

READING BOROUGH COUNCIL

REPORT BY DIRECTOR OF ENVIRONMENT AND NEIGHBOURHOOD SERVICES

TO:	HOUSING, NEIGHBOURHOOD AND LEISURE COMMITTEE		
DATE:	4 JULY 2018	AGENDA ITEM:	10
TITLE:	EXTENSION OF MANDATORY LICENSING & ENERGY EFFICIENCY REGULATIONS		
LEAD COUNCILLOR:	John Ennis	PORTFOLIO:	Housing
SERVICE:	Regulatory Services	WARDS:	Borough Wide
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1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 The report details the extension of mandatory licensing of Houses in Multiple Occupation due to come into force from 1st October 2018. This is the latest addition to a series of measures introduced by Government to tackle criminal landlords and improve standards in the sector. Other measures brought to Housing Neighbourhoods and Leisure Committee on 14th March 2018 includes Civil Penalty Notices, protection from revenge evictions, banning orders, the Rogue Landlords database and the Smoke and Carbon Monoxide Regulations.
- 1.3 The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 meant that from 1st April 2018 it became illegal for landlords to rent out property unless it meets the minimum energy efficiency rating of E. However, there are some exemptions.
- 1.4 This report seeks delegations to authorise officers to carry out these functions and approval to amend policy and introduce a charging scheme.

2. RECOMMENDED ACTION

- 2.1 That the scheme of delegations be amended and the Head of Planning, Development and Regulatory Services in consultation with the Head of Legal and Democratic Services and Head of Finance be delegated authority to implement the scheme for the extension of mandatory licensing of Houses in Multiple Occupation and enforce the requirements of The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015.
- 2.2 That the Head of Planning, Development and Regulatory Services, in consultation with the Head of Legal and Democratic Services, be authorised to discharge the Council's duties and powers under the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 and the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 along with subsequent Regulations and Orders as well as policies and procedures related to this legislation.
- 2.3 That the proposed penalty fines detailed in this report be approved.

3. POLICY CONTEXT

- 3.1 Private rented accommodation provides a flexible and accessible housing solution for many residents. The Council recognises the valuable contribution the sector makes to providing decent and safe homes for many tenants. There are however, a minority of landlords who provide poorly managed, substandard and unsafe homes, often to the most vulnerable in society. In some areas with high densities of private rented accommodation, there can be a direct impact on neighbourhood cohesion.
- 3.2 The Regulatory Services Private Sector Housing Team receives over 1,500+ service requests relating to housing enforcement matters each year. This drives the way in which the service is delivered leading to a more reactive approach rather than proactive or programmed inspection of the private rented stock. Currently only mandatory licensed properties are on a programmed inspection approach, meaning that they are inspected based on risk.
- 3.3 Regulatory compliance includes information, advice, inspection, warnings, enforcement and prosecutions. Officers' work also includes partnering with Royal Berkshire Fire & Rescue as part of their risk based inspection programme, liaison with the University of Reading, in respect of accommodation occupied by students, and the inspection and compliance of B&Bs used by the Council as emergency temporary accommodation.
- 3.4 The Private Sector Housing Stock Condition Survey 2013 indicated that 28.5% of dwellings in Reading were in the Private Rented Sector (PRS). This compared to an average of 20% nationally (English Housing Survey 2015/16). The survey identifies 10% of the PRS to be houses in multiple occupation (HMO), compared to the national figure of 2.3%. The number of non-decent homes has reduced by 40% since the stock condition survey carried out in 2006. At the time of the 2013 survey, 12,200 private sector homes failed to meet the decent homes standard. The survey also found that 27.2% of private rented tenants have informed their landlord or agent about outstanding repair issues, with 40% of those tenants indicating that the issues remained unaddressed. Whilst this data is now 5 years old, it is thought that the data largely remains current.
- 3.5 The Council has previously considered whether mandatory licensing should be extended to include smaller HMOs and conducted a study into its viability in 2015. At the time of the study, it was concluded that the Council should consider other options to improve the sector, rather than exercising its discretionary powers. As a result of the study, the Council introduced a Private Sector Housing Charter which set out its ambition to improve the private rented sector in partnership with stakeholders. The Charter set out key actions that the Council leads on to help support tenants, landlords, letting and managing agents to deliver a safe, healthy and thriving private rented sector. The Charter promotes tenants choice and rights, landlords taking responsibility for their properties' standards and delivering effective and robust action where they fail to do so. Running parallel to the Charter, there is an action plan which set out the following objectives:
- Objective 1 - Improve cross council co-ordination of private rented housing related services, including a joined up consistent approach to communications.
 - Objective 2 - Improve internal working systems to support lean working in the PRS
 - Objective 3 - Improve quality of private sector housing
 - Objective 4 - Selective Licensing Scheme

