

Summary Sheet

Council Report

Cabinet and Commissioners' Decision Making Meeting – 12 September 2016

Title

Future Options for Enforcement Services

Is this a Key Decision and has it been included on the Forward Plan?

Yes

Strategic Director Approving Submission of the Report

Damien Wilson, Strategic Director of Regeneration and Environment

Report Author(s)

Karen Hanson, Assistant Director, Community Safety and Street Scene

Ward(s) Affected

All

Summary

On 14th March 2016, Cabinet received a report which outlined a review of the Environment and Development Services Directorate. This report built on previous work around Commissioner Manzie's 'Laying the Foundations' report. The paper contained a number of important elements, amongst which were proposals to refocus and strengthen enforcement activity within a new joined-up Regulation and Enforcement Team. This report outlines proposals to provide strategic focus to the Council's approach to enforcement activity and outlines a work programme to take these actions forward.

In addition, the paper also lays out new legislative provisions and penalties that will enhance enforcement activity.

Recommendations

1. That the contents of the report and the progress made to date against the themes of strengthening enforcement and the related strategic focus be noted.
2. That the work plan, outlined at paragraph 3.5 of this report, which includes the development of the 'Time for Action' approach and supporting initiatives to tackle environmental crime, be approved.

3. That the recommendations detailed within Appendix A including adoption of tools and powers; amendments to the Council's Scheme of Delegation and General Enforcement Policy; setting of penalties; and work to be undertaken for the recovery of small debts be approved.

List of Appendices Included

- Appendix A - Adoption of tools and powers; amendments to the Council's Scheme of Delegation and General Enforcement Policy; setting of penalties; and work to be undertaken for the recovery of small debts.
- Appendix B - Financial penalties to be adopted.
- Appendix C - General Enforcement Policy: C4 Financial Penalties proposed wording.
- Appendix D – Overview of the Rent Redress Scheme.
- Appendix E – Overview of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.
- Appendix F- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015, Proposed 'Statement of Principles' for assessing monetary penalty
- Appendix G - Deregulation Act 2015: Amendment to Environmental Protection Act 1990 Section 46.
- Appendix H - The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016: Amendment to Section 33 (1) Environmental Protection Act 1990.

Background Papers

The following documents have been relied upon in preparing this report.

- 'Review of the Environment Services Directorate': Cabinet/Commissioner Decision Making Meeting 14th March 2016 (minute 38)
- Enterprise and Regulatory Reform Act 2013
- Statutory Instruments 2014 No. 2359 Housing, England, The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014
- Department for Communities and Local Government (DCLG) guidance for Local Authorities on The Redress Schemes for Lettings Agency Work and Property Management
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

- Fire Statistics: Great Britain April 2013 to March 2014
- Co-Gas Safety's statistics of Deaths and Injuries (2015) – website
- Rotherham Metropolitan Borough Council General Enforcement Policy
- Department for Communities and Local Government (DCLG) guidance *Improving the Private Rented Sector and Tackling Bad Practice A Guide for Local Authorities*, 2015
- Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016
- Environmental Protection Act 1990

Consideration by any other Council Committee, Scrutiny or Advisory Panel

None

Council Approval Required

Yes

Exempt from the Press and Public

No

Future Options for Enforcement Services

1. Recommendations

- 1.1 That the contents of the report and the progress made to date against the themes of strengthening enforcement and the related strategic focus be noted.
- 1.2 That the work plan, outlined at paragraph 3.5 of this report, which includes the development of the 'Time for Action' approach and supporting initiatives to tackle environmental crime, be approved.
- 1.3 That the recommendations detailed within Appendix A including adoption of tools and powers; amendments to the Council's Scheme of Delegation and General Enforcement Policy; setting of penalties; and work to be undertaken for the recovery of small debts be approved.

2 Background

- 2.1 The Cabinet report dated 14th March 2016, although not detailed, sets out a desire to strengthening environmental enforcement action across the Council and how this might look within the new Regeneration and Environment Directorate. The Council is keen to develop proposals to strengthen enforcement and provide a focused steer.
- 2.2 Concurrently, a number of legislative powers have been identified that would add to the improvement of the Council's enforcement functions, including, providing the Council with the ability to set penalty levels that demonstrate determination to tackle enforcement issues. In particular, tools and powers are available that will enhance the way that the Council tackles fly-tipping.
- 2.3 Tackling fly-tipping is a key priority for the Council and communities. Fly-tipping, littering and dog fouling are highly visible to all, degrading the environment, reducing the quality of life and blighting the rural and urban landscapes. Additionally, the removal of fly-tipping costs the Council in excess of £250,000 per year.

3. Key Issues

- 3.2 Permanent recruitment to senior posts within the Directorate has taken place including the Assistant Director for Community Safety and Street Scene and the Strategic Director of Regeneration and Environment from April 2016.
- 3.3 Community Protection and Community Safety teams have transferred over to the Regeneration and Environment Directorate to enhance the Council's joined up approach to enforcement. In particular this links the Council's enforcement work to tackle statutory nuisance, environmental crime, private sector housing safety enforcement, and anti-social behaviour.

