

# additional papers 1



## Council

Mon 14 Nov  
2022  
7.00 pm

Council Chamber  
Town Hall  
Walter Stranz Square  
Redditch  
B98 8AH

**REDDITCH** BOROUGH COUNCIL

*making  
a  
difference*

[www.redditchbc.gov.uk](http://www.redditchbc.gov.uk)

**If you have any queries on this Agenda please contact  
Jess Bayley-Hill**

**Town Hall, Walter Stranz Square, Redditch, B98 8AH  
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**e.mail: [jess.bayley-hill@bromsgroveandredditch.gov.uk](mailto:jess.bayley-hill@bromsgroveandredditch.gov.uk)**



# Council

Monday, 14th November, 2022

7.00 pm

Council Chamber Town Hall

## Agenda

### Membership:

Cllrs:

Ann Isherwood  
(Mayor)  
Tom Baker-Price  
(Deputy Mayor)  
Salman Akbar  
Imran Altaf  
Karen Ashley  
Joe Baker  
Juliet Barker Smith  
Joanne Beecham  
Juma Begum  
Juliet Brunner  
Michael Chalk  
Brandon Clayton  
Luke Court  
Matthew Dormer  
Peter Fleming

Alex Fogg  
Andrew Fry  
Lucy Harrison  
Bill Hartnett  
Sharon Harvey  
Joanna Kane  
Sid Khan  
Anthony Lovell  
Emma Marshall  
Nyear Nazir  
Timothy Pearman  
Gareth Prosser  
David Thain  
Craig Warhurst

## 10. Urgent Business - Record of Decisions (Pages 1 - 12)

One urgent decision has been taken since the previous meeting of Council on the subject of the Energy Efficiency Regulations 2015.

## 11. Urgent Business - general (if any) (Pages 13 - 16)

To consider any additional items exceptionally agreed by the Mayor as Urgent Business in accordance with the powers vested in him by virtue of Section 100(B)(4)(b) of the Local Government Act 1972.

This supplementary pack contains a report requesting a waiver on the six-month rule for Committee attendance for Councillor Gareth Prosser.

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**REDDITCH BOROUGH COUNCIL****RECORD OF DECISION TAKEN UNDER URGENCY PROCEDURES****SUBJECT:** Energy Efficiency (Private Rented Property) ( England & Wales) Regulations 2015**BRIEF STATEMENT OF SUBJECT MATTER:**

The above Regulations were updated resulting in the minimum energy efficiency requirement becoming applicable to all relevant tenancies where there is a legal requirement to hold a valid current Energy Performance Certificate (EPC) for the property. The property must meet the minimum E rating to comply with the Regulations, unless an exemption is available and is claimed by being registered in the Public Exemptions Register. In order for the Council to enforce this requirement, approval is required to adopt and implement the enforcement powers under the above named Regulations.

A full report, together with a financial penalty matrix is attached.

**DECISION:**

The Executive **RESOLVE** that:-

- 1) The Council adopt the enforcement powers under the Energy Efficiency (Private Rented Property) (England & Wales) Regulations 2015; and
- 2) The implementation of these powers are delegated to the Head of Community & Housing Services.

**(Executive decision)**

**GROUND FOR URGENCY:**

The report was originally presented to Executive on 6 September but due to declarations of interest there was not a quorate meeting to consider the report. The next meeting of Executive was then postponed due to the passing of HRM Queen Elizabeth II. Further the October meeting of Executive again was not quorate to consider the item due to the number of Member declarations of interest.

This matter is now urgent to enable grant funding received to support the implementation of these Regulations to be spend before the end of the financial year.

**DECISION APPROVED BY:**

*(Deputy)* **CHIEF EXECUTIVE**

**INTERIM SECTION 151 OFFICER**  
*(if financial implications)*

.....  
**(Signature) (Sue Hanley / Kevin Dicks - (D)CX)**

.....  
**(Signature) (Peter Carpenter)**

**Date: November 2022**

**PROPOSED ACTION SUPPORTED** *(amend as appropriate)*

..... (Signature)	..... (Signature)	..... (Signature)	..... (Signature)	..... (Signature)
<i>CLLR ISHERWOOD</i>	<i>CLLR WARHURST</i>	<i>CLLR BAKER</i>	<i>CLLR DORMER</i>	<i>CLLR HARTNETT</i>
<b>MAYOR *</b>	<b>PF HOLDER</b>	<b>LEADER of the LABOUR Group</b>	<b>LEADER / LDR CONSERVATIVE Group</b>	<b>CHAIR O&amp;S Committee</b>
Date:	Date:	Date:	Date:	Date:

Notes:

\* In addition to the Executive decision above regarding the matter under consideration, the Mayor is signing to agree both that the Executive decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency. This is to ensure that the call-in procedures as set out in Part 8 of the Constitution shall not apply where an Executive decision being taken is urgent.

