

East Herts Council Non-Key Decision Report

Date:

Report by: Councillor Peter Boylan, Executive Member for Neighbourhoods

Report title: Amendment of the council's adopted policy – The issuing of a civil penalty under the Housing and Planning Act 2016

Ward(s) affected: All

Summary

The introduction of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 introduces financial penalties that can be issued to landlords for breaches of the regulations. This report proposes amendments to the previously adopted policy covering the issuing of a civil penalty under the Housing and Planning Act 2016 to include these additional penalties.

RECOMMENDATIONS FOR DECISION that:

- a) The council's Policies for Enforcing Standards for Private Sector Landlords are amended to include the use of financial penalties for breaches of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

1.0 Proposal(s)

- 1.1 To amend the current version of "The issuing of a civil penalty under the Housing and Planning Act 2016" Policy, adopted in

October 2020, to extend its scope to cover financial penalties introduced for breaches of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

To make minor amendments in the remainder of the Policies for purposes of clarity.

2.0 Background

- 2.1 In October 2020, Council resolved to adopt four policies relating to housing standards enforcement using powers introduced in the Housing and Planning Act 2016. The first of these policies relates to the issuing of civil penalties for certain specified offences. The policy explains the factors that will be considered in determining both whether to impose a civil penalty and the level of that penalty. The financial penalty matrix uses these factors in the setting of the penalty.
- 2.2 The Housing and Planning Act 2016 also allowed for regulations to impose duties on a private landlord of residential premises in England for the purposes of ensuring that electrical safety standards are met and on 1st April 2021 the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 came fully into force.
- 2.3 The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 include the provision that where a local housing authority is satisfied, beyond reasonable doubt, that a private landlord has breached a duty under regulation 3, the authority may impose a financial penalty (or more than one penalty in the event of a continuing failure) in respect of the breach. There is no option to prosecute for breach of the regulations and therefore the financial penalties are the main

disincentive to a landlord evading their duties.

- 2.4 The financial penalties are in many respects the same as the civil penalties in the policy adopted in 2020. The maximum penalty in both cases being £30,000. The burden of proof in both is the same (beyond reasonable doubt) and the appeal processes through the Tribunal Service are available for an aggrieved offender.

3.0 Reason(s)

- 3.1 These regulations will help the council to promote safe and healthy housing for residents in private rented accommodation in the district. Poor electrical installations bring the risk of electric shock and fire. The potential for a significant penalty may encourage those landlords who have not been keeping their properties under proper review to do so.
- 3.2 The process for imposing a financial penalty and the matters to be considered in determining the level of the penalty are fully in line with those for determining and issuing a Civil Penalty under the Housing Act 2016.
- 3.3 The non-statutory guidance to local housing authorities on the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 includes the provision that local housing authorities should have a documented policy on how they determine appropriate financial penalty levels and continues to state that in doing so the authority may wish to consider the policy developed for Civil Penalties.
- 3.4 There are similarities between certain offences covered by the

existing policy and those included in the new regulations and therefore to be consistent it is proposed that the existing matrix for determining the level of penalty is used.

- 3.5 The Explanatory Memorandum to the regulations recognises an additional burden on local authorities for enforcement however no additional funding was awarded as the proceeds of any financial penalties imposed can be applied to meet the expenses incurred in this and other private rented sector enforcement.

4.0 Options

- 4.1 No action – NOT RECOMMENDED. The regulations place a duty on the council to serve a remedial notice on landlords who we believe have not complied with one or more of their duties under the regulations. They also allow that we may, in some circumstances, arrange for remedial action to be undertaken by a competent person and can then recover our costs. Guidance states that authority should have a policy on how they determine appropriate financial penalty levels and hence without this policy change recalcitrant landlords would have no incentive to comply and may simply wait to be caught out.
- 4.2 Create a separate policy with its own penalty matrix specifically for financial penalties under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 – NOT RECOMMENDED. The guidance suggests consideration of the matrix and policy created for Civil Penalties under the Housing and Planning Act 2016 and so a separate policy would be unnecessary and arguably confusing when set alongside the council existing policies. Having a combined policy and matrix for calculation of penalties promotes consistency and helps to

make the imposition of penalties more transparent for landlords.

- 4.3 Amend the existing policies to incorporate financial penalties – RECOMMENDED for the reasons laid out in this report.

5.0 Risks

- 5.1 Without an adopted policy for the imposition of these financial penalties there would be no further incentive to the 22% of landlords who do not currently undertake electrical safety checks¹ to meet their duties, leaving the health and safety of some tenants in our district at risk.
- 5.2 The council would also lose the opportunity to apply the proceeds from financial penalties to meet the costs and expenses incurred in, or associated with, carrying out any of its enforcement functions in relation to the private rented sector.
- 5.3 Should the proposed revised policies be approved, there are possible reputational risks where an offender challenges our use of these enforcement powers. Within this context, having a single policy and calculation matrix for the financial penalties imposed under these regulations and for those directly introduced under the housing and Planning Act 2016 supports transparency and consistency in our enforcement to reduce this risk.

6.0 Implications/Consultations

¹ From para 12.4 of Explanatory Memorandum To The Electrical Safety Standards In The Private Rented Sector (England) Regulations 2020

- 6.1 No additional public consultation has been undertaken with respect to this amendment
- 6.2 There are no adverse implications arising from the amendment of the policy.

Community Safety

None arising from this decision.

Data Protection

None arising from this decision.

Equalities

For the initial adoption of the policy a screening review was undertaken and it was agreed that there is no requirement to complete a full Equalities Impact Assessment as the audience for this is quite narrow. This assessment is still relevant.

Environmental Sustainability

None arising from this decision.

Financial

None arising from this decision.

Health and Safety

In seeking to incentive landlords to keep their properties in good order, the proposal would have a positive impact on the health and safety of residents.

Human Resources

None arising from this decision.

Human Rights

None arising from this decision.

Legal

The proposals are based on the powers introduced in the legislation and guidance referred to in this report.

Specific Wards

No.

7.0 Background papers, appendices and other relevant material

7.1 Appendix 1 - East Hertfordshire District Council Policies on Additional Housing Standards Enforcement Powers with proposed amendments.

Contact Member

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