

	Executive 24 August 2020	Agenda Item No. 3
Title	Minimum Energy Efficiency Standards Enforcement Process – Private Sector Housing	
For further information about this report please contact	Mark Lingard Private Sector Housing Manager Telephone: 01926 456410 Email: mark.lingard@warwickdc.gov.uk Elaine Wallace Housing needs Manager Telephone: 01926 456311 Email: elaine.wallace@warwickdc.gov.uk	
Wards of the District directly affected	All	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?	No	
Date and meeting when issue was last considered and relevant minute number	N/A	
Background Papers	N/A	

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	Yes
Included within the Forward Plan? (If yes include reference number)	Yes Ref: 1,124
Equality Impact Assessment Undertaken	N/A

Officer/Councillor Approval		
Officer Approval	Date	Name
Deputy Chief Executive	30/07/20	Bill Hunt
Head of Service	09/07/20	Lisa Barker
CMT	30/07/20	Chris Elliott
Programme Director for Climate Change	16/07/20	Dave Barber
Section 151 Officer	29/07/20	Mike Snow
Monitoring Officer	30/07/20	Andrew Jones
WCC Legal Services	18/06/20	Mandeep Sahota
Finance	07/07/20	Victoria Bamber
Portfolio Holder(s)	24/07/20	Councillor Jan Matecki
Consultation & Community Engagement		
N/A Housing legislation		
Final Decision?	No	
Suggested next steps (if not final decision please set out below)		
It is not a final decision as part of one of the recommendations requires the Council to approve the penalties and part of another recommendation requires the Council to update the constitution.		

1 Summary

- 1.1 This report brings forward an enforcement process to enable officers to apply penalties for breaches of the Minimum Energy Efficiency Standards (MEES) regulations.
- 1.2 These regulations are the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, as amended (most recently by the Energy Efficiency (Private Rented Property) (Amendment) (England and Wales) Regulations 2019.

2 Recommendations

- 2.1 The Executive adopts Appendix 1 for the enforcement of the MEES regulations, subject to Council on 2 September agreeing the proposed penalties, to come into force from 3 September 2020.

- 2.2 That Executive recommends to Council the penalties of the WDC MEEs scheme to be as follows:

£2,000 for renting out a non-compliant property for less than 3 months

£4,000 and a publication penalty for renting out a non-compliant property for 3 months or more.

£1,000 and a publication penalty for providing false or misleading information on the PRS Exemptions Register

£2,000 and a publication penalty for failure to comply with a compliance notice

- 2.3 The Executive approves delegated authority to the Head of Housing Services to enforce the MEES regulations as set out within the approved penalties process; and asks Council to update the Constitution to reflect this.

3 Reasons for the Recommendations

- 3.1 Recommendation 2.1

- 3.2 The regulations set out that from 1 April 2020 the minimum level of energy efficiency for all private rented domestic property in England and Wales is an energy performance certificate (EPC), rating of band E. Therefore, from this date landlords of properties with EPC ratings of F or G will no longer be able to legally let them, subject to certain exceptions that are set out in Appendix 1.

- 3.3 Although the powers are within the regulations, for officers to be able to use them the Council must formally adopt a process to do so. The Council also has the discretion to set a schedule of penalties for the various offences.

- 3.4 Recommendation 2.2

- 3.5 The regulations allow the Council to determine any level of financial penalty, for each offence, up to the maximum amounts set out in the recommendation 2.2

3.6 The proposed approach of using the maximum penalties for the various offences has been arrived at following consultation with colleagues in the West Midlands. The intention is to be as consistent as possible across the region, in terms of both the level of the penalties and the process for applying them.

3.7 Recommendation 2.3

3.8 So that the policy can be applied quickly and efficiently, once adopted, it is proposed that the Head of Housing Services should be granted the authority to decide on the serving of compliance notices and imposing penalties.

4 Policy Framework

4.1 Fit for the Future (FFF)

The Council's FFF Strategy is designed to deliver the Vision for the District of making it a Great Place to Live, Work and Visit. To that end amongst other things the FFF Strategy contains several key projects.

The FFF Strategy has 3 strands – People, Services and Money and each has an external and internal element to it. The table below illustrates the impact of this proposal if any in relation to the Council's FFF Strategy.

