



Cabinet report

Date	16 JUNE 2022
Title	POLICY FOR MINIMUM ENERGY EFFICIENCY STANDARDS (MEES) PENALTIES
Report of	DEPUTY LEADER AND CABINET MEMBER FOR COMMUNITY PROTECTION, DIGITAL TRANSFORMATION, HOUSING PROVISION AND HOUSING NEEDS

EXECUTIVE SUMMARY

1. This report sets out the council policy in respect of penalties for landlords in relation to minimum energy efficiency standards in private rented properties.
2. The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 as amended, which are known as the Minimum Energy Efficiency Standards or MEES, apply to existing private rented sector tenancies. They have been designed to tackle the least energy efficient private residential dwellings, specifically those with an energy performance rating of band F or band G.
3. Under MEES, from 1 April 2020 landlords may not continue to let, or re-let, a private rental property with an EPC band rating of F or G. Therefore, if a landlord wishes to let a property that falls into either of these categories, they must undertake relevant works to increase the band rating to a minimum of an E.
4. The Housing Renewal Section of the Local Authority has enforcement responsibilities relating to the MEES and will intervene with any apparent non-compliant property.
5. The amount of financial penalty charged is at the discretion of a Local Authority, and differs with the type of breach, but the maximum penalty that a landlord can be charged per property is capped at £5,000. However, should the landlord re-let the property on a new tenancy further financial penalties of up to £5,000 can be applied for new/ongoing breaches. This policy seeks to address the standards and how the financial penalties and publication notices will be applied.
6. The policy supports various corporate aims and strategies as well as supporting the Government's mission for carbon reduction and better standards.

RECOMMENDATION

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| 7. That Cabinet approves the policy for MEES penalties. |
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BACKGROUND

8. The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 as amended (referred to as 'the regulations') were introduced on 1 April 2015. The regulations applied to existing private rented sector tenancies and includes any new tenancies from 1 April 2020. They have been designed to tackle the least energy efficient private residential dwellings, specifically those with an energy performance rating of band F or band G. This is known as the Minimum Energy Efficiency Standards, or MEES.
9. The Private Rented Sector (PRS) on the Island is generally considered to comprise around 14,500 properties which is nineteen per cent of all properties.
10. Unless a PRS property has a defined exemption from MEES, or no legal requirement to have an Energy Performance Certificate (EPC), the landlord must obtain an EPC.
11. An EPC measures the energy efficiency of a property on a scale of A-G. Ratings of A being the best and G the worst.
12. EPC F and G rated properties are the most energy inefficient of our housing stock. They impose unnecessary energy costs on tenants and the wider economy and can lead to poor health outcomes, with a resulting resource pressure on health services. These properties also contribute to avoidable greenhouse gas emissions.
13. The Housing Renewal section of the council regulate housing standards, in particular those in the PRS. This policy will assist the Housing Renewal section in its regulatory duties as well as encourage the majority of good landlords to comply with the Government standards without formal intervention.
14. The MEES regulations allow a local authority to impose a financial penalty and/or a publication notice where a landlord is in breach of the requirements. The processes for enforcing these standards are defined in the regulations, and recipients of a financial penalty or notice have a right of appeal.
15. The amount of financial penalty charged is at the discretion of a Local Authority, and differs with the type of breach, but the maximum penalty that a landlord can be charged per property is capped at £5,000. However, should the landlord re-let the property on a new tenancy further financial penalties of up to £5,000 can be applied for new/ongoing breaches.
16. The amount of penalty is to be determined by the local housing authority in each case and this policy aims to provide a framework to create a consistent, fair, proportionate and transparent method of determining the amounts.
17. The amount of financial penalty will be ascertained by assessing the situation in regard to the severity of the offence, the culpability of the offender, the track-record of the offender, and the actual harm to the occupiers based on reasoned objective measures, and then using a calculation by percentage of maximum penalty levels for consistency.
18. Each case can then be reviewed further to consider if it is appropriate to raise or lower the penalty to ensure that any discretion is not fettered.

19. This Policy forms a part of the overarching Neighbourhoods Enforcement Policy 2021-2024 [Environmental Health - Service Details \(iow.gov.uk\)](#).
20. In forming this policy, the Commissioner of Housing Renewal has researched a number of other local authorities polices and taken the best and most effective aspects from these to suit the Island situation. He has also tested the weighting by applying the process on real cases to create notional penalties allowing calibration of realistic and appropriate penalty levels.
21. The overarching principles of the Neighbourhoods Enforcement Policy apply to the enforcement decision in the application of the MEES penalties policy.

