

Executive Report

Ward(s) affected: All

Report of Director of Service Delivery

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Extension of Private Rented Sector Enforcement Powers

Executive Summary

The report advises the Executive of new legislative powers to further improve housing standards in the private rented sector, which enable financial penalties to be imposed if electrical safety standards are not met, under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

The Executive is asked to approve a proposed charging structure for these penalties and to delegate authority to the Head of Environment and Regulatory Services to determine the amount of any financial penalty in accordance with the charging structure. The imposition of a financial penalty is the only enforcement option in relation to these Regulations.

Recommendation to Executive

- (1) That the charging structure for financial penalties imposed in accordance with the powers introduced by Sections 122 & 123 of the Housing and Planning Act 2016 ("the Act") and the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 ("the Regulations") as set out in Appendix 1 to this report, be approved.
- (2) That authority be delegated to the Head of Environment and Regulatory Services to take all necessary action to implement the charging structure and impose financial penalties in accordance with the Regulations.

Reason for Recommendation:

To enable the Council to exercise the powers introduced by Sections 122 & 123 of the Act to impose financial penalties for failure to comply with the Regulations.

Is the report (or part of it) exempt from publication? No

1. Purpose of Report

- 1.1 The report sets out legislative changes, which affect the private rented sector and recommends the adoption of a charging policy for levying financial penalties in respect of offences.

2. Strategic Priorities

- 2.1 Enabling residents to have access to safe and suitable homes that are compliant with current electrical standards supports the objectives of the current Housing Strategy. Protecting our residents from unsafe housing conditions will inaugurate the community-based aims of the Council's Corporate Plan 2018-2023.
- 2.2 The Council's corporate priorities identify that protecting the most vulnerable and less advantaged residents is essential to the success of the Borough. With additional regulation of the private rented sector the Council will be able to fulfil its priorities by ensuring electrical standards are met in this sector. With an ongoing housing crisis, high property prices and the COVID-19 pandemic more people will turn to the private rental sector as a viable source of housing. The private rental sector provides a place to live for a range of Guildford's' residents including students, key workers, those on low incomes and the most vulnerable.

3. Background

- 3.1 The private rented housing sector has expanded in recent years and now accounts for around 16% of the residential sector in our Borough. This equates to 9,000 dwellings affected by the Regulations. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 are now in force and make available greater powers to local authorities to improve conditions in the private rented sector and drive out "rogue landlords". The regulations came into force on 1 June 2020, they apply to new tenancies from 1 July 2020 and existing tenancies from 1 April 2021.
- 3.2 Prior to the regulations coming into force electrical safety in all privately rented dwellings was only enforced through Part 1 of the Housing Act 2004. The regulations place new duties on private landlords to ensure that electrical safety inspections are routinely undertaken, an Electrical Inspection Condition Report (EICR) is produced, that any serious electrical hazards identified in the EICR are remedied within 28 days of the EICR and written confirmation of remediation is provided to the Council within 28 days of such remediation work being undertaken. The Council has already received 176 notifications of remedial work in a 6-month period, since the Regulations came into force in July 2020.
- 3.3 Under the Regulations the Council may request reports following inspections of properties to ascertain the condition of the electrical installation and confirm the landlord is complying with the Regulations. This is an effective toolkit to ensure current and ongoing electrical safety compliance during property condition investigations.

