



APPENDIX 2

HOUSING AND PLANNING ACT 2016
PRIVATE SECTOR HOUSING ENFORCEMENT POLICY

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1. Introduction

- 1.1. The Government has stated that it wants to support good landlords who provide decent, well-maintained homes, and avoid unnecessary regulation which increases costs for landlords and pushes up rents for tenants.
- 1.2. However, it has also pledged to crack down on rogue landlords who flout the law and knowingly rent out unsafe and substandard accommodation.
- 1.3. The Housing and Planning Act 2016 introduced measures to help local housing authorities deal more robustly with criminal, rogue and irresponsible landlords:
 - Financial penalties of up to £30,000 as an alternative to prosecution for certain specified offences;
 - Extension of rent repayment orders to cover illegal eviction, breach of a banning order, failure to comply with an improvement notice and certain other specified offences;
 - Database of rogue landlords and property agents who have been convicted of certain offences or received multiple Financial penalties;
 - Banning orders for the most serious and prolific offenders.
- 1.4. This Policy sets out how the above provisions will be implemented in Gateshead. Gateshead Council is the 'local housing authority' in Gateshead and is referred to in this Policy as 'the Council'.
- 1.5. For the purposes of this policy 'the Act' refers to The Housing and Planning Act 2016.

2. Financial Penalties

2.1. Purpose

2.2. Section 2 of this Policy details the use of Financial penalties as an alternative to prosecution under the Housing Act 2004 (as amended by the Housing and Planning Act 2016) and describes how the Council will use this new power, how the decision to prosecute or to impose a Financial Penalty will be made, and how the level of each Financial Penalty will be determined.

2.3. It is designed to ensure transparency, consistency and fairness in how and when Financial Penalties are imposed, it will play a significant role in helping the Council to create a level playing field for all landlords by dealing robustly with criminal, rogue and irresponsible landlords.

2.4. Legislation

- Housing Act 2004 S.249A (as amended) Schedule 13A
- Housing and Planning Act 2016 S.126 and Schedule 9

2.5. Background

2.6. The Housing and Planning Act 2016 ('the Act') has amended the Housing Act 2004 to introduce the ability of a local housing authority (LHA) to seek to impose financial or 'Civil' penalties on unscrupulous landlords as an alternative to prosecution. This power came into effect from 6 April 2017 and allows the Council to impose a Financial Penalty of up to £30,000 rather than pursue a criminal prosecution.

2.7. When introducing Financial Penalties through the Act, Government Ministers made it very clear that they expect local housing authorities to use their new powers robustly as a way of clamping down on rogue landlords.

2.8. In the House of Commons, Marcus Jones MP (Parliamentary Under Secretary of State at the DCLG) explained why the maximum penalty is £30,000:
"[it is necessary to] clamp down on rogue landlords, so the Financial penalty [has been increased] up to a maximum of £30,000".

2.9. *" It is important [to] raise the level of Financial penalty to £30,000, because a smaller fine may not be significant enough for landlords who flout the law to think seriously about their behaviour and provide good quality, private sector rented accommodation for their tenants".*

2.10. Although the Government states (in guidance that accompanied the Act) that, generally, it would expect the maximum Financial Penalty of £30,000 to be "reserved for the very worst offenders", it recommends that the actual amount imposed in any case should reflect the severity of the offence and take into account the landlord's previous record of offending.

2.11. The offences for which a Financial Penalty may be considered are contained within the Housing Act 2004 and are as follows;

S.30	Failure to comply with an Improvement Notice
S.72	Offence in relation to licensing of Houses in Multiple Occupation
S.95	Offences in relation to licensing of homes included in Selective Landlord Licensing areas
S.139	Failure to comply with an overcrowding notice
S.234	Failure to comply with management regulations in respect of Houses in Multiple Occupation

2.12. Principles of Financial Penalties

2.13. As the Housing and Planning Act 2016 has only recently been enacted, there are few legal precedents in relation to the use and levels of penalties.

2.14. Although the maximum Financial Penalty that can be imposed for an offence is £30,000, it is for the Council to determine the level of penalty.

2.15. Financial Penalties can only be used as an alternative to prosecution. This means that, if a Financial Penalty has already been imposed, the offender cannot be prosecuted for the same offence. Likewise, a person who has been (or is being) prosecuted for an offence cannot be issued with a Financial Penalty for the same offence.

2.16. Although only one Financial Penalty can be issued for each of the first 4 offences listed above, a Financial Penalty can be issued for each separate breach of the HMO Management Regulations.

2.17. Where the letting / managing agent and landlord have committed the same offence, the Council can impose a Financial Penalty on both of them. The level of the Financial penalty imposed on each offender may differ, depending on the circumstances of the case.

2.18. Deciding whether to impose a penalty or to prosecute

2.19. The same criminal standard of proof is required for a Financial Penalty as for prosecution. This means that, before taking formal action, the Council needs to satisfy itself that, if the case were to be prosecuted in the magistrates' court, there would be a realistic prospect of conviction.

2.20. To achieve a conviction in the magistrates' court, the Council must be able to demonstrate beyond reasonable doubt that the offence has been committed. The same principle applies in respect of Financial Penalties so, where a Financial Penalty is imposed and an appeal is subsequently made to the First-tier Tribunal, the Council will need to be able to demonstrate beyond reasonable doubt that the offence had been committed.

2.21. Prosecution may be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past. The following may also be taken into consideration;

- seriousness of the offence, including the circumstances of the tenant and the impact on the wider community
- culpability of the landlord
- track record of compliance of the landlord

2.22. A Financial Penalty of up to £30,000 can however be imposed where a serious offence has been committed and the Council believes that the most disruptive sanction to impose on a criminal, rogue or irresponsible landlord is a financial penalty (or penalties if there have been several breaches), rather than prosecution.

