

WAVERLEY BOROUGH COUNCIL

CORPORATE OVERVIEW & SCRUTINY COMMITTEE - 26 JANUARY 2016

EXECUTIVE – 2 FEBRUARY 2016

Title:

LEGISLATION CHANGES AFFECTING THE PRIVATE RENTED SECTOR

[Portfolio Holder: Cllr Carole King]

[Wards Affected: All]

Summary and purpose:

The purpose of this report is to outline the changes to legislation affecting the private rented sector and the additional duties imposed on the Council.

How this report relates to the Council's Corporate Priorities:

This report relates to the Council's corporate priority on healthy communities.

Financial Implications:

The enforcement of the new legislation will incur both costs and income for the Council of which should be cost neutral overall.

The introduction of the penalty charges will help cover the costs of installation, any remedial actions required and staff time incurred in enforcing the new regulations.

Legal Implications:

There are new enforcement duties and rights placed on the Council by the new legislation, and these are set out within the report. The new provisions also provide certain rights of appeal, but such appeals would be made to the First Tier Tribunal rather than to the Council, and as such the Council does not need to implement an appeals process.

Introduction

1. There have been a number of new pieces of legislation which affect the private rented sector. Some of the changes do not affect the Council directly but do impact on advice provided to landlords and tenants. However, some changes introduce new legal duties on the Council or have the potential to significantly affect the way that enforcement action is taken.
2. The new pieces of legislation are as follows:

Redress Scheme for Lettings and Property Management Work

3. The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) Order 2014 came into force on 1 October 2014. This Order requires persons who engage in lettings agency or property management work to belong to a redress scheme for dealing with complaints in connection with that work. The Order imposes a duty on local authorities to enforce the provisions.
4. Where the enforcement authority is satisfied that a person has failed to comply with the requirement it may, by notice, require that person to pay a monetary penalty of such amount as the authority determine, which must not exceed £5,000. The authority may recover the monetary penalty on the order of a court by providing a certificate, signed by the authority's Chief Finance Officer, stating that the amount due has not been received by the date specified.
5. The Council needs to update the Scheme of Delegation to include the new enforcement provisions under the Order and decide on the level of the monetary penalty.

Retaliatory Evictions

6. The Deregulation Act 2015 contains provisions to prevent landlords from responding to a legitimate complaint from their tenants about the condition of the property by serving a Section 21 eviction notice. It applies to all new assured shorthold tenancies that start on or after 1 October 2015.
7. To gain protection against this kind of retaliatory eviction a relevant tenant must report any disrepair or poor conditions to the landlord in writing. If the landlord does not respond within 14 days, or responds by issuing a Section 21 Notice, the tenant should ask the local authority to carry out an inspection to determine whether the property contains any serious health or safety hazards. If the local authority then serves an Improvement Notice or Notice of Emergency Remedial Action, the landlord cannot evict the tenant for 6 months using the no-fault eviction procedure. This protection does not apply to Section 8 Notices i.e. eviction where the tenant has failed to pay rent for 2 months.
8. There are two main areas of impact on the Private Sector Housing team arising from this:
 - a. There will be a need to carry out an inspection and take enforcement action quickly in response to a tenant's complaint. Failure to do so may result in the tenant being evicted in spite of these new provisions, which potentially will cause an increase in unintentional homeless cases. With a small Private Sector Housing Team there are times when it will only be possible to tenants to acknowledge their complaint in order to respond more fully when there is capacity.
 - b. Under Waverley's current enforcement approach, the action that is taken proportionate to the seriousness of the risk. The majority of tenant complaints have been dealt with successfully by taking informal action. However, if one of the above Notices are not served, the landlord will be able to evict the tenant rather than carrying out the repair. This may affect Waverley's relations with private landlords, most of whom comply with

requirements under the informal approach, and this may lead to an increase in appeals and enforcement.

9. The Council needs to consider the capacity of the private Sector Housing Team to carry out full inspections and serve Notices to meet the requirements of these provisions.

Smoke and Carbon Monoxide Alarm Regulations 2015

10. From 1 October private landlords (with certain exemptions – Registered providers of social housing and Licensed Houses in Multiple Occupation (HMO) are exempt, but unlicensed HMOs are not) must ensure that a smoke alarm is provided on each floor of the property and a carbon monoxide alarm is provided in any room which contains a solid fuel combustion appliance. In addition, the landlord is required to ensure that such alarms are in proper working order on the day each tenancy begins. The government has provided funding to Fire & Rescue authorities to provide free smoke and CO alarms and the Surrey Fire Service has made 7,000 alarms available.
11. These Regulations place enforcement duties on local housing authorities. Where the landlord is in breach of these requirements, the local authority has a duty to serve a remedial notice within 21 days to specify the action that needs to be taken. If the landlord does not comply with the notice within 28 days, the local authority must (if the occupier of the premises consents) arrange for an authorised person to carry out the remedial action within 28 days of the breach of notice. The local authority may also require the landlord to pay a penalty charge, which must not exceed £5,000. There is a right of appeal to the First Tier Tribunal for the penalty charge but not for the remedial notice.
12. The impact to the Council arising from this is:
 - a. The Scheme of Delegation will need to be updated to include the new provisions. This will require full Council approval.
 - b. Waverley will have to prepare and publish a statement of principles to be followed in determining the amount of a penalty charge.

Energy Act 2011

13. In addition to the immediate provisions outlined above, the Energy Act 2011 includes more provisions which will affect the private rented sector:
 - a. From 1 April 2016 private landlords will be unable to refuse a tenant's reasonable request for consent to energy efficiency improvements to a property. Now that the Green Deal funding has come to an end, Waverley will need to consider whether to provide grant funding to vulnerable tenants for these improvements. Enforcement of this requirement is through the First Tier Tribunal and not through the Council. However, the tenant may also request the service of a housing improvement notice to support the claim.

- b. From 1 April 2018 it will be against the law to rent out a property where a minimum EPC rating of E has not been achieved. This may affect several rural properties in Waverley. This is to be enforced by the local authority and will require service of compliance and penalty notices.

Conclusion

14. The new legislation is intended to improve the rights of private tenants against bad management practices and retaliatory evictions and to reduce the risk of injury or death from fire or carbon monoxide poisoning. Despite the promotion of alarms through a non-regulatory approach, private sector tenants remain significantly more at risk from fire or carbon monoxide poisoning than owner occupiers or public sector tenants. The new Regulations are therefore to be welcomed and the Private Sector Housing Team need to be empowered to use them.
15. To enable the Private Sector Housing Team to meet the requirements under the new Regulations, the Council is recommended to amend the Scheme of Delegation.

Corporate Overview and Scrutiny Committee

16. The Corporate Overview and Scrutiny Committee considered this report at its meeting on 26 January 2016 and any observations will be circulated separately.

Recommendation

It is recommended that the Executive notes the impact on the Council of new legislation affecting the private rented housing sector and

1. recommends to the Council that the Scheme of Delegation be amended, as set out in Annexe 1, to include the enforcement provisions under a) the Redress Schemes for Lettings Agency Work and Property Management Work Order 2014; and, b) the Smoke and Carbon Monoxide Alarm Regulations 2015; and
2. The statement of principles at Annexe 2 be adopted, which the Council will follow in determining the amount of penalty charge payable by a landlord who has failed to comply with a remedial notice under the Smoke and Carbon Monoxide Regulations 2015.

Background Papers

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

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