

Report of the Director of Economy, Regeneration and Housing

**The Enforcement of the Minimum Energy Efficiency Standards
Regulations within the Private Rented Sector in York**

Summary

- 1 The provision of good quality housing for York residents is a key priority for the City of York Council. The private rented sector (PRS) is a key part of this provision. The Building Research Establishment (BRE) have identified that the PRS has a higher proportion of homes with excess cold issues than any other sector.
- 2 Within the Energy Efficiency Regulations 2015 (The Regulations) the Government sets Minimum Energy Efficiency Standards (MEES). This regulatory framework looks to provide councils with powers to tackle private rented properties being let with non-valid Energy Performance Certificates (EPCs). Since April 2020 these regulations have stated that a property cannot be let if it does not have a valid EPC of at least an E rating.
- 3 In March 2020, the council was successful in obtaining funding from the Department of Business, Energy and Industrial Strategy (BEIS) to enable it to participate in a national project to commence the enforcement of MEES and to contribute to the development of a national toolkit to aid other councils in England and Wales in enforcing the MEES Regulations in the future.
- 4 The improvement of energy performance within the private rented sector can both reduce the overall carbon emissions of the city thus helping to tackle climate change, as well as improving the health and financial circumstances of our residents. This work therefore meets a number of council priorities. However, the scale of the challenge is significant with this project identifying over 300 non-compliant homes in the city. This pilot has supported 75 of these homes to achieve a compliant EPC rating and certification. However, the project was not just about improving

outcomes for the residents of York, the purpose was to develop a toolkit of resources to help other authorities not participating in this pilot to enforce MEES in their areas. As well as providing a summary of the outcomes of this pilot project, the report looks ahead to future changes in government standards as well as linking this work with opportunities coming forward as part of our Housing Energy Efficiency Programme including retrofit works.

Recommendations:

- 5 The Executive Member for Housing and Safer Neighbourhoods is recommended to:
 - i) Note the report and the possible implications of future Government proposals for the Council;
 - ii) Support the continuation of this project subject to the necessary external funding being available; and
 - iii) Note the future implications for carbon reduction and housing energy efficiency strategy development.

Reason: This work seeks to improve the health and wellbeing of our residents, reduce fuel poverty and reduce the carbon emissions from our housing sector, supporting the city's carbon neutral 2030 aspirations.

Background

6. The Government introduced a requirement for valid EPC's to be in place for rented accommodation let after October 2008.
7. An EPC shows two things:
 - Energy Efficiency Rating (EER) (relating to running costs)
 - Environmental Impact Rating (relating to the carbon dioxide emissions) of a dwelling.
8. Each rating is shown on an A to G rating scale similar to those used for electrical appliances. The EER rating is accompanied by a recommendation report that shows how to improve the dwelling's energy efficiency. These two elements together form the EPC. EPCs must be produced by an accredited assessor.
9. Since April 2018 it has been unlawful to rent out, on a new tenancy, a residential premises that does not reach a minimum energy efficiency standard of E. Since April 2019, landlords of domestic properties with an EPC rating below E must carry out up to £3,500 worth of works to improve their energy efficiency even if they cannot obtain third-party funding to meet the costs. Since April 2020 it has been unlawful to let

any residential property whose EPC doesn't meet an E as a minimum, unless they have a valid exemption in place.

10. EPC F and G rated properties are the most energy inefficient. They impose unnecessary energy costs on residents and can lead to poor health outcomes, with a resulting resource pressure on health services. These properties also contribute to avoidable greenhouse gas emissions. Increasing the energy efficiency of domestic rental stock can help to:
 - reduce the energy costs of residents, helping to tackle fuel poverty;
 - improve the condition of properties and help reduce maintenance costs;
 - lower demand for energy and reduce greenhouse gas emissions; and
 - Improve the health of residents through reducing the number of homes which experience excess cold.
11. Councils are responsible for enforcing compliance with the domestic minimum level of energy efficiency. Councils can check whether a property meets the minimum level of energy efficiency and may issue a compliance notice requesting information where it appears that a property has been let in breach of the Regulations (or if an invalid exemption has been registered in respect of it). Where a local authority is satisfied that a property has been let in breach of the Regulations it may serve a notice on the landlord imposing financial penalties up to 18 months after the breach and/or publish details of the breach for at least 12 months. Councils can decide on the level of the penalty, up to a maximum of £5000. Due to a lack of resource, all councils, including York, had struggled to enforce these Regulations. This prompted BEIS to establish the MEES pilot project which is the subject of this report.

