

Cherwell District Council

Executive

2 July 2018

<p>Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2016 – enforcement and authorisations</p>

Report of Assistant Director Housing

This report is public

Purpose of report

To request Executive approval to authorise officers to apply certain financial penalties where landlords do not bring their privately rented properties up to the legal minimum standard as set out in the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 and as may be amended.

1.0 Recommendations

The Executive is recommended:

- 1.1 To approve use of the financial penalties, as outlined in this report, to ensure private rented domestic properties meet the prescribed minimum energy efficiency standards.
- 1.2 To delegate this power to the Assistant Director of Housing who may then provide sub-delegations, as required, to other appropriate officers.

2.0 Introduction

- 2.1 On 1 April 2016 the Energy Efficiency (Private Rented Property) (England and Wales) Regulations came into force to improve the energy efficiency of privately rented property. They enable a tenant of a domestic property to request their landlord's consent for energy efficiency improvements to be made to the property and place a duty on the landlord not to unreasonably refuse such works. In any case where a tenant has served a tenant's request and the landlord has failed in their duty, the tenant may apply to the First-tier Tribunal for its consent to make the improvements.
- 2.2 The Regulations also require domestic private rented properties to have a minimum Energy Performance Certificate (EPC) rating of E. From 1st April 2018, landlords are prohibited from granting new tenancies for properties with an EPC rating below E, nor may they renew or extend existing tenancies (which includes tenancies that become statutory periodic tenancies following the end of a fixed term shorthold).

- 2.3 From 1 April 2020, the restriction on landlords letting out sub-E rated properties is extended to cover all existing tenancies for properties in scope of the regulations.
- 2.4 These provisions will not apply if the landlord is unable to obtain funding to cover the whole cost of the works to bring the property up to an E rating or above; or all improvements that could be reasonably undertaken have been undertaken and the property remains under an E rating. However, if either of these exemptions applies, the landlord must register the exemptions on the Government's PRS Exemption Register.
- 2.5 The Government is currently consulting on whether the 'full cost' exemption should be replaced by a 'maximum cost' exemption. Current expectation is that the Regulations will be amended in due course so that landlords will have to fund improvements up to a specified value before an exemption can be registered.
- 2.6 Local authorities must enforce compliance. The Council can make use of the national EPC register to direct and assist this work and will also be able to make use of data provided as part of its recent Stock Modelling exercise and report.
- 2.7 Non-compliant landlords can be made subject to a financial penalty of up to £5,000 for offences including failure to obey a Compliance Notice requiring information, failure to register a property on the PRS Exemption Register, or registering false information (table 1).
- 2.8 The authority may also publish details of the breaches on the PRS Exemption Register for 12 months or for any greater period of time as it sees fit (table 1).

Table 1. Maximum and Minimum Penalties

Offences	Maximum Financial Penalty	Total Maximum Financial Penalty per Property per Breach	Minimum Publication Penalty
Letting a sub-standard property for less than 3 months	£2000	£5000	1 year
Letting a sub-standard property for more than 3 months	£4000		
Registered false or misleading information	£1000		
Failure to comply with compliance notice	£2000		

- 2.9 The process for issuing a financial penalty notice is set out in appendix 1. The landlord can request a review but then has the right to make an appeal against a penalty the First-tier Tribunal which can uphold or quash the penalty.

3.0 Report Details

- 3.1 Only a representative or authorised officer of the Council may carry out enforcement activities (including use of information held on the PRS Exemption Register or produced in response to a compliance notice) and issue compliance notices where applicable.
- 3.2 Further to recommendation 1.2 officers in the Private Sector Housing Team will be authorised to carry out functions under the Energy Efficiency (Private Rented Property) (England and Wales) Regulation 2015 (as amended) applicable to domestic properties.
- 3.3 Where the local authority decides to impose a financial penalty, it has the discretion to decide on the amount of the penalty up to the maximum limits set by the Regulations. The Government has made clear that it expects local authorities to impose maximum penalties for breaches, although there is flexibility to consider mitigating circumstances when setting penalty levels.
- 3.4 In deciding whether to impose a penalty, officers will take into consideration the Council's Enforcement Policy¹.
- 3.5 When a fine is issued it will be issued at the maximum permitted levels applicable to the relevant breach(s) and maximum total permitted fine; with a 25% discount for paying the total fine within 14 days of the penalty notice issue.