Objective 4 sets out under its actions, "If after review it is determined that Objectives 1-3 have had insufficient impact and having consideration to the wider housing strategy, a pilot discretionary licensing scheme will be considered." Whilst many of the actions under each of the objectives have been delivered, there has continued to be a requirement to take enforcement action and prosecutions against landlords. An update report was provided to Housing Neighbourhoods and Leisure Committee in November 2017 and an undertaking was given to relook at the option of a discretionary licensing scheme. Since then, the

Government has announced the extension of mandatory licensing; this therefore means that there is no longer a requirement for a pilot scheme to be considered.

Extension of Mandatory Licensing

3.6 The Housing Act 2004 introduced mandatory licensing of Houses in Multiple Occupation (HMOs) that met the following criteria (implemented from 2006):

3.1.1 The property comprises 3 or more storeys to include basement and attic.

3.1.2 The property is occupied by 5 or more people forming 2 or more households sharing amenities such as bathroom and kitchens or those where facilities are not self-contained within individual units. There are currently 1000 licensed HMO in the Borough.

3.7 The Act further introduced charging of fees by Local Authorities to cover the costs of delivering the scheme.

3.8 In the main, Houses in Multiple Occupation (HMOs) in the private rented sector provide good quality accommodation. However, the private rented sector is often associated with anti-social behaviour, poor living conditions and houses some of the most vulnerable people in our community. The purpose of mandatory licensing of HMOs is to ensure that those properties deemed to present the highest risk in terms of health and safety issues are known to Local Authorities along with evidence provided that appropriate management arrangements have been made for the property. Extending the licensing scheme will enable the Council to:

- Check whether a landlord is a fit and proper person to manage the property,
- Conduct assessments into the standard of management of the property (including management of fire safety)
- Carry out a physical inspection of the property
- Assess room size standards and minimum facilities
- Set conditions to ensure that the standards of management are maintained and that tenants have access to their landlord's details and know the maximum number of tenants allowed to prevent over occupation.

The introduction of the extension of Mandatory Licensing is therefore welcomed and it is something that both the Council and the Environmental Health profession have been lobbying for.

3.9 The extension of mandatory licensing is the latest addition to the Government's plans to tackle criminal landlords and substandard living conditions. Other powers introduced as part of Housing and Planning Act include Civil Penalty Notices as an alternative to prosecutions, banning orders and protection of tenants from revenge evictions.

3.10 The Government has encouraged institutional investment in the private rented sector. The sector has experienced growth in Reading with widespread investment in purpose built blocks of flats and student accommodation. These properties will generally fall outside the new licensing regime, with the rationale being that they meet the latest building regulations and often have better management of facilities and services such as the fire alarm systems and routine repairs. However, since the fire at Grenfell, some of these properties have been part of a high risk joint inspection programme undertaken by Royal Berkshire Fire and Rescue and the Council. A report on the outcome of the joint inspection programme is scheduled to be brought to this Committee in November.