- 3.4 Work has commenced to scope options to further strengthen environmental crime enforcement functions including strategic direction relating to key elements of enforcement. There is commitment to ensure that the Council is robustly tackling issues such as fly-tipping, littering and dog fouling to deliver significant improvements to the Council's delivery of these key 'quality of life' issues.
- 3.5 A work plan has been developed which lays out priorities and focus for the Council in relation to an enhanced focus through the adoption of a 'Time for Action' approach including:
- Exploring options to increase the appropriate use of fixed penalty notices as a deterrent to committing environmental crime.
 - Exploring options to enable Parish Councils and Area Assemblies to 'top-up' existing enforcement services within localities.
 - Exploring and developing opportunities to work with South Yorkshire prison to utilise reparation teams where appropriate within communities.
 - Developing a series of 'Love Where You Live' communications campaigns with residents, businesses and schools utilising Keep Britain Tidy initiatives and resources.
 - Developing branding, signage and communications materials to reinforce the 'Love Where You Live' approach.
 - Developing a litter picking scheme as an alternative to Fixed Penalty Notices for young people.
 - Engage fast food outlets to tackle litter issues and encourage a series of joined up high-profile campaigns.
 - On a Ward basis with Members, review the number, position and condition of waste bins and dog waste bins across the Borough.
- 3.6 This work has also identified a number of new and existing pieces of legislation, including amendments that would enhance the Council's enforcement approach. Whilst not all are focused on environmental crime, there are significant pieces that will improve the tools with which the Council can address issues, with particular emphasis on fly-tipping.
- 3.7 Full details of the new tools and powers along with options appraisals are contained within Appendices G to K.

4. Options considered and recommended proposal

- 4.1 Options relating to the adoption of tools and powers, amendments to the Council's Scheme of Delegation and General Enforcement Policy, setting of penalties, and work to be undertaken for the recovery of small debts are set out in Appendix A. Principally the options revolve around whether

or not to adopt the tools and powers, with consequent setting of penalties and amendments to the Scheme of Delegation and General Enforcement Policy. It is considered that the most appropriate option would be to adopt the tools and powers as described in Appendix A to ensure consistency, proportionality, fairness, and demonstration of the Council's robustness of enforcement options.

5. Consultation

- 5.1 Finance and Customer Services Directorate and Legal Services, have confirmed that they are satisfied with the contents of Appendix A relating to the legislation and penalty items, and are able to examine the wider aspects of income recovery in light of the information contained.

6. Timetable and Accountability for Implementing this Decision

- 6.1 Progress against the 'Time for Action' work plan will vary with each action, whilst completion targets will be developed accordingly.
- 6.2 If approved, appropriate amendments will be made to the Council's Scheme of Delegation and General Enforcement Policy. Procedures will be put in place to enable effective enforcement to be carried out forthwith.
- 6.3 The Redress Scheme for Letting Agents will be pursued as a project utilising the small Government grant and should be completed within two months following commencement.
- 6.4 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 will be enforceable after publication of the 'Statement of Principles, and will be rolled out at the beginning of the following calendar month from publication.
- 6.5 The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 came into effect on the 9th May 2016. The implementation of the new fine structure will start at the beginning of October 2016, following approval at Cabinet in September 2016.
- 6.6 Options for early repayment schemes will also be put in place at the beginning of the following calendar month once a decision has been made.
- 6.7 The Assistant Director for Community Safety and Street Scene will be responsible for the delivery of the strategic focus and strengthening of enforcement, with responsibility to implement and deliver the package of legislation and penalties.

7. Financial and Procurement Implications

- 7.1 The financial implications of delivering the additional duties will be initially accommodated within existing revenue budgets and by the use of the small grant of £761.00 from Government. It is expected that further

enforcement costs will be offset by the income generated from any monetary penalties recovered.

- 7.2 There are no procurement implications as the ICT systems for administering this change are already in place. This report has been developed with the involvement of Finance and Customer Services Directorate.

8. Legal Implications

- 8.1 The various statutes and regulations underpinning the issues in this report create a duty on local authorities to enforce the legislation in the Borough. Changes to the General Enforcement Policy will be required to reflect the use of monetary penalties as an enforcement tool.
- 8.2 Provisions for the use of fixed penalty notices for fly-tipping provides a quicker route to discharge offences while ensuring enforcement is efficient.

9. Human Resources Implications

- 9.1 The recommendations of this report extend the range of enforcement duties undertaken within the Community Safety and Street Scene Service. It is anticipated that the additional work for officers can be accommodated within existing staffing structures.
- 9.2 The new fixed penalty notice for fly-tipping will enable more efficient processing, albeit the numbers of cases in which it will be used are relatively small. The savings that can be realised from the service and Legal Services are minor.
- 9.3 There will be a need for a small amount of training of staff to enable them to utilise the new enforcement tools but this would be easily accommodated by managers.

10. Implications for Children and Young People and Vulnerable Adults

- 10.1 There are no direct implications for Children and Young People and Vulnerable Adults arising from this report. However, approval of this report will see improved private rented housing services offered to existing and prospective private rented sector households.

11 Equalities and Human Rights Implications

- 11.1 There are no equalities and/or human rights implications arising from this report. The regulations would not discriminate against any residents or landlords/agents of the Borough under protected characteristics as they apply to all tenants in privately rented properties covered by the regulations.

12. Implications for Partners and Other Directorates

12.1 There are no implications for partners and other directorates in the delivery of the duties within the regulations. However, approval has been sought for further work to be undertaken with the Finance and Customer Services Directorate to establish the procedure for the recovery of small civil debts arising from the use of these additional powers.

13. Risks and Mitigation

13.1 Failure to strengthen enforcement and ensure a strategic focus, will expose the Council to frontline weaknesses in tackling environmental crime, with the consequent negative effects on the quality of life and environment for residents.

13.2 Failure to effectively address environmental crime issues presents a reputational risk to the Council for failing to tackle public priorities around environmental cleanliness.