REDDITCH BOROUGH COUNCIL**Executive Committee**  
20226<sup>th</sup> September**Energy Efficiency (Private Rented Property) ( England & Wales)**  
**Regulations 2015**

Relevant Portfolio Holder	Councillor Craig Warhurst
Portfolio Holder Consulted	Yes
Relevant Head of Service	Judith Willis
Report Author	Job Title: Private Sector Housing Manager Contact email: steve.shammon@bromsgroveandredditch.gov.uk Contact Tel: 07976325459
Wards Affected	All wards
Ward Councillor(s) consulted	No
Relevant Strategic Purpose(s)	Finding Somewhere to Live Living Independent, active & healthy lives
<del>Key Decision</del> / Non-Key Decision	
If you have any questions about this report, please contact the report author in advance of the meeting.	
This report contains exempt information as defined in Paragraph(s) of Part I of Schedule 12A to the Local Government Act 1972, as amended	

**1. RECOMMENDATIONS****The Executive Committee RESOLVE that:-**

- 1) The Council adopt the enforcement powers under the Energy Efficiency (Private Rented Property)(England & Wales) Regulations 2015; and**
- 2) The implementation of these powers are delegated to the Head of Community & Housing Services.**

**2. BACKGROUND**

- 2.1 From 1<sup>st</sup> of April 2020 the Minimum Energy Efficiency requirement became applicable to all relevant tenancies where there is a legal requirement to hold a valid current Energy Performance Certificate (EPC) for the property. The property must meet the minimum E rating to comply with the Regulations, unless an exemption is available and is claimed by being registered in the Public Exemptions Register
- 2.2 The PRS Exemptions Register is for properties that are legally required to have an EPC, are let under a relevant tenancy but

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cannot be improved to meet the minimum standard of EPC band E for one of the following reasons:

- High Cost Exemption – No improvements can be made for less than £3500
- All Improvements Made Exemption - But property remains below EPC 'E' rating
- Wall Insulation Exemption - Cavity wall, external wall and internal wall insulation systems should not be installed due to adverse impact on the structure .
- Consent Exemption- Where a third party consent is required but is being refused.
- Devaluation Exemption – A RICS registered valuers report states the installation of specific energy efficiency measures would reduce the market value of the property by more than 5%.
- New Landlord Exemption – A 6 month temporary exemption for unintended landlords.

2.3 These Regulations have been introduced to make it mandatory for relevant private rented properties to meet a minimum energy efficiency standard to ensure occupants benefit from homes that are both warm and affordable to heat in addition to the wider Government aim of meeting carbon reduction targets.

2.4 Since 01 April 2018 it has been unlawful for a landlord to grant a new letting of a non-compliant or substandard domestic property that has an EPC rating of F or G. As of 01/04/2020 this was extended so that landlords also cannot continue to let such domestic property.

2.5 Where a landlord has failed to take steps to comply, or has submitted misleading information to gain an exemption, a financial penalty under the regulations will be considered appropriate.

2.6 The Local Authority has discretion to decide the amount of penalty subject to the maximums prescribed by the Regulations for each type of breach. The prescribed maximums for letting a substandard property for are

- a) Less than 3 months - £2000
- b) 3 months or more - £4000
- c) Registering false information on the PRS Exemptions register - £1000
- d) Failure to comply with a compliance notice - £2000



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- 2.7 In determining an appropriate level of financial penalty officers will use the Financial Penalty Matrix prescribed at Appendix A which takes account of influencing factors.
- 2.8 It is a requirement that all aggravating or mitigating circumstances are taken into consideration and that any penalty is proportionate and defensible on appeal.

**3. FINANCIAL IMPLICATIONS**

- 3.1 This work will be continued within the existing service resources. Any financial penalty from the Energy Efficiency (Private Rented Property)(England & Wales) Regulations 2015 received by the Council will be applied to the costs of the enforcement functions in relation to the Private Rented Sector.

