1. Summary
1.1. The Council’s current Enforcement Policy has been operational since June 2014. Since then, operational and legislative changes have been introduced and as a consequence, the Policy has been revised and updated to reflect these changes; including extended powers in respect of the licencing of houses in multiple occupation and those contained in the Housing and Planning Act 2016.

1.2. This report sets out the major changes to the Policy and presents an updated version.

2. RECOMMENDATIONS
2.1. That Cabinet approve the draft Private Sector Housing Enforcement and Licensing Policy attached at Appendix A to the report.

2.2. That the Strategic Director (External Services) be granted delegated authority to approve any minor revisions to the Policy as required.

3. Background and Discussion.

3.1. The Council’s existing Enforcement Policy relating to Private Sector Housing was last reviewed and updated in 2014. Over the last few years there have been significant changes to the context in which the Council’s Private Sector Housing service operates and as a result the Policy is in need of updating. Changes include:

- an increase in the proportion of housing in the Borough that is privately rented, reflecting national trends;
- changes to national legislation relating to the private rented sector, with an increasing emphasis on statutory regulation.

3.2. A new Enforcement and Licensing Policy has now been produced that relates solely to the Council’s Private Sector Housing functions, including the licensing of houses in multiple occupation (HMOs) (see 3.18 and Annex 2 of the Policy for full details). The Policy sets out how Officers will carry out enforcement activities and ensure that service users are fully aware of what to expect from the Council.

3.3. The Policy’s primary purpose is to ensure that:

- Tenants of private landlords live in homes that are free of unacceptable hazards and risks to their health and safety;
- All HMOs are safe and well managed and all relevant management regulations are adhered to;
- All licensable properties are licensed and all licensing conditions are met;
- Private Landlords comply with their statutory obligations in relation to housing standards and management

3.4. The Policy is designed to provide comprehensive details of the principles, processes and penalties with which the Council will seek to comply when taking action to ensure that all private sector housing in the Borough is healthy, well managed and safe.
3.5. Civil Penalties, Rent Repayment Orders and Banning Orders.

3.6. The Housing and Planning Act 2016 provides new powers for local housing authorities to issue ‘Civil Penalties’. The use of these new powers will support and complement the current housing enforcement work undertaken, including HMO licensing. They add a new powerful deterrent to criminal landlord behaviour through the levying of significant financial penalties of up to £30,000 for each offence committed without the need for formal prosecution proceedings. Full details of Civil Penalties can be found in Annex 1 of the Policy.

3.7. If these proposals are agreed, the Council can impose a Civil Penalty as an alternative to prosecution for the following offences under the Housing Act 2004.

- Failure to comply with an improvement notice (section 30);
- Offences in relation to licensing of HMOs (section 72);
- Offences in relation to licensing of houses under Part 3 of the Act (section 95) (selective licensing scheme);
- Offences of contravention of an overcrowding notice (section 139);
- Failure to comply with management regulations in respect of HMOs (section 234) (for example those involving household waste control);
- Breaching a banning order (Housing and Planning Act, section 23)

3.8. The Housing and Planning Act 2016 (the Act) introduced a power for the First-tier Tribunal to serve a Banning Order on a landlord or property agent. Banning Orders came into force on 1 October 2017 and can prevent any person/subject from letting housing, engaging in letting agency or management work and from holding a property licence in England. Banning order offences include failing to comply with an Improvement Notice/Prohibition Order/HMO Licensing breaches /Unlawful eviction and harassment of occupier. For full details of Banning Orders see Annex 3 of the Policy.

3.9. The penalty for breaching a Banning Order, upon summary conviction, is either a fine, or possible imprisonment for a period not exceeding 51 weeks, or both.

3.10. The Housing Act 2004 introduced ‘Rent Repayment Orders’ (RROs) to recover housing benefit/universal credit paid to landlords who are running unlicensed properties (see Section 10 of the Policy for further details). A RRO is made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent. RROs have now been extended through the Housing and Planning Act 2016 to cover a much wider range of offences. The new grounds for seeking a RRO are:-

- Failure to comply with an improvement notice under section 30 of the Housing Act 2004
- Failure to comply with a prohibition order under section 32 of the Housing Act 2004;
- Breach of a Banning Order made under section 21 of the Housing & Planning Act 2016;
- Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977; and
- Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977.
3.11. Officers will assess each case carefully to decide whether to issue a Civil Penalty or undertake other enforcement interventions in line with this Policy. If a Civil Penalty is imposed, a prosecution cannot be sought subsequently. Banning Orders would be reserved for the worst offenders, therefore Civil Penalties would potentially form the bulk of the enforcement action for any relevant breaches of the Housing Act 2004.

3.12. It should also be noted that civil penalties cannot be issued unless the evidence has met the criminal standard of proof (i.e. ‘beyond reasonable doubt').

3.13. Civil Penalties are subject to appeal to the First Tier Tribunal (FTT), so it is important that the Council sets penalties at a reasonable level, which it can successfully defend upon appeal.

3.14. The 2017 Department of Communities & Local Government Guidance ‘Civil penalties under the Housing and Planning Act 2016’ has been used to develop a methodology to assess the circumstances of each case. This is with a view to determining the most appropriate penalty which can be imposed, up to a maximum of £30,000 for each offence committed. This methodology will be used to offer transparency and aid consistency in the enforcement process and will assist in defending appeals against either the imposition of a Civil Penalty and the penalty amount. This methodology will be kept under review and will be revised as necessary to take account of any relevant regulations or guidance released by the Secretary of State.