13.2 Failure to amend the Council's Scheme of Delegation and its General Enforcement Policy will prevent the Council from effectively discharging its duties under the legislation and, as a result, reduce its capacity to protect residents.

13.2 Failure to design effective procedures for the recovery of small civil monetary penalties will undermine the impact of targeted enforcement. Where offenders become aware that monetary penalties are not recovered, the deterrent value of this type of penalty will be lost.

13.3 Failure to put in place effective enforcement procedures and training will undermine the Council's robustness in tackling issues around the 'safe and clean' agenda.

13.4 Failure to adopt the provisions within the report will expose the Council to criticisms around consistency, fairness and proportionality.

14. Accountable Officer(s)

Karen Hanson Assistant Director, Community Safety and Street Scene

Damien Wilson Strategic Director, Regeneration and Environment

Approvals Obtained from:-

Finance and Customer Services Directorate, Business Partnering – Regeneration & Environment – Fiona Earl

Finance and Customer Services Directorate, Legal Services – Neil Concannon
Assistant Chief Executive's Office, Human Resources – John Crutchley and Kathryn Pease

This report is published on the Council's website or can be found at:-
<http://moderngov.rotherham.gov.uk/ieDocHome.aspx?Categories=>

Appendix A

Adoption of tools and powers; amendments to the Council's Scheme of Delegation and General Enforcement Policy; setting of penalties; and work to be undertaken for the recovery of small debts.

A1 Summary

A1.1 A number of new powers in relation to the private rented housing sector have been introduced which require formal adoption by the Council in order to use them and give the ability of new civil and monetary penalties. There are also some amendments to environmental protection legislation which enables the Council to set new fine levels. These powers strengthen the Council's enforcement powers around private sector housing, household waste bins, and fly-tipping, namely:

- a) A civil penalty for private sector housing letting agents who fail to comply with requirements to belong to a redress scheme under the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014.
- b) A civil penalty where landlords do not comply with the requirements to provide smoke and carbon dioxide detectors where required in privately rented homes implemented by the Smoke and Carbon Monoxide Alarm (England) Regulations 2015
- c) A monetary penalty for failure of households to present household waste in the manner specified by the Council under an amendment to decriminalise Section 46 of the Environmental Protection Act 1990.
- d) Introduction of fixed penalty notices for fly-tipping offences under the amendments to Section 33 of the Environmental Protection Act 1990.

A1.2 The civil penalty charge or monetary penalty is specified as civil debt and recoverable through the County Court, rather than the similar and more familiar fixed penalty notice used by the Council, which discharges an offence through the criminal courts. The value of the penalties contained within legislation described in this report, can be set by statute or may require the Council to set an appropriate rate for the sanction within statutory parameters.

A1.3 The Redress Scheme Order, and Smoke and Carbon Monoxide Regulations are statutes which have not previously been considered by the Council, and consequently will require an amendment to the Council's Scheme of Delegation.

A1.4 Similarly, the civil and monetary penalty powers have not previously been used by the Council, which consequently will need to be addressed within the General Enforcement Policy.

A1.5 The recovery of small value civil debts under current policies may require review, to ensure appropriate priority is attached to the recovery of such monetary penalties.

A2 Recommendations

It is recommended that the appropriate Commissioner:

A2.1 Approves the adoption and implementation of the package of tools, powers and penalty charges outlined in this report.

A2.2 Approves the amendment of the Scheme of Delegation under the Council's Constitution, to authorise the Assistant Director for Community Safety and Street Scene to enforce and determine any representations received under:

- a. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015, and
- b. The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014

A2.3 Approves that the Council's General Enforcement Policy be amended as described in Appendix C and the Statement of Principles be published.

A2.4 Approves that further work be undertaken with the Finance and Customer Services Directorate to establish the procedure for the recovery of small civil debts arising from the use of these additional powers.

A3 Background

A3.1 The Government's Better Regulation Taskforce aims to simplify, deregulate and de-criminalise UK legislation, where appropriate. As a consequence, new legislation and amendments to existing legislation allow the use of civil monetary penalties rather than creating criminal offences which deliver fines and penalties through court action. This type of monetary penalty is usually set in legislation with a maximum value, but in some cases can be open to local adjustment.

A3.2 In addition, amendments to existing legislation may seek to extend the range of traditional enforcement sanctions available to the Council, in particular offering the use of fixed penalty notices where previously only prosecution of offences was available. This enables a more proportionate discharge of offences in appropriate cases.

A3.3 The new legislation and amendments to existing legislation offer the Council new enforcement tools and penalties which will enhance the way that the Council uses enforcement action to tackle issues relating to private sector housing, fly-tipping and household bin presentation.

- a. The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014, introduces a mandatory requirement for letting agents in the private rented sector to belong to a redress scheme (a type of ombudsman scheme), with a civil penalty for failure to do so.
- b. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 introduce a requirement for private rented sector landlords to install smoke and carbon monoxide detectors in rented properties within specified circumstances, with failures to do so attracting a civil penalty.
- c. The Environmental Protection Act 1990, Section 46. This has been de-criminalised by the Deregulation Act 2015. This enables the Council to require household waste to be presented for collection in a specified manner, and introduces a monetary penalty to be imposed on a resident who fails to comply, replacing the current fixed penalty notice.
- d. The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 amends Section 33(1) of the Environmental Protection Act 1990 to introduce a fixed penalty fine to discharge a person's liability for fly-tipping offences, with the option of an early payment discount.

A3.4 The introduction of civil and monetary penalties is a new form of sanction for offences, recoverable through civil rather than criminal courts. Consequently such penalties have not previously been included in the Council's General Enforcement Policy.

