

CABINET

Monday, 13 September 2021

PRIVATE SECTOR HOUSING ENFORCEMENT POLICY

Report of the of the Executive Head of Health and Wellbeing

Recommendation(s)

It is recommended that Cabinet:

- (1) adopt the Energy Act 2011 and so by doing, also the Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015 (as amended) made under it.
- (2) adopt the Energy Act 2013 and so by doing, also the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 made under it.
- (3) adopt the Enterprise and Regulatory Reform Act 2013 and so by doing, also the Redress Schemes for Letting Agency Work and Property Management Work (requirement to belong to a scheme etc.) (England) Order 2014 made under it.
- (4) delegate to the Executive Head of Health and Wellbeing all powers under the Energy Act 2011, Energy Act 2013 and the Enterprise and Regulatory Reform Act 2013 and subsequent regulations and authorise the Executive Head of Health and Wellbeing to delegate the discharge of those powers to Specialists of suitable experience, competency, and seniority.
- (5) approve the penalty charging structures in appendix 1 (appendix 5 of the policy) which is proposed to be used for any charges issued under the above pieces of legislation; and
- (6) authorise that the annual review and any minor amendments to be made to the matrix be delegated to the relevant Portfolio Lead and the Executive Head of Health and Wellbeing.

Summary

The proposed penalty charging structures and statement of principles contained within the Private Sector Housing (PSH) Enforcement Policy at appendix 1 outlines when and how penalty charges will be utilised in the execution of the Council's statutory duty.

It is intended to bring in the provisions made available to the Council that have previously been overlooked. It ensures the ability of the Council to meet its statutory obligations and

transparency around the use of these powers and penalty charges that may be issued.

Statutory Powers

Primary:

- Energy Act 2011
- Energy Act 2013,
- Enterprise and Regulatory Reform Act 2013

Secondary:

- Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015
- Smoke and Carbon Monoxide Alarms (England) Regulations 2015

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014

Strategic Implications

1. This proposal outlines how the Council will meet its statutory duty. The quality and security of housing is a significant determinant of a person's physical and mental health and wellbeing and those in socio-economic deprivation often have limited access to accommodation of an appropriate standard. The health and wellbeing of all residents in the borough is a strategic priority, and this policy will contribute towards the following objectives:
 - To enable health and wellbeing
 - To tackle health inequality and deprivation

Introduction

2. There is a statutory duty placed on the Council under the Smoke and Carbon Monoxide Alarms (England) Regulations 2015 to issue a remedial notice where it is satisfied a landlord is failing, or has failed, to comply with one or more of the regulations, and to undertake remedial action themselves if the landlord does not comply with any notice served.

There is also a statutory duty placed on the Council to enforce the requirements in their area of

- the Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015 (as amended); and
- The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014.

This proposal brings in the enforcement options and the discretion to issue penalty charges in respect of non-compliance under these pieces of

legislation. By doing so the Council is availing itself of all possible powers to ensure the most appropriate and effective means of action can be used.

The matrices proposed for the levels of fine under each piece of legislation are based on the formats of other matrices already implemented by many local authorities across the country and reflect the maximum penalty values as outlined in their respective legislations. It also takes on board the guidance issued by the Ministry of Housing, Communities and Local Government (MHCLG) which outlines the requirement for a Council to have a clear statement of principles as to how the levels of fine are calculated.

Proposed Policy

3. The main purpose is:

- To officially bring in the enforcement powers of the Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015 (as amended, the Smoke and Carbon Monoxide Alarms (England) Regulations 2015 and The Redress Schemes for Letting Agency Work and Property Management Work (requirement to belong to a scheme etc.) (England) Order 2014 and thereby ensure that the Council is able to meet its statutory obligations under them.
- To ensure transparency and clarity around the charging structure for determining a fine amount under these pieces of legislation.

Consultation

4. The proposed monetary charges were considered a relatively small addition to the existing PSH Enforcement Policy and the maximum amount under the new potential charges is significantly less than those already approved by Cabinet of being levied under other powers already in the PSH Enforcement Policy. It was therefore considered that an external consultation was not necessary in this instance.

Internal consultation was made with the Legal Services team.

Financial Implications

5. There is no immediate financial implication from the approval of this policy.

There may be some additional income generated through the issue of monetary penalties. It should be noted however, that it is expressly stated by government that any money received by this means are to be ringfenced for use back in relation to housing enforcement work.

Any monetary penalty charges will only be issued where there is sufficient evidence and legal justification to do so. For this reason, it should not be viewed as a means of income generation.

Risk Assessment

6. Failure to adopt this proposal will mean the Council is failing to meet its statutory duties under the legislation. Additionally, it will not be utilising all of the legislative provisions available to improve housing conditions for the benefit of Eastleigh residents.

Equality and Diversity Implications

7. The Equality Act is relevant to the decision in this report as the decision relates to advancing equality of opportunity.

The Council is committed to ensuring good housing conditions for its residents. Approval of the policy will result in anticipated improvement for people in social deprivation and/or those with protected characteristics, particularly for age and race. Residents in private rented accommodation are more likely to be younger, with an increasing number over the last 10 years of households with children in this tenure type. There is also a larger proportion of EU citizens resident in the UK using private rented accommodation in comparison to other tenures.

A full Equality Impact Assessment (EIA) has not been carried out because it is not considered proportionate given that the policy mostly covers statutory duties which the Council is required to carry out.

Climate Change and Environmental Implications

8. This policy does not have any direct impact on climate change or environmental implications.

Conclusion

9. The Council has a statutory duty to keep housing conditions under review within the Borough and take appropriate action as needed. By adopting this policy, it ensures clarity for the public and Councillors on what they can expect, as well as ensuring staff have the full complement of provisions within the legislation available to them when undertaking their work.

SENIOR DFG AND HOUSING ENFORCEMENT OFFICER

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Appendices Attached:

- Appendix 1 - Updated Private Sector Housing Enforcement Policy

LOCAL GOVERNMENT ACT 1972 - SECTION 100D

The following is a list of documents which disclose facts or matters on which this report or an important part of it is based and have been relied upon to a material extent in the preparation of this report. This list does not include any published works or documents which would disclose exempt or confidential information.

List Background Papers: None.