
Cabinet

16th February 2021

Name of Cabinet Member:

Cabinet Member for Policing and Equalities – Councillor A S Khan
Cabinet Member for Housing and Communities – Councillor D Welsh

Director Approving Submission of the report:

Director of Streetscene and Regulatory Services

Ward(s) affected:

All

Title:

Review of Private Sector Housing Enforcement Policy 2018

Is this a key decision?

No – although this matter affects all wards in the city, the impact is not expected to be significant.

Executive Summary:

The provision of good quality housing for Coventry residents is a priority for the City Council.

The adopted Coventry Local Plan 2016 details how Coventry City Council will meet the future house building needs up to 2031. There is also a need to consider the city's existing housing stock and in particular the quality of homes provided via the Private Rented Sector (PRS).

Government have also legislated to provide local authorities with additional powers to tackle poor quality homes in the PRS. This report therefore seeks approval of the attached "Policy for Enforcing Standards in Private Sector Housing 2021".

The new powers available to the City Council from a variety of different pieces of legislation are detailed in the Policy at Appendix 1 to the report. If adopted this policy will act as a framework for all future housing enforcement activities.

Recommendations:

The Cabinet is requested to:

1. Consider and approve the amended "Policy for Enforcing Standards in Private Sector Housing 2021" attached as Appendix 1 to the report.
2. Authorise the Director of Streetscene and Regulatory Services to implement the policy as detailed in the report and delegate the power to the Strategic Lead for Regulation to issue, use, amend and enforce civil penalties and all other enforcement powers under the Housing Act 2004 (as amended), the Housing and Planning Act 2016 (and subsequent Regulations and Orders), the Consumers, Estate Agents and Redress Act 2007, Redress Schemes for Lettings Agency Work and Property Management Work (requirement to belong to a Scheme etc.) England) Order 2014, the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019, and the Energy Performance of Buildings (England and Wales) Regulations 2012 as amended.

List of Appendices included:

Appendix 1 - Policy for Enforcing Standards in Private Sector Housing 2021 and appendices

Appendix 2 - Equality and consultation analysis form.

Background papers:

None

Other useful documents:

Housing Act 2004.

Housing and Planning Act 2016.

Tenant Fees Act 2019

Guidance on Tenant Fees Act 2019

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819633/TFA_Statutory_Enforcement_Guidance_190722.pdf

Minimum Energy Efficiency Standards Guidance <https://www.gov.uk/guidance/domestic-private-rented-property-minimum-energy-efficiency-standard-landlord-guidance>

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

A guide to energy performance certificates for the marketing, sale and let of dwellings

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/671018/A_guide_to_energy_performance_certificates_for_the_marketing_sale_and_let_of_dwellings.pdf

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No

Will this report go to Council?

No

Report title: Review of Private Sector Housing Enforcement Policy 2018

1. Context (or background)

- 1.1. In recent years, the Government have introduced a patchwork of legislation designed to strengthen consumer protection for tenants and tackle rogue landlords.
- 1.2. This included new laws requiring letting and managing agents in England to belong to a redress scheme. These include providing protections for tenants against retaliatory eviction.
- 1.3. The Housing and Planning Act 2016, which introduced civil penalties, extended rent repayment orders and provided local authorities with powers to ban the most serious criminal landlords through the introduction of banning orders.
- 1.4. Civil penalties for certain housing offences came into force on 6 April 2017. A civil penalty can be imposed as an alternative to prosecution and the Council adopted its policy relating to this legislation in 2018.
- 1.5. The Government has recently introduced further powers to implement civil penalties under the following:
 - a) The Tenant Fees Act 2019
 - b) The Domestic Minimum Energy Efficiency Standards (MEES)
 - c) The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 under Section 122 & 123 of the Housing and Planning Act 2016
 - e) Consumers, Estate Agents and Redress Act 2007
 - f) Redress Schemes for Lettings Agency Work and Property Management Work (requirement to belong to a Scheme etc.) England) Order 2014
 - g) The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019
 - h) The Energy Performance of Buildings (England and Wales) Regulations 2012 as amended
- 1.6. In order for the Council to use these powers, it must publish a policy setting out how it will implement these powers in relation to properties in the PRS.
- 1.7. Coventry City Council is taking this opportunity to review its policy and to set out how it will implement the powers given in the above legislation.
- 1.8. This will be managed within existing resources and compliments and supports the work carried out under additional and mandatory licensing schemes.
- 1.9. A copy of the revised policy is attached as Appendix 1 to the report.

