

CABINET MEMBERS DELEGATED DECISION

Open		Would any decisions proposed :		
Any especially affected Wards	Mandatory/	Be entirely within Cabinet's powers to decide	YES/NO	
	Discretionary /	Need to be recommendations to Council	YES/NO	
	Operational	Is it a Key Decision	YES/NO	
Lead Member: Clr Adrian Lawrence E-mail: cllr.adrian.lawrence@west-norfolk.gov.uk		Other Cabinet Members consulted:		
		Other Members consulted:		
Lead Officer: Gordon Jackson-Hopps E-mail: gordon.jackson-hopps@west-norfolk.gov.uk Direct Dial:01553 616301		Other Officers consulted: Duncan Hall , Assistant Director of Regeneration, Housing and Place		
Financial Implications YES/NO	Policy/Personnel Implications YES/NO	Statutory Implications YES/NO	Equal Impact Assessment YES/NO If YES: Pre-screening/ Full Assessment	Risk Management Implications YES/NO
If not for publication, the paragraph(s) of Schedule 12A of the 1972 Local Government Act considered to justify that is (are) paragraph(s)				
Date meeting advertised: 22 nd July 2020		Date of meeting decision to be taken: 29 th July 2020		
Deadline for Call-In: 5 th August 2020				

Housing Standards – The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

Recommendations

In response to *The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020* adopt the process for civil penalties in line with the previously agreed civil penalties policy adopted at Council on the 22nd February 2018 in accordance with *The Housing & Planning Act 2016* and to use those powers available for the purposes of appropriate enforcement.

Reason for Decisions

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 place an obligation on private landlords to ensure that electrical installations in the private rented sector are safe for continued use by checking compliance with the relevant electrical safety standards.

The Regulations place a statutory duty on local housing authorities to serve remedial notices where landlords are in breach of the Regulations and also provide local housing authorities with powers to ensure appropriate enforcement through the imposition of financial penalties. The proposed approach will ensure that the enforcement of the Regulations can be undertaken in a timely manner, in accordance with the Statutory Instrument and supporting the principles of appropriate housing standards enforcement.

Background

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 places a duty upon every private sector landlord to ensure that the electrical installations within the rented premises are inspected and safe for tenants.

These Regulations shall apply to every new relevant tenancy from the 1st July 2020 and to every existing relevant tenancy from the 1st April 2021.

The Regulations requires that every landlord must provide written confirmation that the relevant work identified in the electrical installation condition report has been carried out, to their tenant and to the local authority within 28 days of completing the work.

The Regulations also place a duty on every local housing authority to serve a remedial notice on any private landlord in breach of these Regulations.

4.(1) Where a local housing authority has reasonable grounds to believe that, in relation to residential premises situated within its area, a private landlord is in breach of one or more of the duties under regulation 3(1)(a), (1)(b), (1)(c), (4) and (6), and the most recent report under regulation 3(3) does not indicate that urgent remedial action is required, the authority must serve a remedial notice on the private landlord.

Where a private landlord is in breach of the Regulations the local authority may impose a financial penalty in respect of the breach (*s11 of the Regulations*). That penalty cannot exceed a maximum of £30,000.

The assumption is that local authorities will use the powers available to them to enforce appropriate electrical safety standards in the private rented sector and to that end it is proposed that where a landlord knowingly fails to ensure that the electrical installation within a premises is safe or compliant with the Regulations, the assessment of the financial penalty will be in accordance with the previous civil penalties policy adopted at Council on the 22nd February 2018.

The penalty matrix adopted reflects government guidance with regards how a financial penalty should be determined and is assessed upon a range of factors. See Appendix 1. Should the civil penalties statement of principles currently adopted change, this amended statement of principles or policy will apply in respect to offences under *The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020*.

Any landlord issued with a financial penalty notice may appeal the penalty notice in accordance with the procedure prescribed in *s12 Schedule 2* of the Regulations and may have an appeal heard at a First Tier Tribunal.

Proceeds of financial penalties can be used to carry out private rented sector enforcement. Any amount that is not used in this way must be paid into the Consolidated Fund, the government's general bank account at the Bank of England.

