

CABINET
13 JUNE 2023

INTRODUCTION OF THE HOUSING AND PLANNING ACT 2016 AND THE ELECTRICAL SAFETY STANDARDS IN THE PRIVATE RENTED SECTOR (ENGLAND) REGULATIONS 2020

**Responsible Cabinet Member -
Councillor Dr Amanda Riley, 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 for powers to impose a civil penalty up to £30k under the Housing and Planning Act 2016 and the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 to be adopted as an additional means of enforcement to improve standards in the private rented housing sector, where private sector landlords do not take steps to improve standards.
2. To reflect these changes the 'The Private Sector Housing Enforcement Policy' has been updated (**Appendix 1**).

Summary

3. Around 19 per cent of households in Darlington are in the private rented sector, the majority of which are well managed and provide safe and suitable housing for the occupiers. However, where they are not managed well there is a need for the Council to intervene.

Civil Penalties Enforcement Policy and Guidance note

4. The Housing and Planning Act 2016, referred to as "the 2016 Act" was introduced to help tackle rogue landlords and to improve the private rental sector. From April 2017, local housing authorities have had the power to issue civil financial penalties as an alternative to prosecuting landlords for failures under the Housing Act 2004. This action offers a more effective approach and enables a quicker resolution.
5. To enable the Council to introduce the powers, a policy has been developed (**Appendix 2**). This utilises best practice from other local authorities. The 'Civil Penalties Enforcement Policy and Guidance: Housing and Planning Act 2016' is referred to in this document as the "Civil Penalties Enforcement Policy and Guidance note"

Electrical Safety Policy

7. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, referred to in this report as “the Regulations”, are designed to reduce the effects of electrical hazards in rented properties. The regulations require Electrical Safety Condition reports to be carried out before any new tenancy is granted, affecting new tenancies and renewals since 1 July 2020 and all existing tenancies since April 2021.
8. The Regulations establish a minimum standard of electrical safety so that privately rented properties do not have serious defects that have been identified as C1 or C2¹. It now allows local authorities to issue a Notice of the Intention to impose a Civil Penalty of up to a maximum of £30,000. The aim of this policy is to improve standards of domestic rented properties.
6. To enable the Council to introduce the powers, a policy has been developed (**Appendix 3**). This utilises best practice from other local authorities. The ‘Civil Penalties Enforcement Policy & Guidance: The Electrical Safety Standards in the Private Rented Sector Regulations 2020’ is referred to in this document as the “Electrical Safety Policy”

Recommendations

9. It is recommended that: -
 - (a) Cabinet approves the use of the Housing and Planning Act as an additional means of enforcement to improve standards in the private rented housing sector.
 - (b) Cabinet approves the use of new enforcement powers contained within the Housing Act 2004 as amended by the Housing and Planning Act 2016 and approve the following:
 - (i) amendments to ‘The Private Sector Housing Enforcement Policy’ to reflect these new powers (Appendix 1), and
 - (ii) a new ‘Civil Penalties Enforcement Policy and Guidance: Housing and Planning Act 2016’ (Appendix 2) that has been produced to detail how the Council will use the new powers and the level of penalties, and

¹ When an inspection is carried out on the installation, the electrician will issue an Electrical Installation Condition Report (EICR), which will highlight any electrical hazards that need to be addressed. The classification codes on the report are:

- | | |
|-----------|--|
| C1 | - Danger present, risk of injury (immediate remedial action required) |
| C2 | - Potentially dangerous (urgent remedial action required) |
| C3 | - Improvement recommended |
| FI | - Further investigation required without delay |

- (iii) a new 'Civil Penalties Enforcement Policy and Guidance: The Electrical Safety Standards in the Private Rented Sector Regulations 2020' (Appendix 3) that has been produced to detail how the Council will use the new powers and the level of penalties.
- (c) Cabinet delegates to the Assistant Director of Community Services, in consultation with the Portfolio Holder for Stronger Communities and the Assistant Director of Governance and Law, authority to develop, implement and further amend the Council's detailed Policy and Procedure in respect of the imposition of Civil Penalties, such policy to be in accordance with Schedule 13A of the Housing Act 2004, and any other any guidance issued by the Secretary of State.

