

RECORD OF OFFICER DECISION

Adoption of policy to allow penalty charges to be issued to the relevant person for non-compliance of responsibilities under The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 SI2005/962.

Decision made

To adopt the policy set out in Appendix 1 Wiltshire Council - The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 SI2005/962 & the Energy Efficiency (Private Rented Property) (England and Wales)(Amended) Regulations 2019 SI2019/595 .

Policy

Made by;

Simon Hendey, Director for Housing and Commercial Development

Background

1. As the Director for Housing and Commercial Development, I am responsible for any matters relating to the enforcement of poor housing condition in Wiltshire. The adoption of the policy outlined in Appendix 1 will add to the tools to achieve this made available under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 SI2015/962 & the Energy Efficiency (Private Rented Property) (England and Wales)(Amended) Regulations 2019 SI2019/595 . The power to make a decision in respect of this matter is delegated to me pursuant to Wiltshire Council's Constitution. The adoption of the policy allows for easier more robust decisions to be made in a timely manner and to ensure that the powers conveyed by the regulations are available.
2. The Regulations require private rented sector landlords, from 1 April 2018 for new tenancies and from 1st April 2020 for existing tenancies to rent out properties that have a minimum energy performance rating of E on an Energy Performance Certificate (EPC). It will be unlawful to rent a property which breaches the requirement for a minimum E rating, unless there is an applicable exemption.
3. A domestic private rented sector property is substandard if the EPC rating is F or G, unless an exemption applies. The legislation prohibits a landlord from letting out a substandard property. If there is an EPC in place which shows that the property is an F or G then it must not be let; otherwise the landlord is liable to penalties. This is subject to any available exemptions. Energy efficiency improvements must be carried out to bring the property up to an E rating at the minimum, unless one of the exemptions is applicable. For example, where the cost is in excess of £3,500 then the landlord in certain circumstances may seek an exemption. This financial cost requirement was brought in under 2019 amendment following the failure of the Green Deal. The original regulation expected that housing improvements would be implemented using Green Deal funding and stated that there should be no upfront costs (or any net cost to the landlord) because savings resulting from the works should repay their cost over the expected lifetime of the works. It should be noted that should an exempt property present a Category 1 Hazard under the Housing Health and Safety Rating System then the council would be required to consider the most appropriate action to remedy the hazard.
4. If a landlord lets and continues to let the property in breach of the regulations, however, the breach does not affect the validity or legality of the tenancy itself, so the rent still continues to be payable.

5. Local authorities will enforce compliance with the regulations. Where a landlord considers an exemption applies allowing them to let their property below the minimum energy efficiency standard, the landlord will need to provide such evidence to a centralised register, the "PRS Exemptions Register". Landlords may be required to submit relevant evidence and details of their exemption to the Register. The Government may use this information to assist local authorities in targeting their enforcement activity.
 - Where a local authority suspects that a landlord with a property in scope of the regulations is not compliant, or has not sufficiently proved an exemption, the local authority can serve a compliance notice on the landlord requesting further information it considers necessary to confirm compliance. If it is not provided or is provided and is not sufficient to provide compliance, the local authority may proceed to issuing a penalty notice.
 - Penalties for a single offence may be cumulative, up to a maximum of £5,000. Further penalties may be awarded for non-compliance with the original penalty notice where a landlord continues to rent out a non-compliant property; however, penalties would be cumulative up to a maximum of £5,000. The landlord can be awarded a further penalty when one of the following events occurs:
 - The tenant changes
 - The regulatory backstop comes into effect
6. It is expected that majority of landlord will ensure that their properties have been inspected and that they meet the required standard, however, there will be a minority of landlord who either choose not to comply or by default do not comply. Influencing this minority of landlord to undertake their business in a responsible manner will require that a council uses its statutory powers in a judicious manner ensuring landlords do not put their tenants at risk. The use and level of Civil Penalties as well of the cost of remedial works are an important consideration in adopting a policy under the Regulations. It is felt that use of civil penalties should be used and made at a level that reflect the severity of the offence, culpability of the offender, harm, punishment and as a deterrent.

Reason for decision

1. The decision is required to allow the council to have a robust policy that is in keeping with good practice and provide the opportunity should it arise to make full use of the enforcement tools that are available to tackle poor housing standard.
2. I confirm that in making this decision I have considered the following in line with Wiltshire Council's Constitution:
- 3.

