

TEIGNBRIDGE DISTRICT COUNCIL

PORTFOLIO HOLDER DECISION No.02-19

LEADER: Cllr Jeremy Christophers

PORTFOLIO HOLDER: Cllr Humphrey Clemens

PART 1 – FOR OFFICER COMPLETION

SUBJECT: Minimum Energy Efficiency Standard in Private Rented Accommodation

DATE: 7th February 2019

REQUEST OF: Alison Dolley, Private Sector Housing Manager

REQUEST TO: Cllr Humphrey Clemens, PH for Planning and Housing

PART I

PROGRESS BOX

Stage number	Stage description	Progress - requesting officer to mark with completed or current if “live” stage	Date
1	First draft	completed	04/02/19
2	BL/BM consultation	completed	04/02/19
3	Discussion with PH	completed	04/02/19
4	Initial local members / Chair O&S comments	completed	06/02/19
5	MO/151 consulted	completed	06/02/19
6	Check – any objections from stages 4 & 5	No objections	
7	PH approved for consultation?	completed	04/02/19
		Democratic Services to complete subsequent stages	
8	All Councillors consulted	9.30am 20/2/19	20/02/19
9	Call in completed	10am 27/02/19	
10	Originating Officer advised	yes	28/02/19

1. PROPOSED DECISION

The consent of Cllr Humphrey Clemens is sought to approve the appended addendum to the Housing enforcement policy which includes the implementation of maximum penalties for non-compliance with the regulations.

I do not consider this a key decision.

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2. BACKGROUND

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended) are designed to improve the least energy-efficient properties in England and Wales – those with Energy Performance Certificates (EPC) rated F or G. Local authorities are required to enforce the Regulations which apply to new tenancies starting after 1 April 2018 and for any tenancy after the 1st April 2020.

There are a number of exemptions for properties which cannot be improved to meet the minimum standard of EPC band E. which must be registered by the landlord (or agent for the landlord) on the PRS Exemption Register.

As they are based on a principle of 'no cost to the landlord', improvements can only be required to properties where third-party finance is available. If improvements cannot be achieved at no cost then the property can be registered on the PRS Register. In November 2018 the Government announced that landlords would have to spend up to £3,500 per property on energy improvements (which can comprise of third party grant funding) and if after spending this sum and the property still fails to achieve an E rating landlords will be able to register an exemption on the Private Rented Sector Exemptions register. This is expected to come into force in April 2020.

Where the authority believe that a landlord may be in breach of the prohibition of letting a substandard property they can serve a compliance notice requiring information from the landlord to determine if a breach has occurred. Failure to comply with the compliance notice may result in a penalty notice.

Appendix 1 sets out the Councils policy in relation to the enforcement of these standards and the financial penalties to be imposed.

3. MAIN IMPLICATIONS

The implications that Members need to be aware of are as follows:

Financial Implications

There is a potential income generation through the issuing of penalty notices for non-compliance. It should be noted that the guidance recommends that a landlord and an enforcement authority attempt to resolve any dispute informally first, and take expert advice before the matter progresses to the First-tier Tribunal.

The Council currently offer small grants (up to £500) to assist the improvement of energy efficiency measures in the private rented sector occupied by vulnerable tenants. The funding for this is limited and is subject to adequate budget being available.

Legal Implication

The Council are required to have a policy in relation to the enforcement of financial penalties

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Risk implication

There are no major risk associated with this policy.

4. GROUPS / INDIVIDUALS CONSULTED

none

5. TIME-SCALE

Following the required call in period, the immediate adoption of this addendum to the Housing enforcement policy.

6. JUSTIFICATION (Please complete)

To ensure the improvement of the private rented sector in Teignbridge by the enforcement of the minimum energy efficiency standard.

