

<b>Report to:</b>	Cabinet	14 November 2022
<b>Lead Cabinet Member:</b>	Councillor Brian Milnes, Deputy Leader, and Lead Cabinet Member for the Environment	
<b>Lead Officer:</b>	Bode Esan, Head of Climate, Environment and Waste	

# Minimum Energy Efficiency Standards Policy – Draft Approval

## Executive Summary

1. This report outlines the Minimum Energy Efficiency Standards and their use in the enforcement of standards in private sector housing. The Council is responsible for enforcing these regulations and where it is satisfied that a property has been let in breach of the regulations it may serve a Penalty Notice on the landlord imposing a financial penalty.
2. These standards do not apply to registered providers of social housing.

## Key Decision

3. Yes

The key decision was first published in the October 2022 Forward Plan.

## Recommendations

4. It is recommended that Cabinet approves the proposed Minimum Energy Efficiency Standards policy.

## Reasons for Recommendations

5. The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 enable Local Authorities to impose financial penalties on landlords who let sub-standard properties in breach of the regulations (up to a maximum of £5,000 per property).
6. The Council has the discretion to decide the amount of financial penalty up to the maximum limits set by the regulations, as detailed above. It is therefore incumbent upon the Council to agree a policy on how it intends to levy these financial penalties. The policy (Appendix A) fully outlines this and provides Council Officers with a

means to calculate a financial penalty that is well reasoned and proportionate to the breaches of the regulations in question.

## Details

7. The Council is responsible for enforcing various pieces of legislation to ensure property standards are maintained for tenanted properties in the private rented sector and that landlords issue tenancies that comply with the law from the outset. The People & Protection Team undertake the enforcement of these legal provisions respectively.
8. The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 deal with sub-standard domestic rented properties, specifically tackling the least energy-efficient properties in England and Wales, those with Energy Performance Certificates (EPC) that are rated F or G. The regulations establish a minimum standard of EPC band E for domestic privately rented properties, applicable to all relevant tenancies (assured, regulated or domestic agricultural) as of 1st April 2020 and landlords must not continue to let a relevant property which has an EPC rating of F or G unless that property has a valid exemption registered on the government's PRS exemptions register. Where a property is sub-standard, landlords must make energy efficiency improvements, which raise the EPC rating to a minimum E. The People and Protection Team will work with other teams in the Council (i.e. Building Control) to identify relevant properties.
9. The Council is responsible for enforcing these regulations and where it is satisfied that a property has been let in breach of the regulations it may serve a Penalty Notice on the landlord imposing a financial penalty. The Council may also publish details of the breach on the PRS Exemptions Register, also known as a Publication Penalty. The Council has the discretion to decide the amount of financial penalty up to the maximum limits set by the regulations. In order to determine the level of financial penalty to be applied for each breach of the regulations, a policy (Appendix A) has been produced which includes a matrix used to calculate this, which takes into account a number of relevant matters including both culpability and potential harm to the tenant(s). The investigating officer will use this matrix to generate a penalty amount.
10. It should be noted that in the first instance the Council will engage informally with landlords who rent properties with F and G EPC ratings to advise them of the regulations and that their rented properties do not meet the Minimum Energy Efficiency Standards. The Council will offer advice on how the standards can be met and how to register an exemption, if appropriate. Landlords will then be given an appropriate amount of time to make the necessary changes but will be cautioned that if they fail to meet an acceptable rating within the given deadline, formal enforcement action may be taken. In making a decision as to what, if any, enforcement action is appropriate the Council will refer to its own Corporate Enforcement Policy.
11. In formulating this policy, guidance issued by the department for Business, Energy and Industrial Strategy (BEIS) originally produced on these regulations in 2017 (updated in May 2020) has been considered.

12. The Council may issue a Compliance Notice where it believes that a landlord may be in breach of the prohibition on letting a substandard property or a landlord has been in breach of the prohibition at any time in the past twelve months. A Compliance Notice may be served requiring information from that landlord to help them to decide whether that landlord has in fact breached the prohibition. Where the Council is satisfied that a property has been let in breach of the regulations it may serve a Penalty Notice on the landlord imposing a financial penalty.
13. Under the legislation, the recipient of a financial penalty may ask the Penalty Notice to be reviewed (regulation 42). This will require the Head of Environment to review all the evidence and any representations made and then determine if the financial penalty was fair and reasonable in the circumstances, including the amount levied. If the financial penalty is upheld on review, the recipient may appeal to the First-tier Tribunal.

## **Options**

14. Members have the following options in relation to these proposals:

- (i) Approve the proposed policy.
- (ii) Approve the proposed policy with amendments.
- (iii) Refuse the approval of the proposed policy.

## **Implications**

15. In the writing of this report, taking into account financial, legal, staffing, risk, equality and diversity, climate change, and any other key issues, the following implications have been considered: -

### **Climate Change**

16. There are considered to be positive implications to the proposed policy. Having these Regulations, and a policy that provides a financial penalty structure to back them up, can assist officers enforcing them. Officers can outline the penalties to landlords whose properties are non-compliant thus incentivising them to carry out energy efficient improvements to their properties. This in turn will result in lower domestic energy consumption by tenants which contributes to reducing the effects of climate change.

## **Alignment with Council Priority Areas**

17. Proposal not directly relevant to priority areas.

## **Background Papers**

BEIS Minimum Energy Efficiency Standards guidance:

[Domestic private rented property: minimum energy efficiency standard - landlord guidance - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

## **Appendices**

Appendix A: Minimum Energy Efficiency Standards Policy

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