

**CABINET
7 SEPTEMBER 2021**

**INTRODUCTION OF A CIVIL FINANCIAL PENALTY POLICY -
MINIMUM ENERGY EFFICIENCY STANDARDS**

**Responsible Cabinet Member -
Councillor Jonathan Dulston, Stronger Communities Portfolio**

**Responsible Director -
Dave Winstanley, Group Director of Services**

SUMMARY REPORT

Purpose of the Report

1. The purpose of this report is to seek approval to utilise powers to be able to issue notices of intention and to impose Civil Penalties where energy efficiency standards fall short of requirements and landlords do not take steps to improve the standards of domestic rented properties.

Summary

2. The Council presently carries out informal action following reactive service requests. The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended in 2016 and 2019), referred to in this report as “the Regulations”, are designed to assist councils tackle the least energy-efficient properties, those rated F or G on their Energy Performance Certificate (EPC).
3. The Regulations establish a minimum standard of EPC band E for domestic private rented properties, affecting new tenancies and renewals since 1 April 2018 and now allow local authorities to issue a Notice of the intention to impose a Civil Penalty of up to a maximum of £5,000. The aim of this policy is to improve standards of domestic rented properties.
4. To enable the Council to introduce the powers, there is a requirement to publish a Civil (Financial) Penalty policy. Utilising best practice from other Local Authorities, including guidance from the Department for Business, Energy and Industrial Strategy (BEIS), an Enforcement Protocol has been developed referred to in this document as the Civil (Financial) Penalty Policy (**Appendix 1**).

Recommendation

5. It is recommended that Cabinet approve and implement the Civil (Financial) Penalty Policy (Appendix 1), to allow notices of intention and civil penalties to be imposed where landlords fail to meet or improve the energy efficiency standards of Private Rented Properties to the required standard.

Reason

6. The recommendation is supported to improve the standards of domestic private rented properties; ensuring homes are of a certain standard, they are more energy efficient and this supports fuel poverty, bringing down energy bills and reducing carbon emissions.

Dave Winstanley
Group Director of Services

Background Papers

Regulations

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015
www.legislation.gov.uk/uksi/2015/962/pdfs/uksi_20150962_en.pdf

The Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2016
www.legislation.gov.uk/uksi/2016/660/pdfs/uksi_20160660_en.pdf

The Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2019
www.legislation.gov.uk/uksi/2019/595/pdfs/uksi_20190595_en.pdf

Guidance

THE DOMESTIC PRIVATE RENTED PROPERTY MINIMUM STANDARD: 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, as amended (published by BEIS)
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/882957/Domestic_Private_Rented_Property_Minimum_Standard_-_Landlord_Guidance_2020.pdf

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S17 Crime and Disorder	<p>Properties that do not have an EPC may be some of the harder to reach private rented homes and are also more likely to fall foul of other legislative requirements.</p> <p>The powers will provide the Council with the ability to ensure Private landlords comply with their legal requirements.</p>
Health and Well Being	<p>The health and wellbeing of residents living in properties where positive enforcement action is taken will benefit from this project.</p>
Carbon Impact and Climate Change	<p>There are direct environmental impacts from this proposal. Effective enforcement of minimum housing standards ensures landlords and agents improve the energy efficiency of houses in the private rented sector.</p> <p>Improvements in energy efficiency are directly linked to a reduction in carbon emissions; therefore this vital energy efficiency related enforcement opportunity would be valuable to this Council priority.</p>
Diversity	<p>There are no implications as a result of this report.</p>
Wards Affected	<p>All Wards have the potential to benefit from this scheme.</p>
Groups Affected	<p>Most vulnerable and low-income families have the potential to benefit from this project.</p>
Budget and Policy Framework	<p>There is no impact on the Council's Budget or Policy Framework.</p>
Key Decision	<p>Yes</p>
Urgent Decision	<p>No</p>
Council Plan	<p>Improving the energy efficiency standards of Private Rented Properties and having the powers to deal with landlords that do not meet the required standards contributes to the outcomes for the Stronger Communities Portfolio.</p>
Efficiency	<p>There is no impact on the Council's Efficiency agenda.</p>
Impact on Looked After Children and Care Leavers	<p>This report has no impact on Looked After Children or Care Leavers</p>

