

ARUN DISTRICT COUNCIL

REPORT TO AND DECISION OF ENVIRONMENT COMMITTEE ON 20TH JANUARY 2022

SUBJECT:

Enforcement Policy for Environmental Health, Private Sector Housing, Licensing and Cleansing

REPORT AUTHOR: Louise Crane, Principal Environmental Health Officer

DATE: 15th November 2021

EXTN: 01903 737669

AREA: PLACE

EXECUTIVE SUMMARY:

The report seeks approval to adopt amendments to the existing enforcement policy for Environmental Health, Private Sector Housing, Licensing and Cleansing the main elements of which are:

- To include Civil financial penalties for offences under:
 - a) The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015
 - b) The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
 - c) The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
- To provide greater clarity and guidance when considering civil financial penalties as an alternative to prosecution

Other minor amendments have been made, and all alterations are highlighted in the attached policy by way of tracked changes for ease of reference.

Under the Electrical Safety Standards in the Private Rented Sector Regulations 2020 and the Smoke and Carbon Monoxide Alarm Regulations 2015, the Council is required to have a Statement of Principles which is published and outlines the procedures for enforcing this legislation and determining the amount of penalty charge, the report seeks approval to adopt these.

The report also seeks delegated authority for the Group Head of Technical Services to make any necessary consequential changes to the attached Enforcement Policy for Environmental Health, Private Sector Housing, Licensing and Cleansing, the Statement of Principles for the Electrical Safety Standards in the Private Rented Sector Regulations 2020 and the Smoke and Carbon Monoxide Alarm Regulations 2015 as a result of new legislation or alternative practices.

RECOMMENDATIONS:

Members are requested to approve:

1. The amendments to the attached Enforcement Policy for Environmental Health, Private Sector Housing, Licensing and Cleansing are adopted.
2. The adoption of the Statement of Principles for the Electrical Safety Standards in the Private Rented Sector Regulations 2020 and the Smoke and Carbon Monoxide Alarm Regulations 2015.
3. That the Group Head of Technical Services or their nominated representative be delegated authority to make any necessary consequential changes to the attached Enforcement Policy for Environmental Health, Private Sector Housing, Licensing and Cleansing and the Statement of Principles for the Electrical Safety Standards in the Private Rented Sector Regulations 2020 and the Smoke and Carbon Monoxide Alarm Regulations 2015, as a result of new legislation or alternative practices.

1. BACKGROUND:

The existing Enforcement Policy for Environmental Health, Private Sector Housing, Licensing and Cleansing was last reviewed in April 2020. The policy outlines the principles of enforcement, the enforcement options available and the process and procedures in place to ensure effective enforcement is undertaken in a fair, consistent and transparent way.

The policy attached to this report has been amended:

- To include Civil financial penalties for offences under:
 - d) The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015
 - e) The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
 - f) The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
- To provide greater clarity and guidance when considering civil financial penalties as an alternative to prosecution

All amendments are highlighted in the attached policy by way of tracked changes for ease of reference.

Civil Penalties for offences under S249A Housing Act 2004 (inserted by the Housing and Planning Act 2016) is already included within the Enforcement Policy. The Enforcement Review Panel has recently reviewed cases presented to them, and the Panel has subsequently recommended the Council issue a civil financial penalty as an alternative to prosecution. On 2nd November 2021, the First Tier Property Tribunal heard an appeal from an offender who received a civil financial penalty from Arun District Council for the commission of a licensing offence pursuant to the Housing Act 2004. The Tribunal issued a decision determining the appeal on 21st November 2021. Both the hearing and the Tribunal's decision has highlighted the need for further explanation and examples within the charging matrix to assist Officers, and the Enforcement Review Panel apply the Council's policy accurately, and determine the appropriate level of civil financial penalty, using the prescribed criterion. The proposed changes will reduce the risk of a successful

challenge or appeal in the future. Such appeals are resource intensive for the Council and can result in the Council being ordered to pay costs of the offender in limited circumstances.

In addition the Electrical Safety Standards in the Private Rented Sector Regulations 2020 and the Smoke and Carbon Monoxide Alarm Regulations 2015, require the Council to have a Statement of Principles which it proposes to follow in determining the amount of penalty charge. These statements of principles are attached to the report and outline the procedures that Officers will follow and the considerations made and taken into account when setting a financial penalty under these two pieces of legislation.

2. PROPOSAL(S):

Members are requested to approve:

1. That the amendments to the attached Enforcement Policy for Environmental Health, Private Sector Housing, Licensing and Cleansing are adopted.
2. The adoption of the Statement of Principles for the Electrical Safety Standards in the Private Rented Sector Regulations 2020 and the Smoke and Carbon Monoxide Alarm Regulations 2015.
3. That the Group Head of Technical Services or their nominated representative be delegated authority to make any necessary consequential changes to the attached Enforcement Policy for Environmental Health, Private Sector Housing, Licensing and Cleansing and the Statement of Principles for the Electrical Safety Standards in the Private Rented Sector Regulations 2020 and the Smoke and Carbon Monoxide Alarm Regulations 2015, as a result of new legislation or alternative practices.

3. OPTIONS:

Not to approve the amendments to the attached Enforcement Policy for Environmental Health, Private Sector Housing, Licensing and Cleansing or adoption of the Statement of Principles. This would mean that the changes to help improve clarity and guidance in relation to Civil financial penalties would not be included within the policy thereby increasing the risk of a successful challenge of appeals at the First Tier Tribunal Property Chamber. In addition, civil financial penalties could not be considered as an alternative to prosecution for offences under certain legislation.

4. CONSULTATION:

Internal consultation with Legal, Finance, Environmental Health, Licensing, Private Sector Housing, Cleansing, Greenspace and Building Control

Has consultation been undertaken with:	YES	NO
Relevant Town/Parish Council		
Relevant District Ward Councillors		
Other groups/persons (please specify)		
5. ARE THERE ANY IMPLICATIONS IN RELATION TO THE FOLLOWING COUNCIL POLICIES: (Explain in more detail at 6 below)	YES	NO

Financial		X
Legal	X	
Human Rights/Equality Impact Assessment		X
Community Safety including Section 17 of Crime & Disorder Act		X
Sustainability		X
Asset Management/Property/Land		X
Technology		X
Other (please explain)		X

6. IMPLICATIONS:

Legal:

The enforcement policy and statement of principles provide the structure within which the Council can deliver enforcement action for the regulatory functions delivered by the Environmental Health, Private Sector Housing, Licensing and Cleansing teams.

Human Rights/Equality Impact Assessment:

An equalities impact assessment has been completed and does not identify any adverse impacts.

7. REASON FOR THE DECISION:

To ensure a consistent approach to enforcement across Environmental Health, Private Sector Housing, Licensing and Cleansing, that is transparent and proportionate and meets the appropriate codes of practise and guidance.

8. BACKGROUND PAPERS:

Enforcement Policy for Environmental Health, Private Sector Housing, Licensing and Cleansing.

Statement of Principles for the Electrical Safety Standards in the Private Rented Sector Regulations 2020 and

Statement of Principles for the Smoke and Carbon Monoxide Alarm Regulations 2015.

Equality Impact Assessment.