2.23. The use of Financial Penalties (and rent repayment orders) will not only prevent the businesses of criminal, rogue and irresponsible landlords from profiteering from illegal and dangerous practices, but it will also demonstrate the Council's commitment to ensuring that it is offenders (rather than good, responsible landlords or the local council tax payers) who pay for the cost of housing enforcement.

2.24. As the Council is allowed to retain the income it receives from Financial penalties, this course of action will also provide the Council with the opportunity to make a real impact on housing enforcement activity in the Borough.

2.25. Factors taken into account when deciding the level of Financial Penalty

2.26. Generally, the maximum Financial Penalties will be reserved for the very worst offenders. The actual amount levied in any particular case will reflect the severity of the offence and take account of the landlord's previous record of offending.

2.27. To ensure that the Financial Penalty is set at an appropriate level, the Council will consider the following factors that the Government has identified, in its statutory guidance, as being pertinent:

a) The severity of the offence

The more serious the offence, the higher the penalty should be.

b) The culpability and track record of the offender

A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.

c) The harm caused to the tenant

This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be perceived), the higher the amount should be when the Council imposes a Financial Penalty.

The circumstances of the victim, including their vulnerability are highly relevant. Consideration should be given to the worst possible harm outcomes that could reasonably occur as a result of the offender committing the specific offence that is being considered. This means that even if some harm has already come to tenants, or visitors to the property, consideration should still be given to whether there was the potential for even greater harm to have occurred. This will be determined on a case by case basis.

When assessing the level of harm, the Council will take all the circumstances of the case into account, and will have regard to whether the offence was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or the offender has demonstrated hostility towards the victim based on those characteristics.

The Council will also consider whether a prosecution is likely to have a significant adverse effect on the victim's physical or mental health, and whilst a prosecution may be taken due to the wider public interest to prosecute the case through the courts, an adverse effect on a victim may make a prosecution less likely.

Harm can include:

- Physical injury, damage to health and psychological distress to individual victims. The nature of the harm will depend on the personal characteristics and circumstances of the victim.
- Harm to the community, including economic loss and harm to public health
- Some types of harm are difficult to define but can reference public feeling about damage by behaviour to both individuals and society as a whole.

Examples of Physical Harm

- **Low harm** outcomes are usually significant enough to warrant medical attention and can include occasional severe discomfort, broken finger, slight concussion, moderate cuts, significant bruising, regular serious coughs or colds.
 - **Medium harm** outcomes include eye disorders, sleep disturbance, neuro-psychological impairment, dermatitis, severe stress, fractures, serious puncture wounds, severe strains, burns, migraines.
 - **High harm** outcomes include asthma, lead poisoning, legionnaires disease, chronic confusion, severe fever, serious fractures and burns, the loss of a hand or foot.
 - **Very high harm** outcomes include death, malignant tumours, paralysis, severe pneumonia, 80% burn injuries, and permanent loss of consciousness.
- d) **The punishment of the offender** - A Financial Penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.
- e) **Whether it will deter the offender from repeating the offence** - The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with

all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

- f) **Whether it will deter others from committing similar offences** - While the fact that someone has received a Financial Penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a Financial Penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying Financial Penalties where the need to do so exists and (b) that the level of Financial Penalty will be set at a high enough level to both punish the offender and deter repeat offending.
- g) **Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence** - The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

2.28. Punitive Charges

2.29. Officers will use the following Table of Punitive Charges as a starting point for determining, on a case by case basis, the level of Financial Penalty that should be imposed:

		Culpability			
		Low Little or no fault of landlord	Negligent Failure to take reasonable care	Reckless Foresight or wilful blindness	Deliberate Intentional breach
Harm and Severity of Offence	Low (Range) (£)	1,000- 3,000	2,000-4,000	3,000-5,000	4,000-6,000
	Starting point	2,000	3,000	4,000	5,000
	Medium (Range) (£)	2,000-4,000	4,000-8,000	6,000-10,000	8,000-12,000
	Starting point	3,000	6,000	8,000	10,000
	High (Range) (£)	2,000-6,000	6,000-10,000	10,000-14,000	16,000-20,000
	Starting point	4,000	8,000	12,000	18,000
	Very High (Range) (£)	3,000-7,000	8,000-12,000	16,000-20,000	20,000-30,000
	Starting point	5000	10000	18000	25000

2.30. To ensure that the punitive charge is set at an appropriate level, the Council will consider all of its findings against the factors (described in detail above) identified in the statutory guidance. Aggravating factors in the case will increase the amount from the starting point and, equally, any mitigating factors will cause the penalty to fall below the starting point.

- a) Examples of aggravating factors;
- Poor history of compliance
 - Abuse of trust
 - Lack of remorse
- b) Examples of mitigating factors;
- Good history of compliance
 - Circumstances at time of offence
 - Mental or physical illness
 - Culpability of victim
 - Genuine remorse

2.31. The costs of investigating, determining and applying a Financial Penalty

2.32. When setting a Financial penalty, the Council will also take into account the cost of investigating the offence(s) and preparing the case for formal action.

2.33. In keeping with the key principle of ensuring that the costs of enforcement are borne by the offender (rather than by good, responsible landlords or the local council tax payers), the costs associated with investigating, determining and applying a Financial Penalty will be reflected in the level of Financial Penalty that is imposed.

2.34. Cases that result in the Council issuing Financial Penalties entail investigative and preparation costs. These costs, comprise resources and officer time and will be built into the Financial Penalty.

2.35. Investigative Charges

2.36. Investigative costs have been calculated for each of the offences that are covered by Financial penalties by determining the average number of hours taken to complete the work, the hourly rate of the Officers involved and the service on-costs. The costs are then broken down into 3 levels: low, medium and high.