Table 2. Applicable Penalties and Publication periods

Failure	Financial Penalty	Publication Notice Period
Let a sub-standard property less than 3 months	£2000	None
Let a sub-standard property more than 3 months	£4000	1 year
Registered false or misleading information	£1000	1 year
Failed to comply with compliance notice (for information)	£2000	2 years
Failed to comply with compliance notice (to register on the PRS Exemption Register.	£2000	2 years
Maximum Total Fine/Publication *	£5000	3 years
Failed to take the action required by a penalty notice within the period specified and a second penalty notice issued.	£2000	3 years from date of last penalty notice served.

**Further breaches may result in additional penalties*

¹ The joint SNC & CDC Enforcement Policy

4.0 Conclusion and Reasons for Recommendations

- 4.1 The Government has introduced financial penalties as a means of preventing landlords from profiting from non-compliance with legislation and to ensure compliant landlords are not disadvantaged. It is important that the penalties for not complying are sufficiently substantial to persuade a landlord to carry out their duties without the need for enforcement.
- 4.2 The penalty fees outlined in this report are intended to provide sufficient incentive for landlords to comply.
- 4.3 Chasing payment for unpaid fines can be resource intensive and expensive; it is proposed that fines paid within 14 days of the penalty notice issue will be reduced by 25% to incentivise early payment.

5.0 Alternative Option and Reasons for Rejection

- 5.1 The following alternative option has been identified and rejected for the reasons given below.

Option 1: The Council could choose to adopt lower penalty levels than those stipulated as a maximum within the legislation; however that would not send a clear message to landlords that they must ensure tenants (many vulnerable) are able to manage their energy costs; improve the condition of the private rented stock and reduce maintenance costs; smooth seasonal peaks in energy demand and increase the nation's energy security; and reduce greenhouse gas emissions.

6.0 Implications

Financial and Resource Implications

- 6.1 No additional resource will be required. Any additional income generated by the issue of fixed penalty notices will contribute to the funding of the Council's services.
- 6.2 There is no financial risk to the Council.

Comments to be checked by:
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Legal Implications

- 6.3 Regulation 34 of the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2016 SI 2015 No 660 requires local authorities to enforce compliance. A local authority is the 'enforcement authority' for its area².
- 6.4 Compliance Notice
An enforcement authority may, on or after 1 April 2018, serve a "compliance notice" on a landlord where the landlord appears to it to be, at any time within the last 12

² But the County Council, as Weights & Measures authority, is responsible for enforcement of the Regulations as they relate to non-domestic property.

months, in breach of one or more of the following - (a) regulation 23 (, (b) regulation 27. The authority may vary or revoke the order at any time in writing.

6.5 Penalty Notice

An enforcement authority may, on or after 1 April 2018, serve a “penalty notice” on a landlord where it is satisfied that the landlord has been at any time within the last 18 months in breach of one or more of the following - (a) regulation 23 (Prohibition on letting a substandard property), (b) regulation 27 (Prohibition on letting substandard non-domestic property) or (c) regulation 37(4)(a) (Compliance with a Compliance Notice), impose a financial penalty, a publication penalty, or both. The notice must specify any action the enforcement authority requires the landlord to take to remedy the breach and the period within which such action must be taken. If the landlord fails to take the action required by a penalty notice within the period specified in that penalty notice the enforcement authority may issue a further penalty notice.

6.6 Appeal

A landlord may, within the period specified under regulation 38(2)(h)(ii), serve notice on the enforcement authority requesting a review of its decision to serve a penalty notice. If, after a review, a penalty notice is confirmed by the enforcement authority, the landlord may appeal to the First-tier Tribunal.

6.7 Debt

The amount of an unpaid financial penalty is recoverable from the landlord as a debt owed to the enforcement authority unless the notice has been withdrawn or quashed.

Comments checked by:

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Risk Implications

- 6.8 There is a reputational risk to the Council in not adopting the new powers and ensuring its private rented tenants are able to live in energy efficient homes that they can afford to heat.

Comments checked by:

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Equalities implications

- 6.9 To the extent that poorer quality private rented accommodation is frequently occupied by vulnerable people, enforcement of this legislation has the potential to assist those residents in particular.

Comments checked by:

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7.0 Decision Information

Key Decision

Financial Threshold Met: **No**

Community Impact Threshold Met: **Yes**

Wards Affected

All wards

Links to Corporate Plan and Policy Framework

Joint Business Plan: Safeguard the Vulnerable; Provide and Support Health & Wellbeing.

Lead Councillor

Councillor John Donaldson, Lead Member for Housing

Document Information

Appendix No	Title
One	Compliance and Enforcement Flow Chart
Background Papers	
None	
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Appendix 1 Compliance and Enforcement Flow Chart

