

REPORT TO CABINET

Open		Would any decisions proposed :		
Any especially affected Wards	Mandatory and Discretionary elements	(a) Be entirely within cabinet's powers to decide (b) Need to be recommendations to Council (c) Key Decision? –		No YES NO
Lead Member: Cllr Adrian Lawrence E-mail: cllr.adrian.lawrence@west-norfolk.gov.uk		Other Cabinet Members consulted:		
Lead Officer: Duncan Hall E-mail: Duncan.hall@west-norfolk.gov.uk Direct Dial:		Other Members consulted:		
Financial Implications YES	Policy/Personnel Implications YES	Statutory Implications YES	Equal Impact Assessment NO	Risk Management Implications No

Date of meeting: 25 June 2018

Compliance and Enforcement – Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

Summary

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 fulfil a duty placed upon the Secretary of State in the Energy Act 2011 to introduce Regulations to improve the energy efficiency of buildings in the domestic private rented sector.

Every Local Authority is the enforcement authority for their area and will be responsible for enforcing compliance with the minimum level of energy efficiency provisions.

This report outlines these duties and sets out proposals regarding the levels of financial penalties to be adopted.

Recommendation

- i) Cabinet recommend the approval of a policy statement in relation to the enforcement of the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015.
- ii) The adoption of financial penalties in line with the maximums as set by the Regulations and the issuing of publication penalties for a period of 12 months.

Reason for Decision

To note the new duties placed upon the Council and adopt a policy in relation to enforcement and the imposition of penalties in accordance with the Regulations.

1.0 Background

The government's ambition is to improve the energy performance of privately rented properties as improving a home's energy efficiency helps the occupants keep warm, reduces their energy bills and provides better protection for their health and wellbeing. Those benefits are particularly important to households on lower incomes and in homes which are expensive to heat.

For example, BEIS energy cost analysis shows that those households in the private rented sector who live in F or G rated properties face significantly higher energy costs of keeping warm than typical households, needing to pay on average over £600 per year more than E rated private rented properties and almost £1,000 per year more than the average home.

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (the Regulations) fulfil a duty placed upon the Secretary of State in the Energy Act 2011 to introduce Regulations to improve the energy efficiency of buildings in the domestic private rented sector.

The Department for Business, Energy & Industrial Strategy (BEIS) published guidance for landlords and Local Authorities in October 2017 regarding the minimum level of energy efficiency required to let domestic property under the Regulations.

In summary

- From 1 April 2018 – all tenancies starting new or renewing after this date MUST have at least an E-rating on the property's Energy Performance Certificate (EPC) by law.
- From 1 April 2020 – all other privately rented homes (i.e. those on continued leases) MUST have at least an E-rating on the EPC to be lawfully let out.

The Regulations only apply to those domestic properties which are legally required to have an EPC. This means properties required to have an EPC by any of the following:

- a) The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007;
- b) The Building Regulations 2010;
- c) The Energy Performance of Buildings (England and Wales) Regulations 2012.

It is the landlord's responsibility to ensure they meet these requirements and have an EPC rated E (or better) as evidence that their property is legal to rent out (unless the property is exempt, see below).

A copy of the EPC certificate must be provided by landlords to all tenants at the property whose tenancies began on or after 1st October 2015 (required under the Deregulation Act 2015).

A domestic private rented sector property will be considered sub-standard if the EPC rating is F or G, unless an exemption applies. If there is an EPC in place which shows that the property is a band F or G, then it must not be let; otherwise the landlord is liable to penalties.

It is also important to note however that if a landlord lets a property in breach of the Regulations, the breach does not affect the validity or legality of the tenancy itself, so the rent continues to be payable.

2.0 Exemptions

Only appropriate, permissible and cost-effective improvements are required under the Regulations. Landlords will be eligible for an exemption from reaching the minimum standard where they can provide evidence that one of the following applies:

- a) They have undertaken all “relevant energy efficiency improvements” but the property remains below an E, or no such improvements can be made to the property. A “relevant energy efficiency improvement” is one which;
 - Is listed in the Green Deal (Qualifying Energy Improvements) Order 2012 and has been identified as a recommended improvement for that property in an EPC, a green deal report, or a report prepared by a surveyor, and;
 - Can be wholly financed, **at no cost to the landlord**, by means of funding provided by central government, a local authority, or any other person.
Note: The scope of this exemption is under review and may be replaced by a cost cap on the 1st April 2019 (see Section 9.0).
- b) The landlord requires consent from the tenant/s, and the occupying tenant/s withhold that consent.
- c) The landlord has only recently become the landlord for the property
- d) Third party consent is required for the requested improvements but this consent cannot be obtained (e.g. planning permission or consent from mortgage lender).
- e) Measures required to improve the property are evidenced by a suitably qualified independent surveyor as expected to cause a capital devaluation of the property of more than 5%. Only those measures that are expected to cause such devaluation would be exempt from installation.
- f) The landlord has obtained a written opinion, from a suitably qualified person or from the independent installer engaged to install the measure, advising that it is not an appropriate improvement due to its potential negative impact on the fabric or structure of the property (or the building of which it is part). This exemption is only in relation to wall insulation.

