

HAMBLETON DISTRICT COUNCIL

Report To: Cabinet
4 December 2018

Subject: NEW REQUIREMENTS FOR MINIMUM ENERGY EFFICIENCY STANDARDS IN DOMESTIC PRIVATE RENTED PROPERTIES

All Wards

Portfolio Holder for Environmental Health, Waste and Recycling: Councillor S Watson

1.0 PURPOSE AND BACKGROUND:

- 1.1 The purpose of this report is to introduce the requirements of the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 and determine the Authority's approach to the enforcement of these Regulations.
- 1.2 The aims of the Regulations are to improve energy efficiency in the private rented sector, particularly in older housing stock, meet UK targets of carbon dioxide reduction and contribute to tackling fuel poverty in the most vulnerable households by reducing energy bills. It has been established that 1 in 5 private renters are in fuel poverty.
- 1.3 The Regulations came into force in April 2018 for new and renewed private rental tenancies and will affect existing tenancies from April 2020. The Regulations do not apply to the social housing sector.
- 1.4 The Regulations prescribe a minimum level of energy efficiency provision which domestic private rented property must meet unless a valid exemption applies. The minimum level of energy efficiency allowed by the Regulations is an Energy Performance Certificate rating of E; with an A rating being the most efficient.
- 1.5. An Energy Performance Certificate provides the energy efficiency rating of a property and recommends ways in which the energy efficiency of the property can be improved. Most domestic (and non-domestic) buildings sold, rented or constructed since 2008 must have an Energy Performance Certificate.
- 1.6 Where a property fails to meet the standard the landlord must identify 'relevant energy efficiency improvements' that can be made to the property. The landlord is then expected to make the improvements to reach a minimum Energy Performance Certificate rating of E where third party funding is available.
- 1.7 Third party funding is available through schemes such as the 'Green Deal and pay as you save finance' and the 'Energy Company Obligation' fund.
- 1.8 Third party funding can also be provided by Central or Local Government. Hambleton could offer this funding using the existing Energy Repayment Loans fund of £25,000. The Environmental Health service set up this scheme in 2017 with funding from the regional Housing Board. However to date there have been no loan applications and Hambleton still has access to the fund.

- 1.9 Where third party funding is not available to fully cover the cost the landlord will not be required to make the improvements to the property and can register an exemption on the national Private Rented Sector Exemptions register. The Regulations provide other exemptions and exclusions which landlords must also register.
- 1.10 The Council must enforce the requirements of the Regulations and in particular when substandard properties are let in breach of the Regulations and where the landlord has registered any false or misleading information on the Private Rented Sector Exemption Register.
- 1.11 The Regulations allow the service of compliance notices to require the landlord to provide information when the Authority believes the landlord may be in breach of the prohibition on letting a substandard property and can also require the landlord to register the information requested on the Private Rented Sector Exemption Register.
- 1.12 If a landlord fails to comply with a compliance notice the Council can impose a financial penalty by serving a penalty notice which is paid to and retained by the Council. The amount of the financial penalty is at the Council's discretion up to the statutory maximums prescribed in the Regulations as follows:
- a) Landlord has let a sub-standard property in breach of less than 3 months a penalty of up to £2,000.
 - b) Landlord has let a sub-standard property in breach of 3 months or more a penalty of up to £4,000.
 - c) Where the landlord has registered false or misleading information on the Private Rented Sector Exemptions register a penalty of up to £1,000.
 - d) Where the landlord has failed to comply with compliance notice a penalty of up to £2,000.
 - e) Combination of the above financial penalties under either (a) or (b) together with financial penalties under paragraphs (c) and (d) in relation to the same breach not exceeding £5,000.
- 1.13 If having been fined, a landlord proceeds to unlawfully let a substandard property on a new tenancy, the Council may again levy financial penalties of up to a maximum of £5,000.
- 1.14 A landlord can ask the authority to review its decision to serve a penalty notice and the Council may review its decision to serve a penalty notice if new information comes to light.
- 1.15 Where the Council upholds the service of the penalty notice, the landlord has the right of appeal against the penalty notice to the General Regulatory Chamber of the first Tier Tribunal within 28 days.
- 1.16 If the landlord does not pay a financial penalty the Council may take the landlord to court to recover the fine.
- 1.17 The Environmental Health service will determine the penalties that will be imposed for each case based on the hourly rate of officer time (including on costs) taken to investigate and process each matter. This will be in accordance with the Council's arrangements for its fees and charges.
- 1.18 The Environmental Health service will provide for the enforcement of these Regulations by updating its Private Sector Housing Enforcement Policy and ensuring that suitably competent officers are authorised to enforce the Regulations in accordance with the Councils Scheme of Delegation and delegated powers.

2.0 LINK TO COUNCIL PRIORITIES:

2.1 Enforcing the requirements of Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 will contribute to the delivery of three of the Council's key priorities: Enhancing Health and Well Being, Providing a Special Place to Live and Caring for the Environment.

3.0 RISK ASSESSMENT:

3.1 There are no risks with implementing the recommendation.

3.2 The key risk is in not approving the recommendations as shown below:-

Risk	Implications	Prob*	Imp*	Total	Preventative action
Failure to enforce the Regulations and not fulfil the Council's statutory duty.	Properties remain energy inefficient and landlords are allowed to provide substandard properties.	4	3	12	The Regulations are enforced and suitable penalties are in place.

Prob = Probability, Imp = Impact, Score range is Low = 1, High = 5

3.3 Overall the key risk of agreeing with the recommendations outweighs any lower level risks of not agreeing the recommendations and is considered acceptable as the Authority has a statutory duty to enforce the requirements of the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015.

4.0 FINANCIAL IMPLICATIONS:

4.1 The intention is that enforcement of the Regulations will be carried out within the existing revenue budget for the Environmental Health service. The volume and impact upon the service of enforcing the Regulations will be monitored. Any income from the service of penalty notices will either be provided as a saving in the service budget or used to fund any unanticipated costs of enforcing these Regulations.

5.0 LEGAL IMPLICATIONS:

5.1 The Regulations identify local authorities as the enforcing authority, providing powers to ensure compliance with the Regulations in respect of properties within its area.

6.0 EQUALITY/DIVERSITY ISSUES

6.1 Equality and Diversity Issues have been considered however there are no issues associated with this report.

7.0 RECOMMENDATIONS:

7.1 That Cabinet approves and recommends to Council that:-

- (1) the Environmental Health service enforces the requirements of the Regulations to ensure that the Council fulfils its statutory duty;
- (2) that the fund of £25,000 intended for Energy Repayment Loans is also made available for third party funding for energy efficiency improvements; and

- (3) that penalties for non-compliance with Regulations are imposed on a case by case basis up to the statutory maximum and published in accordance with the Council's arrangements for its fees and charges.

PAUL STAINES
DIRECTOR OF LEISURE AND ENVIRONMENT

Background papers: Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015
<https://www.legislation.gov.uk/ukdsi/2015/9780111128350/contents>

The Private Rented Property minimum standard – landlord guidance documents – ‘Guidance to landlords of privately rented domestic and non-domestic property on complying with the 2018 ‘Minimum Level of Energy Efficiency’ standard (EPC band E)’.

<https://www.gov.uk/government/publications/the-private-rented-property-minimum-standard-landlord-guidance-documents>

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