

Classification	Item No.
Open	

Meeting:	Cabinet
Meeting date:	30 th June 2021
Title of report:	The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
Report by:	Councillor Claire Cummins
Decision Type:	Key Decision
Ward(s) to which report relates	All

Executive Summary:

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (referred to as 'the regulations') came into force in June 2020 and as of yet, have not been adopted and implemented by the Council. In order to meet its statutory obligations, the Council must adopt and implement the regulations into their enforcement policy and working procedures.

The regulations place a duty on private landlords to ensure that all electrical installations in the private rented sector are safe for continued use by checking compliance with the relevant electrical safety standards.

The Council has a statutory duty under the regulations, to serve a private landlord with remedial notices where they are in breach of their duties under regulation 3.

The regulations provide the Council with powers to ensure compliance, including carrying out works in default and enforcement through the issuing of civil penalties up to £30,000 for breach of their duties under the regulations.

This report seeks to outline the regulations and inform Cabinet how the Council propose to enforce against private Landlords who breach their duties under regulations.

Recommendation(s)

That:

- 1- Cabinet adopt and implement the regulations in order to allow the Council to carry out its statutory function in relation to electrical safety standards in the private rented sector;
- 2- Agree to adopt the same process of issuing and determining levels of civil penalties for the offences in the regulations, in line with the previously agreed Civil Financial Penalty Policy adopted by Cabinet on 29th July 2020;
- 3- Delegate authority to the Director of Economic Regeneration and Capital Growth to approve minor amendments to the Private Sector Housing Enforcement Policy and the Civil Financial Penalty Policy to reflect the additional regulations and statutory duties.

As a statutory function of the Local Authority, Cabinet must adopt the Regulations so the Council is equipped to tackle rogue Landlords in the private rented sector who fail to meet their obligations as a Landlord. The additional provision to impose a fine up to £30,000 sends a strong message to any rogue Landlord that substandard property conditions and unsafe electrical installations will not be tolerated. Any income from the civil penalty can be attributed towards the cost of the Council taking enforcement action in the private rented sector.

Key considerations

Background

The Council has a vital role to play in ensuring that the private rented sector in Bury is high-quality, safe and healthy. Under The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, the Council has the power to require Landlords to ensure that national standards for electrical safety are met and ensure all electrical installations in their rented properties are inspected and tested every 5 years.

The Regulations came into force on 1st June 2020 and applied to all new tenancies from 1st July 2020. As of 1st April 2021, the regulations now apply to all existing tenancies.

Legislative framework

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, were made under section 122 of The Housing and Planning Act 2016 for the purposes of introducing new requirements for electrical safety in the private rented sector (PRS.) As of 1st April 2021, they apply to all existing tenancies within the PRS.

The regulations do not apply to tenancies where the Landlord is a social housing provider. (Further exemptions do apply and these are detailed in Schedule 1 of the regulations.)

The regulations place duties on a private Landlord. These include:

- To ensure that electrical safety standards are met during any period when the residential premises are occupied under a tenancy, and that every fixed electrical installation is inspected and tested at least every five years by a qualified person;
- To obtain a report which gives the results of the inspection and test, supply that report to each tenant within 28 days, and to the local housing authority within 7 days of a request and retain a copy until the next inspection is due.
- To supply a copy of the last report to any new tenant before occupation, or any prospective tenant within 28 days of a request from the prospective tenant;
- Where the report requires the private Landlord to carry out further investigative or remedial work, the private landlord must undertake such further investigative or remedial work within 28 days or within such lesser time period as specified in the report and
- To obtain and supply written confirmation of completion of such further investigative or remedial work to the tenant and local housing authority.

Where the Council has reasonable grounds to believe a private Landlord is in breach of their duties, the Council has a statutory duty to serve either a remedial or urgent remedial notice under regulations 4 and 10, specifying what action needs to be taken to achieve compliance and when this needs to be achieved by.

The regulations allow for a statutory appeal period against any statutory notice served under the regulations. Private Landlords are able to make written representations to the Council within 21 days in the first instance. Any written representation will be considered on case by case basis.

Private Landlords also have rights to appeal to the First-tier Tribunal. The Tribunal may confirm, quash or vary notices served by the Council.

In the case of non-compliance with urgent or non-urgent remedial notices the Council also has the discretionary power to carry out necessary remedial action. The regulations state the local authority 'may' organise with consent of the tenant, urgent or non-urgent remedial action. Where this is exercised, regulation 8 allows the Council to recover costs reasonably incurred by them taking action.

If there has been no appeal of the notice requiring action, the costs become payable at the end of 21 days, beginning with the day on which the demand for payment was served.

Where the Council is satisfied beyond all reasonable doubt that a private Landlord is in breach of any of their duties under regulation 3, the Council will consider and pursue issuing civil penalties up to £30,000 for a breach of any of duties.

The proposal

It is intended that the Council will embed and utilise this extra legislative power by way of updating its current Private Sector Housing Enforcement Policy and its Civil Financial Penalty Policy, which was adopted by Cabinet on 27th July 2020 through delegation of authority to the Director of Economic Regeneration and Capital Growth to allow the minor amendments to the policies be added.

To ensure a fair and graduated approach to enforcement of the regulations, letters and statutory notices which are intended to be used in the enforcement process have been developed in consultation the Councils Legal Services department.