The Regulations also state that where a local housing authority is satisfied, on the balance of probabilities, that a private landlord on whom it has served a remedial notice is in breach of the duty under regulation 5(1), the authority may, with the consent of the tenant or tenants of the premises in relation to which the remedial action is to be taken, arrange for an authorised person to enter those premises to take the remedial action specified in the remedial notice. It is proposed that officers will consider such action on a case by case basis.

The authority must authorise a qualified and competent person in writing to undertake the remedial action.

The Regulations require that the authorised person must give at least 48 hours notice to the tenant/s. They may be asked by the tenant and the landlord to produce evidence of their identity and a letter from the local authority confirming their authority to carry out the required works.

The authority may also take emergency remedial action should that be deemed appropriate. We anticipate that most responsible landlords will seek to undertake those works necessary to ensure that their property is safe for tenants however should a landlord fail to complete the works necessary and as detailed within the remedial notice or where the works are considered urgent and where tenants may be at risk of harm, it is proposed that the authority may, where deemed necessary and on a case by case basis, take such action as required in accordance with the Regulations.

The authority may recover costs reasonably incurred by them in taking action;

- (a) under regulation 6(1) from the private landlord on whom the remedial notice was served; or
- (b) under regulation 10(1) from the private landlord on whom the notice under regulation 10(3) was served, relating to emergency action.

It is proposed that costs will be recovered in accordance with the Regulations and based upon an assessment of officer time and overheads required in taking any action and the actual costs of the works undertaken required to remedy the deficiencies.

Appeals

In the first instance, landlords can make written representations to a local housing authority within;

- 21 days against a remedial notice
- 28 days against the intention to impose a financial penalty

The local authority has 7 days to respond to the representations.

Landlords then have rights to appeal to the First-tier Tribunal. The Tribunal may confirm, quash or vary notices served by the local housing authority.

Principle Changes

Proposed enforcement of the new *Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020*.

Any changes in respect of enforcement of the above Regulations in future will be authorised by the relevant Executive Director in conjunction with the relevant portfolio holder.

Policy Implications

The financial penalties proposed will be in line with previously adopted civil penalty calculation methodologies.

The use of appropriate enforcement powers will ensure that landlords become aware of their responsibilities with regards electrical safety.

The standard HMO licence conditions will also be amended in light of these Regulations.

Financial Implications

The costs associated with remedial or emergency action will be recovered based upon actual costs and the costs to the local authority in taking any action and in accordance with the Regulations.

Personnel Implications

The Regulations requires that every landlord must provide written confirmation that the relevant work identified in the electrical installation condition report has been carried out to local authority within 28 days of completing the work.

This will generate a significant number of reports from landlords within the Borough that will need to be recorded on existing systems.

It is anticipated that the enforcement of the above will be undertaken by current Housing Standards officers.

Statutory Considerations

As detailed above.

Equality Impact Assessment (EIA)

Pre-screening complete and attached.

Risk Management Implications

None identified.

Declarations of Interest / Dispensations Granted

None

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Signed
(Cabinet Member)

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Date

Appendix 1

The matrix below has been prepared in accordance with Government guidance and has been adopted with respect to Housing Act 2004 offences, adopted by Council on the 22/02/18.

