

**HOMES POLICY DEVELOPMENT GROUP
20 JULY 2021**

PRIVATE SECTOR HOUSING FEES AND CHARGES 2021/22 / REVISED CIVIL PENALTY POLICY AND DELEGATED POWERS

Cabinet Member: Cllr Bob Evans, Cabinet Member for Housing and Property Services
Responsible Officer: Simon Newcombe, Corporate Manager for Public Health, Regulation and Housing

Reason for Report and Recommendation: To provide members with the revised fees and charges for statutory and discretionary Private Sector Housing functions within the Community Team, Public Health and Regulatory Services. To review the updated Civil Penalties Policy which relates to the revised fees and charges.

RECOMMENDATIONS:

1. That Cabinet approve the revised fees as set out in Annex 1.
2. That Cabinet approve the updated Policy on the Use of Financial Penalties for Housing Act Offences as set out in Annex 2.
3. That Cabinet approve the Corporate Manager for Public Health and Regulation and Housing having delegated authority to authorise relevant officers to enforce The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.
4. That changes to the way Works in Default charges are constructed are agreed.

Relationship to the Corporate Plan: This report relates to the economy, homes and community elements for the corporate plan priorities. Recharging for officer time in relation to enforcement activities, Houses in Multiple Occupation (HMO) licensing and recovering costs associated with non-statutory services means that we are encouraging compliance within the private rented sector, providing suitable for homes for our residents and ensuring HMOs do not have an adverse impact on communities.

Financial Implications: The revised fees and charges are set out in Annex 1 of the report. The fees have been updated to reflect current service delivery costs. Any income generated from this activity is unpredictable based on the nature of enforcement action. It is therefore not possible to forecast any income levels for the year.

Budget and Policy Framework: The fees and charges are established within the scope of the current Enforcement Policy PH/EP/09/20 updated and readopted in 2020. Fees and charges received by the authority as a result of enforcement action can be kept by the authority and recycled into further private sector housing enforcement work. The income must be ring fenced for this activity.

Legal Implications: Where there are specific provisions under legislation, statutory functions or discretionary services for fees to be charged then these are indicated in the body of the report. There may be legal implications where the fee or charge is not paid and a process of recovery is required.

Equality Impact Assessment: An assessment is not necessary for this report. The charges are set and applicable to the service being provided and do not disadvantage any protected characteristics or specific groups.

Risk Assessment: There are no major risks. A failure to update the relevant fees and charges could mean we are not able to adequately recover costs where we are able to do so.

Impact on Climate Change: The impact on climate change is minimal and in some cases positive; particularly where improvements have been made to private sector homes in respect of energy efficiency and performance.

1.0 Introduction

1.1 The Community Team within the Public Health and Regulatory service has a duty to ensure that private accommodation meets minimum standards. In particular there are regulations for the licensing, management and use of houses in multiple occupation (HMO), carbon monoxide detectors and smoke alarms, electrical safety and defined hazards within the home.

1.2 All enforcement activities and relevant fees and charges within this report are set out in compliance with the legislation and the adopted Enforcement Policy PH/EP/09/20.

2.0 Changes to the fees and charges and delegated powers

2.1 Each activity where a fee or charge is applicable has been reviewed. A detailed breakdown of the various areas of enforcement and activity has been assessed and officer time allocated to the various tasks. This assessment has resulted in the fees and charges proposed in Annex 1. Where officer time is included within a fee or charge then it is done so purely on a cost-recovery basis. The previous fees are also set out in this Annex for comparison. The detailed calculations may be available on request but are not provided here as they contain details of officer salaries.

2.2 These fees and charges were last updated in 2019/20 and due to the Covid pandemic were carried forward unchanged for 2020/21. It is therefore over 2-years since any existing fees and charges were reviewed. Subject to the recommendations, it is proposed that the updated fees and charges set out herein come into effect immediately after formal adoption and therefore will apply going forward.

HMO Licensing

2.3 Section 63(3) of the Housing Act 2004 gives the Council the power to recover all reasonable costs associated with the administration of the HMO licensing function.

2.4 The officer time and resources involved in processing a new application have been reviewed and a revised fee calculated. The fee has increased due to an uplift in salary and the time taken to process these applications.