Each exemption, once registered on the PRS Register, is valid for 5 years except for:

- Where a landlord has recently become the landlord of the property that exemption is only valid for 6 months.
- Where a tenant has withheld consent for energy efficiency improvements that exemption is only valid until that tenant's tenancy ends (or after 5 years, whichever is sooner)

3.0 Enforcement

Every Local Authority is the “enforcement authority” for their area, and will be responsible for enforcing compliance with the minimum level of energy efficiency provisions within their geographic boundaries.

s34 (2) of the Regulations states;

An enforcement authority must enforce compliance with the requirements of this Part in relation to properties in its area.

The authorised officer may check for different forms of non-compliance with the Regulations including;

- a) From the 1st April 2018 whether the property is sub-standard and let in breach of the Regulations.
- b) Where the landlord has registered any false or misleading information on the PRS Exemptions Register, or has failed to comply with a compliance notice.

4.0 Compliance Notices

From the 1st April 2018, where the enforcement authority believes that a landlord may be in breach of the prohibition on letting a sub-standard property or where a landlord has been in breach of the prohibition at any time in the past 12 months, the enforcement authority may serve a compliance notice that requests information from the landlord which will help them decide whether that landlord has in fact breached the prohibition. The compliance notice may also require the landlord to register copies of the requested information on the PRS Exemptions Register.

The fact that a compliance notice may be served on a landlord up to 12 months after the suspected breach means that a person may be served with a notice even after they have ceased to be the landlord of the property.

5.0 Penalty Notices

From the 1st April 2018, the enforcement authority may serve a penalty notice (relating to a financial penalty, publication penalty or both) on the landlord where they are satisfied that the landlord is, or has been in the last 18 months;

- a) in breach of the prohibition on letting sub-standard property (which may include continuing to let the property after 1st April 2020) or;
- b) in breach of the requirement to comply with a compliance notice or;
- c) has uploaded false or misleading information to the PRS Exemptions Register.

The fact that an enforcement authority may serve a penalty notice on a landlord up to 18 months after the suspected breach means that a person may be served with a penalty notice after they have ceased to be the landlord of a property.

Where the enforcement authority decides to impose a financial penalty, they have the discretion to decide on the amount of the penalty, up to maximum limits set by the Regulations.

The maximum penalties are as follows;

Infringement	Penalty (less than three months in breach)	Penalty (three months or more in breach)
Renting out a non-compliant property	<ul style="list-style-type: none"> • Up to £2,000, and/or • Publication penalty. 	<ul style="list-style-type: none"> • Up to £4,000, and/or • Publication penalty.
Providing false or misleading information on the PRS Exemptions Register		Up to £1,000, and/or Publication penalty
Failing to comply with a compliance notice		Up to £2,000, and/or Publication penalty

Table A

It is important to note that the maximum amount of the financial penalty may not be more than £5,000. This applies per property and per breach of the Regulations. This means that, if after having been previously fined up to £5,000 for having failed to satisfy the requirements of the Regulations, a landlord proceeds to unlawfully let a sub-standard property on a new tenancy; the enforcement authority may again levy financial penalties up to £5,000 in relation to that new tenancy.

The enforcement authority may also issue a publication penalty where some of the details of the landlords breach will be logged on a publicly accessible part of the PRS Exemptions Register. The enforcement authority can decide how long to leave the information on the Register, but it will be available for view by the public for at least 12 months.

Where the enforcing authority issues a penalty notice this notice may tell the landlord what action they should take to remedy the breach and by what date this action should be completed. This completion date must however be no sooner than one month from the date of the penalty notice.

A further penalty notice may be issued if the action required in the penalty notice is not taken in the time specified.

