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<b>REPORT TO:</b>	<b>HOUSING AND COMMUNITY SERVICES COMMITTEE</b>	<b>AGENDA ITEM: 7</b>
<b>DATE OF MEETING:</b>	<b>31<sup>st</sup> JANUARY 2019</b>	<b>CATEGORY: RECOMMENDED</b>
<b>REPORT FROM:</b>	<b>(STRATEGIC DIRECTOR) SERVICE DELIVERY</b>	<b>OPEN</b>
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<b>SUBJECT:</b>	<b>REGULATION OF ENERGY EFFICIENCY IN PRIVATE SECTOR RENTED PROPERTY</b>	
<b>WARD(S) AFFECTED:</b>	<b>ALL</b>	<b>TERMS OF REFERENCE: HCS02</b>

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## **1.0 Recommendation**

1.1 That the Committee approves the proposed level of fixed penalty notices for offences under the Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015.

## **2.0 Purpose of the Report**

2.1 To advise Members of the availability of new fixed penalty sanctions for offences under the Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015.

2.2 To seek approval from Members on the proposed use of the power within South Derbyshire.

## **3.0 Executive Summary**

3.1 None

## **4.0 Detail**

4.1 Chapter 2 of the Energy Act 2011 enables the Secretary of State to introduce regulations to control energy efficiency in the private rented sector.

4.2 Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015 were introduced from 1<sup>st</sup> April 2018 and guidance on the Regulations was published by the Department for Business, Energy and Industrial Strategy (BEIS) in June 2018.

4.3 The Regulations are designed to tackle the least energy-efficient private rented domestic properties in England and Wales – those rated F or G on their Energy Performance Certificate (EPC). The Regulations establish a minimum energy efficiency standard for both domestic and non-domestic privately rented property.

- 4.4 EPC F and G rated properties waste energy. The Regulations are intended to ensure that those tenants who most need more efficient homes, particularly vulnerable people, are able to enjoy a much better living environment and lower energy bills. The average annual energy cost for an EPC band G property is £2,860 compared to the average domestic annual energy cost of £1,710.
- 4.5 The Regulations require that the minimum level of energy efficiency for domestic private rented property is an energy performance certificate (EPC) rating of band E. A small number of exemptions apply and where this exemption is claimed it must be registered on the [PRS Exemptions Register](#).
- 4.6 Under the Regulations a landlord of a domestic private property must not grant a new tenancy of a property with an EPC of less than E after 1 April 2018. Landlords must not continue to let a property after 1<sup>st</sup> April 2020 where the energy performance of the property is below the minimum level.
- 4.7 The Regulations do not apply to Council or registered social landlord stock. On the whole the Council's own stock meets the Decent Home standard which contains a thermal insulation component. The Council is currently undertaking its own stock condition survey and the survey results will inform to further capital investment decisions including improvements in thermal comfort.
- 4.8 Where a local authority is satisfied that a landlord is in breach of the Regulations, it has the discretion to issue a penalty notice imposing a financial penalty, and impose a non-financial 'publication penalty' which consists of publishing the details of the breach on the PRS Exemptions Register.
- 4.9 The Regulations contain a number of offences and the Regulations prescribe the maximum fixed penalty charge that can be applied to each offence. The sum total of the financial penalties imposed in relation to a single property must be no more than £5,000.
- 4.10 Having been issued with a fixed penalty, the landlord may request a review of the penalty notice by the local authority and, where a penalty notice is confirmed on review, the landlord may appeal against the imposition of the penalty notice to the First-tier Tribunal.
- 4.11 The offences and their respective maximum fixed penalties as stated in the Regulation are summarised in Table 1.

**Table 1 - Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015 Maximum Penalty Charges**

Regulation	Offence	Maximum Penalty
Reg 23	Where the landlord has let a sub-standard property in breach of the Regs for a period of less than three months	£2,000 plus a 'publication penalty'
Reg 23	Where the landlord has let a sub-standard property in breach of the Regs for a period of more than three months	£4,000 plus a 'publication penalty'
Reg 36	Where the landlord has registered false or misleading information on the PRS Exemptions Register	£1,000 plus a 'publication penalty'

Reg 37	Where the landlord has failed to comply with a compliance notice	£2,000 plus a 'publication penalty'
	<b>Maximum permitted penalty</b>	<b>£5,000</b>