Offence	Cost of investigation (£)		
	Low	Medium	High
Housing Act 2004 section 30: Failure to comply with an Improvement Notice	200	300	400
Housing Act 2004 section 139: Failure to comply with an Overcrowding Notice	300	450	600
Licensing Offences			
Housing Act 2004 section 72 and 95: Failure to licence a licensable property	200	300	400
Housing Act 2004 section 72 and 95 Failure to comply with licence conditions	300	450	600

HMO Management Regulation Offences			
Regulation 3: Information not available / displayed	300	450	600
Regulation 4: Duty to take safe measures	300	450	600
Regulation 5: Duty to maintain water supply and drainage	300	450	600
Regulation 6: Duty to supply and maintain gas and water	300	450	600
Regulation 7: Duty to maintain common parts	300	450	600
Regulation 8: Duty to maintain living accommodation	300	450	600
Regulation 9: Duty to provide waste disposal facilities	300	450	600
Regulation 10: Duty of occupiers	300	450	600

2.37. The investigative costs incurred in dealing with a landlord's failure to comply with an Improvement Notice are significantly lower (compared to other offences) because the Council will already have charged some preliminary costs when serving the Improvement Notice. The additional costs will cover the work involved in confirming that the remedial action required by the notice is not completed, obtaining tenants' statements, interviewing any suspects under caution and deciding if there is a case to answer.

2.38. The other costs and bands reflect the complexity of the investigation, the numbers of witnesses interviewed, the obtaining of warrants to enter properties, and the cost of specific services, such as a locksmith to gain full access to the premises under investigation.

2.39. If an investigation leads to more than one Financial Penalty being imposed, the initial fixed investigatory costs will be divided equally and added to each Financial Penalty. There will only be one set of investigatory charges for each investigation/operation undertaken by the Council.

2.40. Defence Charges

2.41. A person who has been issued with a Financial Penalty has a right of appeal to the First-Tier Tribunal and this will involve a re-hearing of the Council's decision to impose the Financial penalty. The Tribunal has the power to confirm, vary (increase or reduce) or cancel the Financial penalty that the Council has issued.

2.42. The First-tier Tribunal can dismiss an appeal if it is satisfied the appeal is frivolous, vexatious or an abuse of process, or it has no reasonable prospect of success.

2.43. The Council intends to defend its decision to issue Financial penalties rigorously and this will involve not only officer time and resources but may also include specialist legal support.

2.44. The Council will robustly seek to recover its legal costs in the event that it is required to defend its decision at a Tribunal.

2.45. **Financial means to pay a Financial Penalty**

2.46. In setting a Financial Penalty, the Council may conclude that the offender is able to pay any Financial Penalty imposed, unless the offender has supplied suitable and sufficient financial information to the contrary.

2.47. It is for the offender to disclose to the Council such data relevant to his financial position as will enable the Council to assess what s/he can reasonably afford to pay.

2.48. Where the Council is not satisfied that it has been given sufficient reliable information, it will be entitled to draw reasonable inferences as to the offender's financial means from the evidence it holds and from all of the circumstances of the case which may infer that the offender can afford to pay any Financial Penalty.

2.49. As some offenders will own one or more properties in Gateshead, it is likely that they will have assets that they can sell or borrow against. After taking into account any mortgages on the property, the Council will determine the amount of equity that could be released from the property. If an offender claims that they are unable to pay a financial penalty and shows that they have only a low income, consideration will be given to whether any of the properties can be sold or refinanced.

2.50. **Procedure**

2.51. A Financial penalty can be imposed when one of the following Housing Act 2004 offences have been committed;

S.30	Failure to comply with an Improvement Notice
S.72	Offence in relation to licensing of Houses in Multiple Occupation
S.95	Offences in relation to licensing of homes included in Selective Landlord Licensing areas
S.139	Failure to comply with an overcrowding notice
S.234	Failure to comply with management regulations in respect of Houses in Multiple Occupation

2.52. The Council can only impose a Financial Penalty on a person where they are satisfied beyond reasonable doubt, that one of the above offences has been committed in respect of a premises in their district. The Financial penalty can only be imposed once a person in relation to the same conduct.

2.53. A Financial Penalty cannot be imposed where the person has been convicted of an offence in respect of the conduct being considered, or where criminal proceedings have already commenced in relation to the conduct.

2.54. **Notice of Intent**

2.55. Prior to imposing a Financial Penalty on a person under 249A of the Housing Act 2004, the Council must issue a Notice of Intent to impose a Financial Penalty on that person.

2.56. The Notice of Intent must be issued within 6 months of the first day that the Council had evidence of the offence taking place. If the offence is of a continuing nature then the notice of intent can be served at any time that the offence is continuing or within 6 months of the last date that it continued to occur.

2.57. The Notice of Intent must include;

- Amount of the penalty
- Reasons for proposing to impose the penalty
- Notice recipient's "Right to make Representations"

2.58. A person receiving a notice of intent can make written representations to the Council within 28 days from the date that the notice was issued.

2.59. **Final Notice**

2.60. At the end of the time period for representations, the Council should consider any representations received and then decide;

- Whether to impose a Financial Penalty
- If it decides to impose the penalty, the amount of the Financial Penalty

2.61. If the Council decides to impose a Financial Penalty then it must issue a final notice imposing the penalty.

2.62. The final notice must contain;

- The amount of the penalty
- Reasons for imposing the penalty
- Information about how to pay
- Period for payment (must be made 28 days from the day after the Final Notice is issued)
- Information about right of appeal
- Consequences of failure to comply with the notice

2.63. The Council may withdraw a notice of intent or final notice at any time, or reduce the amount specified in a notice of intent or final notice. Any withdrawal or reduction in the amount must be made in writing.

