

WELWYN HATFIELD BOROUGH COUNCIL
CABINET HOUSING PANEL 7 MARCH 2022
REPORT OF THE HEAD OF COMMUNITY AND HOUSING STRATEGY

ADOPTION OF THE NEW ELECTRICAL SAFETY POLICY

1 Executive Summary

- 1.1 This report details the powers and duties introduced by the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 and sets out the policy document which will govern how the council uses these powers. These relate to the Government's response to tackling rogue landlords and improving the private rental sector.
- 1.2 This policy explains how the Council will extend its Civil Penalty powers under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 "the Electrical regulations" to serve Civil Penalty Notices on non-compliant landlords and managing agents for failing to provide an Electrical Safety Certificate to tenants and at the request of the Council.
- 1.3 The approach set out in this policy aligns with the Council's Policy for imposing financial penalties under the Housing Act 2004 and Housing and Planning Act 2016 and should be read as an addendum to this policy.
- 1.4 The standards require Landlords to ensure that the fixed electrical installations in their properties are inspected and tested at least every 5 years by a competent electrician. The initial inspections need to be carried out before any new tenancy is granted from 1 July 2020, and by 1 April 2021 for existing tenancies.
- 1.5 The proposed policy is attached at Appendix A. It is proposed to be an addendum to be read in conjunction with the current Civil Penalty Policy.
- 1.6 The Civil Penalty policy sets out the criteria for using a civil penalty as an alternative to prosecution and the methodology to be used in setting civil penalty fines. The power to impose a civil penalty as an alternative to prosecution was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016. Local Authorities are expected to use these powers as a means to deter 'Rogue Landlords'.

2 Recommendation(s)

- 2.1 To recommend to Cabinet that the policy as set out in Appendix A is adopted as part of the council's current Civil Financial Penalty Policy.
- 2.2 If this is unanimously agreed by the panel, the decision may be taken by the Executive Member under their delegated powers.

Explanation

- 2.3 The council is committed to improving standards in the private rented sector. Working with landlords to improve their properties without the need for enforcement, the recommendations will enable the council to utilise additional legislative powers in driving up standards within the private rented sector.

- 2.4 The Housing and Planning Act 2016 introduced a range of measures to crack down on rogue landlords. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (the Regulations) further enhance these measures.
- 2.5 Landlords are required to provide their tenants with electrical safety reports: in the case of new tenants, before they move in; to existing tenants within 28 days of receiving it; and to any prospective tenant within 28 days of their request to view the report
- 2.6 The Council has the power to demand sight of the report and the landlord must provide this within 7 days of the request. Failure to do so could result in a penalty charge.
- 2.7 If the Council has reasonable grounds to believe that the landlord is in breach of the Regulations, it also has the power to serve a remedial notice on the landlord to compel them to comply with the Regulations.
- 2.8 Landlords have 28 days to remedy the breach, and if the work is not carried out in time, then the Council has the power to carry out the required works themselves (on providing prior written notice to the landlord) and recover their costs from the landlord.
- 2.9 These powers were introduced by Government to tackle rogue landlords and managing agents and are designed to benefit the increasing number of households that are living in private rented accommodation.
- 2.10 The council is required by the Regulators' Code to publish its Enforcement Policy explaining how it responds to non-compliance. The Council's Enforcement Policy provides guidance to officers, businesses, and the general public on the range of options that are available to achieve compliance with legislation enforced by a range of services across the Council, including housing standards.
- 2.11 Subject to agreement of the recommendation in this report, the council's Enforcement Policy will be updated accordingly when it is next reviewed.

Implications

3 Legal Implication(s)

- 3.1 The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 are now fully in force, the Regulations applied to new tenancies from 1 July 2020 and to existing tenancies from 1 April 2021.
- 3.2 The council can use this legislation to assist in work to improve safety in private rented sector properties. The regulations allow the service of notices to require landlords to carry out remedial works. If notices are not complied with these works can be carried out in default and the costs recovered. Fines for non-compliance can be issued and follow a notice procedure and are subject to legal challenge.
- 3.3 Section 126 of the Housing and Planning Act 2016 allows civil penalties to be imposed as an alternative to prosecution for certain offences as set out in Schedule 9 of the Act. Schedule 9 in turn amends the Housing Act 2004 including providing a new Section 249A which deals with civil penalties as an alternative to prosecution.
- 3.4 The Council has a statutory duty as a Local Housing Authority to enforce relevant Housing Legislation.

4 Financial Implication(s)

- 4.1 The Regulations allow for the recovery of any associated costs of taking urgent and non-urgent remedial action, based upon an assessment of officer time, actual costs of work undertaken, and any other overheads incurred in taking the action. The Council intends to do this, but this is not about income generation for the Council, it is about the adoption and implementation of regulations and the recovery of costs where remedial action is required.
- 4.2 The recovery of costs will be pursued through the Council's existing sundry debts policies and procedures
- 4.3 Income received from a civil penalty can be retained by the local housing authority provided that it is used to further the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector.

5 Risk Management Implications

The risks related to this proposal are:

- 5.1 The council must comply with its public sector equality duty imposed by s149 Equality Act 2010; namely to have due regard to the need to: (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 5.2 An appeal is made by a private Landlord to the First Tier Tribunal against the value of costs of taking action demanded by the Council. The Tribunal may confirm, quash or vary the amount.

Likelihood Very Low; Impact Low. Risk Score Low

6 Security and Terrorism Implication(s)

- 6.1 None noted

7 Procurement Implication(s)

- 7.1 None noted

8 Climate Change Implication(s)

- 8.1 None noted.

9 Human Resources Implication(s)

- 9.1 The team are already resourced to ensure an effective balance between informal and formal actions. A protocol is in place with Legal Services to ensure resources are utilised efficiently.

10 Health and Wellbeing Implication(s)

Tackling poor and unsafe housing conditions in the Private Rented Sector will contribute towards the Councils vision of success health of the resident of Welwyn Hatfield Borough Council (WHBC). Housing is a determinant of health, and in order to ensure that each resident of WHBC has an equal life chance, and a life expectancy to reflect that of the national average the Council needs utilise

all legal and enforcement options available to drive standards up within the Private Rented Sector.

11 Communication and Engagement Implication(s)

- 11.1 There is currently no legal requirement to formally consult on the proposed policy. Subject to the policy being approved we will clearly communicate to the Borough's Landlord and letting agent community that this policy is in place.

12 Link to Corporate Priorities

- 12.1 The subject of this report is linked to the Council's Corporate Priority Quality homes through managed growth, specifically to the commitment 'we will improve housing quality on the borough. Tackling poor and unsafe housing conditions in the Private Rented Sector will contribute towards the council's vision of success health of the residents of WHBC.
- 12.2 The new powers introduced by the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 are intended to provide a significant incentive to landlords to comply with their legal obligations. The adoption of the new powers should mean that landlords comply more quickly and/or proactively in order to avoid financial and other penalties, which should result in fewer private tenants being exposed to housing conditions that have an adverse health impact.

13 Equality and Diversity

- 13.1 The EqIA identified that there is the potential for positive impacts on the protected groups for age, and disability, because people of all ages benefit from improvements to their domestic property.

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Appendices to be listed:

- Appendix A: Electrical Safety Standards Policy