

POLICY FOR IMPOSING FINANCIAL PENALTIES UNDER THE ELECTRICAL SAFETY STANDARDS IN THE PRIVATE RENTED SECTOR (ENGLAND) REGULATIONS 2020

Cabinet	19 November 2020
Report Author	Richard Hopkins, Private Sector Housing Manager
Portfolio Holder	Cllr Helen Whitehead, Deputy Leader and Cabinet Member for Housing and Community Services
Status	For Decision
Classification:	Unrestricted
Key Decision	No
Previously Considered by	Not applicable
Ward:	All wards

Executive Summary:

The council has a statutory duty to enforce The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, which came into force on 01 June 2020. The regulations place mandatory duties on private landlords to maintain electrical safety standards in privately rented homes.

Local housing authorities have been empowered to impose financial penalties of up to £30,000 on private landlords who breach their duties under the regulations. This report seeks the agreement of Cabinet to adopt a policy that would allow the council to impose such penalties for breaches that occur on or after 01 December 2020.

Recommendation(s):

That Cabinet:

1. Approves the adoption of the proposed “Policy for imposing financial penalties under The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020” annexed to this report; and
2. Delegates authority to the Director of Housing and Planning, in consultation with the Cabinet Member for Housing and Community Services, to approve minor amendments to the policy.

Corporate Implications

Financial and Value for Money

The enforcement obligations placed on the council will rest with the Private Sector Housing Team. The extent to which these regulations will place additional burdens on the team is unclear at the present time. These new duties will apply to the landlords of more than 17,000 privately rented homes in Thanet and the extent of non-compliance will not be known until after April 2021. However, it is hoped that the existing team will be able to manage the additional responsibilities within existing resources.

The council will be able to retain any income generated by financial penalties, but all such income is ring-fenced, and may only be used to fund private sector housing enforcement activities. Any income received that is not used for this ring-fenced purpose must be paid into the Consolidated Fund, the Government's general bank account at the Bank of England. The income expected from enforcement activity is highly unlikely to exceed the council's current staffing costs associated with its private sector housing enforcement activities. As such, any income could be used to fund existing staff within the Private Sector Housing Team or, should the additional regulatory responsibilities become unmanageable within existing resources, the income could be used to fund additional enforcement staff.

Legal

The regulations were made under section 122 of the Housing and Planning Act 2016 for the purposes of introducing new requirements for electrical safety standards in the private rented sector. The enforcement of the regulations helps to support the council's general duty under section 3 of the Housing Act 2004 to keep the housing conditions in its area under review and identify any action that needs to be taken.

Under Regulation 4, local housing authorities are under a statutory duty to serve a Remedial Notice if it has reasonable grounds to believe a private landlord is in breach of the regulations. Local housing authorities are also provided with discretionary powers to carry out remedial action themselves and recover their costs in doing so from the relevant private landlord(s) (Regulations 6 to 10).

Under Regulation 11, local housing authorities have the power to impose financial penalties of up to £30,000. The prescribed procedural requirements are set out in Schedule 2 to the regulations. Non-statutory guidance was issued by the Ministry of Housing, Communities & Local Government in June 2020, namely: *Guide for local authorities: electrical safety standards in the private rented sector*. The proposed policy annexed to this report has been developed in accordance with the guidance.

The council's constitution allows the Cabinet to delegate decisions to an individual Cabinet member or an officer. The proposal that the Cabinet delegates authority to the Director of Housing and Planning, in consultation with the Cabinet Member for Housing and Community Services, to approve minor amendments to the policy is therefore permitted within the constitution.

Corporate

The enforcement activities associated with the regulations will help support the Communities objective of the council's Core Business Objectives 2019-2023. The Communities objective includes a plan to "Improve standards and safety in homes across all tenures" and enforcing the regulations will assist in delivering this plan.

Equality Act 2010 & Public Sector Equality Duty

Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.

Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.

This report relates to the following aim of the equality duty:

- To eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act.

Persons from vulnerable groups can sometimes have limited housing choices. In particular, families with young children, older persons and those with a disability can find themselves in poor quality privately rented accommodation. Consequently, the council's enforcement activities often involve safeguarding the health, safety and welfare of persons with the protected characteristics of age and disability. Therefore, the enhanced enforcement capabilities provided by financial penalties will help to minimise disadvantage and contribute to the needs of many residents with protected characteristics.

The equality duty is a continuing one and should be considered and reviewed while enforcing the provisions of the regulations.

An Equality Impact Assessment has been undertaken and is annexed to this report.

CORPORATE PRIORITIES

This report relates to the following corporate priorities:

- *Communities*

1.0 Introduction and Background

1.1 Thanet District Council is a local housing authority ("LHA"). As such, it has a statutory duty to enforce The Electrical Safety Standards in the Private Rented Sector

(England) Regulations 2020. The regulations place mandatory duties on private landlords to maintain electrical safety standards in privately rented homes.

- 1.2 The regulations came into force on 01 June 2020 and apply to new tenancies from 01 July 2020 and existing tenancies from 01 April 2021. There is a legislative anomaly, in that while the regulations were only enforceable from 01 July 2020, they do apply to all new tenancies granted on or after 01 June 2020.
- 1.3 If a LHA is satisfied, beyond reasonable doubt, that a private landlord has breached a duty under the regulations, it has the power to impose a financial penalty of up to £30,000. However, before the council can impose any such penalty, it must first have an adopted policy which is just and proportionate. The purpose of this report is to propose the adoption of such a policy.

