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**25 MARCH 2021**

**DRAFT PRIVATE SECTOR HOUSING ENFORCEMENT AND LICENSING POLICY**

1. Summary

- 1.1 The Private Sector Housing Enforcement and Licensing Policy sets out the general principles, relevant legislation and guidance, which is applied in relation to enforcement action taken by the Council in respect of private sector housing in the borough of Dartford.
- 1.2 Operational and legislative changes have been introduced, and therefore, the Policy has been revised and updated to reflect these changes.
- 1.3 The changes include a new piece of legislation on the powers to enforce the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, including a statement of principles for the issuing of financial penalties under the Regulations. There is also a policy update with inclusion of a statement of principles for the issuing of financial penalties under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended).
- 1.4 This report sets out the major changes to the Private Sector Housing Enforcement and Licensing Policy and presents a revised draft Policy (attached at Appendix A) to replace the previous version.

2. RECOMMENDATIONS

- 2.1 That the draft Private Sector Housing Enforcement and Licensing Policy, attached at Appendix A to the report, be approved.
- 2.2 That the Strategic Director (External Services) be granted delegated authority to approve any in-year amendments to the Policy as required.

3. Background and Discussion

- 3.1. The Council's current Private Sector Housing Enforcement and Licensing Policy has been operational since September 2018. The Policy is designed to:
- Set out the legal requirements and the Council's approach to enforcement, including charges that may be imposed for enforcement
  - Enable the Council to make reasoned and consistent decisions regarding enforcement
  - Inform the public of the principles by which enforcement action is determined and subsequently taken
- 3.2. The Policy (attached at Appendix A), has been reviewed and this report presents the proposed key updates to the Policy.

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- 3.3. The Policy has been updated to include a new procedure on the powers to enforce the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (as set out in Annex 11, page 80 of the Policy). There is also a statement of principles for the issuing of financial penalties under the Regulations (as set out in Annex 5, page 48 of the Policy).
- 3.4. The procedure on enforcing the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended) has been updated (as set out in Annex 8, page 64 of the Policy). There is also a new statement of principles for the issuing of financial penalties under the Regulations added to the Policy (as set out in Annex 9, page 72 of the Policy).
- 3.5. The Annexes to the Policy have also been re-arranged with links provided for ease of reference.

4. Electrical Safety Standards

- 4.1. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 came into force on the 1 June 2020. The Regulations place mandatory duties on private landlords to maintain electrical safety standards in privately rented homes.
- 4.2. The Regulations require landlords to:
- Ensure national standards for electrical safety are met;
  - Ensure all electrical installations in their rented properties are inspected and tested by a qualified and competent person at least every 5 years;
  - Obtain a report from the person conducting the inspection and test which gives the results and sets a date for the next inspection and test;
  - Supply a copy of this report to the existing tenant within 28 days of the inspection and test;
  - Supply a copy of this report to a new tenant before they occupy the premises;
  - Supply a copy of this report to any prospective tenant within 28 days of receiving a request for the report;
  - Supply the Council with a copy of this report within 7 days of receiving a written request for a copy;
  - Retain a copy of the report to give to the inspector and tester who will undertake the next inspection and test;
  - Where the report shows that further investigative or remedial work is necessary, complete this work within 28 days or any shorter period if specified as necessary in the report;
  - Supply written confirmation of the completion of the further investigative or remedial works from the electrician to the tenant and the Council within 28 days of completion of the works.
- 4.3. Annex 11 of the draft Private Sector Housing Enforcement and Licensing Policy sets out the enforcement procedure in respect of the Regulations.
- 4.4. Enforcement process – If there are reasonable grounds to believe that a landlord is in breach of one or more of their duties under the Regulations, the Council has

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a mandatory duty to serve a Remedial Notice on the landlord. The Remedial Notice will specify the remedial action necessary and require that the action be completed within 28 days. A landlord may make written representation against such a notice within 21 days.

