

TONBRIDGE & MALLING BOROUGH COUNCIL
COMMUNITIES and HOUSING ADVISORY BOARD

21 July 2020

Report of the Director of Planning, Housing and Environmental Health

Part 1- Public

Matters for Recommendation to Cabinet - Non-Key Decision (Decision may be taken by the Cabinet Member)

1 MINIMUM ENERGY EFFICIENCY STANDARD CHARGING POLICY

Summary

This report recommends adoption of a policy for determining the level of financial penalty for non-compliance by landlords with the Domestic Minimum Energy Efficiency Standards (MEES) Regulations in the Tonbridge & Malling Borough Council area. It also recommends giving delegated authority to increase the period for publication penalties on the PRS Exemptions Register above the minimum of 12 months.

1.1 Introduction

- 1.1.1 The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended) referred to as “The Regulations” are designed to tackle the least energy-efficient properties in England and Wales – those rated F or G on their Energy Performance Certificate (EPC). The Regulations establish a minimum standard of EPC band E for both domestic and non-domestic privately rented property, which applies to existing and new tenancies. The regulations relevant to the minimum energy efficiency level for domestic private rented properties is known as the Domestic Minimum Energy Efficiency Standard (MEES) Regulations.
- 1.1.2 Since the 1st April 2020 a domestic privately rented property with an EPC rating of F or G is defined as ‘sub-standard and non-compliant’ and the landlord must no longer let the property unless it is exempt by regulation 25, landlord carried out all ‘relevant energy efficiency improvements’, or one or more of the exemptions in Chapter 4 of the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended). Relevant energy efficiency improvements are those that have been recommended for the property; and can be installed using third party funding or at a cost cap of £3,500 including VAT if self-funded by the landlord (or there are none that can be made).

- 1.1.3 The minimum standard applies to any domestic privately rented property which is legally required to have an Energy Performance Certificate (EPC), and which is let on a relevant tenancy, for example an assured tenancy as defined in the Housing Act 1988.
- 1.1.4 Landlords of domestic property for which an EPC is not a legal requirement are not bound by the prohibition on letting sub-standard property.
- 1.1.5 Where a valid exemption applies, landlords must register the exemption on the Government “PRS Exemptions Register” and provide the relevant supporting documentation (Regulation 36).

1.2 Local Context

- 1.2.1 From the June 2020 BRE Integrated Dwelling Level Housing Stock Modelling exercise undertaken for Tonbridge & Malling Borough Council it has estimated there are 508 domestic private rented properties in the borough that have an EPC of F or G.

1.3 Enforcement of the MEES Regulations

- 1.3.1 The Council is the enforcement authority for ensuring compliance with the minimum levels of energy efficiency in domestic private rented properties in the borough area. Officers in the Private Sector Housing team enforce the MEES Regulations. Kent County Council Trading Standards are the enforcing authority for the non-domestic private rented property in the area.
- 1.3.2 The authorised officers may check for different forms of non-compliance with the Regulations including
- whether the property is sub-standard and let in breach of regulation 23 (prohibition on letting of sub-standard property) or
 - where the landlord has registered any false or misleading information on the Government’s “National PRS Exemptions Register” or
 - has failed to comply with a compliance notice.
- 1.3.3 Where the Council believes a landlord may be in breach of the prohibition on letting a sub-standard property, or a landlord has been in breach of the prohibition at any time in the past 12 months, the Council may serve a compliance notice that requests information from that landlord which will help the Council to decide whether that landlord has in fact breached the prohibition.
- 1.3.4 The fact the Council may serve a compliance notice on a landlord up to 12 months after the suspected breach means that person could no longer be the landlord but will still need to produce the relevant documents for the property to demonstrate compliance with the Regulations.