2.64. Appeals

2.65. A person receiving a final notice may appeal to a First-tier Tribunal against;

- The decision to impose the penalty
- The amount of the penalty

2.66. Appeal will result in the suspension of the final notice until the appeal is determined or the appeal withdrawn. The appeal will review the Council's decision but may also take into consideration new information that the Council was unaware of when it made its decision. The Tribunal may confirm, vary or cancel the final notice. Any variation cannot increase the amount of the penalty above the maximum amount the Council was able to impose.

2.67. Recovery

2.68. If the final notice remains unpaid, then the Council can apply for an order for payment by the County Court. The Council should present a certificate signed by the local authority's Chief Finance Officer which states that the amount due had not been received by a specified date. It will not be necessary at this stage to submit to the Court further supporting evidence, the certificate will be treated by the Court of conclusive evidence of that fact.

3. Rent Repayment Orders

3.1. Purpose

3.2. Section 3 of this Policy details the use of Rent Repayment Orders (RROs) as a means to require a landlord to repay a specified amount of rent.

3.3. Legislation

- Housing and Planning Act 2016 Part 2, Chapter 4.

3.4. Background

3.5. The Housing Act 2004 introduced RROs to require a landlord to repay the rent that had been paid in respect of a property that should have been licensed, but where he had failed to seek such a licence (and had therefore avoided the requirements to ensure that the property was well managed and of a good standard that would have formed part of the licence process).

3.6. RROs have now been extended through the Housing and Planning Act 2016 to cover a wider range of offences;

The Housing Act 2004	
S.30	Failure to comply with an Improvement Notice
S.32	Failure to comply with a Prohibition Order
S.72	Operating a Houses in Multiple Occupation without a licence
S.95	Operating a house without a licence in a Selective Landlord Licensing designated area
The Housing and Planning Act 2016	
S.21	Breach of a banning order
The Criminal Law Act 1977	
S.6	Using violence to secure entry to a property
The Protection from Eviction Act 1977	
S.1	Illegal eviction or harassment of the occupiers of a property

3.7. The offences within section 30 and 32 of The Housing Act 2004 must relate to hazards within the occupied premises let by the landlord, rather than just common parts.

3.8. When extended RROs were introduced in April 2017. Ministers made it clear that they expected this power to be used robustly as a way of clamping down on rogue landlords. In the House of Commons, Brandon Lewis MP made the following statement;
'This will enable Council to issue remedy payment orders for up to 12 months. That will give them a resource that it is hoped that they will use'.

3.9. Principles of Rent Repayment Orders

3.10. RROs can be granted via application to the First-tier Tribunal, to either the tenant or the Council. If the tenant paid their rent themselves, then the rent must be repaid to the tenant. If rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be repaid to the Council. 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.

- 3.11. A landlord does not have to have been found guilty of an offence through the courts for a RRO to be considered and made. A RRO can also be made against a landlord who has received a Financial penalty in respect of an offence, but only at a time when there is no prospect of the landlord appealing against that penalty.
- 3.12. The maximum amount of rent that can be recovered is capped at 12 months.
- 3.13. The Council **must** consider a rent repayment order after a person is the subject of a successful Financial penalty and in most cases the Council will subsequently make an application for a RRO to recover monies paid through Housing Benefit or through the housing element of Universal Credit.
- 3.14. The Council will also offer advice, guidance and support to assist tenants to apply for a RRO if the tenant has paid the rent themselves.
- 3.15. The Council may apply for a RRO at the same time as a tenant if part of the rent paid during the specified period within an application was paid from either housing benefit/universal credit. The tribunal will calculate in applications where universal credit has been paid how much rent will be apportioned to the Council and the tenant.
- 3.16. For those applications where a landlord has not been convicted at court, a criminal standard of proof is required. This means that the First-tier Tribunal must be satisfied beyond reasonable doubt that the landlord has committed the offence, or the landlord has been convicted in the courts of the offence for which the RRO application is being made.
- 3.17. The Council will consult the Crown Prosecution Service Code for Crown Prosecutors for this purpose.
- 3.18. If the Council becomes aware that a person has been convicted through the courts of one of the above offences listed above in relation to housing in its area, the Council **must** also consider applying for a rent repayment order.
- 3.19. **Procedure**
- 3.20. **Deciding whether to apply for a rent repayment order and for how much**
- 3.21. The Council has a duty to consider applying for a RRO when one of the prescribed housing offences has been committed, these are detailed above.
- 3.22. Applications for RRO under these powers will only be considered in relation to an offence which was committed on or after 6th April 2017.
- 3.23. In deciding to make an application for a RRO, the Council will have regard to current guidance given by the Secretary of State.

- 3.24. The Council can impose a Financial Penalty and apply for a RRO for certain offences:
- Failure to comply with an Improvement Notice (section 30)
 - Offences in relation to the licensing of House in multiple Occupation (s72(1))
 - Offences in relation to the licensing of houses under Part 3 of The Housing Act 2004 (section 95(1)).

3.25. **Deciding how much rent to recover**

3.26. Where a landlord has been convicted of the offence to which the RRO relates – the First-tier Tribunal must order the maximum amount of rent is repaid (max 12 months).

3.27. Where a landlord has not been convicted of the offence to which the RRO relates, the following factors will be taken into consideration when deciding how much rent the Council should seek to recover:

a) **Punishment of the offender**

The government wish for RRO's to have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities. Factors that Council will consider are;

- the conduct of the landlord and tenant
- the financial circumstances of the landlord
- if the landlord has been convicted of similar offences

b) **Deter the offender from repeating the offence**

The level of the penalty should be set at a high enough level such that it is likely to deter the offender from repeating the offence.

c) **Dissuade others from committing similar offences**

The imposition of a RRO is in the public domain. The robust and proportionate use of RRO's is likely to help ensure others comply with their responsibilities.

d) **Remove any financial benefit the offender may have obtained as a result of commuting the offence**

An important element of an RRO is that a landlord is forced to pay rent and thereby loses much, if not all the benefit that accrued to them by not complying with their responsibilities.