- 3.4 The Regulations also provide additional protection to tenants and prospective tenants, empowering them with the electrical safety documentation they need to rent a safe home.
- 3.5 The Regulations enable the Council to enforce electrical safety standards in all privately let dwellings, except for the following exemptions: private registered providers of social housing, lodgers, long leases, student halls of residence, hostels and refuges, care homes, hospitals, hospices and other accommodation relating to healthcare provision.
- 3.6 Licensable and unlicensable Houses in Multiple Occupation (HMOs) are also covered by the Regulations, strengthening the regulation of all HMOs.
- 3.7 The Regulations impose a duty on the Council to serve a remedial notice where the local housing authority is satisfied on the balance of probabilities that a landlord has not complied with one or more of their duties under the Regulations. The local housing authority can then undertake the remedial action and recover the costs of taking the action from the landlord and may also impose a financial penalty of up to £30,000 on landlords who are in breach of their duties.
- 3.8 Adopting the framework to issue Civil Penalties Notices (CPNs) will enable the amount of each Penalty Notice issued to be recovered and ring fenced by the authority for further enforcement.
- 3.9 The Regulations allow the Council to impose a financial penalty (“a civil penalty”), where it is satisfied, beyond reasonable doubt that a landlord has breached a duty under the Regulations.
- 3.10 The relevant duties are:
- Failure to ensure national standards for electrical safety are met.
 - Failure to ensure all electrical installations in their rented properties are inspected and tested at least every 5 years.
 - Failure to obtain a report from the person conducting the inspection.
 - Failure to supply a copy of this report to an existing tenant, new tenant, prospective tenant or Local Authority upon request.
 - Failure to carry out the further investigative or remedial works specified in the report
 - Failure to supply written confirmation of the completion of the further investigative or remedial works from the electrician to the tenant and the local housing authority within 28 days of completion of the works.
- 3.11 The charging of a civil penalty is the only option to enforce the above duties. A civil penalty is intended to act as a deterrent to and punishment for non-compliance.
- 3.12 The proposed civil penalties charging structure (See **Appendix 1**) will provide consistency of approach and assist officers to determine the appropriate penalty on a case by case basis. The charging structure has been developed in accordance with the guidance issued to local authorities by Department of Communities and Local Government in April 2017 “Civil Penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities”.

Whilst the guidance does not specifically apply to the Regulations, it contains a useful framework for decision making which could be adopted in respect of these Regulations.

3.13 The charging structure takes into account the following criteria set out in the above-mentioned guidance. These should be considered when determining the appropriate level of penalty:

- a) severity of the offence
- b) culpability and track record of the offender
- c) the harm caused to the tenant
- d) punishment of the offender
- e) deterring the offender from repeating the offence
- f) deterring others from committing similar offences
- g) removing any financial benefit the offender may have obtained from committing the offence.

3.14 Where the person fails to pay the civil penalty, the Council may recover it as if it were an order of the County Court.

3.15 The Regulations enable local authorities to use the money received from civil penalties to support the cost of our Private Sector Housing enforcement work.

4. Use of Civil Penalties

4.1 Investigations and inspections relating to property conditions are undertaken in accordance with the Corporate Regulatory Enforcement Policy approved by the Executive on 2 January 2018. Any subsequent enforcement action will also be taken in accordance with the principles set out in the enforcement policy.

4.2 Civil penalties will also be used for non-compliance with the Regulations, such as not remediating electrical hazards within acceptable timeframes.

4.3 The purpose of the civil penalty is to both act as a deterrent to non-compliance with housing standards and where officers have spent time resolving non-compliance the cost of the investigation can be recovered.

4.4 The use of civil penalties will be utilised for all levels of breaches of duty, where it is appropriate – usually where an informal, proportionate and pragmatic approach to compliance has failed. Where the breach is serious and significant, a penalty will be issued as the only enforcement option. Alternatively, a prosecution could be considered under Part 1 of the Housing Act 2004 where electrical hazards result in an Improvement notice being served. The new regulations allow swifter enforcement and rapid remediation of electrical hazards.

4.5 CPNs that are secured will send a clear message and act as a financial deterrent to others that the Council will act where there is non-compliance with housing law to protect residents.

- 4.6 The Council understands that most landlords and property managers want to comply with the law. The Council will continue to publish information that will support private sector housing duty holders to achieve compliance with the law and help tenants to understand their rights.
- 4.7 The issuing of a CPN will follow the Council's enforcement policy and as such a graduated approach will be taken. The landlord will have received prior warning of their failure to comply that may take the form of an (in)formal warning or Remediation Notice - which will be in addition to the statutory "Notice of Intention to Issue a Civil Penalty".
- 4.8 The person who is served a civil penalty notice can appeal both the amount of penalty and the issuing of the notice to the Residential Property Tribunal.