Reasons

10. The recommendations are supported by the following reasons:

- (a) To have a positive impact on the private rented housing sector by bringing about a change in landlord behaviour where necessary and where the current enforcement powers available are not as effective.
- (b) The recommendation is supported to improve the standards of domestic private rented properties; ensuring homes are of a certain standard.
- (c) The adoption of the new powers should mean that landlords comply more quickly and/or proactively in order to avoid financial and other penalties, which should result in fewer private tenants being exposed to housing conditions that have an adverse health impact.
- (d) Enable more effective and efficient action to be taken to address contraventions that impact negatively on tenants.

Dave Winstanley
Group Director of Services

Background Papers

Regulations

- Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
<https://www.legislation.gov.uk/uksi/2020/312/contents/made>

Guidance

- Statutory guidance - Rent repayment orders under the Housing and Planning Act 2016
<https://www.gov.uk/government/publications/rent-repayment-orders-under-the-housing-and-planning-act-2016>
- Statutory guidance - Civil penalties under the Housing and Planning Act 2016
<https://www.gov.uk/government/publications/civil-penalties-under-the-housing-and-planning-act-2016>
- Guide for landlords: electrical safety standards in the private rented sector
[Guide for landlords: electrical safety standards in the private rented sector - GOV.UK \(www.gov.uk\)](http://www.gov.uk/government/publications/guide-for-landlords-electrical-safety-standards-in-the-private-rented-sector)
- Guide for local authorities: electrical safety standards in the private rented sector
[Guide for local authorities: electrical safety standards in the private rented sector - GOV.UK \(www.gov.uk\)](http://www.gov.uk/government/publications/guide-for-local-authorities-electrical-safety-standards-in-the-private-rented-sector)

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S17 Crime and Disorder	There will be a positive effect on crime and disorder as a result of this report including reducing behaviour adversely affecting the local environment.
Health and Wellbeing	The health and wellbeing of residents living in properties where positive enforcement action is taken will benefit from this project.
Carbon Impact and Climate Change	There are no direct environmental impacts from this proposal, but an indirect effect of the effective enforcement of minimum housing standards will be to cause landlords and agents to improve the energy efficiency of houses in the private rented sector. No mitigation measures will be necessary.
Diversity	There are no implications as a result of this report.
Wards Affected	All Wards have the potential to benefit from this scheme.
Groups Affected	Most vulnerable and low-income families have the potential to benefit from this project.
Budget and Policy Framework	There is no impact on the Council's Budget or Policy Framework.
Key Decision	Yes
Urgent Decision	No
Council Plan	Will have a positive impact on the Council Plan objectives
Efficiency	There is no impact on the Council's Efficiency agenda.
Impact on Looked After Children and Care Leavers	This report has no impact on Looked After Children or Care Leavers. Those in the private rented sector will benefit.

MAIN REPORT

Information and Analysis

12. Around 19 per cent of households in Darlington are in the private rented sector, the majority of which are well managed and provide safe and suitable housing for the occupiers.
13. Non-compliance with Housing Act notices, regulations and licensing requirements can result in the local housing authority prosecuting the offender.
14. Powers to serve Civil Penalty Notices (CPN) and to apply for Rent Repayment Orders (RROs) under the 2016 Act came into force on the 6 April 2017. The government's statutory guidance for Councils on the powers were published the same day the powers came into force. The Council must have regard to this guidance in relation to the use of CPNs and RROs.
15. Section 126 and Schedule 9 of the Housing and Planning Act 2016 allows a civil penalty to be imposed by the local housing authority for offences under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.
16. The powers to serve CPNs and apply for RROs are in addition to existing powers the Council has when taking formal action and will provide a range of enforcement options, which officers are currently using over and above those. Members of the Private Sector Housing Team have recently received additional enforcement training to be able to utilise these powers.
17. The details of the powers and duties now available to the Council, are set out in detail in the appendices.