Alison Dolley - Private Sector Housing Manager
Cllr Clemens – Portfolio Holder for Planning and Housing

Wards affected	All
Contact for more information	Alison Dolley, Private Sector Housing Manager 01626 215418 Alison.dolley@teignbridge.gov.uk
Background Papers (For Part I reports only)	<i>The domestic private rented property minimum standard, Guidance for landlords and Local Authorities on the minimum level of energy efficiency required to let domestic property under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015</i> https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/749021/Domestic_Private_Rented_Landlord_Guidance_-_June_18.pdf
Key Decision	No
In Forward Plan	N
In O&S Work Programme	N

PART B (TO BE COMPLETED BY DEMOCRATIC SERVICES)

Decision No. 02/19

Date of Implementation: 27 February 2019 10am Subject to call in

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PART C (COMPLETED BY THE PH)

DECISION: I confirm the decision as set out in paragraph 1 above

REASONS FOR DECISION: I agree with the justification set out in paragraph 6 above.

I have no conflict of interest in making this decision having considered the provisions of the Teignbridge Code of Conduct.

Signed.....*Humphrey Clemens* ...Dated: ...20 February 2019.....

6. Addendum 2 to housing enforcement policy Minimum Energy Efficiency Standards (MEES)

This policy document is an addendum to Teignbridge Council Housing Enforcement policy and sets out how Teignbridge Council will enforce the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended), made under the Energy Act 2011

Background

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended) are designed to improve the least energy-efficient properties in England and Wales – those with Energy Performance Certificates (EPC) rated F or G. Local authorities are required to enforce the Regulations which apply to new tenancies starting after 1 April 2018 and any tenancy after April 2020.

There are a number of exemptions for properties which cannot be improved to meet the minimum standard of EPC band E. which must be registered by the landlord (or agent for the landlord) on the PRS Exemption Register. The exemptions are as follows:

- “No funding” exemption
- “7 year Payback” exemption
- “All improvements made” exemption
- “Wall insulation” exemption
- “Consent” exemption
- “Devaluation” exemption
- “New landlord” exemption

Landlords of domestic property for which an EPC is not a legal requirement are not bound by the prohibition on letting sub-standard property.

Enforcement of standards

The enforcement of the standards will have regard to the guidance produced by the Department for Business, Energy & Industrial Strategy - *The domestic private rented property minimum standard, Guidance for landlords and Local Authorities on the minimum level of energy efficiency required to let domestic property under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015*

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/749021/Domestic_Private_Rented_Landlord_Guidance_-_June_18.pdf

and any subsequent guidance.

Compliance Notices

An authorised officer may check for different forms of non-compliance with the Regulations including:

- For new tenancies agreed after 1 April 2018: whether the property is sub-standard; and continuing to any property after 1 April 2020 that does not have a registered exemption;

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- Where the landlord has registered any false or misleading information on the PRS Exemptions Register or has failed to comply with a compliance notice.

From 1 April 2018, where the authority believes that a landlord may be in breach of the prohibition on letting a sub-standard property, or a landlord has been in breach of the prohibition at any time in the past 12 months, a compliance notice may be served requiring information from that landlord to help determine whether that landlord has breached the prohibition.

A compliance notice may request either the original or copies of the following information:

- the EPC that was valid for the time when the property was let
- any other EPC for the property in the landlord's possession
- the current tenancy agreement used for letting the property
- any Green Deal Advice Report in relation to the property
- any other relevant document that the enforcement authority requires in order to carry out its compliance and enforcement functions.

The compliance notice may also require the landlord to register copies of the requested information on the PRS Exemptions Register.

The landlord must comply with the compliance notice by sending the requested information to the enforcement authority and allow copies of any original documents to be taken. Failure to provide documents or information requested by a compliance notice, or failure to register information on the PRS Exemptions Register as required by a compliance notice, may result in a penalty notice being served.

The authority may withdraw or amend the compliance notice at any time in writing, for example where new information comes to light. The enforcement authority may also use the documents provided by the landlord or any other information it holds to decide whether the landlord is in breach of the Regulations.