CORPORATE PRIORITIES AND STRATEGIC CONTEXT

22. The MEES penalties policy supports the corporate priorities in the following ways;
 - **Growth** by facilitating income opportunities related to enforcement duties.
 - **Regeneration** by ensuring sub-standard homes in the private rented sector are fit for human habitation and free from unnecessary hazards.
 - **Opportunity** by upholding appropriate housing standards which would otherwise negatively affect the occupiers and impact other aspects of their lives through accidents, ill health, poverty or social isolation.
 - **Wellbeing** by positively engaging and enforcing satisfactory housing standards to enable the vulnerable occupiers to live safe and well in their home.
23. Isle of Wight Housing Strategy 2020-2025 states in Priority Three: *Private sector housing – Ensuring that the private housing sector provides enough good quality market housing through support for landlords and, where necessary, robust quality control and regulation.* The ability to impose MEES penalties will enhance the Housing Renewal section’s ability to achieve this priority.
24. This policy directly supports the Councils mission zero climate and environment strategy 2021-2040 [2570-Mission-Zero-Climate-and-Environment-Strategy-2021-2040-final.pdf \(iow.gov.uk\)](#). Specifically objective 4B- Overall emissions from housing to be reduced by at least 85 percent by 2040.
25. Helping achieve corporate key area action B in the corporate plan 2021-2025 [4903STR Corporate plan 2021 v2 \(1\).pdf](#) – ‘Responding to climate change and enhancing the biosphere’. This will be achieved by addressing issues of fuel poverty and health inequalities by making homes more energy efficient and by creating new opportunities for local people to support their health and wellbeing.

Climate and Environment

26. One of the biggest contributors to climate change is carbon dioxide (CO2). The energy used for heating, lighting and power in our homes produces over a quarter of the UK’s CO2 emissions.
27. Only the installation of certain defined energy efficiency measures are eligible under the EPC regulations to improve dwellings. However when installed each measure will not only improve the property’s energy efficiency it will assist in the reduction carbon emissions.

28. The properties to which this policy relates, EPC F and G rated, will provide the largest gains in CO2 reduction by completing eligible energy efficiency improvements.
29. As an example, during the Council's Green Homes Grant scheme in 2021 we assisted in the improvement of a G rated home to achieve a D rating. This resulted in 6.4 Tonnes of CO2 emission savings per year.

Economic Recovery and Reducing Poverty

30. The ability to impose MEES penalties will enhance the Housing Renewal section's ability to positively improve the energy efficiency of PRS housing.
31. It is widely understood that the PRS has the most energy inefficient housing by tenure group, and it also houses many of the most vulnerable and fuel poor households in our society.
32. By improving the energy efficiency of poor performing homes, it will help lift the occupiers out of fuel poverty.
33. The requirement to undertake improvement work on homes will also feed into the economic recovery of the Island by providing work for the relevant trades. The retrofit of housing economy on the Island is sporadic due to intermittent Government schemes, and the effects of this policy will hopefully encourage greater confidence in contractors to engage with the necessary training and investment.

Impact on Young People and Future Generations

34. The most recent data on fuel poverty from the Department for Business, Energy and Industrial Strategy at April 2022 indicated that the proportion of households in fuel poverty is 11.0% (8,250 households).
35. Energy prices and the energy efficiency of the property are key factors in calculating fuel poverty. The final factor is household income. It is not unreasonable to conceive that due to the recent increases in energy prices, particularly in April 2022, and with more increases predicted, the numbers of households living in fuel poverty will have increased and will continue to increase.
36. Fuel poverty is linked with poor housing standards in the PRS, which affects a household's ability to adequately heat their property, combat damp and mould growth, and manage excess heat during hot weather. Not only do these issues represent hazards under the Housing Health and Safety Rating System, but they detrimentally affect the health of adults and young people occupying the property.
37. Occurrences of hazards such as damp and mould, and excess cold can cause physical, psychological, social and mental health effects, which will reduce a child's optimum chances in life from an early age.

FINANCIAL / BUDGET IMPLICATIONS

38. Undertaking MEES enforcement would not require any additional resources beyond those already utilised in the Housing Renewal Section, and the Legal section when

providing any appeals advice/support or applying to the court for non-payment situations.

39. The utilising of MEES financial penalties would provide for a non-regular income opportunity coming into the Housing Renewal section.
40. Financial penalties under this policy are VAT exempt.
41. Using a sample group of recent cases, the service has undertaken a number of Housing Act Notices in regard substandard properties which do not meet the Minimum Energy Efficiency Standards, all of which could have been resolved more efficiently with the use of the proposed MEES penalty policy.