Civil Penalty Notices (CPNs)

18. The Council can, as an alternative to prosecution, serve a CPN of up to £30,000 per offence on a landlord or agent where it can prove beyond reasonable doubt certain offences have been committed.
19. The new powers will enable the Council to serve notices that have Civil Penalties in respect of numerous contraventions detailed in the main report and Appendix 2.
 - (a) Failure to comply with an Improvement Notice
 - (b) Failure to licence or be licensed in respect of Houses in Multiple Occupation (HMOs)
 - (c) Failure to licence or be licensed in respect of the Landlords Selective Licensing Scheme
 - (d) Failure to comply with licensing conditions
 - (e) Failure to comply with an Overcrowding Notice

- (f) Failure to comply with a regulation in respect of an HMO
 - (g) Breaching a Banning Order
20. Once the decision to make a CPN has been made an interim notice is served which the landlord or agent has an opportunity to make representations on. The Council must take into account any representation made before deciding whether or not to serve the final CPN and the amount of any penalty.
 21. There is a statutory right to appeal the notice to the First-tier Tribunal (Property Chamber) Residential Property (there is a cost associated with this action).
 22. The statutory government guidance on CPNs states it expects Councils to develop and document their own policy on when to prosecute and when to issue a civil penalty and should decide which option it wishes to pursue on a case-by-case basis in line with that policy. The existing policies and new policies have been drafted for approval (Appendices 2 and 3).
 23. Under the 2016 Act the council can also serve a financial penalty notice of up to a maximum of £30,000 where it can prove beyond reasonable doubt offences of failing to:
 - (a) License a property or meet licence conditions or occupancy requirements.
 - (b) To comply with overcrowding or improvement notices.
 - (c) Meet the requirements of the management regulations for houses in multiple occupation.
 24. Civil Penalties can be used where a breach is serious and the Council may determine that a significant financial penalty (or penalties if there have been several breaches), rather than prosecution, is the most appropriate and effective sanction in a particular case.
 25. That the Council will have regard to the requirements of the statutory guidance and will publish its own separate guidance on deciding how much a CPN will be in each case, as identified in the appendices to this report.

Rent Repayment Orders (RROs)

26. A Rent Repayment Order (RRO) is a legal order that allows a tenant or local authority to reclaim rent or housing benefit from a landlord who rents out an unlicensed property, such as a house in multiple occupation (HMO).
27. The Council has a duty to consider making an RRO when it becomes aware of certain specified offences. The Council has a power to apply for an RRO where it can prove beyond reasonable doubt that certain other offences have been committed.
28. Tribunals can order landlords to repay up to 12 months' rent. The Council may also assist tenants to make applications themselves.
29. An RRO can be applied for in addition to prosecuting a landlord or serving a CPN.

30. The Housing Act 2004 introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, specifically offences in relation to licensing of Houses in Multiple Occupation (section 72(1)) and offences in relation to licensing of houses under Part 3 of the Act (section 95(1)).
31. Rent Repayment Orders (RRO) can be made by a First Tier Tribunal where they are satisfied beyond reasonable doubt that a landlord has committed certain offences (whether the landlord has been convicted of that offence or not). The landlord can be required to repay up to 12-months' rent, either to a tenant for rent paid or a council for housing benefit or universal credit paid in relation to the rent of a property.
32. The relevant offences are:
 - (a) Violence for securing entry
 - (b) Illegal eviction or harassment of occupiers
 - (c) Failure to comply with an improvement notice or prohibition
 - (d) Failure to license a property which requires a licence
 - (e) For breach of a banning order
33. Councils must consider applying for an RRO if they become aware of someone being convicted of one of the offences which can lead to an RRO. The Council can also help tenants apply for an RRO. Applications for an RRO can be made in addition to other formal action taken in relation to the same conduct.
34. When deciding whether or not to apply for an RRO the Council's proposed policy is to:
 - (a) Treat each case on its own merits
 - (b) Ensure that applying for an RRO would meet the enforcement objectives in the Enforcement policy
 - (c) Consider the impact of the breach on the occupier or others affected by the offence committed
 - (d) Consider the likelihood of the application being successful
 - (e) The level of resources it will take to make a successful application
 - (f) Whether it is more appropriate for the tenant to apply for the order themselves
35. The Council is also obliged to have regard to the statutory guidance issued to local authorities on applying for an RRO entitled 'Rent Repayment Orders under the Housing and Planning Act 2016: Guidance for Local Authorities'.

Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

36. The Housing and Planning Act 2016, introduced a range of measures to crack down on rogue landlords. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 further enhance these measures.
37. Councils have a statutory duty to enforce the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020. (See 'background papers' for access to a copy of the relevant Regulations).
38. Subject to relevant exemptions, these regulations introduce measures that are intended to be implemented by Private Sector Landlords.
39. Since 1 July 2020, for all new tenancies:
 - (a) Landlords are required to provide their tenants with electrical safety reports: in the case of new tenants, before they move in; to existing tenants within 28 days of receiving it; and to any prospective tenant within 28 days of their request to view the report;
 - (b) The Council has the power to demand sight of the report and the landlord must provide this within 7 days of the request. Failure to do so could result in a penalty charge;
 - (c) If the Council has reasonable grounds to believe that the landlord is in breach of the Regulations, it also has the power to serve a remedial notice on the landlord to compel them to comply with the Regulations;
 - (d) Landlords have 28 days to remedy the breach, and if the work is not carried out in time, then the Council has the power to carry out the required works themselves (on providing prior written notice to the landlord) and recover their costs from the landlord;
 - (e) Landlords failing to provide tenants with an electrical safety report at the start of their tenancies will be in breach of the regulations and may face a civil penalty of up to a maximum of £30,000, with the potential for multiple penalties to be imposed for a continuing failure.
40. Since 1 April 2021, these requirements were extended to all existing tenancies and require Landlords to ensure that the fixed electrical installations in their properties are inspected and tested at least every 5 years by a competent electrician.
41. Darlington Borough Council are authorised to check for different forms of non-compliance with the Regulations and issue penalties for non-compliance. The Council's Private Sector Housing section undertakes housing enforcement in the private rented sector and would enforce these regulations. Checks are made for each reactive service request received. This will be expanded to proactive checks being made possible by the anticipated introduction of a Privately Rented Property Portal by the Renters (Reform) bill.

42. To undertake this enforcement action, the Council will publish the 'Civil Penalties Enforcement Policy & Guidance: The Electrical Safety Standards in the Private Rented Sector Regulations 2020: (Appendix 3). This sets out the policy for how the Council will undertake the enforcement duties and arrive at decisions, ensuring they are fair and accountable.
43. The aim of adopting the Electrical Safety 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.

Authorisation of Officers

44. The 2016 Act powers and the amendments made to the Housing Act 2004 provides the power to make CPNs and to apply for RROs to the Local Housing Authority.
45. Darlington Borough Council therefore has the power to approve the policy changes proposed and to authorise officers in Private Housing to use these powers. An updated scheme of officer authorisations will be given to the Assistant Director of Community Services for approval.

Financial Implications

46. There will be additional costs in processing the civil penalty paperwork for each piece of legislation, responding to any representations and then defending appeals. It is anticipated that any additional costs will be met through the additional income generated through levying civil penalties as an alternative to prosecution proceedings.
47. The statutory guidance for the 2016 Act states: "Income received from a civil penalty can be retained by the local housing authority provided that it is used to further the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector, as specified in Regulations."
48. Any amount recovered under a rent repayment order which meet the costs and expenses (whether administrative or legal) incurred in, or associated with, carrying out any of its enforcement functions in relation to the private rented sector must be paid into the Consolidated Fund.
49. Where applied it is anticipated that the Council will be subject to significant number of appeals to tribunals as a result in using these powers. A robust policy is important to assist us at Tribunal. Where decisions are confirmed by a first-tier tribunal there is a right of appeal to an Upper Tribunal.
50. Once any appeal avenue is exhausted the Council can use legal powers to recover unpaid debts from these civil penalties and Private Sector Housing Team will work closely with colleagues in Debt Recovery and Legal Services to do so.

51. It is difficult to be precise as to our ability to levy civil penalties as this will obviously be dependent on the level of compliance by landlords. Since 2016 there have been five successful prosecutions, if 80% of those switched to civil penalties then the gross income would be at least £20,000 (based on four civil penalties at £5,000). However, some landlords are likely to comply upon being given the first notice of intention to issue a penalty, which would reduce this figure.

Legal Implications

52. Section 126 of the 2016 Act allows financial penalties to be imposed as an alternative to prosecution for certain offences as set in Schedule 9 of the Act. Schedule 9 in turn amends the Housing Act 2004 including providing a new Section 249A which has the financial penalties as an alternative to prosecution.
53. The 2016 Act also introduces a number of other steps that may be taken by the Council to tackling landlords who do not comply with the law and improving the private rental sector.
54. The proposed amendments to the Council's Private Sector Housing Enforcement Policy and the new proposed policy on financial penalties are compliant with the relevant legislative changes and statutory guidance to which the Council must have regard.

Consultation

55. There is no requirement for the Council to consult regarding the adoption of the powers and obligations set out in the Housing and Planning Act 2016 or the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.