

**Committee:** Cabinet **Date:** Thursday, 18 April 2024

**Title:** Amendments to the Environmental Health (Housing) Enforcement Policy

**Portfolio Holder:** Authur Coote, Portfolio Holder for Housing and Equalities

**Report Author:** Marcus Watts, Environmental Health Manager - Protection **Key decision:**  
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## Summary

1. The Environmental Health (Protection) Service is responsible for enforcing legislation to ensure property standards are maintained.
2. Enforcement powers that are available to the team are predominantly derived from the Housing Act 2004. However, the Housing & Planning Act 2016 introduced a range of measures to enhance the existing powers including the ability for the Council to issue Civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences.
3. Within the Statutory Guidance published in April 2018, the Government made it clear that local housing authorities must develop and document their own policy to determine when it is appropriate and how to determine the level of civil penalty.
  - a) The Cabinet approved the original Private Sector Housing Enforcement Policy in November 2019. Since this time there have been several changes in legislation allowing civil penalties. These include offences under:
    - I. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
    - II. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
    - III. The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015
    - IV. The Housing and Planning Act 2016
4. This report outlines these changes and requests consent for adoption within the Enforcement Policy.

## **Recommendations**

### **5. That Cabinet:**

- I. Enable officers to discharge its duty and exercise powers under:
  - i The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
  - ii The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 & The Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022
  - iii The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 as amended by The Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2019
  - iv The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018
  
- II. Approve the revised Private Sector Housing Enforcement Policy as set out in Appendix A.

## **Financial Implications**

6. The penalty charges listed serve as a deterrent to ensure that the landlord complies with the advice, recommendations and formal notices issues by Environmental Health. The Government have made it clear that any revenue from civil penalties should not only be retained by the Council, but be ring-fenced for Private Sector Housing enforcement activity.

## **Background Papers**

7. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.
  - Uttlesford Private Sector Housing Enforcement Policy – October 2018
  - Smoke and Carbon Monoxide Alarm (England) Regulations 2015 & Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022
  - Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
  - The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 as amended by The Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2019
  - Ministry of Housing communities and Local Government - Civil penalties under the Housing and Planning Act 2016. Guidance for Local Housing Authorities – April 2018
  - <https://commonslibrary.parliament.uk/research-briefings/cbp-7328/>

## **Impact**

8.

Communication/Consultation	The enforcement policy will be promoted on the Councils website and landlord forum events.
Community Safety	Effective enforcement policies aim to promote community safety in an effective and proportionate manner
Equalities	None
Health and Safety	None ,
Human Rights/Legal Implications	The policies are designed to ensure that the Council carries out its enforcement role lawfully and proportionately having regard, amongst other things, to human rights
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

### Situation

9. The private rented sector (PRS) is an important and growing part of the housing market representing 19% of all households in England. Within Uttlesford, private renting increased from 13.1% in 2011 to 14.5% in 2021 (census data)
10. The expansion of the PRS has focused attention on the need to improve conditions. The English Housing Survey (EHS) estimated that in 2021, 23% of PRS homes did not meet the Decent Home Standard – around 1 million homes. This compares with 13% of owner-occupied and 10% of social-rented homes. PRS homes were also more likely to have at least one Category 1 hazard under the Housing Health and Safety Rating System (HHSRS).
11. It is worth noting that the Government’s white paper, A fairer private rented sector, was published on 16 June 2022. It set out a 12-point action plan to deliver “a fairer, more secure, higher quality private rented sector” In delivering these reforms the Renters Reform Bill has now completed its readings within the house of commons and is due to progress through the House of Lords.
12. Councils Environmental Health Service is responsible for enforcing a wide range of statutory provisions relating to private sector housing and environmental conditions affecting health, wellbeing, and safety. These include:

- Reducing the number of properties with serious risks to health and safety.
- Improving energy efficiency, warmth of homes and help reduce fuel poverty.
- Improving standards in Houses of Multiple Occupation, enforcement, and licensing.
- Immigration Housing Reports & Ukrainian host property inspections
- Empty properties
- Disabled Facilities Grants & Discretionary Home Repairs Assistance
- Hoarding, security, and pest control
- Defective sewers and drains.

13. The existing Environmental Health Private Sector Housing Enforcement Policy was last formally agreed by Cabinet in November 2018. The policy outlines the principles of enforcement, the enforcement options available and the process in place to ensure effective enforcement is undertaken in a fair, consistent and transparent way.

14. The revised Policy continues to allow the Council to impose a civil penalty as an alternative to prosecution, but now includes offences relating to breaches of the Smoke and Carbon Monoxide Alarm (England) Regulations, Electrical Safety Standards in the Private Rented Sector (England) Regulations, The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 as amended and also for breaches of Banning Orders. The following paragraphs provide further context on these changes:

#### **15. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020**

16. Although existing legislation already requires landlords to keep their properties free from electrical hazards. It has previously been best practice for landlords to organise periodic inspection and testing and to provide an electrical safety report to the tenant. Under The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 best practice is placed on a statutory footing.