The Project

12. The funding received from BEIS enabled the Housing Standards and Adaptations Team to employ two full time enforcement officers to work on this project. The project was due to commence on the 1st April 2020, however, due to the start of the Covid pandemic, the project did not start until July 2020.
13. The project was managed on behalf of BEIS by the Centre for Sustainable Energy based in Bristol. The 12 participating authorities were allowed to develop their own processes and implement systems to ensure compliance with and enforcement of the MEES Regulations whilst contributing to the development of a draft best practice enforcement toolkit, containing case studies, templates and off the shelf tools to help streamline the enforcement process and make it less resource intensive for other authorities.
14. York's enforcement policy seeks to ensure legal compliance by:

- Helping and encouraging businesses and individuals to understand and comply with the law; and
 - Responding proportionately to breaches of the law.
15. The policy aims to achieve the following outcomes:
- Support economic growth, especially in small businesses, by ensuring a fair, responsible and competitive trading environment;
 - Protect the environment for future generations including tackling the threats and impacts of climate change;
 - Help people to live healthier lives by preventing ill health and harm, and promoting public health; and
 - Reducing fuel poverty amongst our residents
16. With these principles in mind, a process was designed that advised landlords of their duty and encouraged voluntary compliance. This then progressed to a more formal stage of requiring compliance prior to the issuing of a fixed penalty notice if necessary.
17. A system of recording data and generating actions using the Housing Standards and Adaptations Team's existing database was developed, and a data sharing agreement was developed with the Council Tax Team to allow access to records for officers investigating properties under these particular regulations.
18. A press release regarding the project was issued and all letting agents operating in York along with the major landlord associations were advised of the project and were requested to share information with their clients and members.
19. A list of 315 properties with non-valid EPCs was compiled. From this initial list, further investigations showed that 123 had subsequently been found to have improved their EPC rating, 49 had left the private rented sector or had been let under a tenancy type not covered by the MEES Regulations and 5 were currently empty.

Outcomes

20. As at the end of June 2021, the project had achieved the following outcomes –
- 175 landlords were contacted during investigations. This includes those with multiple properties. Previous data cleansing of the initial list of 315 properties removed the need to contact all landlords.

- 10 Compliance notices have been issued.
- 75 properties have complied by obtaining valid EPCs or have placed their property on the National Exemption Register as a direct result of the project. We are continuing to work with the other properties to ensure they achieve compliance. Due to the pandemic there have been delays in having physical works undertaken.
- To date, no fixed penalty notices have been issued due to landlord compliance in all instances where they were considered.
- 3 Letting agents have amended / repaired websites to include EPC data following contact from the project.
- 12 regional partner authorities have been assisted with implementing MEES enforcement.
- 31 licensed HMO properties renewed expired EPCs
- 9 properties have been subject to referrals to grant assistance.
- For EPC F & G rated PRS properties where a new, valid EPC has been produced following contact from the project team, the following energy savings have been calculated:
 - The total amount of CO² being produced by 50 properties has reduced by 193.4 tonnes per year;
 - The estimated energy used to heat 45 properties has reduced by 243,546 kWh per year, which equates to a saving of £33,900 (based on a cost of 13.92p per kWh for the Yorkshire region).

21. The project started with no data regarding the numbers of non-valid EPCs. This project has therefore been invaluable in gaining a better understanding of performance across the city which will support future considerations around a city wide retrofit strategy. On the whole there has been a willingness on the part of landlords to comply when contacted, however we have noted a number of issues with the EPC assessment process which complicate the enforcement of these regulations. These issues have been fed back to central government when discovered.

Findings of the Pilot Project and Future Opportunities

22. A large proportion of the PRS housing which did not comply with the regulations were older houses within the inner part of the city, usually those which have been converted into flats. In addition there are a number of older properties in the more rural areas of York that did not comply with the regulations. The project also identified a number of properties that were exempt or partially exempt from the regulations such as listed buildings, those in conservation areas and holiday lets.

23. The MEES Regulations themselves are not easy to interpret, particularly with regard to listed buildings, and do not include powers to deal with properties with expired EPCs or with no EPC, which fall under other legislation with a different enforcement and penalty regime. Differing elements of regulation and of administration regarding EPCs fall under MHCLG or BEIS control. This important information will be fed back to BEIS to try and create a more harmonious regulatory framework.
24. Another finding from the pilot scheme work was that the current maximum fine levels relating to the MEES Regulations, make it difficult for councils to fund continued enforcement work from fines as the sole income stream. This information has been fed back to BEIS.
25. Covid brought some new challenges to the pilot project as it was difficult to carry out physical inspections of properties. We have also allowed landlords additional time to obtain EPCs and undertake improvement works. We have also supported residents who did not want to offer access to properties.
26. The pilot project has brought some success on the ground through a number of landlords upgrading their housing and obtaining new or updated EPC's which comply with the regulations. The project has also developed helpful learning for central government around regulatory frameworks and resources and income required to undertake this enforcement work. However, the work is not complete, either in terms of enforcing standards across all PRS housing in York or providing a full toolkit to enable and support other local authorities to commence this work. As such, we are seeking additional external funding sources to continue the project until at least the end of March 2022 and to enable us to continue working jointly with other regional councils to share experience and best practice. The aim is to develop a Northern MEES Forum to facilitate this work and add value to future energy efficiency work in the region.
27. If a consortium funding bid is successful, we are looking to develop York's experience and expertise by supporting 8 partner authorities across the Yorkshire and Humber region to engage in compliance and enforcement of these regulations, in addition to continuing our work. York will act as a mentor to these authorities, providing advice and support.
28. The Government are looking to further increase the standards required of PRS housing in 2025. This will provide resource challenges but also

