

SUBJECT: Minimum Energy Efficiency Standards - Private Rented Sector (PRS).
MEETING: Individual Cabinet Member Decision – Cllr Sara Jones
DATE: 13th January 2021
DIVISION/WARDS AFFECTED: All

1. PURPOSE:

- 1.1 To inform the Cabinet Member of the statutory duty under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 and consider the Council's approach to using the powers contained in the Regulations.
- 1.2 To seek approval to adopt the Enforcement Protocol and associated paperwork as laid out in the appendices to this report including Fixed Penalty Notices and Compliance Notices in relation to domestic and non-domestic property.

2. RECOMMENDATIONS:

- 2.1 That Officers within the Public Protection division who are authorised under the Energy Act 2011 be authorised under Regulation 35 of the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015.
- 2.2 That the Scheme of Delegation to Officers in the Councils Constitution be amended by the Monitoring Officer to reflect this new authorisation.
- 2.3 To agree and adopt the attached Enforcement Protocol as the Council's approach to dealing with identified non-compliances including the use of Fixed Penalty and Compliance Notices where appropriate.

3. KEY ISSUES:

Background

- 3.1 Monmouthshire Trading Standards is the only Welsh local authority selected to participate in Year 2 of the Private Rented Sector - Minimum Energy Efficiency Standards Enforcement and Compliance Project. MCC have joined 9 other authorities across the UK to deliver the project which commenced in late July following an initial delay due to Covid-19. UK Government through the Department for Business Enterprise Industrial Strategy (BEIS) has provided £100,000 of funding to enable the delivery of the work, which will focus on the development and testing of an Enforcement Toolkit that was devised by other local authorities in Year 1 of the project.
- 3.2 Poverty - Data from Welsh Government indicates that 43% of households suffering from fuel poverty live in properties with an EPC rating of F or G; in comparison with 5% of households in properties living in properties with a rating of B or C. Additional modelling indicates that the average cost of heating a G rated property is £3105. For properties rated F its £2124, where as those in properties rated E will pay on average £1425. This represents an average saving of over £1600.00 per year for these households.
- 3.3 Health - Poor energy efficiency in a person's home can lead to lower indoor temperatures in the winter months. Exposure to cold has been associated with increased winter deaths, risk of respiratory and circulatory conditions, cardiovascular problems, and arthritic and rheumatic illnesses; and can exacerbate existing health

conditions, including common flu and cold, and allergies. An adequate indoor temperature can also reduce injury from accidents as higher temperatures improve general safety, hand strength and dexterity. Cold living conditions can also affect mental health as cold homes can cause stress and anxiety. Research from the Building Research Establishment highlights that cold related illness amongst people living in privately rented properties costs the NHS over £35 million. Increasing the energy efficiency of PRS properties is therefore key to tackling cold related illness and limiting impact on the NHS.

3.4 Climate - The energy used in our homes accounts for more than a quarter of energy use and carbon dioxide emissions in the UK. More energy is used in housing than in road transport or industry and therefore housing represents a major opportunity to cut energy use and CO2 emissions. The Private Rented Sector has doubled in size since 2002 in the UK and now accounts for around 20% of the UK's total housing stock. F and G rated properties waste energy. They impose unnecessary cost on tenants and they contribute to avoidable greenhouse gas emissions.

3.5 **Legislation**

The need for an EPC when renting out a property has been in place now for over 10 years, but in 2015 The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 established a Minimum Energy Efficiency Standard (MEES) for privately rented property in England and Wales. This meant that, from **April 2018**, landlords of privately rented domestic and non-domestic property in England and Wales must ensure that their properties reach at least an Energy Performance Certificate (EPC) rating of Band 'E' before granting a new tenancy to new or existing tenants. In **April 2020** this requirement was expanded to include domestic private rental properties with sitting tenants. In **April 2023** this will also cover the non-domestic properties with sitting tenants.

3.6 Long term the Government has an aspirational trajectory to raise the minimum EPC requirements for domestic properties to Band C. Legislation introducing this change is now under consultation, with a proposed implementation in 2025.

3.7 **Project**

The Toolkit is in the formative stage. Participating authorities working with the management firm CSE (Bristol) and BEIS will test the effectiveness of its contents. It will cover everything from building a business case, training staff, devising a communications strategy, and implementing an enforcement procedure. Working with partners like Rent Smart Wales, officers will look to act on properties with an F and G rating, encouraging landlords to make the necessary improvements, signposting to funding opportunities, but taking enforcement action against those who are unwilling to implement the changes to improve their properties.

