

Agenda Item No: 6
Report To: Cabinet
Date of Meeting: 24 June 2021
Report Title: The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 – Financial Penalty Policy
Report Author & Job Title: Julian Watts
Senior EHO – Private Sector Housing
Portfolio Holder Cllr. Bill Barrett
Portfolio Holder for: Housing



Summary: The council is responsible for enforcing the minimum standards for energy efficiency within the private rented sector, under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

This report seeks approval to implement a Fee Policy Framework to allow the council to achieve improvements in the private rented sector and reduce fuel poverty.

Implementing the Frame work would allow the council to issue fixed penalty notices of up to £4,000 for landlords who fail to address poor energy efficiency in their properties in accordance with the Regulations.

Key Decision: NO

Significantly Affected Wards: All Wards

Recommendations: **The Cabinet is recommended to:-**

- I. To approve the Fee Policy Framework – attached Appendix 1**

Policy Overview:

The council has the discretion to decide on the amount of the penalty fee up to the maximum limit set out in the Regulations. From 1 April 2020 landlords are required to improve the energy efficiency of their rented properties

The Regulations allow the council to issue fixed penalty notices for landlords who fail to comply with a compliance notice or provide fake or misleading information on the PRS (Private Rented Sector) Exemption Register.

Financial Implications:	Setting a penalty charge would deter landlords from providing properties which do not meet the minimum standards set out in the regulations
Legal Implications:	Landlords were expected to be compliant with the Regulations from the 1 st April 2020, However, certain properties will be exempt. Officers within Private Sector Housing will be delegated to issue the compliance notices and where necessary prepare cases for any appeals brought by landlords. Successful penalty charges would be brought to the attention of our finance department to pursue for payment.
Equalities Impact Assessment:	An Equality Impact Assessment has been completed and is attached at Appendix 2
Data Protection Impact Assessment:	N/A
Risk Assessment (Risk Appetite Statement):	N/A
Sustainability Implications:	N/A
Other Material Implications:	Adopting the statement would not affect staff terms and conditions, staff resources or structures.
Exempt from Publication:	NO The Fee Policy Framework once agreed will become a public document, and will be available to view on our Website.
Background Papers:	N/A
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Report Title: Fee Policy Framework

Introduction and Background

1. The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (the Regulations) are designed to tackle the least energy-efficient properties in England and Wales – those rated F or G on their Energy Performance Certificate (EPC). The Regulations establish a minimum standard for both domestic and non-domestic privately rented property, effecting new tenancies from 1 April 2018.
2. The Regulations have required landlords of homes with EPCs rated as Bands F or G to improve their property to E before issuing a new tenancy, unless they obtain an exemption.
3. From 1 April 2020 the Regulations now include all existing tenancies as long as the property as an EPC (unless an exemption applies)
4. Councils can enforce standards for properties in their borough where landlords have failed to fulfil their obligations under the Minimum Energy Efficiency Standards (MEES) Regulations, by issuing a compliance notice. Failing to comply with a notice can lead to a council issuing a financial penalty up to a maximum of £5,000.
5. The Department for Business Energy and Industrial Strategy have produced guidance published in 2017 and updated in June 2018; *Guidance for landlords and Local Authorities on the minimum level of energy efficiency required to let domestic property under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015*. The council have had regard to this guidance in formulating this policy.

Implementing the Regulations

6. In accordance with Regulation 33 and 34 Local Authorities are responsible for enforcing the minimum level of energy provisions within their area. The purpose of this policy is to describe how officers of Ashford Borough Council will enforce the Regulations.
7. In the first instance the council will informally notify Landlords who rent properties with an EPC of F or G that they do not meet the minimum energy efficiency standard. The council will offer advice on how the standards can be met and request Landlords to register an exemption if appropriate.
8. Landlords will be given an appropriate time to make the necessary changes but will be warned that if they continue to be in breach after the time given, an investigation will follow and formal enforcement action will be considered.

9. The council may in circumstances where a landlord has a history of not complying with housing related regulatory requirements, decide to take formal action without giving an informal opportunity for the landlord to comply.
10. The council has discretion to serve Compliance Notices to request information from the landlord that will help them to decide whether there has been a breach. The council will serve Compliance Notices where the additional information is required. The council will consider serving Penalty Notices where a landlord fails to comply with the Compliance Notice.
11. The council will check the National PRS Exemptions Register and if it believes a landlord has registered false or misleading information it will consider serving a financial penalty.
12. If offences under these regulations are committed the council will, where appropriate, serve a Penalty Notice. The proposed fee policy framework for officers to follow in how to determine the appropriate penalty.
13. Under regulation 39 the Local Authority may publish some details of the landlord's breach on a publicly accessible part of the PRS Exemptions Register. The council will place the information on the register at the appropriate time, for a minimum of 12 months.
14. The Landlord has the right to ask for a Penalty Notice to be reviewed under Regulation 42. Any request for review must be submitted to the Council within one calendar month of the Penalty Notice being served. Requests for review after the prescribed time will be considered at the council's discretion.