A3.5 The Council's General Enforcement Policy, (June 2015), outlines the approach the Council takes when considering enforcement action. This policy is an overarching policy that applies to all the Council's Services with regard to enforcement duties. Currently the issue of a monetary penalty is not included as an enforcement option within the policy and therefore an amendment of the policy at Section C4 'Financial Penalties' will be required to include monetary penalties.

A3.6 It is important that the Council adopts use of this new legislation, together with setting proportionate levels of sanction where available, in order to address key priorities particularly around the 'safe and clean' agendas. Similarly, it is vital that the Council amends the Scheme of Delegation and General Enforcement policy to ensure legality, proportionality, accountability, transparency, consistency, and targeted enforcement.

A3.7 It is critical that an effective method of debt recovery is put in place to ensure efficient and effective recovery of the new monetary and civil penalties, to ensure that the Council can demonstrate its commitment to sanctioning those that fail to comply with national legislation.

A4 Key Issues

A4.1 Full details of the new tools and powers along with options appraisals are contained within Appendices D to H.

- a) **Rent Redress.** The Redress Scheme for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 should be adopted with the appropriate monetary penalty to ensure protection for tenants' rights.
- b) **Smoke and Carbon Monoxide Alarms.** The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 introduced under the Energy Act 2013, require that privately rented domestic dwellings have at least one smoke alarm installed on every storey of their properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance, such as a coal fire or wood burning stove.
 - i) Before these Regulations are enforced, a local housing authority must first prepare and publish a 'Statement of Principles' which it proposes to follow in determining the amount of a penalty charge. A draft Statement of Principles is included at Appendix F.
 - ii) Currently the Council has a limited supply of free detectors provided by the South Yorkshire Fire and Rescue Service, and these will be utilised to promote the adoption of this Regulation.
- c) **Decriminalisation of Household Waste Enforcement.** The amendments to Section 46 of the Environmental Protection Act 1990 enables the use of a civil monetary penalty instead of a fixed penalty notice, and allows the Council to set the level of penalty to not less than £60 and not more than £80. Currently the Council has a level set for fixed penalty notices at the maximum of £80, and it is recommended that the Council retains the £80 level for the penalty.
- d) **Fly tipping and duty of care towards waste.** The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 amends Section 33(1) of the Environmental Protection Act 1990 and introduces a new fixed penalty fine of between £150 and £400 for fly-tipping offences. It also allows the Council to set the level of penalty within parameters and allows for reductions for early payment. The proposed fine level and early payment discount means that an adjustment to the closely related existing fixed penalty level for breaches of a business's 'duty of care' towards waste would also be amended to allow an early payment discount to ensure consistency and fairness of enforcement.
- e) **General Enforcement Policy** - The Council's General Enforcement Policy is an overarching policy which establishes the key principles under which enforcement and regulation is undertaken across the Council; however these civil and monetary penalties are not

specified within it. The proposed amendment is contained in Appendix C.

- A4.2 The aim of any penalty is to act as a disincentive to those who consider breaking the law and to be an appropriate consequence for those who choose to do so. It is essential that if a monetary penalty is to be a deterrent, then it is supported by an effective recovery mechanism. Current recovery process will need to be examined to ensure that they provide an efficient means to recovery the new penalties.
- A4.3 It is anticipated that the level of income generated from these enforcement tools will not be significant. Nevertheless, the sanctions are expected to ensure that there is significant encouragement given to those who might potentially commit an offence to consider their actions and avoid heavy penalties. Where penalties are issued, the receipts will come to the Council, where previously for example, fines from fly-tipping offences heard in Court would be paid to the Treasury.
- A4.4 Early re-payment opportunities are available in relation to the penalty levels suggested, with the exception of the Decriminalisation of Household Waste Enforcement. This allows the Council to demonstrate a proportionate approach whereby those who acknowledge their actions and are willing to pay for them, have the opportunity to pay a lesser fine. In addition, the approach will also ensure that there is a level of consistency with neighbouring Councils where similar penalties are imposed.
- A4.5 The legislation that is targeted at private rented properties is likely to drive improvements in the safety of tenants, particularly those tenants of the less compliant landlords and agents, as it sets standards that agents and landlords are required to comply with.
- A4.6 Importantly, the use of penalties ensures that enforcement is quick and that perpetrators are made responsible for their actions. In contrast, where options are limited to prosecution, for example in the case of fly-tipping, it can be many months between the commission of the offence and sentencing in Court, which loses the immediate impact of enforcement on the individual who commits the offence. Such penalties provide the Council with an effective means of ensuring that perpetrators receive speedy sanction for their actions.

A5. Options considered and recommended proposal

- A5.1 Option 1 – Adoption of the new legislative tools and making consequential amendments to policies
- a) The package of tools and penalty levels described in Section 3 and in appendices E to K enable the Council to ensure people have the opportunity to live in safe homes run by reputable managing agents and that the Council can ensure effective and proportionate enforcement of housing and environmental protection legislation.

- b) Amendments to the Scheme of Delegation and the General Enforcement Policy are natural consequences of the adoption of the statutes and simply require approval for the changes.
- c) The penalty fine levels proposed in Appendix B which can be imposed for each new enforcement tool are consistent with government guidance and when compared with other local authorities in the region who have implemented these powers already. More information on these considerations is in the relevant appendix.
- d) Consideration of effective recovery mechanisms for penalties is a result of the introduction of the new monetary and civil penalties, and ensure that an operational means of recovering debts is in place.

A5.2 Option 2 – Do not adopt the additional legislative tools.

