

# Nottingham City Council Delegated Decision



**Nottingham**  
**City Council**

Reference Number:

4751

Author:

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Department:

Resident Services

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Subject:

The adoption of financial penalties as an enforcement option for specific offences under The Energy Efficiency (Private Rented Property) Regs 2015

Total Value:

£0 (nil) (Type: Revenue)

Decision Being Taken:

To

- (1) approve the use of Compliance Notices and Civil Penalty Notices under the Energy Efficiency Regulations 2015;
- (2) adopt Nottingham City Council's Minimum Energy Efficiency Regulations 2015 Enforcement Policy; and
- (3) delegate to the Director for Community Protection, in conjunction with the relevant Portfolio Holder, authority to introduce the Energy Efficiency Regulations Policy.

**Reasons for the Decision(s)**

**The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 came into force on 1st April 2018 and introduced measures to improve the energy efficiency of certain private rented property in England and Wales. Part 3 of the Regulations prescribes a minimum level of energy efficiency to all private rented properties, where the minimum standard on Energy Performance Certificates (EPC's) is a rating of band E. The Regulations make provision for the enforcement of Part 3 by local authorities in relation to domestic private rented properties and local weights and measures authorities in relation to non-domestic private rented properties.**

**There is a need to reduce carbon emissions from buildings and reduce fuel poverty within the City of Nottingham and this is embedded into Nottingham City Council's 'Carbon Neutral Nottingham 2020-2028 Action Plan'. Furthermore, it will contribute to Nottingham City Council's 'Fuel Poverty Strategy 2018 -2025 target to eliminate E, F, or G banded EPC rated properties occupied by fuel poor households by 2025 where practicable.**

**Nottingham City Council remains committed to improving housing conditions within the private rented sector and has most recently secured funding from the Department of Levelling Up Housing and Communities (DLUHC) to undertake the identification of those properties that have an EPC rating below E, which are being privately rented to tenants. This has enabled Nottingham City to undertake the 'Ask and Warn' stages within the Safer Housing Enforcement Policy, however Nottingham City Council has been unable to undertake all steps of this policy. Where properties have an EPC rating below E, it is highly likely that the property has poor thermal efficiency and it is expensive to heat the property. This can lead to those within the private rented sector entering into 'fuel poverty' where 10% of the household income is spent on energy and heating the home. With the current energy crisis and the increase in the cost of living, the number of households that will be considered to be fuel poor will increase.**

**Should the adoption of the policy be approved, Nottingham City Council will be able to implement the Energy Efficiency Regulations 2015 which will enable Compliance Notices to be served on those landlords who are operating a property without the appropriate EPC banding of E and above. Nottingham City Council may impose a financial penalty of up to £5,000 under Regulation 37 of the Energy Efficiency Regulations 2015 upon those landlords who fail to comply with the Compliance Notice.**

**As local authorities are able to impose a financial penalty of up to £5000, Nottingham City Council propose that a graduated approach to this is adopted and both culpability and harm factors are taken into consideration with a potential financial penalty ranging between £800 to £5000.**

**Income received from financial penalties will be retained by the local housing authority, provided it is used solely to further the local authorities statutory functions in relation to their enforcement actions taken against landlords within the private rented sector.**

**Briefing notes documents:**

**MEES Enforcement Policy.docx, MEES Briefing Update 04-05-2022 NOT FOR PUBLICATION.docx**

**Other Options Considered:**

**Option 1 - Continue to use current enforcement tools, e.g. serving of enforcement notices contained within the Housing Act 2004 and consideration for civil penalty notices when appropriate - for example failure to comply with the enforcement notice. This option is not suitable as bad practice will continue in the private rented sector and the housing conditions will remain the same.**

**Option 2 - Adopt the use of financial penalties in accordance with national legislation and statutory guidance.**

**Preferred Option: Option 2 The adoption of financial penalties will support the Council's aim to improve housing standards and protect tenants and reduce carbon emissions within Nottingham's private rented sector as contained within the Council Plan 2021-2023 and the Carbon Neutral plans by 2028.**

**The legislation does not allow consideration of prosecution as an alternative to issuing a financial penalty against a breach of the Energy Efficiency Regulations. Therefore the ability to issue the financial penalty is the enforcement tool available to act as a deterrent and available option to those landlords who do not improve the thermal efficiency of their properties. All income obtained from financial penalties will be retained by Nottingham City Council and will be spent on housing enforcement functions; financial penalties will have the potential to be cost neutral. The income and enforcement costs will be reviewed periodically.**

**Background Papers:**

**see uploaded documents presented at SLT**

**Published Works:**

**National legislation  
Enforcing the enhancement of energy efficiency regulations in the English Private Rented Sector**

**Affected Wards:**

**Citywide**

**Colleague / Councillor  
Interests:**

**Consultations:**

**Those not consulted are not directly affected by the decision.**

**Crime and Disorder  
Implications:**

**It is believed that the adoption of financial penalties as an additional enforcement tool will help to further protect tenants and help improve the overall standards of private rented sector housing and contribute to the reduction of carbon emissions across Nottingham city.**

**Equality:**

**Please login to the system to view the EIA document: EIA MEES.docx**

**Decision Type:**

**Portfolio Holder**

**Subject to Call In:** Yes

**Call In Expiry date:** 26/10/2022

**Advice Sought:** Legal, Finance, Equality and Diversity

**Legal Advice:**

The Energy Efficiency Regulations 2015 were introduced to grant a discretionary power to serve Compliance and Penalty notices for Landlords whose Energy Performance Certificate Ratings fall below the required rating in their privately rented properties (Regulation 38). The author therefore seeks the approval to adopt Nottingham City Councils Minimum Energy Efficiency Regulations 2015 Enforcement Policy in order to apply this discretionary power as an enforcement tool against non compliant landlords.

The adoption and making of such a policy is an Executive power and within the remit of the portfolio holder. Andrew Errington therefore has delegated powers to issue and enforce such notices, which he can then subdelegate to officers, as he sees fit. It is a function of the policy to ensure that any penalties imposed are just and proportionate and the decision maker must have regard to any aggravating and mitigating considerations along with application of the terms of the Regulations.

Work has been carried out with Legal Services in order for the Author to put together the policy. Approval of the adoption of this policy is accepted.

Advice provided by Sabina Bashir (Solicitor) on 30/09/2022.

**Finance Advice:**

This decision seeks approval to adopt a financial penalty option for enforcement of Energy Efficiency Regulations 2015. There are no direct financial implication as a direct result of this decision. The costs of enforcement will continue to be funded from approved MTFP resources.

As the council will be working with Landlords to ensure compliance it is not envisaged the level of fines needing to be issued will be significant. Financial penalties recovered under this legislation may be used to meet the costs incurred by the Council in carrying out enforcement measures ensuring in line with legislation.

Advice provided by Susan Turner (Senior Commercial Business Partner) on 12/09/2022.

**Equality and Diversity Advice:**

Advice has been provided on EIA as attached. Once these comments have been addressed will be happy to approve. Just need to provide a little more detail on the adverse impact on landlords and the availability of information etc as highlighted on EIA. Advice provided by Nasreen Miah (Equality & employability consultant) on 08/07/2022.

Advice documents: MEES EIA Final Version.docx

**Signatures**

Toby Neal (Portfolio Holder for Housing and HR)

SIGNED and Dated: 19/10/2022

Andrew Errington (Director of Community Protection)

SIGNED and Dated: 12/10/2022