. Where a valid exemption applies the landlord must register the exemption on the national Private Rented Sector Exemptions Register.

The minimum standard will apply to any domestic privately rented property which is legally required to have an EPC and which is let on certain tenancy types. Landlords of property for which an EPC is not a legal requirement are not bound by the prohibition on letting sub-standard property.

The Council will:

- Check that properties in the district falling within the scope of the Regulations meet minimum levels of energy efficiency.
- Issue a compliance notice requesting information where it appears that a property has been let in breach of the Regulations.
- Serve a penalty notice where satisfied that the landlord is, or has in the past 18 months, been in breach of the requirement to comply with a compliance notice or has provided false or misleading information on the exemptions register.

The Council will have regard to guidance in the application of this legislation, the penalty amount and the publication of the penalty.

18. Smoke and carbon monoxide alarm regulations

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 require landlords of private rented accommodation to:

- Have at least one smoke alarm installed on every storey of their rental property which is used as living accommodation, and
- Have a carbon monoxide alarm in any room used as living accommodation which contains a solid fuel burning appliance.
- Ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy.

This policy gives consideration in relation to the above legislation. Appendix B provides a statement of principles that the Council will apply exercising its powers to require a landlord to pay a financial penalty, which it will follow when determining the amount of a penalty charge.

19. Illegal eviction and harassment

The Council will consider action under the Protection from Eviction Act 1977 which makes it an offence to:

- Do acts likely to interfere with the peace or comfort of a tenant or anyone living with them;
- Persistently withdraw or withhold services for which the tenant has a reasonable need to live in the premises as a home; or
- Unlawfully deprive or attempt to deprive the residential occupier of any premises they occupy or any part thereof.

For any tenancies started on or after 1st October 2015 where a tenant makes a genuine complaint about the condition of their property that has not been addressed by their landlord, the Council will inspect and may serve a notice requiring works to be carried out, following which, for a period of six months, a section 21 notice requiring vacant possession may be deemed invalid.

The Council will both support tenants and deal with landlords and agents where these issues arise.

20. Redress schemes for lettings agency and property management work

All letting agents and property managers must belong to one of three Government approved schemes:

- Ombudsman Services Property (www.ombudsman-services.org/property.html)
- Property Redress Scheme (www.theprs.co.uk)
- The Property Ombudsman (www.tpos.co.uk)

The Council will take action where it is satisfied that, on the balance of probability, someone is engaged in letting or management work and is required to be a member of a redress scheme but has not joined.

The Council may impose further penalties if a lettings agent or property manager continues to fail to join a redress scheme despite having previously had a penalty imposed. There is no limit to the number of penalties that may be imposed on an individual lettings agent or property manager and further penalties may be applied if they continue to be in breach of the legislation.

21. Empty Properties

Where a residential property is found empty, the Council's Empty Homes Policy will apply. Owners of empty dwellings will be encouraged to bring them back in to use through a range of informal action but where this is not successful then enforcement will be considered to address the problems and bring the property back into use. Examples of such powers include the use of empty dwelling management orders, compulsory purchase orders, and enforced sale.

22. Boarding up properties

The Council has powers to board up properties that are insecure after all efforts have been made to contact and work with the owner, to make the property safe and correct any hazards found in the properties. When deemed appropriate to do so, the Council will consider taking such action and will detail works required and the reason(s) why, e.g. prevention of unauthorized entry. The Council will look to recover expenses reasonably incurred where such works are undertaken.

23. Other enforcement powers

The Council will consider the use of statutory powers to deal with various housing issues, including statutory nuisance, dangerous structures, filthy and verminous premises, defective drainage and, specifically, the Antisocial Behaviour, Crime and Policing Act 2014 on a case-by-case basis in accordance with legislation, approved guidance and codes of practice etc., and in accordance with the Corporate Enforcement Policy and Enforcement Service Standards.

24. Powers of entry

Entry to a property is usually required to enable authorized officers to carry out statutory functions. Apart from in emergency situations, or where otherwise deemed counterproductive, the Council will make an appointment in the first instance and will give 24 hours' notice to the occupants and owners of the intention to inspect the property.