2. Options considered and recommended proposal

- 2.1. **Do nothing** - This option is not recommended because this would prevent the use of the full suite of civil penalties in relation to PRS available to the City Council. This could affect the Council's ability to help protect the health, safety and welfare of tenants in Coventry.
- 2.2. **Approve the policy – This is the preferred option.** In order for the Council to proceed with implementing the powers provided under the Housing and Planning Act 2016 it must first have published a policy. Without this the Council is not able to use the powers relating to civil penalties for enforcing the Electrical Safety Regulations. Therefore, the Cabinet are requested to approve the policy for Enforcing Standards in Private Sector Housing and adopt the approach for dealing with the implementation of civil penalties under the Tenant Fees Act, Redress Schemes, Client Money Protection and Energy Performance legislation as detailed in the report.

3. Results of consultation undertaken

- 3.1. The enforcement measures open to the Council are set out in legislation and consultation is unnecessary for the Council to be able to use them.

4. Timetable for implementing this decision

- 4.1. The policy must be published first to allow the Council to implement civil penalties. The implementation can commence once the report has been approved and the policy is published. It is proposed that the policy will take effect from the date it is approved by Cabinet.

5. Comments from the Director of Finance and the Director of Law and Governance

5.1. Financial implications

The financial implications associated with the recommendation are limited to the employee costs associated with implementing the policy and any costs involved in publishing the policy document. These costs will be managed within existing resources.

Enforcement authorities will be able to retain the money raised through financial penalties with this money reserved for future housing enforcement in the private rented sector as set out in statutory guidance.

5.2. Legal implications

Tenant Fees Act

The Tenant Fees Act 2019 prevents landlords or agents from requiring tenants in the private rented sector in England, or any persons acting on behalf of a tenant or guaranteeing the rent, to make certain payments in connection with a tenancy.

The ban on tenant fees applies to new or renewed tenancy agreements signed on or after 1 June 2019.

On 1 June 2020, the Act applied to all applicable tenancy agreements regardless of the date when the agreement was entered into.

A breach of the legislation will usually be a civil breach with a financial penalty of up to £5,000. However, if a further breach is committed within five years of the imposition of a financial penalty or conviction for a previous breach, this will be a criminal offence.

Statutory guidance has been produced for enforcement authorities.

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

With effect from the 1 April 2018, the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 were amended by the “MEES Regulations” – Minimum Energy Efficiency Standards.

As of the 1st April 2018 there is a requirement for any properties rented out in the private rented sector to have a minimum energy performance rating of E on an Energy Performance Certificate (EPC). The regulations came into force initially for new lets and renewals but extended to existing tenancies on the 1st April 2020.

From 1 April 2020 the prohibition on letting F and G properties will extend to all relevant properties, even where there has been no change in tenancy.

If the Council believes a landlord has failed to fulfil their obligations under the MEES Regulations, they can serve the landlord with a compliance notice. If a breach is confirmed, the landlord may also receive a financial penalty.

While most properties in the private rented sector meet this level comfortably, for some landlords this means that they will no longer be able to rent out their property if it has a rating of F or G.

Electrical Safety Standards in the Private Rented Sector

The Electrical Safety Standards (England) Regulations 2020 have been made under Section 122 of the Housing and Planning Act 2016 which provides that the Secretary of State may by regulations impose duties on a private landlord of residential premises in England for the purposes of ensuring that electrical safety standards are met during any period when the premises are occupied under a tenancy.

Landlords already have to keep the electrical installations in their rented properties safe and in working order. Most landlords already do this.

Under these Regulations, landlords must now get the electrical installation checked at least every 5 years by a properly qualified person. The electrical installation must be safe, and the landlord must give the tenant proof of this.

This is similar to the way landlords must carry out gas safety checks every year.

The date from which 'new specified tenancies must comply will be 1 July 2020 and there will be a nine-month transition period to 1 April 2021 for existing tenancies.

If a landlord does not comply with the requirements of the regulations, then the Council can serve a remedial notice requiring the landlord to carry out the necessary works or even do the works themselves if necessary. The Council also has the power to impose penalties of up to £30,000 if a landlord does not comply with their legal obligations under the Regulations.

The Council will not be able to undertake its role of regulating the PRS through the use of these powers unless it has approved and published its policy.

The regulatory function in relation to the policy will be carried out by the Regulation Service through officers exercising delegated powers. The one exception is the approval of the policy statement, which must be approved by Coventry City Council.

The Council is required to have regard to any current Government guidance when carrying out any regulatory activities under the Housing and Planning Act 2016 and the Tenant Fees Act 2019.