3.28. **Notice of Intended Proceedings**

3.29. Prior to making an application to the First-tier Tribunal, the Council must issue a Notice of Intended Proceedings to the landlord. The notice may not be given after the end period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

3.30. The notice of intended proceedings must:

- Inform the landlord that the Council is proposing to apply for a RRO and explain why.

- State the amount that the Council seeks to recover
- Invite the landlord to make representations within a specified period of no less than 28 days from the date the notice was issued

3.31. Consideration of Representations Received.

3.32. The Council will consider any representations made during the notice period before deciding to apply for a RRO.

3.33. Rent Repayment Order Application

3.34. The Council can make an application if:

- The offence relates to housing in their areas
- They have given the landlord a notice of intended proceedings.

3.35. The Council will wait until the notice period has ended before applying for a RRO. The application will include;

- A copy of the Notice of Intended Proceedings
- A copy of the Certificate of Conviction if there has been a conviction
- A copy of the Financial Penalty – Final Notice if one has been served.
- A statement from an Officer detailing whether a Financial Penalty-Final Notice was paid and any appeal outcome
- If there has been no prosecution or Financial Penalty, evidence to satisfy the Tribunal beyond reasonable doubt that the landlord has committed the offence.

3.36. Making of a Rent Repayment Order

3.37. The tribunal may make a RRO if satisfied beyond reasonable doubt that a landlord has committed a relevant offence (whether the landlord has been convicted).

3.38. Costs

3.39. The Rent Repayment Orders (Supplementary Provisions (England) Regulations 2007 provide that a LHA may apply an amount recovered under a RRO for the purposes of the reimbursement of the Council's administrative and legal costs and expenses.

3.40. Amount of order when satisfied that an offence has been committed

3.41. If the offence related to violence for securing entry/eviction/harassment, universal credit (or housing benefit) will be repaid for the period of 12 months ending with the date of the offence.

3.42. Amount of order following conviction

3.43. When there has been a conviction or a Financial Penalty (Financial Penalty Final Notice has been served in respect of the offence and; there is no prospect of appeal or any appeal has been determined or withdrawn) the Tribunal must award the maximum payable amount with no discretion.

3.44. For other related offences payment will be made for a period, not exceeding 12 months, during which the landlord was committing the offence.

3.45. Rent Repayment Order Recovery

3.46. The amount payable to the Council under a RRO is recoverable as a debt.

3.47. An amount payable to the Council under a RRO does not when recovered, constitute an amount of universal credit recovered by the Council.

3.48. The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017, outline the provisions about how the Council will deal with amounts recovered.

3.49. The Council can apply any amount recovered under a RRO in line with the above to meet the costs and expenses (whether administrative or legal) incurred in or associated with carrying out any of its enforcement functions in relation to the private rented sector. Any amounts recovered which is not applied for that purpose must be paid into the consolidated fund.

3.50. If the final amount due remains unpaid, the Council can apply for an order for payment by the County Court. The Council should present a certificate signed by the authorities Chief Finance officer which states that the amount due has not been received by a specified date. It will not be necessary at this stage to submit to the Court further supporting evidence, the certificate will be treated by the Court of conclusive evidence of that fact.

3.51. Any amount payable to the Council will be placed against the property as a legal charge until it has been paid.

3.52. Appeals

3.53. A person aggrieved by the decision to award a RRO by the First-tier tribunal may appeal to the Upper Tribunal.

4. Banning Order

4.1. Purpose

4.2. Section 4 of this Policy details the use of Banning Orders (BO) in relation to landlords and property managers who have been convicted of certain offences.

4.3. Legislation

- Housing and Planning Act 2016, Part 2, Chapter 2

4.4. Background

4.5. A BO is an order by the First-tier Tribunal, following an application from the Council that bans a landlord or property agent (letting agents and property managers as defined in Chapter 6 Part 2 of the HAP Act 2016) 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

4.6. The Housing and Planning Act 2016 enables the Council to apply to for a BO following conviction of an individual for a significant number of different offences under a number of different Acts, including certain housing offences.

4.7. To make use of BO powers the Council is required to have in place its own policy on when to pursue a BO and to decide which option it wishes to pursue on a case-by-case basis in line with that policy.

4.8. This policy takes account of the non-statutory guidance issued by the Government which makes clear that BO's are aimed at rogue landlords who flout their legal obligations and rent out accommodation which is substandard, and which also confirms the Government's expectation that BO's will be used for the most serious offenders.

4.9. Whilst there is no statutory maximum period for a BO, it must be for a minimum of 12 months for relevant offences committed on or after 6th April 2018. A BO can be made against a person if that person was a residential landlord or property agent at the time the offence was committed. The First-tier Tribunal will set the banning period but the Council is required to recommend a period as part of an application.

4.10. The breach of a BO is a criminal offence.

4.11. The power to apply for BO's in appropriate cases is one of a number of enforcement tools available to the Council which include prosecution, carrying out works in default, applying for Rent Repayment Orders and the imposition of Financial Penalties.

4.12. Banning Order Offences

- 4.13. BO offences are listed in The Housing and Planning Act 2016 (Banning Order Offences) Regulations (2017) and are divided into;
- Relevant housing offences (but not when the person has received an absolute/conditional discharge for that offence)
 - Immigration Offences
 - Serious Criminal Offences (when sentencing has occurred in the Crown Court).
- 4.14. In respect of the relevant offences that fall within the legislation below; BOs can only be sought if the offence is linked to the tenant or other occupier, or the property owned or rented out by the landlord;
- The Fraud Act 2006
 - The Criminal Justice Act 2003
 - The Misuse of Drugs Act 1971
 - The Proceeds of Crime Act 2002
 - The Protection from Harassment Act 1997
 - The Anti-Social Behaviour, Crime and Policing Act 2014
 - The Criminal Damage Act 1971
 - The Theft Act 1968

4.15. **Banning Order Applications**

4.16. The Council will have regard to current guidance issued by the Secretary of State in considering an application for a BO.