FFF Strands		
People	Services	Money
External		
Health, Homes, Communities	Green, Clean, Safe	Infrastructure, Enterprise, Employment
<u>Intended outcomes:</u> Improved health for all. Housing needs for all met. Impressive cultural and sports activities. Cohesive and active communities.	<u>Intended outcomes:</u> Becoming a net-zero carbon organisation by 2025 Total carbon emissions within Warwick District are as close to zero as possible by 2030 Area has well looked after public spaces. All communities have access to decent open space. Improved air quality. Low levels of crime and ASB.	<u>Intended outcomes:</u> Dynamic and diverse local economy. Vibrant town centres. Improved performance/ productivity of local economy. Increased employment and income levels.
Impacts of Proposal		
This proposal provides additional tools to use in ensuring that private sector housing is suitable for its occupiers, meeting their needs and contributing to their	Reduce carbon emissions	None.

health and well-being.		
Internal		
Effective Staff	Maintain or Improve Services	Firm Financial Footing over the Longer Term
<u>Intended outcomes:</u> All staff are properly trained. All staff have the appropriate tools. All staff are engaged, empowered and supported. The right people are in the right job with the right skills and right behaviours.	<u>Intended outcomes:</u> Focusing on our customers' needs. Continuously improve our processes. Increase the digital provision of services.	<u>Intended outcomes:</u> Better return/use of our assets. Full Cost accounting. Continued cost management. Maximise income earning opportunities. Seek best value for money.
Impacts of Proposal		
None.	In providing new options for enforcement work the proposal helps to improve services to occupiers in private sector housing.	While not an objective of the policy, the charging regime does have the potential to generate new income for the Council.

4.2 Supporting Strategies

Each strand of the FFF Strategy has several supporting strategies. Improving housing standards in residents' homes directly and positively contributes to the Housing and Health-and-Wellbeing priorities. It also contributes to the Housing and Homelessness Strategy objective of improving the management and maintenance of existing housing.

4.3 Changes to Existing Policies

This report does not change existing policies but introduces a new process that enables use to be made of additional options for carrying out private sector housing enforcement work.

4.4 Impact Assessments

The report brings forward proposals inline with the requirement of Government regulations, which considered equality impact as part of its decision making. The report is also inline with the adopted enforcement policy/procedures as an overarching process. Therefore no impact assessment has been undertaken.

5 Budgetary Framework

- 5.1 Private sector enforcement work is undertaken by the Private Sector Housing Team and is already budgeted for. It is anticipated that this additional work can be absorbed into the workload of the team. Therefore, it is not envisaged that the introduction of this process will require new budgetary provision to be made.

5.2 The income received from the penalties can be retained by the Council but is ring fenced for Private Sector Housing enforcement work. The anticipated income budget is unknown at this stage but will be adjusted in further months, when the level of likely penalties becomes apparent.

5.3 The penalties will be included for review within the Council's Fees and Charges report in September/October 2020.

5.4 It has been confirmed that VAT is not applicable to these penalties.

6 Risks

6.1 The introduction of this process would bring the risk of legal challenges from landlords who receive the penalties. This has been mitigated by incorporating the government guidance within the process.

7 Alternative Option(s) considered

7.1 Not adopting this process would limit the Council's options in its role as a regulator of private sector housing. It could also affect community confidence in the Council's ability and ambition to deal with poor management and to raise housing and energy efficiency standards.

8 Background

8.1 The number of people housed in private rented accommodation now exceeds the number of people housed in socially rented properties, both nationally and locally.

8.2 Properties with an EPC rating of F or G are the most energy inefficient housing. They impose unnecessary energy costs on tenants and the wider economy and can lead to poor health outcomes, with a resulting resource pressure on health services. These properties also contribute to avoidable greenhouse gas emissions.

8.3 Increasing the energy efficiency of privately rented housing can help:

- reduce energy costs for tenants, including some of the most vulnerable.
- improve the condition of properties and help reduce maintenance costs.
- lower demand for energy thereby smoothing seasonal peaks in energy demand.
- reduce carbon emissions.

8.4 Whilst the regulations came into force just for new tenancies in April 2018. The very protracted national discussions/consultation around the maximum landlord contribution meant that enforcement work was not practically possible until this had been confirmed. The maximum landlord contribution has now been set at £3,500 and from the 1 April 2020 the regulations apply to all rented properties.

8.5 Whilst the regulations prevent properties with an EPC rating of F and G being rented out there are a number of exemptions, which are set out in Appendix 1

8.6 It is the landlord's responsibility to provide the evidence to support an exemption and they must be registered on the Government's Private Rented Sector Exemptions Register.