6.0 Appeals

It is important to note that an enforcement authority may decide to review its decision to serve a penalty notice, for example when new information comes to light. A landlord also has the right to ask the enforcement authority to review its decision to serve a penalty notice and the enforcement authority must withdraw the penalty notice if;

- a) They are satisfied that the landlord has not committed the breach, they are satisfied that the landlord took all reasonable steps, and exercised all due diligence to avoid committing the breach, or
- b) They decide that because of the circumstances of the landlords case, it was not appropriate for the penalty notice to be served.

If the enforcement authority does not decide to withdraw the penalty notice, it might decide to waive or reduce the penalty, allow the landlord additional time to pay, or modify the publication penalty and must explain the appeals process.

If the enforcement authority, upon review, decide to uphold a penalty notice then the landlord may appeal to the First-tier Tribunal (General Regulatory Chamber) which is administered by Her Majesty's Courts and Tribunals Service against that decision if they think that;

- a) The penalty notice was based upon an error of fact or an error in law
- b) The penalty notice does not comply with a requirement imposed by the Regulations, or
- c) It was inappropriate to serve a penalty notice on them in the particular circumstances.

Where a penalty notice has been issued with a financial penalty element then recovery of the penalty will be by way of normal debt recovery. This could include court proceedings to recover the penalty sums.

The application of the Regulations and the enforcement process is detailed in the flow charts contained within Appendix A.

7.0 Adoption of a Policy

BEIS have stated that they expect a 'slow start' to the enforcement of the regulations, and that they understand that there is some uncertainty for enforcement authorities nationally given that BEIS are already consulting with regards significant changes to the regulations before they have come into force (see section 9.0).

BEIS have decided that they will be seeking to undertake some enforcement 'pilot schemes' with selected local authorities and that they will be issuing more detailed technical guidance to all enforcement authorities in due course however the Regulations in their current form do come into force of the 1st April 2018 and therefore each authority will need to consider its approach to the enforcement of the current Regulations in accordance with s34 of the Regulations.

Given that there is a requirement for the Local Authority to enforce compliance with the Regulations it is appropriate for the Council to determine what penalties be applied for breaches of the Regulations in their current form (subject to the limits imposed) coming into force on the 1st April 2018.

The Regulations do provide for enforcing authorities discretion is setting the level of financial penalties relevant to any breaches however the guidance relating to domestic private rented properties was not published by BEIS until late October 2017 and therefore it has not been possible to obtain a consensus from other enforcing authorities as to their approach to enforcing financial penalties.

BEIS are not proposing to change the financial penalty maximums contained within the current Regulations however they will be reviewing these penalties once the Regulations have been fully implemented and have been enforced for a reasonable period.

8.0 Recommendation

It is recommended that the Council adopt a policy that penalties will be imposed in line with the maximums stated within the Regulations (Table A) however given the lack of enforcement technical advice for enforcing authorities it is proposed that where a landlord is evidently in breach of the Regulations and where it is their first offence, the first penalty notice issued will not contain a financial penalty element but will require the landlord to remedy the situation by either registering a valid exemption on the PRS Exemptions Register or completing the relevant and appropriate works within a reasonable period. Should the landlord fail to complete the works within the notice period then they may be served with a further penalty notice containing a financial penalty element (not exceeding the financial penalty maximums).

It is proposed that this staged approach to the application of financial penalties will allow landlords the opportunity to fully understand the Regulations and remedy matters in respect to their first breach in advance of a financial penalty being issued.

It is proposed that where a landlord fails to comply fully with a compliance notice or registers false or misleading information on the PRS Exemptions Register then a financial penalty element would apply to a first penalty notice.

It is also recommended that where a publication penalty is available, that such a penalty be applied, with publication on the Register for a period of 12 months. This publication period will be subject to review as further detailed enforcement guidance is issued by BEIS.

9.0 Further Developments

The BEIS are currently consulting regards potential changes to the Regulations that would come into force on the 1st April 2019. The most significant change would relate to the amendment of the 'no cost option' condition whereby landlords would potentially be required to make a financial contribution to energy performance measures up to a cap of £2,500 (inc VAT).

This consultation will inform the preparation of draft amending regulations. After gathering views BEIS plans to issue its response to the consultation in spring 2018, lay the amending regulations by summer 2018, and make amending regulations during autumn 2018. It is hoped that this will provide clarity to landlords as to the future direction of the minimum standard, so that they can make informed judgements about investing in their properties.

It is proposed that the policy in respect of enforcement of the Regulations will be reviewed in line with those changes proposed by BEIS and/or where further enforcement guidance is issued or where it is deemed appropriate.

It is proposed that any future changes as to the enforcement of the Regulations will be agreed and authorised by way of an officer decision supported by the relevant portfolio holder.