LEGAL IMPLICATIONS

42. Powers in the MEES regulations allow a local authority to impose a financial penalty or publication notice on the landlord.
43. The maximum penalty provided in the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 is £5,000 per offence. The amount of penalty is to be determined by the local housing authority in each case, the calculation of which is clarified by the proposed policy.
44. The regulations allow for an appeal against a penalty notice to the First Tier Tribunal. A landlord can also ask the Local Authority to review the notice prior to an appeal. If the Local Authority does not decide to withdraw the penalty notice, it might decide to waive or reduce the penalty, allow the landlord additional time to pay, or modify the publication penalty.

EQUALITY AND DIVERSITY

45. An equality impact assessment has been undertaken which has concluded there is generally no impact under most of the protected characteristics and positive impact for some in certain circumstances. The procedures allow for suitable adjustments for any disability related access to service difficulties. Any impact for the occupiers sub-standard housing would be positive, particularly for older/younger occupiers and people who suffer a disability or mental health illness which is affected by hazards resulting from energy inefficient property.

PROPERTY IMPLICATIONS

46. There are no council owned property implications.
47. There are positive implications for properties in the private rented sector. It is hoped that the majority of cases of sub-standard properties will have property improvements carried out before the need for formal action. However, the policy provides for a robust response where landlords have committed certain offences under MEES regulations and sends a strong message to the landlord in question as well as other landlords operating unsatisfactorily. The aim is to improve the standard of the Island's private rented housing market.

OPTIONS

48. Option 1. To approve the MEES penalties policy.
49. Option 2. To not approve the MEES penalties policy.

RISK MANAGEMENT

50. There is a risk that a MEES penalty is issued on the wrong person or at the wrong address. Currently the sanction of serving a financial penalty requires internal checks and legal peer checks, all following the Neighbourhoods Enforcement Policy and it is proposed that this remains in place for the MEES penalties process.
51. The comprehensive procedural checks will also mitigate any reputational risk.
52. There is a risk that a MEES penalty is issued without the appropriate evidence and case oversight. A financial penalty can be appealed and may be challenged at the Residential Property Tribunal. The enforcement procedures will ensure that this level of evidence is achieved to minimise any risk of successful appeal or that unnecessary enforcement is carried out.
53. There is risk that the person issued a MEES penalty does not pay and the authority must apply to the court to receive the money. Whilst this is an appropriate process, it is not desirable to take up members of staff time in court action. This will be mitigated by applying proportionate penalty amounts rather than trying to elevate the charge to maximum levels consistently. It is hoped that proportionate charging will encourage settlement of the debt. Additionally, the Local Authority will allow payment plans to assist with any payment difficulties.
54. There is risk that the issuing and payment of a MEES penalty does not resolve the physical work, and tenants may still be suffering the hazards. This can be mitigated by undertaking separate housing standards enforcement. Should the offender repeat the offence it will have a significant effect on any subsequent financial penalties by increasing them. Also, further separate enforcement action may take the form of a different housing notice and could result in prosecution or civil penalty. The Housing Renewal Section does not normally cease intervention until the physical issues have been resolved.
55. There is a risk that some landlords may take retaliatory action, such as evict the tenants, or decide not to continue letting the property. In order to mitigate unnecessary homelessness duties for the authority each case can be carefully monitored and mitigating action under the Housing Act 2004 may be able to be taken to protect the tenants from retaliatory eviction. If a landlord is intent on only operating in a non-compliant way then it should be no loss to the sector, where other good landlords would hopefully step in and take on the property. We will actively promote any grant schemes that landlords may be eligible for to assist them in undertaking their duties and avoid getting into an enforcement position.

EVALUATION

56. The one option is being recommended as it is a simple yes or no choice to allow the local authority the ability to impose MEES penalties by approving the MEES penalty policy.

57. This option will enable more cost-effective regulation, a proportionate approach, the ability to utilise any income within the Housing Renewal service and contribute to the council's corporate priorities.

BACKGROUND PAPERS

58. Equality impact assessment. Attached
59. Useful guidance- 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. BEIS April 2020. [The domestic private rented property minimum standard \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)
60. Fuel poverty data [Sub-regional fuel poverty in England, 2022 \(2020 data\) \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)
61. Energy price cost data [Domestic energy prices - House of Commons Library \(parliament.uk\)](https://parliament.uk)
62. Housing Health and Safety Rating System information [Housing health and safety rating system \(HHSRS\) operating guidance: housing inspections and assessment of hazards - GOV.UK \(www.gov.uk\)](https://www.gov.uk)
63. [Neighbourhoods enforcement policy 2021-2024 Environmental Health - Service Details \(iow.gov.uk\)](https://www.iow.gov.uk)

APPENDIX

Appendix 1 - Policy for Minimum Energy Efficiency Standards (MEES) Penalties

Appendix 2 - Equality Impact Assessment

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