4.17. **Procedure**

4.18. **Determining the appropriate sanction**

4.19. The Council will consider the following factors when deciding whether to apply for a BO and when recommending the length of any BO;

a) The seriousness of the offence

All BO offences are serious. When considering whether to apply for a banning order the Council will consider the sentence imposed by the Court in respect of the BO offence itself. The more severe the sentence imposed by the Court, the more appropriate it will be for a BO to be made. For example, did the offender receive a maximum or minimum sentence or did the offender receive an absolute or conditional discharge? Such evidence will later be considered by the First-tier Tribunal when determining whether to make, and the appropriate length of a BO.

b) Previous convictions/rogue landlord database

The Council will check the rogue landlord database in order to establish whether a landlord has committed other BO offences or has received any Financial penalties in relation to BO offences. A longer ban may be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they

knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be aware of their legal obligations. For example, in the case of property agents, they are required to be a member of a redress scheme and any evidence of noncompliance could also be taken into account.

The Council will also consider the likely effect of the BO on the person and anyone else that may be affected by the order and will take into account the following:

c) The harm caused to the tenant

This is a very important factor when determining whether to apply for a BO. The greater the harm or the potential for harm (this may be as perceived by the tenant), the longer the ban should be. BO offences include a wide range of offences, some of which are more directly related to the health and safety of tenants, and could therefore be considered more harmful than other offences (such as fraud)

d) Punishment of the offender

A BO is a severe sanction. The length of the ban should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending. It is, therefore, important that it is set at a high enough level to remove the worst offenders from the sector. It should ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.

e) Deterring the offender from repeating the offence

The goal is to prevent any further offending. The length of the ban should prevent the most serious offenders from operating in the sector again or, in certain circumstances; help ensure that the landlord fully complies with all of their legal responsibilities in future. The length of ban should therefore be set at a long enough period such that it is likely to deter the offender from repeating the offence

f) Deterring others from committing similar offences

An important part of deterrence is the realisation that (a) the Council is proactive in applying for BOs where the need to do so exists and (b) that the length of a BO will be set at a high enough level to both punish the offender and deter repeat offending.

Spent convictions as defined under the provisions of the Rehabilitation of Offenders Act 1974 will not be taken into account when determining whether to apply for and/or make a BO.

4.20. Having had regard to this policy, a decision to commence the banning order procedure in any case will be confirmed by the Service Director –Development, Transport and Public Protection who will also be responsible for considering any representations made by a landlord served with a notice of intention and for the decision to make an application for a BO, including the recommended duration of the ban.

4.21. Subject to its own legal advice and guidance provided by the Ministry of Justice, the Council will consider publishing details of successful BO including the names of

individual landlords. The Council will also consider making information on BO available on request by a tenant.

4.22. A BO can apply to a body corporate, and both a body corporate and an officer of a body corporate.

4.23. **Notice of Intention**

4.24. Prior to applying for a BO, the Council must issue the landlord/manger with a notice of its intention to do so. The Notice of Intent must be served within 6 months of the landlord being convicted of the offence.

4.25. The Notice of Intent must set out;

- That the Council is proposing to apply for a BO
- The reasons for the application
- The length of each proposed ban
- Notice recipients right to make representations

4.26. **Appeals**

4.27. A person receiving the notice of intent can make written representations within 28 days to the Council from the date the notice was issued. The Council will consider any representations received during the 28-day period and then decide whether to pursue a BO.

4.28. A landlord may also appeal to the First-tier tribunal against the decision to make a BO. An appeal cannot be made unless permission is granted by either the First-tier Tribunal or the Upper Tribunal.

4.29. **Request for Information**

4.30. The Council may require a landlord to provide information under Section 19 of the Act to enable them to decide whether to apply for a BO. This could include requiring the landlord to provide information on all the properties that the landlord owns.

4.31. It is an offence for a landlord not to comply with this request, unless they can provide a reasonable excuse. It is also an offence for a landlord to provide false and misleading information. The Council will consider exercising its powers in relation to Section 19 if a landlord or agent/manager fails to provide information or the information provided is found to be false or misleading.

4.32. **Role of the First-tier tribunal (FtT)**

4.33. The FtT has the power to make a BO against a landlord or property agent who has been convicted of a BO offence and who was a residential landlord at the time the offence was committed. They will do so on an application by the Council for the area in which the offence occurred.

4.34. The FtT determines the length of the BO following a recommendation from the Council in its application as to the length of ban they are seeking. The minimum duration of a ban is 12 months.

4.35. Factors the FtT will consider when deciding whether to make a banning order

- The seriousness of the offence of which the person has been committed
- Any previous convictions that a person has for a BO offence
- Whether the person is or has at any time been included in the rogue landlord's database; and
- The likely effect of a BO on the person and anyone else that may be affected by the order.

4.36. The FtT can also revoke or vary a BO upon application from the person against whom the BO has been made. Examples of variations include adding new exemptions to a ban, varying the banned activities listed on the order, varying the length of the ban and varying existing exceptions to a ban. The Council cannot vary or revoke a BO.

4.37. Enforcement and Impact

4.38. A landlord subject to a BO is prevented 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

4.39. A landlord subject to a BO is also unable to hold a licence for a House in Multiple Occupation (HMO) and their property may also be subject to a management order.

