



Classification	Item No.
Open	

Meeting:	Cabinet
Meeting date:	24th March 2021
Title of report:	Introduction of a Civil (Financial) Penalty Policy and Enforcement Protocol - Minimum Energy Efficiency Standards
Report by:	Cabinet Member for Housing Services
Decision Type:	Key
Ward(s) to which report relates	All

Executive Summary:

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended in 2016 and 2019), referred to in this report as “the Regulations”, are designed to tackle the least energy-efficient properties, those rated F or G on their Energy Performance Certificate (EPC). The Regulations establish a minimum standard of EPC band E for domestic private rented properties, affecting new tenancies and renewals since 1 April 2018. The Regulations now applies to all properties in scope from 1 April 2020.

To enable the Council to enforce this Statutory duty, there is a requirement to publish a Civil Penalty Policy. Therefore, in consultation with the Centre for Sustainable Energy and utilising best practice from other Local Authorities, including guidance from the Department for Business, Energy and Industrial Strategy (BEIS), we have developed the Civil (Financial) Penalty Policy and Enforcement Protocol – Minimum Energy Efficiency Standards. This report is seeking approval for the new proposed Policy.

Recommendation(s)

To approve and implement the Civil (Financial) Penalty Policy, to allow officers to impose fines where necessary to landlords and improve the energy efficiency standards of Private Rented Properties.

Key considerations

Background:

LEGISLATIVE FRAMEWORK

1.1 Councils have a statutory duty to enforce the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (amended in 2016 and 2019). (See 'background papers' for access to a copy of the Regulations). Subject to relevant exemptions these regulations set a minimum level of energy efficiency that:

- since 1 April 2018, landlords of relevant domestic private rented properties must not grant a tenancy to new or existing tenants if their property has an EPC rating of F or G (as shown on a valid EPC for the property);
- from 1 April 2020, landlords must not continue letting a relevant domestic property which is already let if that property has an EPC rating F or G (as shown on a valid EPC for the property).

Where a property is sub-standard, landlords must normally make energy efficiency improvements which raise the EPC rate to minimum E before they let the property. In certain circumstances, landlords may be able to claim an exemption from this prohibition on letting a sub-standard property. Where a valid exemption applies, landlords must register the exemption on the National PRS Exemptions Register.

Bury Council Officers are authorised to check for different forms of non-compliance with the Regulations and issue penalties for non-compliance. The Council's Urban Renewal section undertakes housing enforcement in the private rented sector and would be the team that would enforce these regulations.

1.2 To undertake this enforcement action, the Council must publish a Civil Penalty Policy, that sets out the protocol for how the Council will undertake the enforcement duties and arrive at decisions, ensuring they are fair and accountable.

1.3 The aim of adopting the policy is to increase the range of measures open to the Council, in tackling non-compliant landlords and to increase the Council's capacity to undertake enforcement, where there is clear evidence that offences have been committed.

SCOPE FOR ENFORCEMENT

2.1 The Council has previously not had the capacity to develop this work area to enable the enforcement of these regulations. However, in 2019/20 seven pilot studies across eight English local authorities were delivered which investigated enforcement of these Regulations. Following this a draft toolkit was developed by Centre Sustainable Energy (CSE) with the Department for Business, Energy and Industrial Strategy (BEIS) support, drawing on findings with example materials developed. In 2020 Bury was one of 12 Local Authorities chosen,

(and awarded £100,000 from BEIS) to test this draft toolkit. The purpose of the pilot was to further explore the extent to which the toolkit can help streamline process development work, provide off-the-shelf tools to embed within business-as-usual practices; and minimise any additional resources that may be needed for Local Authorities when enforcing the regulations.

- 2.2** This has enabled Urban Renewal to recruit a temporary officer and created the capacity required to develop this work area, to set up the policies and procedures required, utilising the best practice and guidance from the first round of pilot projects, (Oxford Council and Bristol Council). Consequently, supporting Bury to become a flagship Council for the enforcement of these regulations, helping to shape the final toolkit that will be published by BEIS in the future.
- 2.3** We have identified an initial 326 private rented properties in the Borough, that are potentially not compliant with the regulations, they have an EPC rating of F/G. There have been no exemptions registered formally in Bury for domestic private sector homes. We have mapped this data to identify clusters of properties that are not compliant for proactive and focused targeted, ensuring limited staffing resources are utilised most effectively.

The proposal

- 3.1** Urban Renewal have drafted a proposed Civil (Financial) Penalty Policy, (see '*background papers*'), that describes in detail how Bury Council comes to the decision to issue a financial penalty, the level of fine it will impose, and the process it will follow to issue the penalty.

The policy details:

- An outline of the regulations
- The Councils protocol for engagement with landlords
- A summary of the available penalties
- Factors in determining the level of Civil Penalty
- How decisions will be recorded
- How a landlord can appeal the decision

- 3.2** As mentioned earlier the Council has engaged with other local authorities involved in the phase 1 BEIS pilot in developing:

- The levels of harm, for example there is a vulnerable tenant in property, and they have been in the non-compliant property for an extended period, therefore there is a high level of harm,
- The level of culpability, for example there may be complex issues outside of the landlord's control which have led to non-compliance and therefore a low level of culpability,

And

- The fine levels set according to the above. Currently the maximum level of penalty imposed, in relation to breaches of the regulations and as per the Regulations must be no more than £5,000, at an individual property, at a single point of time.