2.0 Duties of landlords in relation to electrical installations

2.1 Under the regulations, private landlords must:

- Ensure that the “electrical safety standards” are met during any period of occupation. For the purposes of the regulations, the electrical safety standards are the 18th Edition of the IET Wiring Regulations, which are published as British Standard 7671;
- Ensure that all electrical installations in their rented properties are inspected and tested by a qualified and competent person at intervals of not more than five years (or less if the most recent report recommends a shorter period before the next inspection);
- Obtain a report from the person conducting the inspection and test which gives the results and sets a date for the next inspection and test;
- Supply a copy of the report to the existing tenant within 28 days of the inspection and test;
- Supply a copy of the report to any new tenant before they occupy the premises;
- Supply a copy of the report to any prospective tenant within 28 days of receiving a written request for the report;
- Supply the LHA with a copy of the report within seven days of receiving a written request for a copy;
- Retain a copy of the report to give to the inspector and tester who will undertake the next inspection and test;
- Where the report shows that further investigative and/or remedial work is necessary, complete the work within 28 days or any shorter period if specified in the report;
- Where further investigative and/or remedial work is necessary, supply the tenant and the LHA with written confirmation from a qualified and competent person that confirms the completion of the further investigative and/or remedial works within 28 days of the completion of those works.

2.2 While there are some specific exemptions set out in the regulations, the vast majority of tenancies in the private rented sector are subject to the above-mentioned requirements.

3.0 Powers of local housing authorities

3.1 In summary, LHAs have been given the following statutory powers under the regulations, the first of which is a mandatory duty:

- **Duty to serve a Remedial Notice** - Where a LHA has reasonable grounds to believe that a private landlord is in breach of one or more of the duties imposed by the regulations, the LHA must serve a Remedial Notice on that private landlord. A Remedial Notice will specify the remedial action necessary and require that the action be completed within 28 days. A private landlord may make written representations against such a notice within 21 days.
- **Power to arrange remedial action** - If a private landlord does not comply with a Remedial Notice, the LHA has the power, with the tenant's consent, to undertake the remedial action specified in the notice and recover the costs incurred from the private landlord.
- **Power to undertake urgent remedial action** - Where a report indicates that urgent remedial action is required and the private landlord does not take timely action, the LHA may, with the tenant's consent, undertake the urgent remedial action and recover the costs incurred from the private landlord.
- **Power to impose a financial penalty** - If a LHA is satisfied, beyond reasonable doubt, that a private landlord has breached a duty under the regulations, it has the power to impose a financial penalty of up to £30,000.

4.0 Procedural requirements

4.1 Before imposing a financial penalty, an LHA must first give the private landlord notice of its intention to impose a penalty. This type of notice is known as a "Notice of Intent". The Notice of Intent gives private landlords the opportunity to make written representations within 28 days.

4.2 If after receiving any written representations (if any), the LHA decides that it remains in the public interest to impose a financial penalty, it must serve a "Final Notice". Private landlords may appeal to the First-tier Tribunal against the service of a Final Notice within 28 days. The Tribunal may confirm, vary or quash the financial penalty.

5.0 Financial penalty policy

5.1 A financial penalty may be of any amount up to the statutory maximum of £30,000. However, LHAs are expected to reserve the higher amounts for the worst offenders and take a logical and proportionate approach to setting the level of financial penalties more generally. The overarching principle is that the more serious the breach, the higher the penalty should be. The penalty for each breach must therefore be determined on a case-by-case basis.

5.2 Non-statutory guidance was issued by the Government in June 2020. Having due regard to the guidance, the proposed "Policy for imposing financial penalties under The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020" has been developed. The severity of each breach is based on an assessment of culpability, track record, portfolio size, and risk of harm. There is also provision to take into account mitigating and aggravating factors.

- 5.3 The approach set out in the proposed policy broadly aligns with the council's "Policy for imposing financial penalties under the Housing Act 2004 and Housing and Planning Act 2016", which was adopted by Cabinet on 14 March 2019 and came into force on 01 April 2019.

6.0 Commencement

- 6.1 The policy is proposed to take effect from 01 December 2020 and apply to all relevant breaches of duty that occur on or after that date.

7.0 Options

- 7.1 There are three options available to the council, namely:

Option 1: To adopt the proposed "Policy for imposing financial penalties under The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020" annexed to this report.

Option 2: To adopt the proposed "Policy for imposing financial penalties under The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020" annexed to this report, subject to amendment.

Option 3: To not adopt the proposed "Policy for imposing financial penalties under The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020" annexed to this report.

- 7.2 In the event that the policy is adopted, with or without amendment, its ongoing ability to deliver just and proportionate sanctions will remain under review. While not expected, it is possible that minor anomalies may arise in its application. It is therefore proposed that the authority to approve minor amendments to the policy is delegated to the Director of Housing and Planning, in consultation with the Cabinet Member for Housing and Community Services.

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Reporting to: Bob Porter, Director of Housing and Planning

Annex List

- Annex 1: Policy for imposing financial penalties under The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
Annex 2: Equality Impact Assessment

Background Papers

Guide for local authorities: electrical safety standards in the private rented sector. Available at:

<https://www.gov.uk/government/publications/electrical-safety-standards-in-the-private-rented-sector-guidance-for-landlords-tenants-and-local-authorities/guide-for-local-authorities-electrical-safety-standards-in-the-private-rented-sector>

Corporate Consultation

Finance: Chris Blundell, Director of Finance

Legal: Jennifer Phillips, Principal Litigation Lawyer