4.40. Consequences of Banning Orders

4.41. A person who breaches a banning order commits an offence.

4.42. The Council can consider two options on the identification of a breach:

- Prosecution (liable on conviction to imprisonment for a period not exceeding 51 weeks or to a fine or both)
- Financial Penalty

4.43. When a person is convicted of breaching a BO and the breach continues after conviction, the person commits a further offence and is liable on further conviction to a fine not exceeding 1/10 of level 2 on the standard scale or part of a day on which the breach continues.

4.44. If the Council chooses to impose a Financial Penalty in respect of a breach then the person may not be convicted of that offence. If the person has been convicted of an offence for the same conduct, or criminal proceedings for that offence been instituted against that person and the proceedings have not been concluded then the Council may not impose a Financial Penalty.

4.45. Financial Penalty for Breach of a Banning Order

4.46. The Council may impose a Financial Penalty on a person if satisfied, beyond reasonable doubt, that the persons conduct amounts to a breach of a BO.

4.47. Only one Financial Penalty may be imposed in respect of the same conduct unless the breach continues for more than 6 months, when a further Financial Penalty can be imposed for each additional 6 month period for the whole or part of which the breach continues,

4.48. The Council will determine the amount of the Financial Penalty in accordance with Section 2 of this Policy, and any current guidance made by the Secretary of State.

4.49. Banning Order Publicity

4.50. The Government encourages local housing authorities to publish details of successful BO's, including the names of individual landlord's and businesses, at a local level. Details of a BO will also be made available to a tenant upon request. The Council shall seek legal advice and consider local circumstances when determining whether a BO will be publicised.

4.51. Other Impacts of Banning Orders

4.52. A landlord is unable to transfer their property/ies to certain persons whilst a BO is in force. A prohibited person is:

- A person associated with the landlord (including family members, spouses and Financial partners)
- A business partner of the landlord
- A person associated with a business partner of the landlord
- A business partner of a person associated with the landlord
- A body corporate of which the landlord or person mentioned above is an officer
- A body corporate in which the landlord has a shareholding or other financial interest; or
- In the case where a landlord is a body corporate, any body corporate that has an officer in common with the landlord.

4.53. A BO does not invalidate a tenancy agreement held by the occupiers in the property regardless of whether the agreement was issued before or after the BO was made. This is to ensure an occupier of the property does not lose their rights under the terms and conditions of their tenancy agreement.

4.54. Management Orders

4.55. The Council will consider the use of management orders (MO) for properties affected by BOs if deemed necessary. A MO enables the Council to take over the management of a privately rented property in place of the landlord. A MO ensures that health and safety of occupiers and persons living or owning property nearby are protected, or

ensures that a property is still available to rent. The ability of the Council to take over the management of a private rented home under certain circumstances was created by Part 4 of the Housing Act 2004.

5. Rogue Landlord Database

5.1. Purpose

5.2. Section 5 of this Policy details how the Council will use the database of rogue landlords. The database is a new tool for LHA's in England to keep track of offences committed by rogue landlords and property agents. The database is operated by the Secretary of State for Housing, Communities and Local Government, but LHA's in England have responsibility for maintaining its content.

5.3. The new requirements permit the Council to add entries to the database. The Council can also view all entries on the database including those made by other LHA's to help keep track of known rogues', especially those operating across council boundaries to allow LHA's to target their enforcement activities on individuals and organisations who knowingly flout their legal obligations.

5.4. Legislation

- Housing and Planning Act 2016, Part 2, Chapter 3

5.5. Use of Information in the Database

5.6. The Council may only use the information obtained from the database:

- For purposes with its functions under The Housing Act 2004
- For the purposes of a criminal investigation or proceedings relating to a banning order offence
- For the purposes of an investigation or proceedings relating to a contravention of the law relating to housing or landlord and tenant.
- For the purposes of promoting compliance with the law relating to housing or landlord and tenant by any person in the database, or
- For statistical or research purposes

5.7. Making an Entry

5.8. Government guidance has been produced to assist the Council in deciding whether to make an entry onto the database and to provide practical guidance so that the database can be used effectively.

5.9. Under section 29 of the Act the Council **must** make an entry on the database for a person or organisation that has received a Banning Order following an application by the Council and no entry was made under section 30 before the banning order was made, on the basis of a conviction for the offence to which the banning order relates.

5.10. An entry made under section 29 must be maintained for the period for which the banning order has effect and must then be removed

5.11. Under section 30 of the Act, the Council **may** make an entry on the database for a person or organisation who has been convicted of a banning order offence that was committed at a time when they were a registered landlord or property agent; and/or

5.12. 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 property agent.

5.13. **Deciding whether to make an entry under Section 30**

5.14. The Council will always consider whether it would be appropriate to make an entry on to the database when a landlord has been convicted of a banning order offence or received two or more Financial penalties over a 12-month period.

5.15. The database is designed to be a tool which will help LHA's to keep track of rogue landlords and focus their enforcement action on individuals and organisations who knowingly flout their legal obligation. The more comprehensive the information on the database, the more useful it will be to the Council. Such information will also encourage joint working between LHA's who will be able to establish whether rogue landlords operate across their local housing authority areas.

5.16. The Council is required to have regard to the following criteria when deciding whether to make an entry in the database under section 30;

- a) **The severity of the offence** – The more serious the offence, the stronger the justification for including the offence on the database
- b) **Mitigating factors** – where a less serious offence has been committed and/or there are mitigating factors, the Council may decide not to make an entry on the database. Mitigating factors could include personal issues, for example, health problems or a recent bereavement. The Council will decide on a case by case basis whether mitigating factors are strong enough to justify a decision not to record a person's details on the database.
- c) **Culpability and serial offending** – when an offender has a history of failing to comply with their obligations. Where there is a clear history of knowingly committing banning order offences and/or non-compliance, the stronger the justification for making an entry on the database. Conversely where it is a first offence and/or where it is relatively minor, the Council may decide that it is not appropriate to record a person's information on the database.
- d) **Deter the offender from repeating the offence** – the goal is to prevent landlords and property agents who have failed to comply with their legal responsibilities, repeating the offence. An important part of deterrence is the realisation by the offender that the Council has the tools and is proactive in recording details of rogue landlord and property agents, and, that they will be unable to simply move from one local authority area to another.
- e) **Deter others from committing similar offences** - Knowing they may be included on the database if they are convicted of a banning order offence or receive multiple financial penalties, may deter some landlord's from committing banning order offences in the first place.