Energy Efficiency

- 3.11 The Energy Act 2011 placed a duty on private rented landlords to have an Energy Efficiency Certificate. From 1st April 2018 The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 made it illegal for private landlords to let out a property without an Energy Performance Certificate rating of less than an E before granting a new tenancy agreement to new or existing tenants. Further, these requirements will then apply to all private rented residential properties from 1st April 2020 even when there has been no change in tenancy arrangements. Guidance issued by Ministry of Housing, Communities and Local Government (MHCLG) notes that an EPC is not required for HMOs which have not been subject to a sale in the past ten years, or which have not been let as a single rental in the past ten years.
- 3.12 Through the provision of energy efficiency measures such as heating and insulation, benefits are provided to tenants in terms of affordability and comfort but also reduces the risk of issues such as damp and mould in winter months. Under the Housing Health and Safety Rating System (HHSRS), which is the statutory standard for housing inspection, excess cold is one of the key complaints the Council receive which can lead to enforcement action for landlords to provide adequate heating and thermal comfort.
- 3.13 Appendix 1 gives more details of these Regulations and the exemptions that can be applied.
- 3.14 Where a landlord has let out a sub-standard property in breach of the regulations the local authority can impose a financial penalty up to a maximum of £5,000
- 3.15 It is important to note that this maximum amount of £5,000 applies per property and per breach of the Regulations. This means that if after having previously been fined up to £5,000 for failing to comply with the regulations, a landlord lets the property on a new tenancy without bringing it up to a minimum EPC E standard the Council can again levy financial penalties up to £5,000 in relation to the new tenancy.

4 THE PROPOSAL

Mandatory Licensing

- 4.1 The extension of Mandatory Licensing will come into force from 1st October 2018 and the key changes to note are:
- 4.1.1 From 1st October 2018 the 3 storey criteria will be removed and all HMOs occupied by 5 or more people forming 2 or more households where facilities are shared will require a HMO licence. It is not possible to say definitely how many additional licences will result from this change but it is anticipated that around 3,000 additional properties will require a licence.
- 4.1.2 In relation to purpose built flats (these are flats that were originally built as flats not converted) the Government has decided that:
- 4.1.2.1 A purpose built flat occupied by 5 or more people, and it is in a block comprising of up to 2 flats will be licensable
- 4.1.2.2 If a purpose built flat is occupied by 5 or more people and it is in a block comprising 3 or more flats it will not need a licence
- 4.1.3 This means that mandatory licensing will apply to flats such as those above shops but will not apply to purpose built blocks of flats such as tower blocks as set out above.
- 4.2 The introduction of a minimum room size standards is also being introduced. Currently the Council makes an assessment of sleeping rooms either under the Housing, Health and Safety Rating System or the Housing Act 1985 when determining overcrowding. This has led to

national inconsistencies and the Environmental Health profession has asked for a simple national standard. The room size standards below will be applied to shared accommodation:

- a minimum floor area of 4.66m² for one person aged less than 10 years of age.
- 6.51m² for a single person aged 10 years or over and 10.22m² for two occupiers.

In licensed properties, these minimum room size standards could limit the number of rooms that could be let within the property. In some cases, by prohibiting the use of a room, the property may no longer be licensable. In Reading, the Council is aware of a number of room conversions that will not meet this standard both in the existing licensed stock and in those properties that will fall within the extended scheme.

- 4.3 At the point these new regulations come into force on 1st October 2018, Local Authorities have no discretion to deviate from these national minimum room size standards.
- 4.4 The Government has stated in the Regulations that landlords are to be allowed up to 18 months at Local Authorities discretion to correct any over occupation resulting from this change in room sizes and this applies to any licenses granted or renewed after 1st October 2018. It is therefore possible that there may be an overall decrease in housing provision as a result of the loss of legal useable rooms within houses in multiple occupation.
- 4.5 There is no change to the national minimum amenity standards for bathrooms for example or to fire safety measures.

Energy Efficiency

- 4.6 The table below sets out the maximum fines detailed in the Regulations and the Council proposed fines. 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. However, 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. The proposal is to levy a lower fine in the first instance and then full fine for any subsequent breaches at the point of a new tenancy. The rationale behind having a lower fine for the first offence than the maximum is to reduce the risk of appeals. Tribunals have held in the application of similar penalties that the fine should be proportionate.

Breach of the Regulations	Maximum financial penalty	RBC proposed fine (1 st Offence)
a) Landlord has let a sub-standard property for less than 3 months	£2,000	£1,000
b) Landlord has let a sub-standard property for 3 months or more	£4,000	£2,000
c) Landlord has included false or misleading information on the PRS Exemption Register	£1,000	£500
d) Landlord fails to comply with compliance notice (this is a request for information on measures undertaken at a property)	£2,000	£1,000

- 4.7 Other Options Considered
- 4.8 The Licensing of Houses in Multiple (Mandatory Conditions of Licences) (England) Regulations 2018 is a mandatory requirement so no other options have been considered

- 4.9 The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 is a mandatory requirement and supports the Council's policies on energy efficiency.