- 2.5 The issuing of licence renewals has also been considered and the fee for these has been reduced. Once the initial application has been assessed the licence must be renewed every 5 years. The service has received a number of renewals in the last year so we have been able to more accurately assess the time taken to process these, resulting in the fee reduction.

Mandatory HMO Licensing Public Register

- 2.6 Section 232 of the Housing Act 2004 allows the council to make a reasonable fee for supplying a person with a copy of the register if requested.
- 2.7 It is proposed to continue to charge a nominal administration fee for providing the register in electronic form or hardcopy. Details of the proposed charges can be found in Annex 1.
- 2.8 An extract from the register is provided on our website and the charges will apply for requests for the full register only.

Charging for enforcement action

- 2.9 The Housing Act 2004 section 49 gives the local housing authority the power to charge for certain enforcement action. The provisions are clear that only the costs associated with determining whether enforcement action is necessary, identifying the type of action and the serving of the notice can be recovered.
- 2.10 The average officer time and resources for carrying out these functions have been recalculated and a revised standard fee has been proposed. The hourly rate is based on 20/21 financial year due to the absence of any agreed salary increase for 21/22 financial year onwards.
- 2.11 The charge can be applied to all enforcement action under part one of the Act; we currently apply the charge to Improvement Notices, Prohibition Orders, Emergency Remedial Action, Emergency Prohibition Orders and Demolition Orders.
- 2.12 It is not considered appropriate to charge for the service of hazard awareness notices as there is no penalty for non-compliance, it is a recommendation of the work to be carried out and it is not placed as a local land charge.
- 2.13 A demand for payment of the charge will be applied where prohibition orders, emergency remedial action notices and emergency prohibition orders are served. Demolition orders will also be charged as well as the survey cost that is required as part of the serving of the order.
- 2.14 Where an improvement notice is served the charge will be applied where there is non-compliance with the notice. This aim is to encourage compliance with notice requirements and improve housing standards generally.

Immigration housing request visits

- 2.15 Historically applications to live and/or work in the UK have required the local housing authority to undertake an inspection of the proposed living accommodation to check its suitability and ensure there would not be overcrowding. These visits no longer need to be undertaken by the local housing authority as part of an application but occasionally the team will receive a request to carry out a visit and provide a report.
- 2.16 As this is not a statutory requirement it is acceptable for the Council to charge for the provision of this service. The proposed fee covers the average amount of officer time involved in dealing with a request, visiting and producing the relevant report.

Financial penalties for Housing Act offences and review of Civil Penalties Policy

- 2.17 The Housing and Planning Act 2016 introduces an amendment to the Housing Act 2004 to allow local housing authorities to impose a financial penalty on an owner of a property where they have failed to comply with provisions under the 2004 Act as an alternative to prosecution. The maximum penalty is £30,000. This will be applied in accordance with the Enforcement Policy and the council's policy on applying the civil penalty.
- 2.18 The Council is required to have a policy on how it intends to use civil penalties. This is partially covered by the aforementioned Enforcement policy but the revised policy (attached Annex 2) provides more detail.

Penalty Charges for offences under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015

- 2.19 There is no suggested change to the penalty under these regulations. The maximum penalty is £5,000 with a 25% reduction if payment is made within 14 days of the demand for payment.

Financial penalties for offences under the Electrical Safety Standards

- 2.20 Section 123 of the Housing and Planning Act 2016 makes provision for the local housing authority to impose a financial penalty on an owner of a property where they have failed to comply with the electrical safety standards.
- 2.21 The provision of a financial penalty has been made under 2016 Act within The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020. These Regulations came into force in July 2020 with a maximum fine of £30,000 for non-compliance.
- 2.22 Due to Covid, delegated authority to enforce these regulations and therefore to have provision to impose a financial penalty (which is a legal power rather than a duty) has not been sought until now. Nonetheless, this authority is now sought going forward as set out in the recommendations.

- 2.23 It is proposed to follow the civil penalty policy to determine the level of fine for non-compliance.

Penalties for offences under The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 as amended 2016

- 2.24 There has been no change recommended for the penalty charge associated with these regulations.

Works in default

- 2.25 There is a slight change to this charge. It is proposed that the full cost of the work carried out is recovered as well as officer time and expenses to arrange and oversee the works. The administrative charge of £100 will remain in addition to the officer costs. Interest is paid to be paid on the full costs incurred if the invoice is not paid in full within 3 months. Interest of 3% will be applied annually to any outstanding amounts and will be applied as a local charge against the property.

