



Derby City Council

**ADULTS, HEALTH AND HOUSING CABINET
MEMBER MEETING
19 June 2018**

ITEM 4

Report of the Strategic Director for Communities
and Place

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

SUMMARY

- 1.1 These Regulations introduce measures to improve the energy efficiency of certain private rented property in England and Wales.
- 1.2 Part 3 (*minimum level of energy efficiency*) applies to domestic private rented property. It prescribes a minimum level of energy efficiency for private rented properties: that is, an energy performance indicator (evidenced on the energy performance certificate for the property) of band E.
- 1.3 It provides that, subject to prescribed exceptions, a landlord of a domestic private rented property must not grant a new tenancy of the property after 1 April 2018, and must not continue to let the property after 1 April 2020, where the energy performance of the property is below the minimum level.
- 1.4 The Council is responsible for enforcing these regulations. Regulation 34 (2) states that an enforcement authority must enforce compliance with part 3 of the Regulations in relation to properties within its area. Officers in the Housing Standards Team have been authorised to enforce these regulations.

RECOMMENDATION

- 2.1 To endorse the proposed approach to the imposition of penalty notices outlined below in 4.7.

REASONS FOR RECOMMENDATION

- 3.1 To ensure that enforcement of the regulations have the desired impact on private rented sector landlords.

SUPPORTING INFORMATION

- 4.1 Part 3 (*minimum level of energy efficiency*) came into force on 1 October 2016, and applies to domestic private rented property. It prescribes a minimum level of energy efficiency for private rented properties: that is, an energy performance indicator (evidenced on the energy performance certificate for the property) of band E.

- 4.2 It provides that, subject to prescribed exceptions, a landlord of a domestic private rented property must not grant a new tenancy of the property after 1 April 2018, and must not continue to let the property after 1 April 2020, where the energy performance of the property is below the minimum level.
- 4.3 It makes provision for the enforcement of the requirements of Part 3 by local authorities. Landlords seeking to rely on a prescribed exemption when letting a private rented property which falls below the minimum level of energy efficiency must register that exemption on a register maintained by the Secretary of State.
- 4.4 Where a local authority considers that a landlord may be in breach of a requirement of Part 3, it may serve a compliance notice requiring the landlord to provide evidence of compliance to the local authority.
- 4.5 Where a local authority is satisfied that a landlord is in breach, it may issue a penalty notice imposing a financial penalty, and impose a publication penalty (which consists of publishing the details of the breach on the PRS Exemptions Register).

Various levels of penalty are prescribed in the regulations depending on circumstances, but the total of the financial penalties imposed must be no more than £5,000. The landlord may request a review of the penalty notice by the local authority and, where a penalty notice is confirmed on review, may appeal against the imposition of the penalty notice to the First-tier Tribunal.

- 4.6 The regulations determine the maximum level of penalty as follows:
- Where the landlord has breached regulation 23 (the minimum level of energy efficiency for private rented properties) and, at the time the penalty notice is served has, or had, been in breach for **less** than three months, the penalties are:
 - (a) a financial penalty not exceeding £2,000, and
 - (b) the publication penalty.
 - Where the landlord has breached regulation 23 (the minimum level of energy efficiency for private rented properties) and, at the time the penalty notice is served has, or had, been in breach for **three months or more**, the penalties are:
 - (a) a financial penalty not exceeding £4,000, and
 - (b) the publication penalty.
 - Where the landlord has registered false or misleading information on the PRS Exemptions Register the penalties are:
 - (a) a financial penalty not exceeding £1,000, and
 - (b) the publication penalty.

- Where the landlord has failed to comply with a compliance notice in breach of regulation 37(4)(a), the penalties are:
 - (a) a financial penalty not exceeding £2,000, and
 - (b) the publication penalty.
- Where an enforcement authority imposes any of the financial penalties indicated above on a landlord in relation to a breach of regulation 23 the total of the financial penalties imposed must be no more than £5,000.

4.7 The proposal is that in each case the maximum penalty is imposed – except that where more than one penalty is imposed at the same time, the total imposed shall be no more than £5000. Where this is the case, each penalty shall be reduced proportionately to achieve a total figure of £5000.

The reasoning behind this approach is that:

- The central objective of imposing a penalty is deterrence. The level of the penalty must be sufficient to deter Landlords from contravening regulatory requirements.
- In particular, the level of the penalty must be sufficiently high to have the appropriate impact. It should incentivise the Landlord to change their conduct and bring them into compliance.
- The level of the penalty should be high enough that the Landlord recognises that it is not more profitable for them to break the law and pay the consequences, than it is to comply with the law in the first instance, and that it should therefore discourage bad conduct and encourage good practices and a culture of compliance across the private housing sector.
- The Council will incur considerable costs when imposing penalties on landlords and there will be no other mechanism to recover these costs, other than through the income derived from penalties.

OTHER OPTIONS CONSIDERED

5.1 Not applicable.

This report has been approved by the following officers:

Legal officer Financial officer Human Resources officer Estates/Property officer Service Director(s) Other(s)	Lucie Keeler - Solicitor Amanda Fletcher, Head of Finance (C&P) Michael Kay – Head of Service
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For more information contact: Background papers: List of appendices:	Rob Rylott 01332 642366 rob.rylott@derby.gov.uk The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 Appendix 1 – Implications
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IMPLICATIONS

Financial and Value for Money

- 1.1 Penalty charge receipts will be returned to the Housing Standards budget..

Legal

- 2.1 The support of Legal Services will be required in confirming that sufficient evidence is available before officers' in the Housing Standards Team impose penalty charges. Legal Services will represent the Council in the event of an appeal to a First Tier Tribunal, and to assist in the recovery of the monetary penalty through the courts

Personnel

- 3.1 None arising out of this report

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- 4.1 None arising out of this report

Equalities Impact

- 5.1 None arising out of this report

Health and Safety

- 6.1 None arising out of this report

Environmental Sustainability

- 7.1 These regulations are designed as an energy conservation measure.

Property and Asset Management

- 8.1 None arising out of this report

Risk Management and Safeguarding

- 9.1 None arising out of this report

Corporate objectives and priorities for change

- 10.1 Enforcing these regulations in the private rented sector will increase energy conservation and contribute to the Councils pledge to provide a safe and pleasant environment for people to live and work.