Civil Penalties Matrix

Factors	Score =1	Score = 5	Score = 10	Score = 15	Score = 20	Total
1. Deterrence & Prevention (pick only one box to the right)	High confidence that a financial penalty will deter repeat offending. Informal publicity not required as a deterrence.	Medium confidence that a financial penalty will deter repeat offending. Anonymised media communication will be required for mild deterrence in the landlord community.	Low confidence that a financial penalty will deter repeat offending (e.g. no contact from offender). Anonymised media communication will be required to prevent similar offending in the landlord community.	Little confidence that a financial penalty will deter repeat offending. Anonymised media communication will be required to prevent similar offending in the landlord community.	Very little confidence that a financial penalty will deter repeat offending. Anonymised media communication will be required to prevent similar offending in the landlord community.	
2. Removal of Financial Incentive (pick only one box to the right)	No significant assets. No or very low financial profit made by offender.	Little asset value. Little profit made by offender by committing the offence.	Small portfolio landlord (between 2-3 properties). Low asset value. Low profit made by offender.	Medium portfolio landlord (between 4-5 properties) or a small Managing Agent. Medium asset value. Medium profit made by offender.	Large portfolio landlord (over 5 properties) or a medium to large Managing Agent. Large asset value. Large profit made by offender.	
3. Offence & History (pick only one box to the right)	No previous enforcement history. Single low level offence.	Minor previous enforcement. Single offence.	Recent second time offender. Offence has moderate severity or small but frequent impact(s).	Multiple offender. Ongoing offence of moderate to large severity or a single instance of a severe offence.	Serial offender. Multiple enforcement over recent times. Continuing serious offence.	
4. Harm to Tenant(s) (Weighting x2) (pick only one box to the right)	Very little or no harm caused. No vulnerable occupants. Tenant(s) provides no information on impact.	Likely some low level health/harm risk(s) to occupant. No vulnerable occupants. Tenant provides poor quality information on impact.	Likely moderate level health/harm risk(s) to occupant. Vulnerable occupants potentially exposed. Tenant provides some information on impact but with no primary or secondary evidence.	High level of health/harm risk(s) to occupant. Tenant(s) will be affected frequently or by occasional high impact occurrences. Vulnerable occupants more than likely exposed. Small HMO (3-4 occupants), multiple occupants exposed. Tenant provides good information on impact with primary evidence (e.g. prescription drugs present, clear signs of poor health witnessed) but no secondary evidence.	Obvious/high level health/harm risks(s) and evidence that tenant(s) are badly and/or continually affected. Multiple vulnerable occupants exposed. Large HMO (5+ occupants), multiple occupants exposed. Tenant provides excellent information on impact with primary and secondary evidence provided (e.g. medical, social services reports).	
					Final Total	

Score Range	Penalty Fee	Scoring Regime <ul style="list-style-type: none"> Each row should be scored in order with only one option being chosen for each row. All rows MUST be scored. Note the score in the Total column. Factor 4 Harm to Tenants has an additional weighting, which will double the selected score. In the final cell at the bottom of the column insert the final total. The score should be then compared to the sliding scale of enforcement fee to be levied.
1-5	£250	
6-10	£500	
11-20	£750	
21-30	£1,000	
31-40	£2,500	
41-50	£5,000	
51-60	£10,000	
61-70	£15,000	
71-80	£20,000	
81-90	£25,000	
91-100	£30,000	

Pre-Screening Equality Impact Assessment

Borough Council of
**King's Lynn &
West Norfolk**



Name of policy/service/function	Housing Standards - Enforcement				
Is this a new or existing policy/ service/function?	New with reference to existing				
Brief summary/description of the main aims of the policy/service/function being screened. Please state if this policy/service rigidly constrained by statutory obligations	To ensure adequate enforcement of new Regulations and to update fees associated with the licensing of HMOs and residential caravan sites.				
Question	Answer				
<p>1. Is there any reason to believe that the policy/service/function could have a specific impact on people from one or more of the following groups according to their different protected characteristic, for example, because they have particular needs, experiences, issues or priorities or in terms of ability to access the service?</p> <p>Please tick the relevant box for each group.</p> <p>NB. Equality neutral means no negative impact on any group.</p>		Positive	Negative	Neutral	Unsure
	Age			X	
	Disability			X	
	Gender			X	
	Gender Re-assignment			X	
	Marriage/civil partnership			X	
	Pregnancy & maternity			X	
	Race			X	
	Religion or belief			X	
	Sexual orientation			X	
Other (eg low income)			X		
Question	Answer	Comments			
2. Is the proposed policy/service likely to affect relations between certain equality communities or to damage relations between the equality communities and the Council, for example because it is seen as favouring a particular community or denying opportunities to another?	Yes/No				
3. Could this policy/service be perceived as impacting on communities differently?	Yes/No				
4. Is the policy/service specifically designed to tackle evidence of disadvantage or potential discrimination?	Yes / No				
<p>5. Are any impacts identified above minor and if so, can these be eliminated or reduced by minor actions? If yes, please agree actions with a member of the Corporate Equalities Working Group and list agreed actions in the comments section</p>	Yes/ No	Actions:			
		Actions agreed by EWG member: GJH			
Assessment completed by: Name	Gordon Jackson-Hopps				
Job title: Housing Standards Manager	Date June 2020				