- a) Adopting Option 2 will not enable the Council to compel businesses to act responsibly. In addition, the Council would not be able to levy monetary penalties for failure to comply with the appropriate legislation. The penalties for placing waste receptacles inappropriately and fly tipping would remain at the statutory minimum levels which are lower than similar fixed penalty fines. In any event the Council has a statutory duty to enforce the legislation

A5.3 Option 1 is considered to be the most appropriate option and will ensure consistency, proportionality, fairness, and demonstration of the Council's robustness of enforcement options.

Appendix B
Financial penalties to be adopted

Penalty Type	Statute	Type	Full Penalty	Reduced fee for early payment
Rent Redress	Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014	Monetary Penalty	£5,000	£3,500
Smoke and Carbon Monoxide Alarms	Smoke and Carbon Monoxide Alarm (England) Regulations 2015	Monetary Penalty	£1,500 1 st offence £3,000 2 nd offence £5,000 for subsequent offences	£1,000 (1 st offence only)
Domestic Waste Receptacles	Environmental Protection Act 1990, Section 46	Civil Penalty	£80	n/a
Unauthorised deposit of waste (Fly Tipping)	Environmental Protection Act 1990, Section 33	Fixed Penalty to discharge liability for criminal prosecution	£400	£300
Failing to produce authority to transport waste / waste transfer documentation (duty of care towards waste)	Environmental Protection Act 1990, Section 34	Fixed Penalty to discharge liability for criminal prosecution	£300	£225

Appendix C

General Enforcement Policy: C4 Financial Penalties

Enforcement Actions available to the Council in Respect of Criminal and Civil breaches

Extract of existing General Enforcement Policy.

‘C4 Financial Penalties

The Council has powers to issue fixed penalty notices in respect of some breaches. A fixed penalty notice is not a criminal fine, and does not appear on an individual’s criminal record. If a fixed penalty is not paid, the Council may, however, commence criminal proceedings or take other enforcement action in respect of the breach.

If a fixed penalty is paid in respect of a breach the Council will not take any further enforcement action in respect of that breach. Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches.

The Council is only able to issue fixed penalty notices where it has specific powers to do so. If fixed penalty notices are available, their issue is at the Council’s discretion. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice.’

Proposed change to general enforcement policy

‘C4 Financial Penalties

The Council has powers to issue fixed penalty notices, penalty charge notices and monetary penalties in respect of some breaches of legislation. A fixed penalty notice, penalty charge notice or monetary penalty is not a criminal fine, and does not appear on an individual’s criminal record. If a fixed penalty, penalty charge notice or monetary penalty is not paid, the Council may, however, commence criminal proceedings or take other enforcement action in respect of the breach or take civil enforcement action to recover the value of the fixed penalty, penalty charge or monetary penalty subject to the provisions of the relevant legislation.

If a fixed penalty, penalty charge notice or monetary penalty is paid in respect of a breach, the Council will not take any further enforcement action in respect of that breach. Payment of the penalty does not provide immunity from prosecution in respect of similar, continuing or recurrent breaches.

The Council is only able to issue a fixed penalty notices, penalty charge notices and monetary penalties where it has specific powers to do so. If fixed penalty notices are available, their issue is at the Council’s discretion. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice.

In specific instances dictated by regulation, the Council has powers to issue monetary penalties. In some cases the Council has discretion in the level of

monetary penalty to impose. Where regulation makes provision for the Council to receive representations in respect of a charge, the Council will inform recipients how to make representation and provide guidance on what might be relevant issues. Any representation received will be reviewed in a timely manner within the terms of the regulation, the requirements of this policy and based on the reasonableness of the charge on a case by case basis.

If the Council deems fit it may confirm, vary or quash a monetary penalty.'

Appendix D

Overview of the Rent Redress Scheme

- G.1 The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 was made by the Secretary of State in exercise of the powers in the Enterprise and Regulatory Reform Act 2013. It came into force on 1 October 2014 requiring all letting and property management agents (subject to certain exclusions) to join one of three Government approved redress schemes. The purpose of the legislation is to:
- a) Ensure tenants and leaseholders have a clear and defined route to report complaints about poor working practices to an approved body, giving increased protection against unscrupulous agents.
 - b) Encourage property professionals, letting agents and property managers to operate in a professional manner and provide a formal method of redress for tenants and landlords who have difficulties with their property professional.
- G.2 There are three Ombudsman schemes which the government has approved:
- The Property Ombudsman www.tpos.co.uk Joining fee approx. £250 + VAT
 - Ombudsman Services Property <http://www.ombudsman-services.org/property.html>
 - Property Redress Scheme <https://www.theprs.co.uk/PropertyAgent>
- G.3 These schemes will deal with complaints about the working practices of letting and managing agents. However, the Council is the enforcing authority for this legislation and is responsible for ensuring all applicable agents have complied with the new requirements, and have joined an approved scheme.
- G.4 The requirement to be a member of a redress scheme has been in law since October 2014 and has been widely publicised in the property press. The redress scheme provides a framework which ensures the professional delivery of housing services and offer additional redress/protection to landlords and tenants when using businesses who are members. Relevant businesses have been given an opportunity to join any one of the three schemes.
- G.5 This Order is targeted towards letting and management agents, and businesses who specifically sell their expertise in the field of property to landlords and property owners. As such, there is an expectation that specialist providers are fully aware of the legislative environment and as a result, offer professional advice and services to their clients.
- G.6 As the enforcing authority, Rotherham Metropolitan Borough Council has a duty to enforce the Order when it is aware of a breach. The Order allows the Council to impose a civil monetary penalty for non-compliance at a level it considers appropriate up to a maximum of £5,000 and any penalties recovered can be retained by the Council. The Council, along with all other local authorities in England, have been given a grant in December 2015 of £761 to help enforce this Order.

