



**EXECUTIVE OVERVIEW &
SCRUTINY COMMITTEE:
21 October 2021**

CABINET: 2 November 2021

Report of: Corporate Director of Place & Community

Relevant Portfolio Holder: Councillor Gareth Dowling

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**SUBJECT: MINIMUM ENERGY EFFICIENCY STANDARD ENFORCEMENT
POLICY**

Wards affected: Borough wide

1.0 PURPOSE OF THE REPORT

1.1 To consider and agree the Minimum Energy Efficiency Standard Enforcement Policy.

2.0 RECOMMENDATIONS TO EXECUTIVE OVERVIEW & SCRUTINY

2.1 That the Minimum Energy Efficiency Standard Enforcement Policy attached at Appendix 1 be put before Cabinet to be approved.

2.2 That any agreed comments be referred to Cabinet.

3.0 RECOMMENDATIONS TO CABINET

3.1 That the Minimum Energy Efficiency Standard Enforcement Policy attached at Appendix 1 be approved.

3.2 That any comments from Executive Overview & Scrutiny be considered and agreed.

3.3 That the Corporate Director of Place & Community, in consultation with the relevant Portfolio Holder, be authorised to amend the policy considering any legislative or guidance changes.

3.4 That the Corporate Director of Place & Community, in consultation with the relevant Portfolio Holder, be authorised to review and change the level of financial penalties issued as required.

3.5 That the Corporate Director of Place & Community, in consultation with the relevant Portfolio Holder, be authorised to amend the current Private Sector Housing Enforcement Policy, originally approved by Cabinet, to include the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (the Regulations) (as amended).

4.0 BACKGROUND

4.1 The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (the Regulations), first came into force on the 1 April 2018 but were amended in 2020. The Regulations were brought in to tackle the least energy efficient private rented properties in England and Wales.

4.3 The Regulations set out the minimum level of energy efficiency for private rented properties in England & Wales, known as the Domestic Minimum Energy Efficiency Standard (MEES).

4.4 The Council will be the enforcing authority and can serve financial penalties where the landlord is found to be in breach of the Regulations.

5.0 APPLICATION OF THE REGULATIONS

5.1 The Regulations first came into force on the 1 April 2018 and were amended in 2020. Since 1 April 2018, landlords must not have granted a tenancy to new or existing tenants if the property had an energy performance certificate (EPC) rating of F or G. Since 1 April 2020, landlords must not continue to let a property which is already let if it has an EPC rating of F or G, unless a valid exemption is in place.

5.2 The Regulations apply to all domestic private rented properties that are:

- let on either an assured tenancy (including assured shorthold tenancies), a regulated tenancy (defined in the Rent Act 1977) or a domestic agricultural tenancy (i.e. an assured agricultural tenancy under s.24 Housing Act 1988, a protected occupancy under s.3(6) of the Rent (Agriculture) Act 1976, a statutory tenancy under s.4(6) Rent (Agriculture) Act 1976);
- legally required to have an Energy Performance Certificate (EPC)

5.3 The Regulations do not apply to social housing tenancies.

5.4 Where a property is legally obliged to have an EPC, it will meet the MEES if from either 1 April 2018 or 1 April 2020, it has a valid EPC that shows an energy rating of E or above. If it has a rating of F or G, it will be defined as sub-standard and in breach of the Regulations.

6.0 FUNDING IMPROVEMENTS

6.1 In order to improve the EPC rating of a property, a landlord can make 'relevant energy efficiency improvements'. Such improvements will be listed in the EPC report, a surveyors report or a Green Deal Advice Report.

- 6.2 An improvement will only be a relevant improvement if:
- third-party funding is available to cover the full cost of purchasing and installing the improvement(s); or
 - where third-party funding is unavailable, the improvement(s) can be purchased and installed for £3,500 or less (inclusive of VAT) using the landlord's own funding; or
 - the improvement(s) can be installed through a combination of landlord self-funding and third-party funding with a total cost of £3,500 or less (inclusive of VAT).
- 6.3 Landlords are not required to spend more than £3,500 including VAT on energy efficiency improvements.
- 6.4 If a property's EPC rating cannot be improved to at least an E rating for £3,500 or less, improvements up to that value should still be made and then an 'all improvements made' exemption should be registered.
- 6.5 Funding options are available to landlords and include third party funding e.g. Energy Company Obligation, Local Authority Grants, Green deal finance, self-funding or a combination of third part and self-funding.

7.0 EXEMPTIONS

- 7.1 There are various exemptions that apply to the prohibition on letting a property with an energy efficiency rating below E. If a property meets the criteria for any of the exemptions, the landlord will be able to let it once an exemption has been registered on the PRS Exemptions Register.

8.0 ENFORCEMENT & FINANCIAL PENALTIES

- 8.1 The Regulations will be enforced by the Council. If it is believed that a landlord has breached the Regulations, a compliance notice will be served. If a breach is confirmed, a financial penalty will be issued.
- 8.2 The compliance notice can be served up to 12 months after a suspected breach occurred. This means that a person can be served a notice even if they are no longer the landlord.
- 8.3 If a breach is confirmed, a financial penalty can be served up to 18 months after the breach. The levels of financial penalties can be found at Appendix 2 to the Policy.
- 8.4 The Council can also publish details of the breach on the publicly accessible part of the PRS Exemptions Register and will remain on the Register for at least 12 months.

9.0 RIGHTS OF APPEAL

- 9.1 Landlords can ask the Council to review the decision to serve a penalty notice. If the decision is upheld, landlords can appeal to the First-Tier Tribunal.

10.0 SUSTAINABILITY IMPLICATIONS

10.1 The introduction of the Regulations will result in an improvement in the quality of the Borough's private rented housing stock by ensuring the landlords do everything they can to improve the energy efficiency of their properties.

11.0 FINANCIAL AND RESOURCE IMPLICATIONS

11.1 The introduction of these Regulations will have an impact on resources. There is currently only 1 FTE post within the Private Sector Housing Team that is responsible for enforcement. A further FTE equivalent post will be needed to ensure the Council can meet its legal obligations under these and other new Regulations recently introduced.

11.2 There are financial implications due to the need for another FTE Enforcement Officer post. Whilst income can be generated through the imposition of financial penalties, enforcement is always a last resort and voluntary compliance is always preferred.

12.0 RISK ASSESSMENT

12.1 The Regulations provide an opportunity by increasing the powers available to the Council to ensure the continuous improvement of the Borough's private rented housing stock.

12.2 Failure to adequately carry out these functions is a breach of the Regulations and this presents a risk to the Council.

13.0 HEALTH AND WELLBEING IMPLICATIONS

13.0 The proposal will empower people in vulnerable, deprived and disadvantaged communities to realise their full health potential by ensuring their homes are safe and warm.

Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

There is a direct impact on members of the public, employees, elected members and / or stakeholders, therefore an Equality Impact Assessment is required. A formal equality impact assessment is attached as an Appendix to this report, the results of which have been taken into account in the Recommendations contained within this report

Appendices

1. Minimum Energy Efficiency Standard Enforcement Policy
2. Equality Impact Assessment
3. Minute of Executive Overview & Scrutiny Committee – 21 October 2021 (Cabinet only)