5. CONTRIBUTION TO STRATEGIC AIMS

- 5.1 In relation to the Council's Corporate Plan 2016 - 2019 the following themes are appropriate:

- Providing homes for those most in need - the regulations allow for the continuing improvement of housing conditions along with contributing to the health, safety and welfare of residents by driving up physical and management standards in the Private Rented Sector.

6. COMMUNITY ENGAGEMENT AND INFORMATION

- 6.1 The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 and The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 do not require any consultation prior to introducing the powers detailed in the report.

- 6.2 Publicity will be carried out both in the form of press releases and newsletters in line with the introduction of these powers.

7. EQUALITY IMPACT ASSESSMENT

- 7.1 Under the Equality Act 2010, Section 149, a public authority must, in the exercise of its functions, have due regard to the need to—

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

- 7.2 No group will be adversely affected by the introduction of these schemes.

8. LEGAL IMPLICATIONS

- 8.1 The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006 has been revoked and replaced with The Licensing of Houses in Multiple (Mandatory Conditions of Licences) (England) Regulations 2018

- 8.2 This Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

9. FINANCIAL IMPLICATIONS

- 9.1 Licence fees are charged for the issue of a licence for HMOs. In the main, licences are issued for 5 years and the fees charged cover the administrative and enforcement costs over the term of the licence period. The cost of the licences and renewals smooths out the income over the term of the licence period to enable costs to be covered on a cost neutral basis as required by the legislation.

The licensing fees charged are:

Band	New Licence Cost	Renewal Licence Cost
A - members of accreditation schemes (NLA, RLA, RRWC)	£640	£345
B - for ordinary new applications	£720	£425
C - for landlords who did not licence correctly	£1,485	£815

9.2 The financial implications arising from the proposals set out in this report are set out below:-

It should be noted that the details set out below are based on an estimate of the additional number of licensed properties within the Borough and an average fee income.

Increased Employee costs reflect the requirement for an increase in staffing to be able to deliver the administration and enforcement of the scheme. The net cost saving is derived from moving officers from front line reactive inspections and complaints work to proactive licensing with the income from the scheme covering staff costs. In February 2018, Policy Committee approved savings proposals associated with the extension of licensing. DENS33C set out the costs and savings associated with the scheme

As the scheme will come in to force from 1st October 2018 we will realise some of the income 5 months sooner than the original proposed dates. Any savings delivered will be reported through budget monitoring meetings.

Revenue Implications

	2018/19 £000	2019/20 £000	2020/21 £000
Employee costs (see note1)	682	832	832
Other running costs (see note 2)	47	97	97
Capital financings costs (see note 3)	25		
Expenditure	754	929	929
Income from:			
Fees and charges (see note4)	95	540	540
Grant funding (specify)			
Other income			
Total Income:	95	540	540
Net Cost (see note 5)	659	389	389

Note 1. The 2019-21 employee costs reflect a £150,000 increase which relates to new staffing requirements associated with extending the Licensing scheme. This is based on two qualified Environmental Health Officers and Business Support.

Note 2. The increase in running costs is associated with additional IT system maintenance costs, surveys etc.

Note 3. The 2018-19 capital costs relates to the investment in application processing technology. This has been excluded from the net costs as it is a one off cost.

Note 4. The income is derived from current licensing fees smoothed over the term of the 5 year licence. From 19/20 the additional licence fee income would be £445k some of which will be realised in the 2018/19 financial year as the scheme is introduced in October 2018, plus the income arising from the current licencing scheme, averaged over 5 years.

Note 5. Reduction in the net cost of the team equates to £270k as detailed in DENS33C.

9.4 Risk Assessment

9.5 There are a number of risks associated with extending the mandatory licensing scheme in Reading, which include:

- The estimated number of properties falling into the new extended scheme is an overestimate and therefore there is a shortfall in income to cover the proposed growth in the requirement for officers to process and enforce the scheme.
- That the level of enforcement required outstrips capacity. This may include the capacity of the team, support services such as Legal Services or the Courts.
- That the Council is unable to recruit to the roles. There is currently a shortage of qualified and competent officers in the sector.
- The ability of the team to process the number of applications and inspections generated by the scheme.
- Impacts associated with high volumes of casework on the ability of the team to deliver a response to single occupation private rented complaints.
- Landlords may choose to reduce the number of tenants within their property below the threshold of 5, which would take them out of the licensing criteria. This would reduce fee income and lead to more regulation in this part of the sector.