Penalties Process

Appendix 1

This process follows the general principles set out in the Council's Enforcement Policy and the Government guidance.

In summary where the Council believes that a property has been let in breach of the Minimum Energy Efficiency Standard Regulations (MEES) it will serve a compliance notice requesting information. If the Council are then satisfied that a breach has occurred, they can serve a notice on the landlord imposing financial penalties. The landlord may ask for the penalty notice to be reviewed. Following the outcome of the review the landlord still has the option to appeal the penalty notice to the First Tier Tribunal.

Compliance Notice

Where the Council believe that a landlord is letting a property in breach of the MEES Regulations or has registered false or misleading information on the Private Rented Sector (PRS) Exemptions Register a compliance notice will be issued.

A compliance notice requests information to help the Council decide whether a breach has occurred. The Council may serve a compliance notice up to 12 months after the suspected breach occurred.

A compliance notice may request information on:

- the Energy Performance Certificate (EPC) that was valid for the time when the property was let
- the tenancy agreement used for letting the property
- information on energy efficiency improvements made
- any Energy Advice Report in relation to the property
- any other relevant document

Penalties

If it is confirmed that a property has been let since April 2020 in breach of the regulations, and the landlord is not working with the Council to comply with the regulations, a penalty notice will be served with the maximum applicable penalty.

The maximum penalty amounts that apply per property and per breach of the regulations are:

- £2,000 for renting out a non-compliant property for less than 3 months
- £4,000 and a publication penalty for renting out a non-compliant property for 3 months or more.
- £1,000 and a publication penalty for providing false or misleading information on the PRS Exemptions Register
- £2,000 and a publication penalty for failure to comply with a compliance notice

In total the maximum amount a landlord can be fined per property is £5,000.

A publication penalty means that the Council will publish some details of the landlord's breach on a publicly accessible part of the PRS Exemptions Register.

Right of Appeal

The landlord can ask for the decision to serve a penalty to be reviewed by writing to Head of Housing Services within 28 days of the penalty notice being served, giving their reasons for the review request.

The Council must withdraw the penalty notice if:

- new evidence shows a breach has not occurred.
- a breach has occurred, but the evidence shows that the landlord took all reasonable steps to avoid the breach.
- It is decided that because of the circumstances of the case, it was not appropriate to issue a penalty.

The Council can also decide to vary the level of penalties following representations from the landlord.

If a local authority decides to uphold the penalty notice, a landlord may appeal to the First-tier Tribunal. The landlord has 28 days to submit an appeal from the date of the local authority's decision.

The First-Tier Tribunal may quash the penalty notice or confirm the penalty notice in its original form. If the penalty notice is quashed, the Local Authority must repay any amount paid by the landlord in carrying out the notice.

If a landlord does not pay a financial penalty imposed on them, the Local Authority may take the landlord to court to recover the money.

Exemptions

If a property meets the criteria below the landlord, or an agent for the landlord, will be able to let it once they have registered an exemption in the Government's PRS Exemptions Register:

- **All relevant improvements have been made exemption (valid for 5 years)**

Where a property is still below an EPC rating of E after improvements have been made up to the cost cap (£3,500 incl VAT) or where no relevant improvements can be made

- **High cost exemption (valid for 5 years)**

Where no improvement can be made because the cost of installing even the cheapest recommended measure would exceed £3,500 (including VAT).

After the exemption expires the landlord must try again to improve the property's rating to meet the minimum level of energy efficiency. If this still cannot be achieved, then a further exemption may be registered.

- **Third-party consent exemption (valid for 5 years)**

Where the relevant improvements for the property need consent from another party, and the landlord can evidence that despite their best efforts consent cannot be obtained, or is given subject to conditions that they could not reasonably comply with.

- **Property devaluation exemption (valid for 5 years)**

Where the landlord can evidence that making energy efficiency improvements to the property would devalue it by more than 5%.

- **Temporary exemption due to recently becoming a landlord (valid for 6 months)**

Where a person recently becomes a landlord, under certain circumstances they will not be expected to take immediate action to improve your property to an EPC rating of E. They may claim a 6 months' exemption from the date that they became the landlord for the property.

Any exemptions which are registered on the Private Rented Sector Exemptions Register may not pass over to a new owner or landlord of a property upon sale, or other transfer. If a property is sold or otherwise transferred with an exemption registered, the exemption will cease to be effective and the new owner will either

need to improve the property to the minimum standard at that point, or register an exemption where one applies, if they intend to continue to let the property.