- 4.5. If a landlord does not comply with a Remedial Notice or if urgent remedial work is required, the Council has discretionary powers to arrange for an authorised person to carry out this work and recover costs reasonably incurred in taking action to carry out remedial work.
- 4.6. If the Council is satisfied, beyond reasonable doubt, that a landlord has breached a duty under the Regulations, it has the power to impose a financial penalty of up to £30,000.
- 4.7. Before issuing a financial penalty on a landlord, the Council will serve a Notice of Intent on the landlord. A landlord may make written representations against the notice within 28 days.
- 4.8. If after receiving any written representations (if any), the Council decides that it remains in the public interest to impose a financial penalty, the Council will serve a Final Notice to the landlord imposing the penalty, which will require the penalty to be paid within 28 days beginning with the day after that on which the notice was served.
- 4.9. Landlords have the right of appeal to the First-tier Tribunal (Property Chamber) for appeals relating to remedial action, urgent remedial action, recovery of costs and financial penalties.
- 4.10. Statement of principles for the issuing of financial penalties – The power to impose a financial penalty is a discretionary one, for which the amount of the financial penalty can be up to a maximum set by the Regulations. In order to make full use of all available enforcement measures, the use of financial penalties would strengthen the Council's ability to tackle rogue landlords and improve the electrical safety of private rented sector housing in the borough.
- 4.11. Government guidance advises that local housing authorities should develop and document their own policy on how they determine appropriate financial penalty levels. Generally, it is expected the maximum amount to be reserved for the very worst offenders. The actual amount levied in any particular case should reflect the severity of the offence as well as taking account of the landlord's previous record of offending. When developing their policy, local housing authorities are advised to consider the policy they previously developed for Civil Penalties under the Housing and Planning Act 2016 and the guidance published by the Government.
- 4.12. The existing statement of principles for the issuing of Civil Penalties at Annex 5 of the draft Private Sector Housing and Enforcement Licensing Policy was already based on the Housing and Planning Act 2016 and guidance; and, has consequently been updated to include financial penalties under the Electrical Safety Standards, thereby combining the methodology for applying both types of penalty into one overarching statement.

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4.13. The factors that will be considered in the assessment of the level of penalty to be levied include:

- Severity of the offence
- Culpability and track record of the offender
- The harm caused to the tenant (actual and potential)
- Punishment of the offender (the penalty should be proportionate to the offence and have a real economic impact)
- Deter the offender from repeating the offence;
- Deter others from committing similar offences;
- Remove any financial benefit the offender may have obtained as a result of committing the offence.

5. Minimum Energy Efficiency Standards

5.1. The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended) are designed to tackle the least energy efficient properties in England and Wales – those rated F or G on their Energy Performance Certificate (EPC). The Regulations establish a minimum standard of EPC band E for domestic privately rented property.

5.2. The Regulations initially applied to all specified privately rented tenancies starting or renewing from April 2018. From April 2020, the Regulations also apply to all other specified privately rented tenancies (i.e. those on continued tenancies).

5.3. Under the Regulations, all specified privately rented properties with an EPC rating of F or G is defined as 'sub-standard and non-compliant' and the private landlord must no longer let the property unless it is exempt by the Regulations. Relevant energy efficiency improvements are those that have been recommended for the property; and can be installed using third party funding or at a cost cap of £3,500 including VAT if self-funded by the landlord (or there are none that can be made).

5.4. Where a valid exemption applies, landlords must register the exemption on the Government PRS Exemptions Register and provide the relevant supporting documentation.

5.5. Annex 8 of the draft Private Sector Housing Enforcement and Licensing Policy sets out the existing enforcement procedure in respect of the Regulations. This has been updated in draft to provide more detail on the process, and to reflect changes made to the Regulations in March 2019, where a capped landlord's contribution requirement was introduced in the event of the non-availability or insufficiency of third party funding.

5.6. Enforcement process – The Council will issue a Compliance Notice where it believes that a landlord may be in breach of the prohibition on letting a sub-standard property under the Regulations (currently or during the past 12 months). The Compliance Notice requests information from that landlord which will help the Council to decide whether that private landlord has in fact breached the prohibition. The Compliance Notice may also require the landlord to register copies of the requested information on the PRS Exemptions Register.

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- 5.7. The Council has the power to check for different forms of non-compliance with the Regulations including:
- Where the property is sub-standard and let in breach of the Regulations;
  - Where the landlord has registered any false or misleading information on the PRS Exemptions Register;
  - Where the landlord has failed to comply with a Compliance Notice
- 5.8. The Council may issue a financial and/or publication penalty on a private landlord who breaches a duty under the Regulations. Where the Council decides to impose a financial penalty, it has the discretion to decide on the amount of the penalty, up to maximum limits set by the Regulations, as follows:
- Renting out a non-compliant property for less than three months – up to £2,000 and/ or the publication penalty
  - Renting out a non-compliant property for three or more months – up to £4,000 and/or the publication penalty
  - Providing false or misleading information on the PRS Exemptions Register – up to £1,000 and/or the publication penalty
  - Failing to comply with a Compliance Notice – up to £2,000 and/or the publication penalty
- 5.9. If the Council decides to impose a financial and/or publication penalty, it will serve a Penalty Notice on the landlord. A landlord has the right to request a review of the Council's decision to serve a Penalty Notice.
- 5.10. If on review the Council decides to uphold the Penalty Notice, the landlord may then appeal to the First-Tier Tribunal Property Chamber (Residential Property) (General Regulatory Chamber) against that decision.
- 5.11. Statement of principles for the issuing of financial penalties – The Energy Efficiency Regulations and its enforcement process has been set out in the Private Sector Housing Enforcement and Licensing Policy since 2018. However, the power to impose a financial penalty is a discretionary one to which the amount of the financial penalty can be up to a maximum set by the Regulations.
- 5.12. In order to make full use of all available enforcement measures, the issuing of such financial penalties would require a policy to ensure that transparency, proportionality, fairness and consistency is applied in its application. Therefore, Annex 9 of the draft Private Sector Housing Enforcement and Licensing Policy sets out the statement of principles for the issuing of financial penalties under the Regulations.
- 5.13. The factors that will be considered in the assessment of the level of penalty to be levied include whether it is the landlord's first breach and whether there are multiple breaches.