Powers of entry allow an officer, at any reasonable time, to enter a property to carry out an inspection and gather evidence, take someone with them, take appropriate equipment or materials and take any measurements, photographs, recordings and samples as necessary. In some cases, powers of entry will be used to carry out works.

The Council will exercise its statutory powers to gain entry without giving prior notice to investigate an alleged offence or to carry out a statutory duty where it is necessary to protect the health and safety of any person or to protect the environment without avoidable delay. Application will be made to a Magistrates Court for a warrant to enter the premises if necessary.

25. Housing immigration – inspections and accommodation certificates

When an immigration application is made to come to the UK, one of the documents that must be provided is a letter confirming:

- The property the applicant intends to live in has been inspected
- The property is of an acceptable for occupation
- The property will not become overcrowded if they live there

As this is not a statutory function, the Council will provide this service taking into consideration other operational demands. A fee will be payable in advance for the inspection and the letter. The current fee charged is £100.00 plus VAT and will be subject to annual review.

26. Delegated authority and competency of officers

All officers involved with the enforcement of legislation covered by the policy will be competent to perform their duties in accordance with the legislation and agreed internal procedures and will carry out continuous professional development to do so.

The Council has delegated the authority to serve notices under various Acts, including the Housing Act 2004, to the Head of Housing who has in turn delegated the service of some of these directly to enforcement officers. All notices will be served having regard to this delegation scheme.

27. Feedback and review of this policy

This policy will be reviewed from time to time and refreshed should any changes in legislation or relevant codes of practice or guidance require it to be updated. The Council will publish this and our service standards on our website and welcomes and will respond to any comments on the content of the policy at any time. This policy and any updates or changes to it will be ratified in accordance with our constitution and changes will be listed in Appendix C.

Details of our general service standards and what you can expect from our officers can be found on our website. If an alleged offender is being prosecuted or subject to formal legal action then in most cases the court process has its own channels for legally challenging the action of the Council or the outcome, through a court appeal.

If a matter has not yet reached court or in any other case where a person is dissatisfied, see our Customer Feedback Policy for further advice on how to proceed.

You can contact the Council by the following means:

Address: South Holland District Council Offices, Priory Road, Spalding, Lincolnshire, PE11 2XE

Email: privatehousing@sholland.gov.uk

Telephone 01775 761161

Website: www.sholland.gov.uk/article/5182/Private-Sector-Housing

Appendix A - Civil Penalties

Prior to taking formal action against a relevant person, consideration will be given to current enforcement policies and the two stage test contained in the Code for Crown Prosecutors:

- The evidential test: that there is sufficient evidence to provide a realistic prospect of a conviction for each offence, having regard to any potential defence.
- The public interest test: that it is in the public interest to pursue legal sanction and what sanction would be the most appropriate given the circumstances.

At the conclusion of this decision making process, the Council may determine that one of the following outcomes is most appropriate:

- Pursue a prosecution for the offence(s)
- Impose a civil penalty
- Apply a simple caution
- Gather additional evidence so that it can be further considered
- Find resolution using informal methods
- Take no further action

If the Council decide that the imposition of a civil penalty is the most appropriate course of action, then the Council will determine the level of penalty based on the cumulative sum of penalties for each offence, plus the sum of penalties for any additional offences, plus a level of penalty determined by an impact scoring matrix, as shown in table 1.

Table 1: Civil penalty level for Housing Act 2004 offences

(Column 1 + column 2 + column 3 = column 4).