The Consumers, Estate Agents and Redress Act 2007 requires Estate Agents and the Redress Schemes for Lettings Agency Work and Property Management Work (requirement to belong to a Scheme etc.) England) Order 2014 requires letting agents engaging in letting agency or property management work relating to private accommodation to be a member of a redress scheme for dealing with complaints in connection with that work.

Such businesses must display:

- a statement that they are a member of a redress scheme
- the name of the redress scheme

Failure to comply can incur a fixed penalty charge.

The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 requires those who engage in letting agency or property management work to belong to an approved client money protection scheme. They must display or publish a statement indicating that the agent is a member of a client money protection scheme and providing the name of the scheme. A certificate issued by the scheme must be displayed at premises where a client visits, on the agent's website, and should provide a copy free of charge when reasonably requested. The agent should notify its clients within 14 days of any changes in membership including when membership is revoked. Failure to comply can incur a fixed penalty charge.

The Energy Performance of Buildings (England and Wales) Regulations 2012 as amended requires a seller or a landlord to obtain an Energy Performance Certificate (EPC) when selling or offering to rent a property. Before a property is marketed an Estate Agent or Letting Agent should take reasonable efforts to ensure a valid EPC has been obtained. The energy performance indicator of the building as shown on the EPC, for example, C, must be stated in any advertisements in the commercial media. Failure to comply can incur a fixed penalty charge.

6. Other implications

6.1. How will this contribute to achievement of the Council's Plan?

The Health and Wellbeing Strategy 2016-19 recognises that creating health, wealth and happiness requires more than simply managing people's health problems.

The health and wealth being of people can be improved if people have jobs, good housing, and are connected to families and communities.

The Council's Housing Strategy 2013-2018 affirms the Council's view that housing plays a crucial role in the economic growth of the City. The ambition for Coventry is *"to ensure decent homes, housing choice and support for Coventry citizens"* through various themes including:

- Increase the supply, choice and quality of new housing;
- Prevent and tackle homelessness;
- Strive for a healthier and more sustainable City by improving the quality and use of stock; and
- Encourage balanced, stable and sustainable communities.

The Housing Strategy links into the Council Plan and the Health and Wellbeing Strategy by contributing to the delivery of the key corporate priorities but also in supporting the local economy through ensuring communities have stable and safe places to live.

6.2. How is risk being managed?

If the Policy for Enforcing Standards in Private Sector Housing is not approved, the City Council will not be able to perform its full regulatory functions through the use of civil penalties under the Tenant Fees Act 2019, MEES, EPCs, Client Money Protection requirements, membership of a redress scheme and the Housing and Planning Act 2016.

The policy will inform decisions taken by regulatory services that will have an impact on the interests of private landlords, agents and tenants. The policy follows the principles of enforcement set out in the Council's overarching Public Safety and Housing Enforcement Policy 2017 and therefore reflects the need to respect the relevant rights given by the Human Rights Act.

Decisions of regulatory services are open to challenge through the First Tier Property Tribunal and in certain cases the Magistrates Court and beyond. The policy is designed to ensure our compliance with legislation and statutory guidance, minimising the risk of legal challenge.

6.3. What is the impact on the organisation?

The adoption of the policy should have limited impact on the organisation. There is no human resource, financial or ICT implications as cases which are likely to be subject to civil penalties will be investigated using current resources. There is a potential positive impact, in that any income received from civil penalties provides an opportunity to undertake further proactive work and statutory functions in relation to the Council's enforcement activities covering the PRS.

6.4. Equalities / EIA

The Policy for Enforcing Standards in Private Sector Housing makes links to the Council's Equality and Diversity Policies and an Equalities Assessment exists for regulatory activities. A specific Equalities Assessment has been completed for this report and is attached at Appendix 2 to the report.

6.5. Implications for (or impact on) climate change and the environment?

The review of the policy provides powers for the Council to address issues relating to minimum standards of energy efficiency that will contribute toward the climate change agenda.

6.6. Implications for partner organisations?

The Policy for Enforcing Standards in Private Sector Housing contributes towards the work of the Community Safety Partnership.

The effective operation of the policy by regulatory services has an impact on the quality and management of properties in the PRS and on the co-existence of rented properties with local residents and communities.

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Michelle Salmon	Governance Services Officer	Law and Governance	6 th January 2021	6 th January 2021
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Andrew Walster	Director of Streetscene and Regulatory Services	-	20 th November 2020	1 st December 2020
Councillor A Khan	Cabinet Member for Policing and Equalities	-	11 th January 2021	14 th January 2021
Councillor D Welsh	Cabinet Member for Housing and Communities	-	11 th January 2021	14 th January 2021

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