MAIN REPORT

Information and Analysis

Legislative Framework

7. Councils have a statutory duty to enforce the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (amended in 2016 and 2019). (See 'Background Papers' for a copy of the relevant regulations).
8. Subject to relevant exemptions, these regulations set a minimum level of energy efficiency that:
 - (a) Since 1 April 2018, landlords of relevant domestic private rented properties must not grant a tenancy to new or existing tenants if their property has an EPC rating of F or G (as shown on a valid EPC for the property);
 - (b) From 1 April 2020, landlords must not continue letting a relevant domestic property which is already let if that property has an EPC rating F or G (as shown on a valid EPC for the property). Where a property is sub-standard, landlords must normally make energy efficiency improvements which raise the EPC rate to minimum E before they let the property. In certain circumstances, landlords may be able to claim an exemption from this prohibition on letting a sub-standard property. Where a valid exemption applies, landlords must register the exemption on the National Private Rented Sector (PRS) Exemptions Register.
9. Darlington Borough Council are authorised to check for different forms of non-compliance with the Regulations and issue penalties for non-compliance. The Community Safety Team enforce both Domestic and Non-Domestic properties, the Private Sector Housing Team - Domestic private rented property and Trading Standards - Non-domestic private rented property.
10. To undertake this enforcement action, the Council will publish an **Enforcement Protocol**: referred to in this report as "the Civil (Financial) Penalty policy" (Appendix 1). This sets out the policy for how the Council will undertake the enforcement duties and arrive at decisions, ensuring they are fair and accountable.
11. The aim of adopting the Civil (Financial) Penalty Policy is to increase the range of measures open to the Council, in tackling non-compliant landlords and to increase the Council's capacity to undertake enforcement where there is clear evidence that contraventions have been committed.

Scope for Enforcement

12. In 2019/20 seven pilot studies across eight English local authorities were delivered which investigated enforcement of these Regulations. Following this, a draft toolkit was developed by Centre Sustainable Energy (CSE) with the Department for Business, Energy and Industrial Strategy (BEIS) support, drawing on findings with example materials developed.

13. In 2020, 12 Local Authorities were chosen to test this draft toolkit. The purpose of the pilot was to further explore the extent to which the toolkit can help streamline process development work, provide off-the-shelf tools to embed within business-as-usual practices; and minimise any additional resources that may be needed for Local Authorities when enforcing the regulations.
14. In 2021, a further competition was announced to test the proposed toolkit. The Private Sector Housing Team submitted a bid for £25,000 to be part of this process which will enable Darlington Borough Council to effectively use these Regulations.
15. We have identified an initial 257 private rented properties in the Borough that are potentially not compliant with the regulations; they have an EPC rating of F/G. We have mapped this data to identify clusters of properties that are not compliant for a proactive and focused approach, ensuring staffing resources are utilised most effectively.
16. As of 29 July 2021, there were 12 exemptions registered formally in Darlington. The exemptions register can be found at <https://prsregister.beis.gov.uk>

The Proposal

17. A proposed Civil (Financial) Penalty Policy (Appendix 1) has been drafted that describes in detail how Darlington Borough Council comes to the decision to issue a financial penalty, the level of fine it will impose, and the process it will follow to issue the penalty in respect of domestic properties.
18. The policy details:
 - (a) An outline of the regulations;
 - (b) How the council will undertake the enforcement duties and make decisions ensuring they are fair and accountable and within the legislation framework (Enforcement protocol);
 - (c) A summary of the available penalties;
 - (d) Factors in determining the level of Civil Penalty;
 - (e) How decisions will be recorded;
 - (f) How a landlord can appeal the decision.
19. This policy has been informed by the earlier Department for Business, Energy and Industrial Strategy (BEIS) pilot schemes while developing:
 - (a) The levels of harm, for example there is a vulnerable tenant in a property, and they have been in the non-compliant property for an extended period, therefore there is a high level of harm;
 - (b) The level of culpability, for example there may be complex issues outside of the landlord's control which have led to non-compliance and therefore a low level of

culpability;

- (c) The fine levels set according to the above. Currently the maximum level of penalty imposed, in relation to breaches of the regulations and as per the Regulations must be no more than £5,000, at an individual property, at a single point of time.
20. Darlington Borough Council will initially informally advise Landlords, who rent properties with an EPC of F or G, that they do not meet the minimum energy efficiency standard and are therefore committing an offence under the Regulations.
 21. Additionally, the Council will proactively promote the energy efficiency retrofit grants that are available, such as the Green Homes Local Authority Delivery Scheme, to engage positively with non-compliant landlords of domestic properties in the first instance.
 22. Landlords will be given an appropriate time, normally 14 days, to respond, either showing evidence that they now have a compliant EPC, or to set out a plan to achieve the required energy efficiency level.
 23. They 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, both under these Regulations and the Housing Act 2004.
 24. 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.
 25. By approving this Civil (Financial) Penalty Policy, this will:
 - (a) Enable the enforcement of the Regulations;
 - (b) Improve the energy efficiency standards of private rented homes in the Borough;
 - (c) Improve health outcomes for residents, ensuring they do not live in homes that are cold and damp, which can exacerbate health conditions such as asthma, angina, arthritis and can lead to respiratory infections and increased risk of stroke and heart attack due to vasoconstriction;
 - (d) Reduce fuel bills and alleviate fuel poverty for Darlington's residents;
 - (e) Contribute to relevant Council strategies e.g., Housing Strategy and Climate Change Strategy.

Legal Implications

26. The proposals and attached Civil (Financial) Penalty Policy (Appendix 1) are in accordance with the relevant regulations.

Financial Implications

27. As the council will be working with Landlords to ensure compliance it is not envisaged the level of fines needing to be issued will be significant. If any fines should be issued, the income will be retained by Darlington Borough Council.