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5.14. There is an early payment reduction of 25% in the amount of financial penalty payable if the landlord can demonstrate an early acceptance of guilt by paying the penalty charge within 21 days.

5.15. If there are repeat breaches the Council may use its discretion to apply the full penalty with no reduction for early payment.

6. Consultation on the draft Private Sector Housing Enforcement and Licensing Policy

6.1. As the Council is under a legal duty to enforce the law and the processes are largely prescribed by the Regulations, no formal consultation is required as a result of the updates to the Private Sector Housing Enforcement and Licensing Policy in respect of the Electrical Safety Standards and the Energy Efficiency Standards.

7. Relationship to the Corporate Plan

7.1. The draft Policy relates to the Corporate Plan strategic aims of facilitating quality, choice and diversity in the housing market, assisting in meeting housing need in Dartford and delivering high quality services to service users; and, creating strong and self-reliant communities.

7.2. The Policy also related to the strategic objective to provide high quality housing services and to strive to improve the quality and condition of the borough's private rented housing sector.

8. Financial, legal, staffing and other implications and risk assessments

Financial Implications	<p>Under the Electrical Safety Regulations, the proceeds of the financial penalties can be re-used to fund private rented sector related enforcement work. Any amount that is not used in this way must be paid into the Consolidated Fund, the Government's general bank account at the Bank of England.</p> <p>Under the Energy Efficiency Regulations, the proceeds of the financial penalties can be re-used to fund and support the work on compliance and enforcement.</p>
Legal Implications	<p>The Electrical Safety Regulations were made under the Housing and Planning Act 2016 for the purposes of introducing new requirements for electrical safety standards in the private rented sector. The Energy Efficiency Regulations were made under the Energy Act 2011 for the purpose of introducing new requirements for energy efficiency in the private rented sector. The enforcement of both of the above Regulations helps to support the Council's general duty under section 3 of the Housing Act 2004 to keep the housing conditions in its area under review and identify any action that needs to be taken.</p>

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Public Sector Equality Duty	A Customer Access Review has been carried out on the draft Private Sector Housing Enforcement and Licensing Policy – attached at Appendix B. Members are reminded to have due regard to the Public Sector Equality Duty and the attached Customer Access Review in reaching its decisions on the recommendations in this report.
Staffing Implications	The enforcement of the Regulations will be managed within existing staff resources in the Private Sector Team. In terms of the collection of unpaid financial penalties, this would require staff resource from the Finance and Legal Teams.
Administrative Implications	As set out in this report.
Risk Assessment	<p>Failure to ensure compliance with legislation and relevant standards may compromise the health and safety of the residents of, and visitors to, private sector residential properties. An updated policy is required to reflect current legislation and reduces the risk of any challenge.</p> <p>Another risk will be an inability to collect the income from the financial penalties imposed. This risk will be mitigated by obtaining legal and financial resources as required in order to deliver the appropriate options for debt recovery for each case.</p> <p>The main legal risk from the adoption of these powers will be successful appeals from landlords. This risk will be mitigated by taking legal advice upon the processes to be adopted and a comparison of best practice with other local authorities. Officers will receive necessary training and instruction and will be guided by procedures that will be regularly reviewed and updated.</p>
Crime and Disorder duty	None

9. Details of Exempt Information Category

Not applicable

10. Appendices

Appendix A – Draft Private Sector Housing Enforcement and Licensing Policy  
Appendix B – Customer Access Review

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BACKGROUND PAPERS

<u>Documents consulted</u>	<u>Date / File Ref</u>	<u>Report Author</u>	<u>Section and Directorate</u>	<u>Exempt Information Category</u>
		Sarah Williamson (01322) 343470	Housing/ External Services	N/A