10.0 Financial Implications

The Regulations are silent as to how the Council may seek to use those sums raised via penalty notices however it is proposed that such sums would be ring fenced for housing enforcement activities.

The enforcement of the Regulations will be undertaken by authorised members of the Housing Standards Team with penalty notice appeal reviews undertaken by the Housing Standards Manager (or equivalent post) or the Housing Services Manager.

It is estimated that there may be as many as 1300 F&G rated private rented properties in West Norfolk and it is anticipated that enforcement of the Regulations in their current form will not be resource intensive initially. As the Regulations are amended (as proposed) and further more detailed enforcement guidance is issued by BEIS the resources required to enforce the Regulations may increase. Officer time will be monitored and the level of resources kept under review as the Regulations and guidance develop.

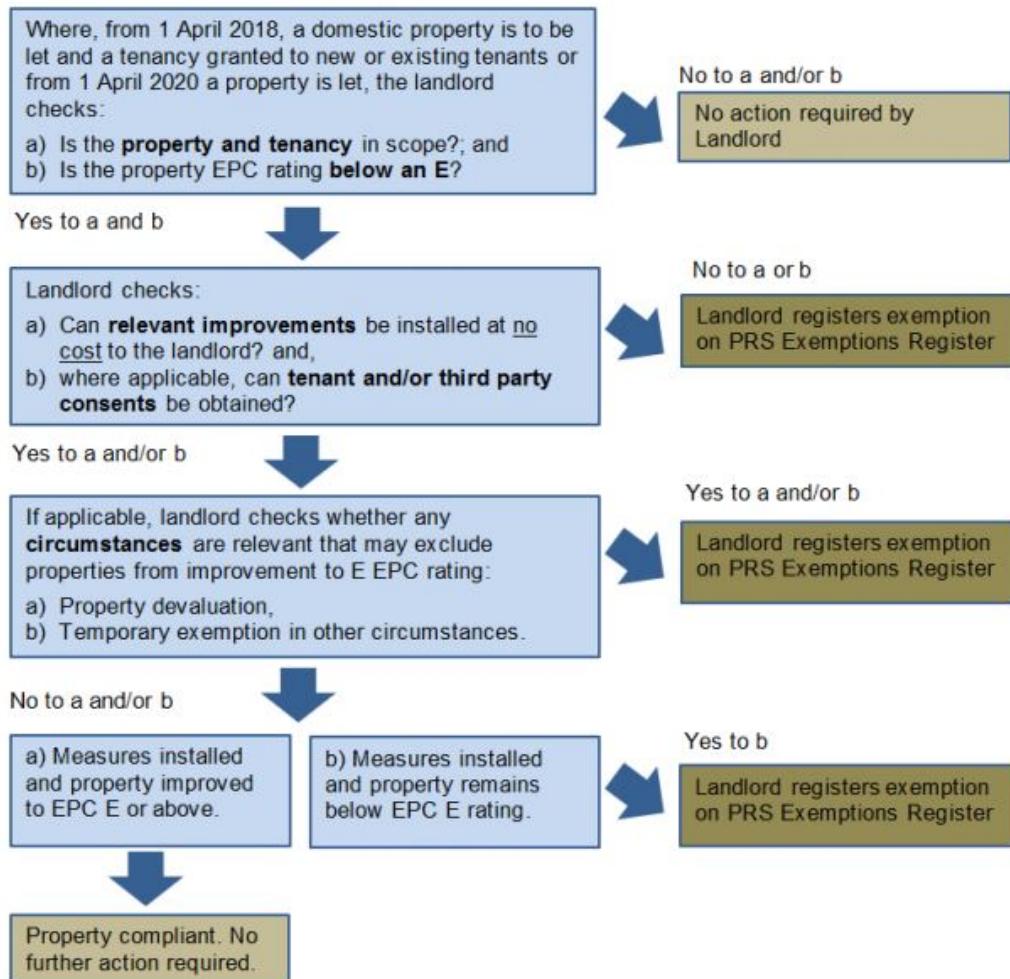
The government are reviewing their additional burdens provision as it is expected that enforcement authorities will be required to provide adequate resources to enforce the Regulations.

11.0 Equality Impact Assessment (EIA)

The Regulations do not impact on any particular equality group in the West Norfolk area as they apply to all landlords of privately rented properties covered by the Regulations.

Appendix A

Minimum Level of Energy Efficiency Provisions Flow Chart



Compliance and Enforcement Flow Chart