As the Local Authority and PRS regulator, the Council intends to use its powers, reclaim costs of taking action where necessary and impose civil penalties up to £30,000 or breaches of regulation 3 of the regulations.

It is proposed that any associated costs of taking urgent and non- urgent remedial action will be recovered in line with the regulations and will be based upon an assessment of officer time, the actual costs of any works undertaken and any other overhead required in taking action. The recovery of costs will be pursued within the Councils existing policies and procedures with regard to sundry debtors.

Non statutory guidance for Local Authorities has been produced by the Ministry of Housing, Communities and Local Government for the regulations, which has been taken into consideration.

Alongside the additional statutory duties placed on the Council by the regulations, regulation 11 empowers the Council to issue civil penalties of up to £30,000 for a breach of duties under the regulation 3 as an additional enforcement sanction. The MHCLG guidance states:

'That the Local Authority should develop and document their own policy on how they determine appropriate financial penalty levels. When developing their policy, local housing authorities may wish to consider the policy they previously developed for civil penalties under the Housing and Planning Act 2016.'

It is therefore proposed that the regulations are incorporated into the existing Civil Financial Penalty Policy, which was developed for Housing Act offences under The Housing and Planning Act 2016 to include the penalties under The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020. By doing so, the Council is meeting the obligation set out in the guidance to develop a policy on determining fine levels and is consistent in the way that it issues fines of up to £30,000.

Other alternative options considered

1- To not adopt and incorporate the regulations;

As a piece of legislation, we have a duty to adopt and utilise the powers contained within.

2- To implement the regulations into the Private Sector Housing Teams Enforcement Policy and produce an additional civil penalty policy for offences under The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

This option is not recommended. In order to issue a fine under the regulations, the Council must be certain, beyond all reasonable doubt, that a private Landlord is in breach of their duties under regulation 3 of the regulations. The existing civil penalty policy, adopted by Cabinet on 29th July provides a procedure and fining structure consistent with other GM Local Authorities when issuing fines of the same maximum financial value and burden of proof. There is no need to create an additional policy when once has previously been agreed.

3- To implement the regulations into the Private Sector Housing Teams Enforcement Policy and produce an additional civil penalty policy for offences under The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 with a different fining structure to the current policy.

This option is not recommended as any alteration to the fining structure would cause policies to conflict with each other and could leave the Council open to challenge in the event of any appeal. For clarity and consistency, the fining structure should remain the same as the current civil penalty policy.

Community impact/links with Community Strategy

Bury 2030 Let's Do It defines success as:

'Equal life chances for all our residents across every township and at a level which surpasses the England average. All residents in the Borough will have a healthy life expectancy with the current gap between our Borough and the England average closed by 2026. We will be known as public service thought leaders, working system-wide to tackle the determinants of a quality life.'

Tackling poor and unsafe housing conditions in the PRS will contribute towards the Council's vision of success health of the resident of Bury. Housing is a determinant of health, and in order to ensure that each resident of Bury has an equal life chance, and a life expectancy to reflect that of the national average the Council needs to utilise all legal and enforcement options available to drive standards up within the PRS.

Equality Impact and considerations:

Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*

The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services.

Equality Analysis	<i>Please provide a written explanation of the outcome(s) of either conducting an initial or full EA.</i>
There is no perceived impact of this decision on equality and diversity as Government legislation, providing extra enforcement tools to tackle rogue landlords and substandard property conditions, the Council has a statutory obligation to implement it.	

**Please note: Approval of a cabinet report is paused when the 'Equality/Diversity implications' section is left blank and approval will only be considered when this section is completed.*

Assessment of Risk:

The following risks apply to the decision:

Risk / opportunity	Mitigation
Risk: Non-payment of costs	Costs liable by the private Landlord will be pursued through the Councils existing sundry debtor's procedure.

Risk: 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.	The Council will only seek to claim costs that they have 'reasonably occurred' in taking action. Including, but not limited to; officer time, the actual costs of the works, admin etc.
Risk: Non-payment of civil penalty imposed	Non-payment of civil penalty recoverable through order of the County Court.
Opportunity: Income generated from civil penalties can be used to cover meet the costs and expenses incurred in, or associated with, carrying out the Councils enforcement function in relation to the PRS.	

Consultation:

Legal Implications:

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 are now fully in force, the Regulations applied to new tenancies from the 1st July 2020 and to existing tenancies from the 1st April 2021. By amending our enforcement policy, the Council will be able to 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 noncompliance can be issued and follow a notice procedure and are subject to legal challenge. As set out in the report the use of proceeds from the penalties must be used to meet the costs and expenses incurred in private rented sector enforcement.

Financial Implications:

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. The recovery of costs will be pursued through the Councils existing sundry debts policies and procedures.

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Background papers:

Bury Councils current Civil Financial Penalty Policy:

<https://www.bury.gov.uk/CHttpHandler.ashx?id=21170&p=0>

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020: <https://www.legislation.gov.uk/ukdsi/2020/9780111191934>

Guide for local authorities: electrical safety standards in the private rented sector:

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

Bury 2030 Let's do it strategy:

<https://www.bury.gov.uk/CHttpHandler.ashx?id=21540&p=0>

Please include a glossary of terms, abbreviations and acronyms used in this report.

Term	Meaning
PRS	Private Rented Sector
The regulations	The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
MHCLG	Ministry for Housing, Communities and Local Government