G.7 The Order prescribes a process must be followed when an authority proposes to impose a monetary penalty. This includes a 'notice of intent' which includes the reasons for imposing the monetary penalty, the amount of the penalty and offers a right to make representations and objections to the Local Authority within 28 days. The Local Authority must consider any written representation or objections and decide, based on reasonableness and any mitigation, whether to impose the monetary penalty, with or without modifications. If the decision is to continue to impose a monetary penalty then the Council will serve a final notice to confirm this. Following the service of the final notice that imposes the monetary penalty, a person may appeal to the First-tier Tribunal (Residential Property Tribunal) against that notice on the grounds of reasonableness or the notice was wrong in law or based on an error in fact. During any appeal to the First-tier Tribunal, the notice is suspended until the appeal is finally determined or withdrawn.

G.8 The recommendation of this report is that in Rotherham, the Cabinet applies the maximum monetary penalty of £5000, with an option for the penalty to be reduced to £3500 if paid in full within 14 days. Any representations received should be considered on their merits and if appropriate the maximum penalty be modified, based on what is reasonable in the circumstances, still having regard to the seriousness of the issue and the prejudice to their clients. It is further proposed that cabinet delegate the authority to hear and decide on any representation to the Assistant Director for Community Safety and Street Scene.

G.9 Option Appraisal

- a) The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014, allows the Council to set the value of the monetary penalty for breaching the Order at up to £5,000.
- b) A review of other local authority's websites indicates a mixed approach to the setting of the penalty level. Sheffield City Council and the East Riding of Yorkshire Council have adopted the £5000 maximum penalty with the understanding that an appropriate representation may vary that amount. Alternatively, West Lindsey Council has adopted a tiered approach where multiple breaches attract increasing higher penalties.
- c) Department for Communities and Local Government (DCLG) guidance states that '... the expectation is that a £5,000 fine should be considered the norm and that a lower fine should only be charged if the enforcement authority is satisfied that there are extenuating circumstances'.¹
- d) It is clear from Government guidance that although flexibility is given to Councils to set their own level of penalties, there are limitations to that flexibility which Rotherham needs to take account of. Indeed, it is very apparent that Government takes the offence very seriously, and recognises the impact that management agents who do not belong to a redress scheme have on landlords and tenants.

¹ Department for Communities and Local Government, *Improving the Private Rented Sector and Tackling Bad Practice: A Guide for Local Authorities*, 2015, pp53 -54

- e) The model put in place by Sheffield and the East Riding, confirms Government guidance by ensuring that only where there are extenuating circumstances upon representation, would the Council consider a lower fine. However, this approach does not provide incentives to pay the fines, and makes no differentiation between those who are willing to comply at the point of formal enforcement, and those that are willing to take the risk of Court action.

- f) It is proposed that a good option for Rotherham would be to set the monetary penalty to the maximum level of £5000, with the option for the penalty to be reduced to £3500 if paid in full within 14 days to encourage early payment and ensure differentiation of those who subsequently seek to comply. In addition, any representations made to the Assistant Director for Community Safety and Street Scene should be considered on their individual merits and, if appropriate, the maximum penalty be modified according to what is reasonable in the circumstances, whilst still having regard to the seriousness of the issue and the prejudice to their clients.

Appendix E

Overview of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015

- H.1 From 1st October 2015 the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 require landlords in the private rented sector to ensure that:
- a) A smoke detector is fitted on every storey of their rented property when occupied, and that a carbon monoxide detector is fitted in any room which contains a solid fuel burning combustion appliance.
 - b) They also require that detectors are in proper working order at the start of each new tenancy. An important exemption is that the regulations don't apply to licensed Houses in Multiple Occupation (HMO) as this is already a requirement of the HMO licensing regime.
- H.2 The Council have a duty to serve a remedial notice on the Landlord where they have reasonable grounds to believe that the landlord has not provided the smoke and/or carbon monoxide alarms or where the landlord has not ensured that they are in good working order at the beginning of the tenancy.
- H.3 If the remedial notice is not complied with, the Council will be placed under a duty to arrange the remedial action. This may involve installing a prescribed detector; repairing or checking a prescribed detector is working.
- H.4 The sole aim of the legislation is to encourage property owners to install smoke and/or carbon monoxide alarms for the protection of life. The type of alarm is not prescribed by the legislation and typical costs of purchasing/installing a smoke alarm are around £5-10 and £20-30 for a carbon monoxide alarm.
- H.5 Dwellings with no smoke alarm accounted for 38% of deaths in home fires in Great Britain, and nearly one fifth of deaths occurred where no smoke alarm worked.
- H.6 On average, carbon monoxide -Gas Safety data on unintentional carbon monoxide poisoning from all fuels has shown that there are 36 deaths per year and 260 people injured. However, there is no automatic testing for carbon monoxide of people who have died from unexplained causes and people who have symptoms of carbon monoxide have great difficulty obtaining a blood or breathe test in time to test positive for carbon monoxide. Therefore, these numbers could, in practice, be higher.
- H.7 As part of the Council's reactive approach to all customer enquiries and the application process associated with the Selective Licensing scheme, private rented properties will be inspected to ensure that smoke and carbon monoxide alarms are present and working.
- H.8 Adoption of these regulations requires the Local authority to publish a 'Statement of Principles' outlining how the value of the monetary penalty has been decided. This will be accompanied by a press release and a limited opportunity for landlords or tenants to receive free detectors. The requirement will also be

publicised to landlords and tenants via the Council's website and in periodic newsletters.