- 1.3.5 The compliance notice may also require the landlord to register copies of the requested information on the PRS Exemptions Register.
- 1.3.6 The compliance notice must be in writing sent by hard copy or electronically, specifying and requesting certain information as defined in regulation 37 of the Regulations.
- 1.3.7 Where the Council are satisfied that the landlord is, or has been in the last 18 months in breach of the Regulations described in 1.3.2 they may serve a penalty notice relating to a financial penalty, a publication penalty or both. The information to be included in the penalty notice is defined in regulation 38 of the Regulations.
- 1.3.8 The landlord can ask the Council in writing to review its decision to serve a penalty notice and if the decision on review is upheld may appeal to the First-tier Tribunal (General Regulatory Chamber).
- 1.3.9 The policy for determining the level of financial penalty is included in **[Annex 1]**. This financial penalty structure is to be adopted by other local authorities across Kent, which will maintain consistency for landlords with properties in multiple Kent local authority areas.
- 1.3.10 A publication penalty means that the Council will publish certain details on the publicly accessible part of the PRS Exemptions Register as defined in the Regulations (regulation 39), for example details of the breach of the Regulations, address of the property concerned and the amount of any financial penalty. This information must be published for a minimum of 12 months and may be published for longer if decided by the Council.
- 1.3.11 While some landlords of F and G rated rental properties may be able to claim valid exemptions from the requirement to improve a property to EPC band E, this does not excuse them from meeting the existing obligation under the Housing Act 2004 to keep their properties free from serious hazards, for example Excess Cold hazard.

1.4 Legal Implications

- 1.4.1 The Council is under a statutory duty to enforce the Domestic Minimum Energy Efficiency Standards (MEES) Regulations.

1.5 Financial and Value for Money Considerations

- 1.5.1 The Private Sector Housing team is participating in a Year 2 Private Rented Sector minimum energy efficiency compliance and enforcement Pilot Study for the Department of Business, Energy and Industrial Strategy (BEIS) and has been given section 31 grant funding of £100,000. This enables the Council to focus on those sub-standard privately rented properties in the borough to improve the energy efficiency of those properties and to enable the tenants living in these

properties to benefit from a potentially warmer living environment and lower energy bills. The recent housing stock modelling project, part funded by MCHLG's PRS Innovation and Enforcement Grant, which placed particular emphasis on providing up to date private rented sector intelligence on the location of and conditions of the private rented sector properties in Tonbridge & Malling, will allow the Council to identify those sub-standard properties.

1.6 Risk Assessment

- 1.6.1 While it is not mandatory to include the use of MEES financial and publication penalties within the Council range of enforcement tools, the Council could be criticised for not using all available enforcement options to tackle rogue landlords and improve the energy efficiency of private rented sector housing in the borough to at least current minimum requirements.
- 1.6.2 If the Council are not to use financial and publication penalties to support our work on the compliance and enforcement of MEES Regulations it may mean we are unable to meet all the desired outcomes of the BEIS project referred to in 1.5.1.

1.7 Equality Impact Assessment

- 1.7.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act, with no perceived impact to end users.

1.8 Policy Considerations

- 1.8.1 The proposed policy for determining the level of financial penalty for non-compliance with the Domestic Minimum Energy Efficiency Standards (MEES) Regulations in the Tonbridge & Malling Borough Council area links in with the Council's Corporate Strategy, Corporate Enforcement Policy, and the West Kent Housing and Homelessness strategy.

1.9 Recommendations

- 1.9.1 That Cabinet is **REQUESTED** to **ENDORSE** the policy for determining the level of financial penalty for non-compliance with the Domestic Minimum Energy Efficiency Standards (MEES) Regulations in the Tonbridge & Malling Borough Council area in **[Annex 1]**.
- 1.9.2 That Cabinet is **REQUESTED** to **DELEGATE** authority to the Director of Planning, Housing and Environmental Health, in consultation with the Cabinet Member for Housing to increase the length of time limit above the minimum 12 months a publication penalty is publicised on the PRS Exemptions Register if determined appropriate.

The Director of Planning, Housing and Environmental Health confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and Policy Framework.

Background papers:

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The Department for Business Energy and Industrial Strategy (BEIS) 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): April 2020

BEIS Year 2 Private Rented Sector minimum energy efficiency compliance and enforcement Pilot Study toolkit

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