- 3.3 Urban Renewal will initially informally advise Landlords, who rent properties with an EPC of F or G, that they do not meet the minimum energy efficiency standard and are therefore committing an offence under the Regulations.
- 3.4 Additionally, the Council will proactively promote the energy efficiency retrofit grants that are available, such as the Greater Manchester Green Homes Local Authority Delivery Scheme, to engage positively with non-compliant landlords in the first instance. This will also assist the Council in achieving the Greater Manchester targets set for retrofit energy efficiency installations.
- 3.5 Landlords will be given an appropriate time, normally 14 days, to respond, either showing evidence that they now have a compliant EPC, or to set out a plan to achieve the required energy efficiency level. They will be warned that if they continue to be in breach after the time given, an investigation will follow and formal enforcement action will be considered, both under the Regulations and the Housing Act 2004.
- 3.4 The Council may in circumstances, where a landlord has a history of not complying with housing related regulatory requirements, decide to take formal action without giving an informal opportunity for the landlord to comply.
- 3.5 By approving this Policy, this will:
- Enable the enforcement of the Regulations,
 - Improve the energy efficiency standards of private rented homes in the borough,
 - Improve health outcomes for residents, ensuring they do not live in homes that are cold and damp, which can exacerbate health conditions such as asthma, angina, arthritis and can lead to respiratory infections and increased risk of stroke and heart attack due to vasoconstriction. This would inevitably lead to an increased demand on an already stretched health service,
 - Reduce fuel bills and alleviate fuel poverty for Bury residents,
 - Contribute to relevant Council strategies e.g. Housing Strategy and Climate Change Strategy,
- And
- Safeguard the continued delivery of the testing toolkit pilot outlined above, meeting targets set and ensuring that Bury remains a flagship leader in the development of enforcement across England and Wales.

Other alternative options considered

- 5.1 Reject the civil penalty policy – As a piece of legislation, we have a duty to adopt and utilise the powers contained within. Not adopting the policy also misses the opportunity to improve the energy efficiency of homes in the private rented sector, (which is an aim of the emerging Housing Strategy), to meet our climate change agenda, alleviate fuel poverty and to generate additional income.
- 5.2 Implement the policy and change the banding level of fines - This would mean Bury Council is not consistent with other Local Authorities.

Community impact/links with Community Strategy

Links to 2030 strategy, the emerging Housing Strategy and the 2038 Carbon neutral agenda.

Equality Impact and considerations:

Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

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

The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services.

Equality Analysis	<i>Please provide a written explanation of the outcome(s) of either conducting an initial or full EA.</i>
One issue raised - there may be instances where the landlord or tenant may not have English as their first language, should that be the case Enforcement Officers will ensure that any notices are translated to ensure equality. This is standard practice across all the enforcement duties Urban Renewal deliver, therefore this discrimination/inequality should not occur as a direct result of the introduction of this specific policy.	

**Please note: Approval of a cabinet report is paused when the 'Equality/Diversity implications' section is left blank and approval will only be considered when this section is completed.*

Assessment of Risk:

The following risks apply to the decision:

Risk / opportunity	Mitigation
Legal Financial Reputational	As described in the new process

Consultation:

Relevant Council departments, the Department for Business, Energy and Industrial Strategy (BEIS) and Centre for Sustainable Energy.

Legal Implications:

The proposals and attached policy are in accordance with the relevant regulations.

Financial Implications:

The cost of the proposals are met from the grant available. In the event that any fines should be issued the income will be retained by the service.

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Background papers:

Bury Council CIVIL (FINANCIAL) PENALTY POLICY and Enforcement Protocol:
Minimum Energy Efficiency Standards



Bury Civil Penalty
Policy and Enforcem

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

www.legislation.gov.uk/uksi/2015/962/pdfs/uksi_20150962_en.pdf (2015)
www.legislation.gov.uk/uksi/2016/660/pdfs/uksi_20160660_en.pdf (Amended 2016)
www.legislation.gov.uk/uksi/2019/595/pdfs/uksi_20190595_en.pdf (Amended 2019)

THE DOMESTIC PRIVATE RENTED PROPERTY MINIMUM STANDARD: Guidance for landlords and Local Authorities on the minimum level of energy efficiency required to let domestic property under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, as amended (published by BEIS)



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National PRS Exemptions Register available at:

<https://www.gov.uk/guidance/domestic-private-rented-property-minimum-energy-efficiency-standard-landlord-guidance#registering-an-exemption>

Web article from CSE on Coordinating MEES pilot schemes across England: Helping local authorities fulfil their MEES obligations. Available at:

<https://www.cse.org.uk/projects/view/1360>

Please include a glossary of terms, abbreviations and acronyms used in this report.

Term	Meaning
BEIS	Department for Business, Energy and Industrial Strategy
CSE	Centre for Sustainable Energy
EPC	Energy Performance Certificate

MEES	Minimum Energy Efficiency Standards
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