4.12 Approval is sought for officers to issue the maximum penalty under the Regulations, with a 25% reduction for early payment (i.e. within 14 days of the issue of the fixed penalty). The reasons for adopting this penalty payment structure are as follows;

- The penalties are intended as a deterrent for negligent landlords. Most private landlords provide a valuable contribution to the housing market and behave responsibly. However, as demand for housing increases nationally, so a small number of private landlords have sought to exploit the increasing demand by knowingly renting out unsafe and substandard accommodation. The business model of these landlords is to under-invest in their properties and to absorb the costs of criminal fines as part of their normal business costs. Due to the relatively high profits offered through renting private sector properties and the relatively low fines on conviction for housing offences this has proved to be a lucrative, but immoral operating model. The penalties must, therefore, be sufficiently high to ensure landlords recognise that this business model is not profitable.
- Enforcement action is likely to result in the use of considerable resources of officer time and therefore the penalty must ensure that the enforcement costs incurred by the Council are met.
- Derby City Council have already adopted the maximum penalty level and the other councils in Derbyshire are actively considering adopting the maximum penalty. The adoption of a lower penalty creates a risk that rogue landlords may be encouraged to move their business into South Derbyshire.
- The Council has already adopted a 25% discount for all other forms of fixed penalty which successfully encourages offenders to act quickly to discharge their liability.

### **Internal Process for Appeals**

4.13 It is proposed that the process for deciding when to impose a fixed penalty will be similar to that adopted by this Committee on 8 March 2018 for the imposition of civil penalties for breaches of the Housing and Planning Act 2016.

4.14 Under the terms of the existing Corporate Enforcement Policy, where an investigating officer has concluded that an offence should be dealt with by prosecution, this must be approved in writing by the Strategic Director. It is proposed that a similar process should be adopted for the decision to issue a fixed penalty under the Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015.

4.15 The proposal to issue a fixed penalty will be produced by the Investigating Officer in the form of a written enforcement decision request. The fixed penalty will only be issued when the enforcement decision is approved in writing by the Strategic Director.

4.16 If a landlord applies to the Council to review, waive or modify a penalty in accordance with Regulation 42, it is proposed that the decision to review, waive or modify the penalty will be decided by Legal Services.

## **5.0 Financial Implications**

- 5.1 Minor beneficial. The private sector housing stock in South Derbyshire is generally good and the Council rarely serves legal notices on our landlords. It is not, therefore, anticipated that this policy will generate significant income.
- 5.2 Nevertheless at the time of the last private sector housing stock condition survey in South Derbyshire (2014), 5,567 (14.5%) of private dwellings were privately rented and of these 574 (10.5%) failed the thermal comfort criteria under the Decent Homes standard. The Decent Homes standard does not provide a direct comparison to compliance with the Energy Efficiency Regulations, but this data provides an illustration of the likely existing scale of non-compliance with the Regulations.

## **6.0 Corporate Implications**

### **Employment Implications**

- 6.1 None

### **Legal Implications**

- 6.2 Approval of the recommendations will enable officers in the Private Sector Housing Team to take immediate action using fixed penalty notices to address poorly insulated privately rented domestic properties. Adoption of the power will provide a further deterrent to prevent rogue landlords operating within South Derbyshire.

### **Corporate Plan Implications**

- 6.3 The proposals align with the 'People' Corporate Plan theme and in particular Action PE3. "Use existing tools and powers to take appropriate enforcement action" and with the 'Place' theme and in particular Action PL1. "Facilitate and deliver a range of integrated and sustainable housing and community infrastructure."

### **Risk Impact**

- 6.4 None

## **7.0 Community Impact**

### **Consultation**

- 7.1 None

### **Equality and Diversity Impact**

- 7.2 Major beneficial. The proposed use of fixed penalty notices is aimed at protecting tenants in the private domestic rented sector from negligent landlords and providing these same tenants with properties which limit their energy costs.

### **Social Value Impact**

- 7.3 Major beneficial.

### **Environmental Sustainability**

- 7.4 Major beneficial. The impact of the proposals will lead to improvements in the energy efficiency of the private sector rented stock and therefore reduce overall greenhouse gas emissions.

## **8.0 Conclusions**

8.1 The proposed use of fixed penalty notices for offences under the Energy Efficiency (Private Rented Property)(England and Wales) Regulations will enable Environmental Health Officers to ensure quick, efficient and proportionate action to tackle inadequate thermal conditions in the private rented sector.

## **9.0 Background Papers**

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, BEIS (June 2018)