3.0 Revised Use of Financial Penalties for Housing Act Policy 2021

- 3.1 This policy was last reviewed and updated in 2017 (version 2). The policy has been reviewed against any organisational changes any updated to legislation or guidance. Relatively few relevant changes were identified and as a result version 3 presented in Annex 2 is a light-touch update incorporating the following changes:

- Updated cross-reference to the latest adopted Enforcement Policy PH/EP/09/20 (adopted 29 October 2020)
- Updated Policy owner job title reference (Corporate Manager for Public Health, Regulation and Housing)
- Updated version number (v3) and next review date (5 years/May 2026)
- Updated fine levels as per review of fees and charges against the maximum permitted by the legislation (see Policy page 8)

4.0 Recommendations

- 4.1 The following recommendations are therefore made:

1. That Cabinet approve the revised fees as set out in Annex 1.
2. That Cabinet approve the updated Policy on the Use of Financial Penalties for Housing Act Offences as set out in Annex 2.
3. That Cabinet approve the Corporate Manager for Public Health and Regulation and Housing having delegated authority to authorise relevant officers to enforce The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.
4. That changes to the way Works in Default charges are constructed are agreed.

Contact for more Information: Tanya Wenham, Team Leader (Community Team) 01884 255255 or twenham@middevon.gov.uk or Simon Newcombe, Corporate Manager for Public Health, Regulation and Housing, 01884 255255 or snewcombe@middevon.gov.uk.

Circulation of the Report:

Cllr Bob Evans, Cabinet Member for Housing and Property Services
Members of the Homes PDG
Leadership Team
Corporate Management Team
Legal Services
All Group and Operations Managers

Annex 1

Mid Devon District Council Public Health and Regulatory Services (Community Team) Review of Fees and Charges 2021/22

HMO licensing		
New licence	Fee 2021/22	Previous fee 2019/20 and 2020/21
3-5 Units	£902	£820
6-10 units	£974	£876
11+ units	£1046	£933
Renewal		
3-5 Units	£647	£673
6-10 units	£683	£701
11+ units	£719	£729

HMO Licensing Public Register	
	Charge
Request for full register electronically	£5
Request for full register hardcopy	£8

Charging for enforcement action		
	Charge 2021/22	Previous charge 2019/20 and 2020/21
Improvement notice	£553	£438
Prohibition Order	£553	£438
Emergency Remedial Action	£553	£438
Emergency prohibition order	£553	£438
Demolition Order	£553 plus survey fees	£438 plus survey fees

Immigration housing request visits		
	Fee 2021/22	Previous fee 2019/20 and 2020/21
All requests	£330	£261

Financial penalties	
	Penalty
Smoke and carbon monoxide alarms	£5000 reducing by 25% if paid within 14 days of demand
Electrical Safety Standards	Up to £30,000
Housing Act offences	Financial penalty as alternative to prosecution up to £30,000

Energy Efficiency Regulations		
	Penalty	
Renting out a non-compliant property	Less than three months in breach	£2000 and Publication penalty
	Three months or more in breach	£4000 and Publication penalty
Providing false or misleading information on the Exemption register	£1000 and Publication penalty	
Failing to comply with a compliance notice	£2000 and publication penalty	

- These penalties are applied to each property where there is a breach to a maximum of £5000 per property
- Publication penalty – some of the details of the financial penalties are published on the publicly accessible part of the PRS Exemptions Register

Note: The Private Rented Sector (PRS) Exemptions Register is for properties which:

- are legally required to have an EPC
- are let on a relevant tenancy type
- cannot be improved to meet the minimum standard of EPC band E for one of the reasons set out below

Works in default	
	Charge
Interest on works and associated costs	Cost of the work plus officer time (including travel) plus £100 admin fee. 3% interest per annum added where invoice is un-paid after 3 months.

Other charges	
	Charge
Information on contaminated land (see EIR)	£40 per hour to produce the information
Environmental Information Request (EIR)	£40 per hour to produce the information
High hedge investigations	£392

Annex 2

**POLICY ON THE USE OF FINANCIAL PENALTIES FOR HOUSING ACT
OFFENCES (revised, updated version 3 May 2021)**