Proposal

15. Currently the council does not have a fee policy framework, which has been agreed by Cabinet and therefore we are unable to charge landlords who fail to meet minimum energy efficiency improvements within the private rented sector.
16. Implementing the Framework would be in accordance with the council's Five Year Corporate Plan: Priority 2 – Improving the quality of housing and homes for all and contribute to carbon reductions within the borough.
17. Any penalty charge should be set at a level within the fee policy framework, which is proportionate to the level of the non-compliance as set out in the Regulations.
18. Deciding on the appropriate level of the fine will be in accordance with other local authorities across Kent, who have adopted similar fee frameworks.
19. Improving energy efficiency of homes within the private rented sector will lead to reduce household energy bills and healthier and happier tenants, especially for those on low incomes. Also such measures will contribute to a reduction of carbon emissions. For these reasons, an effective incentive to comply with these Regulations is fully justified.

20. It is understood that fines under the regulations, can present an excessive financial burden but this is balanced against improving energy efficiency of homes and tackling fuel poverty. In most cases landlords will be able to apply for funding from various Government and local authorities' schemes. A recipient of a charge has a right of appeal.
21. The Frame work of Penalties (appendix 1) sets out various banding depending on the type of the breach. A reduction of 25% will apply if payment is received within 21 days of service of the penalty charge notice. As with criminal prosecutions an early acceptance of guilt is in the public interest as it saves public time and money. However, if there are repeated offences the council may use its discretion to apply the full penalty with no reductions.

Equalities Impact Assessment

22. Members are referred to the attached Assessment, at **Appendix 2** No significant issues have been identified in relation to implementing the Fee Policy Framework. The Framework will not discriminate against any disadvantage or vulnerable people.

Consultation Planned or Undertaken

23. The Fee Policy Framework has been reviewed by legal and discussed and agreed by the Portfolio Holder and Head of Housing before submitting to Cabinet for approval.

Other Options Considered

24. The charges are deemed to be fair and transparent.
25. The Regulations allow for charges to be reviewed if necessary.
26. Currently the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 provide additional powers to local authorities to improve conditions within the rented market and address fuel poverty.

Reasons for Supporting Option Recommended

27. Without a Fee Policy Framework we are unable to issue any penalty charge notices on landlords who fail to comply with the minimum energy efficiency standards set out in the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015. Having a fee policy will hopefully encourage landlords to provide good standards within their properties.
28. Poorly insulated homes can be costly to heat and can have an impact on health and wellness of the occupants, especially on the elderly and infirm and those on low incomes.
29. It is proposed that the Frame Work is included on the council's website and will be promoted at the next landlord event

Next Steps in Process

30. Approving the Fee Policy Frame Work will give the council additional powers to deal with landlords who do not provide properties that meet minimum standards for energy efficiency.

Conclusion

31. Implementing the Frame Work will provide a means to deal properties that are poorly insulated and would act as deterrent for landlords who are failing to comply with the Regulations.

Portfolio Holder's Views

32. I am supportive of the proposed implementation of the Frame Work of Penalties.

Contact and Email

33. Mr Julian Watts, Senior EHO, Private Sector Housing
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Appendix 1

Framework of Penalties for non-compliance with the Minimum Energy Efficiency Standards.

Breaching the ban on letting a property with an F or G rating for less than 3 months (statutory maximum £2000)	
First offence - £1000 (or £750 if paid within 21 days)	All other offences - £2000 (or £1500 if paid within 21 days)

Breaching the ban on letting a property with an F or G rating for more than three months (Statutory maximum: £4,000)	
First offence: £2,000 (or £1,500 if paid within 21 days)	All other offences: £4,000 (or £3,000 if paid within 21 days)

Registering false or misleading information on the PRS Exemptions Register (Statutory maximum: £1,000)	
First offence: £500 (or £375 if paid within 21 days)	All other offences: £1,000 (or £750 if paid within 21 days)

Failing to provide information to the council demanded by a Compliance Notice (statutory maximum £2,000)	
First offence: £1,000 (or £750 if paid within 21 days)	All other offences: £2,000 (or £1,500 if paid within 21 days)

In accordance with Regulation 40(6), where a private landlord has committed multiple breaches in respect of a single tenancy and having regard to the above framework, the financial penalties would in total exceed £5,000, one or more of the financial penalties would be adjusted down to such that the statutory maximum of £5,000 is not exceeded.

If the council confirms that a property is (or has been) let in breach of the Regulations, they may serve a financial penalty up to 18 months after the breach and/or publish details of the breach for at least 12 months

Publication penalties

A publication penalty under Regulation 39 means publication on the PRS Exemptions Register, by the council, of the following information:

- The name of the private landlord, but only when the landlord is not an individual;
- Details of the breach;
- The address of the property at which the breach occurred;
- The amount of financial penalty imposed.

Under Regulation 39(2), local authorities may decide how long the details of each breach should stay on the PRS Exemptions Register, subject to a minimum period of 12 months

Publication penalty policy

The council has determined to impose a publication penalty in respect of all breaches that are subject to a Penalty Notice, unless there are exceptional circumstances.