5. Consultations

- 5.1 The proposed charging structure has been sent for consultation to the HMO (Houses in Multiple Occupation) Stakeholder Group, which has representatives from the University of Surrey, local residents, groups, letting agents, landlords, the Academy of Contemporary Music and the Council. No responses were received to the consultation letter sent.

6. Equality and Diversity Implications

- 6.1 There may be circumstances where officers will be working with landlords and agents for whom English is not their first language. Where necessary, appropriate translation services will be used to ensure the requirements are fully understood. Any equality implications will be taken into account when individual decisions are made to enforce duties under the Regulations or impose financial penalties.

7. Financial Implications

- 7.1 There are no additional resource implications as a result of this legislation.
- 7.2 The amount of a civil penalty is not prescribed and each penalty notice is to be assessed case by case. The framework in **Appendix 1** was generated by the MHCLG and is designed to enable officers to identify the most appropriate level of fee, based on the severity of the offence.
- 7.3 Where a civil penalty charge is recovered, the Council can use the money to fund private sector housing enforcement work and therefore there is no additional expenditure resulting from implementing the new charging structure. However, such charges are unlikely to be regular or significant. These additional funds will enable the authority to continue to enforce housing standards in the borough. CPNs will enable a simple and effective deterrent to those landlords operating outside of the law.
- 7.4 Recovering debt from unpaid CPNs has been covered by the MHCLG guidance for Local Authorities. Where the landlord fails to pay a civil penalty, the local housing authority should refer the case to the county court for an order of that

court. If necessary, the local housing authority should use county court bailiffs to enforce the order and recover the debt.

8. Legal Implications

- 8.1 The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 extend the enforcement powers available to the Council to regulate housing conditions in the private rented sector.
- 8.2 The Regulations allow the Council to serve remedial notices where electrical safety standards are not met and the Council may carry out works in default where remedial notices are not complied with.
- 8.3 Failure by private landlords to comply with the duties in the Regulations is not a criminal offence. The Council may however issue a civil financial penalty where it is satisfied beyond reasonable doubt that the duties have been breached. There is a right of appeal against any financial penalties imposed. Implementation of a charging structure will assist the Council to make reasoned decisions which can be defended on appeal.
- 8.4 All enforcement action will be taken in accordance with the Council's adopted regulatory enforcement policy.

9. Human Resource Implications

- 9.1 There are no human resource implications.

10. Summary of Options

- 10.1 The Council has a statutory duty to enforce the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 . It now has the option of imposing financial penalties to enforce breaches of landlord's duties under the new regulations. . There is no specific statutory guidance applicable to financial penalties under the Regulations, however officers recommend following the guidance issued in respect of Civil Penalties under the Housing and Planning Act 2016. The following options are available:

- Option 1 - To implement the civil penalty charging structure, which has been produced in accordance with the statutory guidance.
- Option 2 - Not to utilise the power to issue civil penalties and to continue without enforcement provisions.

- 10.2 Option 1 is preferred, as imposing financial penalties will be the only method to regulate and enforce the new regulations. The option of issuing penalties will be both proportionate and effective in dealing with breaches. The ability to retain any penalty will help to offset our enforcement costs.

11. Conclusion

- 11.1 The legislation adds to evolving tools that exist to improve housing standards in the private rented sector. It is expected that the majority of landlords in the

Borough will meet their obligations and responsibilities. Where there is non-compliance, officers will continue to use a combination of informal and formal means to secure compliance in accordance with the Council's Regulatory Enforcement Policy.

- 11.2 The new powers will be a useful enforcement option in appropriate circumstances.

12. Background Papers

[Housing and Planning Act 2016](#)

[Electrical Safety Standards in the Private Rented Sector \(England\) Regulations \(2020\)](#)

[Civil Penalties under the Housing and Planning Act 2016 - Guidance for Local Authorities](#)

[Corporate Regulatory Enforcement Policy](#)

13. Appendices

Appendix 1: Housing and Planning Act 2016 Civil Penalties Fee Structure