5.17. Deciding how long a Database entry should last

5.18. The Council will have regard to the following criteria when deciding the period to specify in a decision notice:

- a) **Severity of offence** – the severity of the offence and related factors, such as whether there have been several offences over a period of time will be considered. Where an offence is particularly serious and/or there have been several previous offences; and/or the offences) have been committed over a period of time, then the decision notice may specify a longer period of time. When one or more of those factors are absent, it may be appropriate to specify a shorter period.
- b) **Mitigating factors** – these could include a genuine one-off mistake, personal issues such as ill health or a recent bereavement. When this is the case, the Council may decide to specify a shorter period in the decision notice
- c) **Culpability and serial offending** – a track record of serial offending or when the offender knew, or ought to have known, that they were in breach of their responsibilities may suggest a longer time period would be appropriate
- d) **Deter the offender from repeating the same offence** – the data should be retained on the database for a reasonable time period so that it is a genuine deterrent to further offences.

5.19. Procedure

5.20. The Council may make an entry onto the database if a person or organisation;

- Has been convicted of a banning order offence and the offence was committed at a time when the person was a residential landlord's or property agent
- Has within a period of 12 months, received a financial penalty in respect of a banning order offence committed at a time when the person was a residential landlord or a property agent. A financial penalty can and will only be taken into consideration if the period for appealing the penalty has expired and any appeal has been finally determined or withdrawn.

5.21. An entry made under section 30 must be maintained for the period specified in the decision notice as described below before the entry was made (or that period as has been reduced in accordance with section 36) and must then be removed at the end of that period.

5.22. Database Entry Decision Notice

5.23. Prior to making an entry on the database in respect of a person under s30, the Council must issue a decision notice. The decision notice must be issued within 6 months, beginning with the day on which a person was convicted of the banning order offence to which the notice relates, or, received the second of the financial penalties to which the notice relates.

5.24. The decision notice must;

- Explain that the authority has decided to make the entry in the database after the end of the period of 21 days beginning with the day on which the notice is given ("the notice period"), and
- Specify the period for which the persons entry will be maintained, which must be at least two years beginning with the day on which the entry is made.
- Summarise the notice recipients appeal rights

5.25. An entry on to the database will then be made once the notice period has ended and there is no appeal received.

5.26. The Council will take reasonable steps to keep information on the database up to date.

5.27. Appeals

5.28. A person receiving a decision notice may appeal to the First-tier Tribunal against;

- The decision to make the entry in the database in respect of the person, or
- The decisions as to the period for which the persons entry is to be maintained.

5.29. An appeal must be made before the end of the notice period specified in the decision notice, however the Tribunal may allow an appeal to be made to it after the end of the notice period if satisfied that there is good reason for the persons failure to appeal within the period (and for any subsequent delay).

5.30. The tribunal may confirm, vary or cancel the decision notice upon appeal.

5.31. If an appeal is received within the notice period then the Council will not make an entry in the database until;

- The appeal has been determined or withdrawn, and
- There is no possibility of further appeal (ignoring the possibility of an appeal out of time)

5.32. Removing or Variation of an Entry

5.33. An entry made in the database may be removed or varied;

5.34. If an entry was made based on one or more conviction all of which are overturned on appeal, the Council must remove the entry.

5.35. The Council *may* remove an entry or reduce the period for which the entry must be maintained under the following circumstances:

5.36. If the entry was made on the basis of;

- more than one conviction and some of them (but not all) have been overturned on appeal
- one or more convictions that have become spent (for the purposes of the Rehabilitation of Offenders Act 1974).

- that the person has received two or more financial penalties and at least one year has elapsed since the entry was made

5.37. The Council also have the power under the above circumstances to;

- remove an entry before the end of the two-year period
- reduce the period for which an entry must be maintained to less than the two-year period.

5.38. Receipt and consideration of requests to remove entries or reduce entry time periods

5.39. The Council will receive requests in writing from a person in respect of whom an entry is made in the database under s30 to remove an entry or reduce the period for which the entry must be maintained.

5.40. Request Decision notice

5.41. On receipt of a request in writing the Council must:

- decide whether to comply with the request, and
- give the person notice of its decision

5.42. If the Council decide not to comply with the request the decision notice must include the reasons for the decision and a summary of the persons rights of appeal.

5.43. Appeals against a decision not to comply with a request

5.44. Appeal by a person given a notice confirming that the Council has decided not to comply with the request can be made to the First-tier tribunal within 21 days beginning on the day on which the notice was given. On appeal the tribunal may order the Council to remove the entry or reduce the period for which the entry is maintained.

5.45. Power to Require Information

5.46. Under Section 35 of the Act the Council may require a person to provide specified information for the purpose of enabling them to decide whether to make an entry in the database in respect of the person.

5.47. The Council may require from a person that they have made an entry about or are proposing to make an entry about, any information needed to complete the persons entry or keep it up to date.

5.48. It is an offence, on conviction with a fine, for a person to fail to comply with the s35 requirement, unless the person has a reasonable excuse for the failure.

5.49. It is also an offence for the person to provide information that is false or misleading if the person knows that the information is false or misleading or is reckless as to whether it is false or misleading.