3.15. The Council will be required by law to input details of Banning Orders into the Rogue Landlord Database under section 29 of the Act. The database enables all local authorities to record information about, and target enforcement action against, any landlord or property agent who has: received a banning order; been convicted of a banning order offence; received 2 or more Civil Penalties over a 12 month period. There will be a small additional cost to the Service to comply with this requirement.

The above powers are not retrospective and will not apply to offences committed before the official date of implementation which was 6 April 2018.

3.16. The Council has a statutory duty and powers to deal with poor housing conditions in privately rented accommodation. The role of the Private Sector Housing team is to raise standards and ensure compliance with legislation. This is mostly done through advice and support but, where required, the new enforcement powers will be used and the new Policy at Appendix A provides a clear framework in which to conduct this.

3.17. **Extension of Houses in Multiple Occupation (HMO) Licensing.**

3.18. A full definition of what constitutes an HMO is contained in sections 254 and 258 of the Housing Act 2004. With effect from 1 October 2018 this scheme will apply to **all** HMOs that meet the following criteria:

- Is occupied by five or more persons
- Is occupied by persons living in two or more separate households and meets:
(i) The standard test under section 254(2) of the Act; any building in which two or more families/individuals share basic amenities
(ii) The self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or
(iii) The converted building test under section 254(4) of the Act. any converted building which comprises of one or more units of accommodation that are not self-contained

3.19. Some new additional licensing conditions have also been introduced relating to minimum sleeping room sizes and to storage and disposal of refuse.

3.20. The scheme will apply to the whole of the Borough of Dartford currently administered by Dartford Borough Council. Full details of HMO Licensing can be found in Annex 2 of the Policy.

3.21. **Energy Efficiency Standards.**

3.22. The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (amended 2016) requires that landlords:

- Have an Energy Performance Certificate (EPC) and provide a copy to tenants whenever they rent their properties out and
- Ensure all rented homes have at least an E rating on the EPC

3.23. Since 1 April 2016 tenants can request energy efficiency measures and landlords may not unreasonably refuse consent. From 1 April 2018, all tenancies starting new or renewing after this date MUST have at least an E-rating on the property's EPC by law. From 1 April 2020, all other privately rented homes (i.e. those on continued tenancies) MUST have at least an E-rating on the EPC to be lawfully let out. The Regulations apply to all properties that are:

- Legally required to have an EPC, and
- On an assured, regulated or agricultural tenancy type

3.24. Full details of these standards and their enforcement can be found in Annex 4 of the Policy.

3.25. **Consultation.**

No formal consultation is required as a result of the policy proposal set out in this report. The penalty charges and conditions will however be clearly advertised on the relevant pages of the Council’s website.

4. **Relationship to the Corporate Plan.**

4.1. This report relates to the Corporate Plan strategic aim ‘to facilitate quality, choice and diversity in the housing market, to create strong and self-reliant communities and deliver high quality services to service users’. 
Financial, legal, staffing & other administrative implications & risk assessments:

<table>
<thead>
<tr>
<th>Implications</th>
<th>Description</th>
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<tr>
<td><strong>Financial Implications</strong></td>
<td>The Government has published regulations that state the income from Civil Penalties and Rent Repayment Orders can be retained by the Local Authority. The income must be used to cover the administration and legal costs and the expenses incurred in carrying out its private rented sector enforcement functions. Any amount outside of that has to be paid in to the Consolidated Fund.</td>
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<tr>
<td><strong>Legal Implications</strong></td>
<td>The Housing and Planning Act 2016 introduced a new financial penalty regime which took effect from 6 April 2017. This enables the Council to impose a civil penalty up to £30,000. The legal basis for these powers is contained in section 126 and Schedule 9 of the Housing and Planning Act 2016, which allows financial penalties to be given as an alternative to prosecution.</td>
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<td><strong>Staffing Implications</strong></td>
<td>Resource and staffing issues to be agreed.</td>
</tr>
<tr>
<td><strong>Admin Implications</strong></td>
<td>As set out in this report.</td>
</tr>
<tr>
<td><strong>Risk Assessment</strong></td>
<td>Failure to ensure compliance with legislation and relevant standards may compromise the health and safety of the residents of, and visitors to, private sector residential properties. An updated policy is required to reflect current legislation and reduces the risk of any challenge. Another risk will be an inability to collect the income from the penalties imposed. This risk will be mitigated by obtaining legal and financial resources as required in order to deliver the appropriate options for debt recovery for each case. The main legal risk from the adoption of these new powers will be successful appeals from landlords. This risk will be mitigated by taking legal advice upon the processes to be adopted and a comparison of best practice with other local authorities. Officers will receive necessary training and instruction and will be guided by procedures that will be regularly reviewed and updated.</td>
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<td><strong>Public Sector Equality Duty</strong></td>
<td>A Customer Access review has been completed.</td>
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7. Appendices
Appendix A – Draft Private Sector Housing Enforcement and Licensing Policy.

BACKGROUND PAPERS

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<tr>
<th>Documents consulted</th>
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<th>Report Author</th>
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<tr>
<td>Jackie Pye</td>
<td>Housing, Strategic</td>
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