H.9 Option Appraisal

- a) The regulations place a duty on housing authorities to enforce the requirements. Where a property owner has failed to install or maintain a detector, a notice must be served which if breached, can result in the issue of a monetary penalty with a maximum value of £5,000. Where a breach occurs the Council has a duty to undertake the works in default to install a detector. The regulations provide the Council with the discretion to set a monetary penalty at any value up to a maximum amount of £5,000 for non-compliance.
- b) Having regard to the potential severity of not providing and maintaining smoke or/and carbon dioxide detectors, it is anticipated that the appropriate penalty should represent a serious deterrent for non-compliance.
- c) Whilst the offence is serious and the sanction should be fit as a deterrent, it is also incumbent on the Council to ensure that the enforcement approach is proportionate. Account must be taken of the range of individuals and business that let domestic property and their history of compliance, which must play a part in determining what level of penalty represents a reasonable deterrent in each case.
- d) The approach to setting of penalty levels has been researched across a number of other Local Authorities including amongst others, Kirklees Council, Bradford City Council, and Leicester City Council. In their Statement of Principles, the position has been generally to offer a tiered approach to penalties, varying mainly on how many tiers they apply, discounts for early payment, and starting values at each tier. Many set the first tier of penalty at a level between £1000 and £1500, with an appreciation that this may be varied by written representation.
- e) It would be an option for the Council to look at imposing the maximum penalty of £5,000 for first offences. This would certainly send a message out that the Council is determined to tackle the issue. Nevertheless, the Council can demonstrate robust enforcement, whilst showing proportionality and an understanding that individual cases have varying merits and mitigation.
- f) It would be consistent with other Councils, and the principles laid out in the Council's General Enforcement Policy, if a similar tiered structure of penalties, based on multiple offences be considered for the value of the monetary penalty to be adopted in Rotherham. The value may be further amended if a representation is received identifying mitigating factors which justify modifying the imposed penalty on a case by case basis.
- g) A penalty of £1,500 for the first offence with a reduction to £1000 for early payment; a penalty of £3,000 for a second offence with no option for early repayment; and a penalty of £5,000 for subsequent offences, would be consistent with the levels of fine used in other Local Authorities.

Appendix F
The Smoke and Carbon Monoxide Alarm (England) Regulations 2015,
‘Statement of Principles’ for assessing monetary penalty

Rotherham Metropolitan Borough Council

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015,

Statement of Principles as prescribed by Section 13 (3)

Introduction

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 introduces the following requirements for specified tenancies during any period beginning on or after 1st October 2015 when the premises are occupied under the 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;
- 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.

Enforcement

Enforcement will be undertaken in line with the Council’s General Enforcement Policy.

Where the Local Housing Authority on the balance of probabilities has reason to believe that the regulations have been breached, the Authority shall serve a Remedial Notice detailing the actions the landlord must take to comply with the Regulations.

If after 28 days the Landlord has not complied with the Remedial Notice or submitted a written representation. A Penalty Charge shall be levied through a penalty charge notice.

Principles to be followed in determining the amount of a Penalty Charge

It is understood that the imposition of the maximum penalty available under the regulation of £5,000 will not be reasonable in every case and will present an excessive financial burden. The Authority considers that a tiered level of penalty is appropriate and reasonable based on repeat offending and the circumstances of the breach.

The level of penalty will cover the cost of all works in default, all officer costs and overheads associated with the investigation, all recovery costs, an administration fee and include a punitive element recognising the failure of the landlord to protect their tenants and comply with the law. Repeated offences will attract a progressively

higher penalty in view of continuing disregard for legal requirements and tenant safety.

Level of Penalty Charge

The Penalty Charge shall be £1,500 for the first offence. Reduced to £1000 for full payment within 14 days

Should the Landlord be found in breach of the regulations for a second time, in any property under their control and fail to comply with a future Remedial Notices, then the penalty shall be increased to £3000 with no reduction for early payment. Any further offence will attract the maximum penalty of £5000 with no reduction for early payment.

Mitigating Factors and Representations

The Council may vary the amount of the financial penalty charge notice where a landlord makes a written representation to the Council within 28 days of the day the penalty charge notice was served. The representation should set out any relevant information describing why the charge is unreasonable or unjust.

The written representation should be sent to;

Assistant Director of Environment and Street Scene,
Riverside House,
Main Street,
Rotherham.
S60 1EA

The Assistant Director may confirm, vary or withdraw the charge based on the information you provide in your representation.

Information which will be considered will include but not be limited to;

- Number of properties owned
- Level of cooperation with the Council
- Period of time you have been letting property
- Personal financial circumstances
- Your history of compliance with Housing Legislation
- Membership of a professional body
- Efforts made to try to comply
- Any reason you feel the charge has been made unreasonably

Recovery of Penalty Charge

The local housing authority may recover any unpaid penalty charge on the order of the County Court, as if payable under an order of that Court, as laid out in the Regulations.