new opportunities to tackle the climate emergency, improve the health and wellbeing of our residents and reduce incidences of fuel poverty.

29. Within the latest government consultation of this issue, it is proposed to:
- Amend the minimum standards so that from April 2025 it will be unlawful to let a residential premises that does not reach a minimum energy efficiency standard of C on a new tenancy and from April 2028 to make it unlawful to let any residential property whose EPC doesn't meet an C.
 - Increase the maximum investment amount to a £10,000 cost cap.
 - Introduce a 'fabric first' approach to energy performance improvements.
 - Encourage compliance with the regulations by placing a requirement on letting agents and online property platforms to only advertise and let properties that are compliant with the regulations; require landlords to provide an EPC prior to a property being advertised; raise the level of the fixed civil penalty fine for offences under the EPB regulations (i.e. letting with an expired or no EPC), and introduce a property compliance and exemptions database.
 - Assist enforcement of the regulations through a number of proposals including: enabling authorities to inspect properties; increasing the maximum financial penalty an authority may impose on a non-compliant landlord per property and per breach of the regulations to £30,000; giving powers to tenants to request that energy performance improvements are carried out when a landlord is non-compliant, and introducing requirements for pre- and post-improvement EPCs.
30. The government stated it would publish a response to this consultation in spring 2021 and was planning to lay regulations in the autumn which would amend the current PRS Regulations. To date nothing further has been published.
31. City of York Council submitted a response to this consultation. We would estimate that there are currently around 9,000 properties in the PRS in York with an EPC rating of D or E. If these new proposals are implemented and councils are expected to enforce them it will have significant resource implications for the Housing Standards Team.
32. It will be important once the government consultation response is published that the City of York Council plan for these changes. Once the implications are fully known, including how such regulatory change and enforcement will be funded, a business case will be developed and brought back for approval by Executive or Executive Member. As outlined earlier in this report, the current MEES regulations do not come with sufficient funding to support cost recovery of the service. This was part of the consultation response to government and we await the formal announcement about how this will be managed moving forwards. In the meantime, landlords are being advised of the implications of these proposals, particularly with regard to planning improvement works

now or in the near future to best prepare for improved requirements which are likely to be implemented over the next few years.

Council Plan

33. Effective, ongoing enforcement of the MEES Regulations is a key action of the council plan to achieve the outcome of Creating Homes and World class infrastructure. It also contributes to other council plan outcomes:
- a) Open and Effective Council
 - b) A better start for Children and Young People
 - c) Good health and Wellbeing
 - d) Carbon reduction targets

Implications

Financial/Human Resources and Information and Technology.

34. The resources for the work undertaken to date has been funded from the BEIS grant.

Legal.

35. Whilst there are currently no legal implications within the report, there may be future legal resource implications if more enforcement action is needed based on the proposals to increase regulatory standards.

Property

36. City of York Council does let some properties in the private sector, however these are let on tenancy agreements and leases outside of the scope of the MEES regulations.

Other

37. None

Risk Management

38. There is a risk that further external funding is not available which would result in the end of the pilot work and a significantly reduced ability to improve PRS housing energy efficiency and carbon reduction standards in the short term at least.

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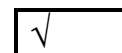
Housing Accountant

Chief Officer Responsible for the report:**Tracey Carter**Director of Economy, Regeneration and
Housing**Report
Approved**

21 July 2021

Wards Affected:

All

**For further information please contact the author of the report****Background Papers:**

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, as amended (most recently by the Energy Efficiency (Private Rented Property) (Amendment) (England and Wales) Regulations 2019)

Abbreviations

BEIS – Department of Business, Energy and Industrial Strategy

BRE – Building Research Establishment

EER – Energy Efficiency Rating

EPC – Energy Performance Certificate

HMO – House in Multiple Occupation

MEES – Minimum Energy Efficiency Standards

MHCLG – Ministry of Housing, Communities and Local Government

PRS – Private Rented Sector