1	2	3		4
Offence specific penalties	Further penalties (if any)	Table 3 impact matrix score	Level of penalty	Cumulative total
<i>Total for each penalty shown in Table 2, column A</i>	Total for each penalty shown in Table 2, columns B and / or C	60 - 110	£1,000	Level of civil penalty to be applied (maximum £30,000)
		120 - 170	£5,000	
		180 - 230	£10,000	
		240	£20,000	

Table 2: Offence specific penalty and other penalties

	A			C		
s.30	Non-compliance with improvement notice.	£500	There are 2 or more category 1 hazards.	£2,000	Where there are 3 or more high scoring category 2 hazards. ²⁹	£1,000
s.72	Failure to obtain a property licence.	£10,000	The licence holder/manager permits more persons or households to occupy than authorised by the licence.	£2,000	The HMO is licenced under this section and there is a breach of licence conditions (penalty per breach).	£1,000
s.95	Failure to obtain a property licence. ³⁰	£3,000	The HMO is licenced under this section and there is a breach of licence conditions (penalty per breach).	£1,000		
s.139	Non-compliance with an overcrowding notice.	£500	Penalty added for every person the property is overcrowded by.	£200		
s.234	Failure to comply with management regulations in respect of HMOs (penalty per breach).	£500				

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A high scoring category 2 hazard is defined as a hazard achieving a score rating of D or E under the HHSRS
 SHDC does not operate an additional property licensing scheme. The implementation of such a scheme will be in accordance with local policy and statutory requirement

Table 3: Impacts scoring matrix

Answer each of the questions 1 – 5 below and apply the score shown in the column header.

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Score		10	20	30	40
1	Severity of harm or potential harm caused x 2 (the relevant column score is double)	Low No harm caused. Potential harm unchanged in HHSRS assessment. Previous/current occupant not in vulnerable category.	Moderate Moderate level health risk(s) to relevant persons. Previous/current occupant in vulnerable category.	High High level health risk(s) to relevant persons. Potential harm outcome increased in HHSRS assessment. Previous/current occupant in vulnerable category. Occupants affected frequently or by occasional high impact occurrences.	Severe High level of health risk(s) to relevant persons. Previous/current occupant in vulnerable category. Multiple occupants at risk. Potential harm outcome increase in HHSRS assessment. Occupants are severely and/or continually effected.
2	Number of properties owned/managed	1-2	3-4	5-8	8+
3	Enforcement history	No previous enforcement history.	1 previous enforcement notice served. Moderate severity.	1 or more enforcement notice served previously. Moderate to large severity.	Serial offender. Multiple enforcement notices served previously. Moderate to large severity.
4	Removal of financial incentive	Little or no income received	Low income received	Moderate income received	High income received
5	Deterrence and prevention	High confidence that penalty will deter repeat offence.	Medium confidence that penalty will deter repeat offence.	Low confidence that penalty will deter repeat offence.	No confidence that penalty will deter repeat offence.

Table 3 guidance

The principle aim of imposing a financial penalty on landlords and or agents is to help prevent the exposure of tenants to health risks as a consequence of poor housing conditions which are in the control of their landlord or agent. It is for this reason a weighted score has been applied to the severity of harm outcome (question 1).

The number of properties owned by the landlord or managed by the agent will be indicative of their culpability in respect of the offence. It is assumed that a person owning, managing or letting properties is aware of any legal responsibilities or obligations.

In consideration of enforcement history, cases which were closed within the previous 7 years will be used in determination of this question.

The term 'serial offender' will be applied at the discretion of the Council in consideration of the overall number of property enforcement-related issues brought to the attention of the Council in respect of the person/company over the previous 7 years. Issues believed by the Council to be false or malicious will not be taken into account.

The investigation of a relevant person's/company's financial means will involve using all investigatory powers available to the Council and will take into consideration all assets including personal assets both within and outside of the district.

In determination of the confidence level that the penalty will act as a deterrent, this will be to deter both the relevant person/company and other persons in the business of letting properties in the area from causing offences under the Act. Council records and First-tier Tribunal cases will be considered and a written justification retained on our record for future reference.

A person in a vulnerable category is defined as someone who forms part of a vulnerable group under the HHSRS relating to the hazard(s) present in the property, or an occupant or group of occupants considered by the Council to be at particular risk of harm that the offender ought to have regard to.