Mitigating actions will be taken to reduce the risks set out above.

10. BACKGROUND PAPERS

10.1 Statutory Instrument - The Licensing of Houses in Multiple (Mandatory Conditions of Licences) (England) Regulations 2018

10.2 Department for Business, Energy and Industrial Strategy - Guidance on energy efficiency standards

Appendix A - Energy Efficiency Regulations

The Energy Act 2011 placed a duty on private rented landlords to have an Energy Efficiency Certificate. From 1st April 2018 The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 made it illegal for private landlords to let out a property without an Energy Performance Certificate rating of less than an E before granting a new tenancy agreement to new or existing tenants. Further, these requirements will then apply to all private rented residential properties from 1st April 2020 even when there has been no change in tenancy arrangements.

Guidance issued by Ministry of Housing, Communities and Local Government (MHCLG) notes that an EPC is not required for HMOs which have not been subject to a sale in the past ten years, or which have not been let as a single rental in the past ten years.

Where a recommended measure is not a 'relevant energy efficiency improvement' because the cost of purchasing and installing it cannot be wholly financed at no cost to the landlord (Regulation 25(1)(b)). The landlord will need to provide evidence of why they have been unable to obtain adequate 'no cost' funding. The exemption will last 5 years after which time the landlord must again try to improve the EPC rating of the property to the minimum rating of E.

On 19 December 2017 Government published a consultation on steps to make the domestic Energy Efficiency (Private Rented Property) Regulations more effective. A key proposal in this consultation is the removal of the 'no cost to the landlord' principle, and the introduction of a 'landlord funding contribution' component which would take effect where a landlord is unable to obtain suitable third party funding. To protect landlords from excessive costs, the consultation proposes the introduction of a cost cap: a limit on the amount any landlord would need to invest in an individual property. A cost cap of £2,500 per property is proposed. This consultation closed on 13 March 2018 and as yet the outcome of the review has not been published.

The MHCLG has set up The National PRS Exemptions Register which is a digital service which allows landlords or agents acting on behalf of landlords to centrally register valid exemptions from the minimum energy efficiency requirements.

The exemptions are detailed below

1. Where the landlord has made all the 'relevant Energy Efficiency improvements' that can be made or where none can be made and the property remains below EPC standard E. The landlord will need to provide evidence and the exemption will last for 5 years after which time the landlord must again try to improve the EPC rating of the property to the minimum rating of E. If this continues not to be possible they can register a further exemption.
2. Wall Insulation exemption (Regulation 24(2)) applies where it is not possible to fit cavity wall insulation or internal or external insulation. In this circumstance the landlord will need to obtain a report from a specialist such as an architect, chartered surveyor or chartered engineer. This expert advice must be uploaded to the register and the exemption will last for 5 years after which point the landlord must again try and improve the property to EPC E or if this is not possible register a further exemption.

3. In some circumstances it may not be possible to get third party consent for example from the local authority, mortgage lender or tenants. In these circumstances the 'no consent' exemption (Regulations 31(1) and 36(2) may apply and again the landlord will need to provide evidence through uploading correspondence/documentation to the register demonstrating consent was sought but not gained. The exemption last for 5 years after which time the landlord has to try and improve the property again to EPC E or if this is not possible register another exemption.
4. An exemption from meeting the minimum standard can be applied for under Regulation 32(1) where a landlord has obtained a report from a Surveyor registered with the Royal institute of Chartered Surveyors that states that specific energy efficiency measures will reduce the market value of the property by more than 5%. The exemption will last for 5 years after which time the landlord is expected to improve the property to minimum EPC E or register a further exemption
5. New landlord exemption (Regulation 33(1) applies when someone has had to become a landlord suddenly in which case an exemption of 6 months is allowed. At the end of this time either the property needs to have been brought up to a minimum EPC E standard or an exemption registered if applicable

More detailed information can be found in the domestic landlord guidance via the link below: <https://www.gov.uk/government/publications/the-private-rented-property-minimum-standard-landlord-guidance-documents>