Financial penalties

The penalties are as follows:

- a. Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than 3 months, a financial penalty of up to £2,000 and may also impose the publication penalty.
- b. Where the landlord has let a sub-standard property in breach of the regulations for 3 months or more, a financial penalty of up to £4,000 and may also impose the publication penalty.
- c. Where the landlord has registered false or misleading information on the PRS Exemptions Register, a financial penalty of up to £1,000 and may also impose the publication penalty.

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- d. Where the landlord has failed to comply with compliance notice, a financial penalty of up to £2,000 and may also impose the publication penalty.

A local authority may not impose a financial penalty under both paragraphs a. and b. above in relation to the same breach of the Regulations, but they may impose a financial penalty under either paragraph a. or paragraph b., together with financial penalties under paragraphs c. and d., in relation to the same breach. Where penalties are imposed under more than one of these paragraphs, the total amount of the financial penalty may not be more than £5,000.

A summary of the fines are as follows:

Infringement	Penalty (less than three months in breach)	Penalty (three months or more in breach)
Renting out a non-compliant property	<ul style="list-style-type: none">Up to £2,000, and/orPublication penalty.	<ul style="list-style-type: none">Up to £4,000, and/orPublication penalty.
Providing false or misleading information on the PRS Exemptions Register	Up to £1,000 and/or Publication Penalty	
Failing to comply with a compliance notice	Up to £2,000 and/or Publication Penalty	

The maximum penalty amounts apply **per property** and **per breach of Regulations**

Publication penalty

The authority will publish the following details on a publicly accessible part of the PRS Exemptions Register.

- the landlord's name (except where the landlord is an individual)
- details of the breach
- the address of the property in relation to which the breach occurred and
- the amount of any financial penalty imposed

This Information will not be published on the PRS Exemptions Register while the penalty notice could be, or is being reviewed by the local authority, or is subject to an appeal to the First Tier Tribunal.

This will be available for the public to view for at least 12 months or a period determined by the local authority.

Penalty notices

A penalty notice (relating to a financial penalty, a publication penalty or both) may be served on the landlord where they are satisfied that the landlord is, or has been in the last 18 months:

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- in breach of the prohibition on letting sub-standard property (which may include continuing to let the property after 1 April 2020) or
- in breach of the requirement to comply with a compliance notice or
- has uploaded false or misleading information to the Exemptions Register.

An enforcement authority may serve a penalty notice on a landlord up to 18 months after the suspected breach. A person may be served with a penalty notice after they have ceased to be the landlord of a property.

Review and appeals process

The notice will explain the review and appeals process, where a landlord can ask the enforcement authority to review a decision to serve a penalty notice. This will be reviewed by the Private Sector Team Manager in consultation with the legal department and the Executive member with responsibility for Housing. On review, where a decision is made to uphold the penalty notice, the landlord may then appeal to the First-tier Tribunal against that decision if they think that:

- the penalty notice was based on an error of fact or an error of law
- the penalty notice does not comply with a requirement imposed by the Regulations or
- it was inappropriate to serve a penalty notice on them in the particular circumstances.

If a landlord does appeal, the penalty notice will not have effect while the appeal is ongoing. The First-tier Tribunal may decide to quash, confirm or modify the penalty notice. If the penalty notice is quashed, the enforcement authority must reimburse the landlord for any financial penalty already paid under the notice.

Recovery of financial penalties

The authority will take the landlord to court to recover the financial penalty except:

- during the period in which the landlord could ask the enforcement authority to review their decision to serve the penalty notice, or while they are reviewing their decision to serve the penalty notice or
- during the period in which the landlord could appeal to the First-tier Tribunal, or while there is an ongoing appeal to the First-tier Tribunal.

Housing health and Safety Rating System (HHSRS)

Whilst an exemption may be registered by the landlord on the PRS Exemptions register, the local authority still have a duty to take action under the HHSRS where they have established that a Category 1 hazard for excess cold has been identified and in accordance with the housing enforcement policy action will be taken accordingly.