Appendix G
Deregulation Act 2015
Amendment to Environmental Protection Act 1990 section 46

- J.1 The legislation, which enables the Council to require household waste to be presented for collection in a specified manner, has been de-criminalised by the Deregulation Act 2015.
- J.2 Previously, failure to comply with a Council enforcement notice under Section 46 of the Environmental Protection Act 1990 could result in a fixed penalty fine of £80 or criminal prosecution if the fixed penalty notice was not paid. The main use of the powers was in relation to domestic waste receptacles left on pavements which became an obstruction, visually detrimental to the area or a risk of being set on fire.
- J.3 Rotherham Council have designated dates for the presentation of household waste for collection and on occasion residents don't follow the stated procedures for retrieving the receptacles, following the disposal of waste, and therefore it causes an obstruction.
- J.4 The new process enables the use of a monetary penalty following a written warning where the failure to comply with an enforcement notice has or is likely to cause a nuisance, or to be detrimental to any amenities of the locality. The amount of the penalty charge can be specified by the council, but the default charge is £60. A person issued with a penalty charge can also now appeal to the First Tier Tribunal against the charge made.
- J.5 It is recommended that the penalty charge be set at the same level as the previous fixed penalty notice at £80. This level is consistent with litter and dog fouling fixed penalty notices that the Council currently issues. A higher charge may result in fewer payments made and increased recovery charges. However, the level of income generated by this new charge is likely to be negligible as no fixed penalty notices have been issued for offences under the original legislation since its formal adoption in 2010, as all cases have been resolved by the initial stages of enforcement.
- J.6 Section 58, Deregulation Act 2015, which was introduced on 26th March 2015, amends the Environmental Protection Act 1990.

J.7 Option Appraisal

- a) The amendments to the Environmental Protection Act 1990, Section 46, allow the Council to set a monetary penalty in relation to offences, with a minimum default level at £60.
- b) The Council currently has a fixed penalty in place for this type of offence set at £80, albeit that it is rarely used.
- c) Potentially the Council may not set a penalty level, which would lead to the default level of £60. However, this could be interpreted as the Council

dampening down its enforcement powers when the safe and clean agenda is a priority.

- d) The Council could take the path of increasing the level of fine beyond what is currently adopted, however this might be considered as disproportionate to the offence, particularly as the Council has not sought to increase the level previously on the back of any evidence to support the need for an increase.
- e) It would be consistent and proportionate to maintain the penalty level at £80 in keeping with the previous fixed penalty.

Appendix H

The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 Amendment to Section 33 (1) Environmental Protection Act 1990

- K.1 Where authorised officers believe that a fly-tipping offence has been committed, the officer may serve a fixed penalty notice on the perpetrator. This provides an opportunity for individuals to discharge the offence without recourse to Court action. The fixed penalty can be set at the discretion of the local authority. Where the authority does not set a penalty level, the standard penalty is £200.
- a) An early payment discount level can be specified to enable more efficient enforcement by encouraging people to pay the penalty at the earliest opportunity. This discount level also has to be specified by the Council and must be no less than £125.
 - b) The Council has utilised powers under Section 34A of the Environmental Protection Act 1990 which allows for fixed penalty notices of £300 to be issued where someone has failed to discharge their duty of care in respect of waste under their control. However, the Council has not previously taken advantage of the option to allow for reductions for early payment.
- K.2 The provision of a fixed penalty option does not however remove the ability of the Council to decide on formal prosecution at the first stage for say commercial or repeat fly-tipping offences, or where the scale of the fly-tipping is such that only a prosecution is appropriate.
- K.3 If a fixed penalty is served, and that fixed penalty is not paid, then the Council may institute proceedings after 14 days.
- K.4 In addition it is an offence for anyone to provide a false or inaccurate name or address, where a person giving such false information would be liable to summary conviction.
- K.6 Option Appraisal
- a) The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 amendments to the Environmental Protection Act 1990 Section 33(1) allows the Council to set the penalty fine level between £150 and £400.
 - b) Currently fly-tipping offences, with the exception of small fly-tipping, are dealt with through prosecution. The introduction of fixed penalty notices will add some immediacy to sanctions for such offences.
 - c) Officers from South Yorkshire local authorities have been discussing the implementation and use of fixed penalty notices for fly-tipping to ensure a co-ordinated and consistent approach. All are likely to propose a fixed penalty of £400 with a reduction to £300 through their decision making processes.
 - d) Comparatively in Rotherham, the level of prosecution fines and costs awarded at court varies, but average at £356 for fines and £380 for costs.

This level is similar to the suggested fixed penalty fines suggested by South Yorkshire officers.

- e) The Council might consider setting the fine to the maximum available at £400. The single fine level would be higher than related offences but would potentially encourage people to risk going to court for the offence in the hope of having longer to pay a fine or having a reduced fine. In addition, there would be no incentive for those who are willing to accept sanction for their wrong-doing.
- f) The Council is also able to not set a fine level, and leave the sanction at the default level of £200. However this would not be consistent with other Authorities in the region, and the modest penalty would not demonstrate that the Rotherham considers fly-tipping to be a serious offence.
- g) By setting a £400 fine and a £300 discounted fine for early payment, the Council would demonstrate the seriousness of the fly-tipping offence and maintain consistency across the region. Additionally, the early payment option demonstrates the Council's proportionality in that it will encourage those who accept their wrong-doing to discharge the offence at the earliest opportunity. The early payment must be met within 10 days, as this is set by the legislation.
- h) The Environmental Protection Act 1990 Section 34 contains an option for the Council to offer early payment discounts for fixed penalty notices for failures in relation to duty of care over waste. This option has not been taken advantage of in Rotherham. The offence is closely related to fly-tipping and includes not keeping records of waste transfers and failing to have or present on demand, an Environment Agency licence to transport waste.
- i) As advised by Legal Services it would be consistent for the Council to introduce an early payment discount for duty of care offences similar to that suggested for fly-tipping offences and as such a 25% early payment discount would enable the Council to demonstrate consistency and fairness of enforcement.