17. In summary, the regulations place the following duties on private landlords:

- To ensure that electrical safety standards are met during any period when the residential premises are occupied under a tenancy, and that every fixed electrical installation is inspected and tested at least every five years by a qualified person.
- To obtain a report from the person conducting the inspection and test which gives the results and sets a date for the next inspection and test

- To supply a copy of the report to the existing tenant within 28 days of the inspection and test, and on request supply a copy to the local housing authority.
  - To supply a copy of the last report to any new tenant before occupation, or any prospective tenant within 28 days of a request from the prospective tenant.
  - Where the report requires the private landlord to carry out further investigative or remedial work, the private landlord must undertake such further investigative or remedial work within 28 days or within such lesser time period as specified in the report; and
  - To obtain and supply written confirmation of completion of such further investigative or remedial work to the tenant and local housing authority.
18. Where the Council has reasonable grounds to believe a private Landlord is in breach of their duties, the Council has a statutory duty to serve either a remedial (Reg 4) specifying what action needs to be taken to achieve compliance and when this needs to be achieved by. Alternatively, the Council can carry out urgent remedial works and an urgent remedial notice (Reg 10). The regulations allow for a statutory appeal period against any statutory notice served under the regulations.
19. Private landlords are able to make written representations to the Council within 21 days in the first instance. Any written representation will be considered on case by case basis. Private landlords also have rights to appeal to the First-tier Tribunal. The Tribunal may confirm, quash, or vary notices served by the Council.
20. The Council also has the discretionary power to carry out necessary remedial action. The regulations state the local authority 'may' organise with consent of the tenant, urgent or non-urgent remedial action. Where this is exercised, regulation 8 allows the Council to recover costs reasonably incurred by them taking action.
21. If there has been no appeal of the notice requiring action, the costs become payable at the end of 21 days, beginning with the day on which the demand for payment was served. Where the Council is satisfied beyond all reasonable doubt that a private landlord is in breach of any of their duties under regulation 3, the Council can issue civil penalties up to £30,000 for a breach of any of duties.

**22. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (As Amended by the Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022**

23. Under the Smoke & Carbon Monoxide Alarm Regulations there is a mandatory requirement to provide a carbon monoxide alarm in rooms used as living accommodation where there is a fixed combustion applicant, such as gas heaters and boilers. These rules amend the previous regulations where the requirement previously only applied to solid

fuel combustion appliances, such as wood burners. However, the rules do not extend to gas cookers.

24. The amended rules also include a new requirement to ensure that when a tenant reports to their landlord or letting agent that an alarm may not be working properly, the alarm must be repaired or replaced. Landlords or their agent must also ensure that the property's alarms are in proper working order on the day that a tenancy starts, and they must keep a record of this.

25. The Council is required under the Smoke & Carbon Monoxide Alarm (England) Regulations 2015 to prepare and publish a statement of principles which it proposes to follow when deciding on the penalty charge amount (up to a maximum penalty of £5000) for failing to comply with a remedial notice served under these regulations.

26. The statement of principles is provided within the revised Enforcement Policy. The Council will impose a penalty charge where it is satisfied, on the balance of probabilities, that the landlord has not complied with the action specified in a remedial notice within the required timescale.

**27. The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 as amended (MEES)**

28. The Minimum Energy Efficiency Standards (MEES) Regulations came into force in April 2018 and have been amended twice since that time. The Regulation requires a domestic private rented property to have a minimum Energy Performance Certificate (EPC) rating of E. From the 1st April 2018 landlords were prohibited from granting new tenancies for a property with an EPC rating of below E, nor can they renew or extend any existing tenancies. From 1st April 2020 the legislation further restricts landlords letting out below E-rated properties to all existing tenancies.

29. In addition to the EPC rating requirements, the legislation also enables a tenant to request their landlord's consent for energy efficiency improvements to be made to the property and placed a duty on the landlord to not unreasonably refuse such works. This enables a tenant to serve a 'tenants request' on the landlord and if the landlord fails in their duty the tenant may apply to the First Tier Tribunal for its consent for the improvements to be made.

**30. The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017**

31. A banning order is an order by the First-tier Tribunal that bans a landlord from:

- Letting housing in England;

- Engaging in English letting agency work;
- Engaging in English property management work; or

- Doing two or more of those things.
32. Banning Orders are rare and tend to be used for the most serious offenders who flout their legal obligations, renting out accommodation that is sub standard.
  33. The obligation is for the Local Authority to apply for a banning order and is required to develop and document their own policy on it. However, the government expects the power to be used for the most serious offences.
  34. A breach of a banning order is a criminal offence can also result in a civil penalty and this has also been included within the Private Rented Sector Enforcement Policy
  35. The civil penalties given within the revised enforcement policy have been calculated taking into consideration government guidance and allow local authorities to impose a civil penalty of up to £30,000 as an alternative to prosecution.
  36. The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before taking formal action, a local housing authority should satisfy itself that if the case were to be prosecuted in the magistrates' court, there would be a realistic prospect of conviction.
  37. To actually achieve a conviction in the magistrates' court, the local housing authority would need to be able to demonstrate beyond reasonable doubt that the offence has been committed. Similarly, where a civil penalty is imposed and an appeal is subsequently made to the First-tier Tribunal, the local housing authority would need to be able to demonstrate beyond reasonable doubt that the offence had been committed.
  38. The Government has made it clear that local housing authorities must develop and document their own policy to determine when to prosecute and when to issue a civil penalty.
  39. On 18<sup>th</sup> October 2017, Cabinet adopted an overarching Corporate Enforcement Policy which details the approach to which all Council enforcement officers should have regard to when considering action. The amended Private Sector Housing Enforcement Policy should be regarded as an extension of this Policy.

## Risk Analysis

40.

Risk	Likelihood	Impact	Mitigating actions
There are few risks identified for not adopting the	1 – Low	3 - Impact arises in the event of non –	Maintain service level & adoption of policy

<p>policy. Officers would look to sanctioning offenders through the courts. There are risks associated with the non delivery of enforcement services, both on resident health and safety and reputational risk to the Council</p>		<p>enforcement services</p>	
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- 1 = Little or no risk or impact
- 2 = Some risk or impact – action may be necessary.
- 3 = Significant risk or impact – action required
- 4 = Near certainty of risk occurring, catastrophic effect or failure of project.