Key decision requirements	N/A
Views of relevant cabinet member(s), committee chairman, area board(s)	No
Consideration of the area boards and delegated decision checklist for officers on the issue of when and how to involve local councillors and area boards in decisions about local services	N/A
Implication of any council policy, initiative, strategy or procedure	Yes
Consultation in accordance with the council's consultation strategy	N/A

Range of options available	Yes – see below
Staffing, financial and legal implications	N/A
Risk assessment	Yes – see below
Involvement of statutory officers and/or directors	N/A
Regional or national guidance from other bodies	N/A
The council's constitution	Yes
This contract is suitable for execution under the e-signature process.	N/A

Conflict of Interest

4. Not applicable

Other options considered

5. Not to adopt a policy which would reduce the council's ability to tackle poor housing conditions and have negative implication in terms of reputation of the council

Made by:



Simon Hendey, Director for Housing and Commercial Development

Date: 08/04/2021

APPENDIX 1

WILTSHIRE COUNCIL

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 SI2005/962

1. Introduction and scope

This policy addresses the practical application of the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 SI2005/ enforcement procedures and aims to provide a fair and effective approach to enforcement action by officers of the authority including the use of Civil Penalties to achieve minimum standards of energy efficiency.

The enforcement action we take must be compliant with the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 SI2005.

This policy seeks to assist officers in the decision-making process when dealing with enforcement issues and to sets out a consistent approach. This policy should be read in conjunction with the Private Sector Housing Enforcement policy as well as corporate policies and, national guidance on enforcement issues.

This policy sets out when the council will levy civil penalties. The council would wish to avoid prosecution of private landlords through the courts in all but the most serious cases.

2. Context of the Enforcement of the Regulation

Principally the purposes of enforcing the Regulations is to support the use of statutory powers as an effective means of ensuring that private landlord's comply with minimum energy efficiency standards and to safeguard their tenants and other members of the public from potential harm. It is acknowledged that most landlords will ensure that they fully comply with the Regulations, but it is expected that a minority of landlords will not be conscientious about their responsibilities. Residents of Wiltshire, including responsible landlords, would have a reasonable expectation that the enforcing authority deals effectively with rogue landlords in a manner that ensures that faults are remedied, and transgressors amend poor practices.

The council will assist, advise and encourage wherever possible but will also take proportionated enforcement action on those landlords who ignore the Regulations. The council when enforcing the Regulations will provide opportunities to landlords to remedy their negligence and comply. Those private landlords who transgress should expect to receive civil penalty which reflect the level of cooperation and further transgression.

Our regulatory effort will be directed in accordance with the Government's "Regulators Code" and we will carry out our work with due regard to the following;

- in a way that supports those we regulate to comply and grow,
- that provides a simple and straightforward ways to engage with those we regulate and hear their views,
- based on risk
- by share information about compliance and risk,
- by ensuring clear information, guidance and advice is available to help those we regulate to meet their responsibilities to comply

□ Ensuring transparency

The Council has also adopted the Enforcement Concordat, which establishes principles of good enforcement and set out what businesses and others being regulated are entitled to expect from enforcement officers.

The service will endeavour to ensure that enforcement action is consistent by taking a similar approach in similar circumstances. However, officers will take into account many variables such as level of risk, compliance history and the attitude and actions of those involved which may result in different outcomes in what appear potentially similar investigations. Any enforcement action we take will be proportionate to the risk and seriousness of the breach of legislation.

3. Formal Action

Once the council has reasonable ground to believe that a private landlord is in breach of one or more of his duties under the Regulations the council can issue a maximum civil penalty fine of £5,000.

Formal action will involve the proportionate use of formal mechanism to achieve compliance including issuing financial civil penalties.

Landlords will be given reasonable time to carry out essential works to improve the energy efficiency of the property to the minimum standard required.

4. Financial Penalty

The council will impose civil penalty where it is satisfied beyond reasonable doubt that a landlord has breached a duty under the Regulations.

Appendix A of this policy sets out the level of civil penalty that will be imposed for breaches of the Regulations. In the case of landlords arguing that they are financially stricken, and they will have problems paying the civil penalty then the council will consider a statement from the landlord's or agent's providing details of their income and assets. In cases where a landlord provides evidence that they cannot pay the penalty immediately then the council will in the first instance provide an opportunity to make payments by instalment.

5. Appeals & Representation

The process, timescales and reasons that allow a private landlord to make representation to the council and make appeals to the 1st Tier Tribunal are set out in the Regulations.

Appendix A

Should a landlord not comply with the regulation then the council will issue penalty fines as follows:

Infringement	Penalty	
Providing false or misleading information to the PRS Exemptions Register	£1,000 Publication of non-compliance	
Failure to comply with a compliance notice from a local authority	£2,000 Publication of non-compliance	
Renting out a non-compliant property	Less than 3 months non-compliance £2,000 fixed penalty Publication of non-compliance	3 months or more of non-compliance £4,000 fixed penalty Publication of non-compliance