3.8 Officers will also scrutinise the Register of Exemptions, where landlords can register properties that can avail themselves of an exemption from meeting the Minimum Energy Standard. Regular feedback to CSE and BEIS will enable the toolkit to be adjusted to ensure an effective enforcement tool can be distributed to authorities across the UK

3.9 **Fixed Penalty Notices**

Financial penalties for domestic properties (Regulation 40)

3.10 Where the Local Authority decides to impose a financial penalty, they have the discretion to decide on the amount of the penalty, up to maximum limits set by the Regulations. The maximum penalties are as follows:

- 3.11 (a) Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than 3 months, the Local Authority may impose a financial penalty of up to £2,000 and may impose the publication penalty.
- (b) Where the landlord has let a sub-standard property in breach of the regulations for 3 months or more, the Local Authority may impose a financial penalty of up to £4,000 and may impose the publication penalty.
- (c) Where the landlord has registered false or misleading information on the PRS Exemptions Register, the Local Authority may impose a financial penalty of up to £1,000 and may impose the publication penalty.
- (d) Where the landlord has failed to comply with compliance notice, the Local Authority may impose a financial penalty of up to £2,000 and may impose the publication penalty.
- 3.12 Financial Penalties for Non – Domestic Properties Regulation 41
Where the Local Authority decides to impose a financial penalty, they have the discretion to decide on the amount of the penalty, up to maximum limits set by the Regulations. The maximum penalties are as follows:
- 3.13 (a) Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than 3 months, the Local Authority may impose a financial penalty of up to £5,000 or 10% of the rateable value of the property (whichever is greater, but not exceeding £50,000) and may impose the publication penalty.
- (b) Where the landlord has let a sub-standard property in breach of the regulations for 3 months or more, the Local Authority may impose a financial penalty of up to £10,000 or 20% of the rateable value of the property (whichever is the greater, but not exceeding £150,000) and may impose the publication penalty.
- (c) Where the landlord has registered false or misleading information on the PRS Exemptions Register, the Local Authority may impose a financial penalty of up to £5,000 and may impose the publication penalty.
- (d) Where the landlord has failed to comply with compliance notice, the Local Authority may impose a financial penalty of up to £5,000 and may impose the publication penalty.
- 3.14 The Enforcement Protocol lays down how Monmouthshire will apply a staged approach to determining the level of fine that is appropriate and proportionate given the particular circumstances to each non-compliance. This includes the various factors relevant to each non-compliance, such as the level of harm, the level of culpability, the admission of guilt and the 'Totality Principle'.

4. EQUALITY AND FUTURE GENERATIONS EVALUATION (INCLUDES SOCIAL JUSTICE, SAFEGUARDING AND CORPORATE PARENTING):

- 4.1 In May 2019 Monmouthshire County Council unanimously declared a climate emergency and in October 2019 devised its strategy for become carbon neutral by 2030. Increasing the energy efficiency of our PRS can significantly contribute to local targets for the reduction of carbon emissions and the climate change agenda.
- 4.2 Minimum energy efficiency standards form part of the climate change agenda and links in with crucial environmental considerations as well as addressing the problems associated with poverty, many living in fuel poverty are the most vulnerable citizens.

4.3 The completed evaluation form is also attached as an appendix to this report.

5. OPTIONS APPRAISAL:

5.1 An options appraisal has been undertaken in Table One below.

Table One: Options Appraisal

Option	Benefits	Risks	Comments
Do nothing	None identified	Continuing lack of protection for any residents living in non-complying properties.	Continuing pressure on delivery leading to further missed opportunities.
Enforce Legislation without authorisation to issue notices.	Potential to rectify non-compliant properties through advice but if not would leave Officers without the tools to do their job.	Existing resource is already stretched and is likely to impact adversely on any chance of successful delivery.	As above.
Adopt Enforcement Protocol and Authorise appropriate Officers to issue Notices.	Ensure that all tenants and the environment are afforded the protection behind the legislation. Vulnerable residents are supported.	Reputational risk if not fully committed to delivering. Statutory duty to ensure compliance with the legislation,	As well as supporting vulnerable residents it also delivers to the Council's economic and environmental objectives.

6. REASONS:

6.1 In addition to that mentioned in section 4 above - It is already a duty of the local authority to enforce the legislation relating to minimum energy efficiency standards. Again no allocated resource came with the legislation and local authorities were expected to pick it up alongside other duties, combined with years of austerity measures makes it an almost impossible task when considering the wide variety of statutory functions performed by a small team. This project enables the tools to be put in place for future enforcement and to deal with the non-compliant properties. Any income generated will depend on levels of compliance gained from Landlords but would be unlikely to cover the cost of the additional burden to an already stretched team.

7. RESOURCE IMPLICATIONS:

7.1 None arising directly from the authorisation of Officers and the adoption of the attached Enforcement Protocol. There is the potential of some income being generated if any non-compliances are not rectified when identified and dealt with in accordance with the Protocol.

8. CONSULTEES:

SLT
Cabinet Members
Monitoring Officer and Head of Legal Services
Head of Public Protection

9. BACKGROUND PAPERS:

Information available

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Appendices:

Appendix 1 – Enforcement Protocol – PRS MEES
Appendix 2 – Compliance and Fixed Penalty Notice's
Appendix 3 – Future Generations Evaluation (including Equalities and Sustainability Impact Assessment).