The council has also determined that all breaches will be registered on the PRS Exemptions Register for a period of three years, with the option to reduce this period in exceptional circumstances

Right of review and right of appeal

If you do not agree with a penalty notice, you may ask your local authority to review its decision. They can withdraw the penalty notice if:

- new evidence shows a breach has not occurred
- a breach has occurred, but evidence shows the landlord took all reasonable steps to avoid the breach
- they decide that because of the circumstances of the case, it was not appropriate to issue a penalty

If a local authority decides to uphold a penalty notice, a landlord may appeal to the First-tier Tribunal if they think that:

- the penalty notice was based on an error of fact or an error of law
- the penalty notice does not comply with a requirement imposed by the Regulations
- it was inappropriate to serve a penalty notice on you in the particular circumstances

Appendix 2

Equality Impact Assessment

Lead officer:	Julian Watts Senior EHO Private Sector Housing
Decision maker:	Cabinet
Decision: <ul style="list-style-type: none"> • Policy, project, service, contract • Review, change, new, stop 	<p>Cabinet to agree to implement a Fee Policy Frame Work to allow the council to consider issuing penalty charge notices to landlords who fail to comply with a compliance notice or provide false or misleading information on the PRS Exemption Register.</p> <p>The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 charges can be issued for landlords failing to comply with minimum standards set out in the Regulations.</p>
Date of decision: The date when the final decision is made. The EIA must be complete before this point and inform the final decision.	1 June 2021
Summary of the proposed decision: <ul style="list-style-type: none"> • Aims and objectives • Key actions • Expected outcomes • Who will be affected and how? • How many people will be affected? 	<p>A Fee Policy Framework will act as deterrent for landlords who fail to take proper responsibilities for properties with poor energy efficiency. Failing to meet minimum standards could lead to penalty charges being issued of up to £4,000</p> <p>The council is required under The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 to set out a Framework. Without one the council is unable to issue a penalty charge notice.</p> <p>The policy will apply to landlords in the private rented sector.</p>
Information and research: <ul style="list-style-type: none"> • Outline the information and research that has informed the decision. • Include sources and key findings. 	<p>The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015</p> <p><i>Guidance for landlords and Local Authorities on the minimum level of energy efficiency required to let domestic property under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015.</i> The council have had regard to this guidance in formulating this policy.</p>

<p>Consultation:</p> <ul style="list-style-type: none"> • What specific consultation has occurred on this decision? • What were the results of the consultation? • Did the consultation analysis reveal any difference in views across the protected characteristics? • What conclusions can be drawn from the analysis on how the decision will affect people with different protected characteristics? 	<p>The wording of the Fee Policy Framework has been discussed and agreed with by Housing Managers, Portfolio Holder (Cllr Barrett) and Legal Services (Samantha Clarke)</p>
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Assess the relevance of the decision to people with different protected characteristics and assess the impact of the decision on people with different protected characteristics.

When assessing relevance and impact, make it clear who the assessment applies to within the protected characteristic category. For example, a decision may have high relevance for young people but low relevance for older people; it may have a positive impact on women but a neutral impact on men.

Protected characteristic	Relevance to Decision High/Medium/Low/None	Impact of Decision Positive (Major/Minor) Negative (Major/Minor) Neutral
<u>AGE</u> Elderly	Medium	Positive (Minor)
Middle age	Low	Positive (Minor)
Young adult	Low	Positive (Minor)
Children	Medium	Positive (Minor)
<u>DISABILITY</u> Physical	Medium	Positive (Minor)
Mental	Low	Neutral
Sensory	Low	Neutral
<u>GENDER RE- ASSIGNMENT</u>	Low	Neutral
<u>MARRIAGE/CIVIL PARTNERSHIP</u>	Low	Neutral

<u>PREGNANCY/MATERNITY</u>	Low	Neutral
<u>RACE</u>	None	Neutral
<u>RELIGION OR BELIEF</u>	None	Neutral
<u>SEX</u>	None	Neutral
Men		
Women	None	Neutral
<u>SEXUAL ORIENTATION</u>	None	Neutral

Mitigating negative impact: Where any negative impact has been identified, outline the measures taken to mitigate against it.	
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Is the decision relevant to the aims of the equality duty? Guidance on the aims can be found in the EHRC's <i>Essential Guide</i> , alongside fuller <i>PSED Technical Guidance</i> .	
Aim	Yes / No / N/A
1) Eliminate discrimination, harassment and victimisation	N/A
2) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it	N/A
3) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it	N/A

Conclusion:	
<ul style="list-style-type: none"> Consider how due regard has been had to the equality duty, from start to finish. There should be no unlawful discrimination arising from the decision (see guidance above). 	Implementing the Fee Policy Framework (FPF) will not discriminate against any disadvantage or vulnerable people. The FPF will provide the council with additional enforcement powers to deal with landlords who fail to keep their properties up to standard.

<ul style="list-style-type: none">• Advise on whether the proposal meets the aims of the equality duty or whether adjustments have been made or need to be made or whether any residual impacts are justified.• How will monitoring of the policy, procedure or decision and its implementation be undertaken and reported?	
EIA completion date:	1/6/2021