The class of harm/health risks is defined as a physical or mental illness or injury that corresponds to one of the four classes of harm under Schedule 2 of the Housing Health and Safety Rating System (England) Regulations 2005. These four classes of harm will be used in consideration of both the actual or potential severity of harm and justification of that calculation in respect of the scoring matrix and will be held within the Council's records.

The financial circumstances of an individual/company will enable the Council to both determine the ability of the relevant person/company to pay the penalty and ensure the level of the penalty will act as a deterrent against the occurrence of future offences. In calculation of an offender's income level, the national average gross income level will be considered a moderate income, and 10% increments above/below will determine their level of income for the purpose of the scoring matrix. If the Council has insufficient information to make a determination of the financial circumstances of the offender, it may make such a determination as it thinks fit. Where an offender can demonstrate that their income is less than £400 per week by providing sufficient documented evidence of their income, the overall financial penalty will be reduced by 50%, subject to the discretion of the Council.

Appendix B – Smoke and CO alarm

Legislative background

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 came into force on 1st October 2015 and introduced the following duties for “relevant landlords” when premises are occupied under a “specified tenancy”:

- a smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation; and
- a carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and
- checks are made by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy.

Where the Council has reasonable grounds to believe that a relevant landlord is in breach of one or more of these duties, the Council will serve a remedial notice on the landlord. Reasonable grounds include evidence from an officer of the Council, Lincolnshire Fire and Rescue, Lincolnshire Police etc. The Council will take a staged approach, in line with our Corporate Enforcement Policy, giving the landlord 7 days to comply where there is no history of non-compliance. If there is a history of non-compliance or compliance is not achieved within 7 days a remedial notice will be served.

Where a remedial notice has been served and the Council is satisfied on the balance of probabilities that the landlord on whom a remedial notice was served has failed to take the remedial action specified in the notice within the specified period, the Council will (where the occupier consents) arrange for the remedial action to be undertaken and will require the landlord to pay a penalty charge.

Principles followed in determining the amount of Penalty Charge

The purpose is to protect the safety of residents in rented accommodation. Where legislation is not complied with the financial penalty aims to:

- Change the behaviour of the landlord and deter future non-compliance;
- Eliminate any financial gain associated with non-compliance;
- Be proportionate (giving consideration to seriousness, past performance; risk and relevant government guidance); and
- Reimburse the Council for costs incurred in enforcement.

Penalty Charge

The Regulations allow a civil penalty of up to £5,000 to be imposed on landlords who fail to comply with a remedial notice. Having regard to proportionality and the Corporate Enforcement Policy, a lesser penalty will be merited on the occasion of a first offence and that prompt payment of the penalty on that first occasion should attract a reduced penalty in recognition of early admission of liability.

However, repeat offences shall attract a higher penalty in view of an offenders continuing disregard for the legal requirements and tenant safety.

The level of penalty covers the cost of all works in default, officer costs, inspections and administration, and on a basic cost recovery basis. In addition to this an appropriate and proportionate penalty fine will be levied.

Level of Penalty Charge

	Penalty charge	Discount for payment within 14 days
First Offence	£700	£200
Second Offence	£2500	None
Third and Subsequent Offences	£5000	None

Recovery of Penalty Charge

The Council may recover the penalty charge as laid out in the Regulations on the order of a Court, as if payable under a Court Order.

Appeals in relation to a penalty charge notice

The landlord may request in writing, in a period that must not be less than 28 days beginning with the day on which the penalty notice was served, that the Council review the penalty charge notice. The Council will consider any representation and decide whether to confirm, vary or withdraw the penalty charge notice. This review will be carried out by the Head of Environment and Public Protection. In the event of an appeal the penalty notice will be suspended until such time the matter has been reviewed.

A landlord who is served with a notice confirming or varying a penalty charge notice may appeal to the First Tier Tribunal against the Council's decision.

Appendix C – Policy revisions

	Date	Revisions
Final Version		
Revision A		

Policy Name:	Private Sector Housing Enforcement Policy		
Responsible Executive:		Date of signing:	
Responsible Officer:		Date of signing:	
Policy Register Number:		Service Area:	
Adopted:		Reviewed:	