**4. LEGAL IMPLICATIONS**

- 4.1 Local housing authority has a legal duty to enforce the Energy Efficiency (Private Rented Property)(England & Wales) Regulations 2015. There is an appeal process to the Residential Property Tribunal. The private rented sector plays an important role in meeting the diverse housing needs that exist in the Borough. It is therefore important that the accommodation is regulated effectively to ensure it is energy efficient to benefit the occupants and environment. While the majority of landlords carry out their legal duties and obligations, the small minority of landlords may disregard their legal obligations if there is no deterrent.

**5. STRATEGIC PURPOSES - IMPLICATIONS****Help Me Find Somewhere to Live**  
**Living independent, active & healthy lives**

- 5.1 A home that is warm is an integral part of maintaining health and the ability to maintain a warm home at minimal costs in terms of energy consumption and finances is crucial. With energy costs increasing rapidly it is essential that the private rental sector meets the standards required, being a sector most likely to include vulnerable persons and those on lower incomes where a higher percentage of income is spent on energy costs..

**Climate Change Implications**

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- 5.2 Thermally efficient homes will reduce energy consumed for heating and therefore contribute to lowering of emissions and overall carbon footprint across the Borough.

**6. OTHER IMPLICATIONS****Equalities and Diversity Implications**

- 6.1 The application of these regulations will have a positive impact on many family households living in private rented sector accommodation from improvements in thermal efficiency and reduced energy consumption.

**Operational Implications**

- 6.2 There are no staffing implications, envisaged at this stage. Initial stages of enforcement are to be undertaken through a Joint Project with Wyre Forest District Council using funding awarded for a successful bid which included for staffing and other resources. Formal enforcement will be undertaken by existing staff in the course of general Private Sector Housing duties. No health and safety implications have been identified to staff by the introduction of new regulations.

**7. RISK MANAGEMENT**

- 7.1 There is a risk of legal challenge if the process is not followed correctly, which could result in Residential Property Tribunal over-turning Notices and penalty fines imposed by the Council. A Private Sector tenant could apply to the Housing Ombudsman if they feel the council has failed to act in a case of non-compliance.

**8. APPENDICES and BACKGROUND PAPERS**

Appendix 1 - Financial Penalty Matrix.

[www.legislation.gov.uk/ukdsi/2015/9780111128350/contents](http://www.legislation.gov.uk/ukdsi/2015/9780111128350/contents)

**9. REPORT SIGN OFF**

Department	Name and Job Title	Date
Portfolio Holder		

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Lead Director / Head of Service		
Financial Services		
Legal Services		
Policy Team (if equalities implications apply)		
Climate Change Officer (if climate change implications apply)		

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REDDITCH BOROUGH COUNCIL

## Appendix 1

**Energy Efficiency ( Private Rented Properties) ( England & Wales)  
Regulations 2015**Financial Penalty Matrix

	Low Culpability	High Culpability	Notes
Low Harm	25%	50%	% = Proportion of Maximum Penalty
High Harm	50%	100%	

Notes

If two or more Penalty Notices apply, the combined maximum per property per breach will be £5,000.

Officers may wish to adjust the penalty from that determined in the matrix if there are particular aggravating or mitigating factors. These may come to light during the investigation and will need to be included in the Penalty Notice.

Also, factors may be provided in representations from a landlord in his request to review after the Penalty Notice has been served. Officers will have regard to these factors and may adjust the penalty to increase or reduce as they feel appropriate.

Landlords will be provided with a minimum of one month and normally 6 weeks to request a review, presenting any information they wish considered as part of that review. The landlord will be served a notice after the review with an explanation of any adjustment made.

Any representations received will be considered in a case review by the manager of the investigating officer and subject to legal advice prior to determination of whether to confirm, vary, withdraw the financial penalty or allow more time for payment to be made.

The proceeds of any financial penalty received under these regulations will be applied to the costs of the enforcement functions in relation to the private rented sector.

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If a local authority confirms that a property is (or has been) let in breach of the Regulations, they may serve a financial penalty up to 18 months after the breach and/or publish details of the breach for at least 12 months.

## Factors affecting the culpability

Low - Landlords first offence under these regulations

No previous history of non-compliance with housing related regulatory requirements

Non-compliance due to complex issues partially out of the landlord's control

High - Landlord has a previous history of non-compliance with housing related regulatory requirements and/or landlord has failed to comply with repeated requests to comply.

Landlord has knowingly or recklessly provided incorrect information in relation to exemptions to these regulations

## Factors affecting harm

High - A very low EPC rating

Vulnerable tenants occupying the property for an extended period of time since non-compliance

Low - No vulnerable tenants

Higher EPC score, close to the minimum EPC rating (E)

Tables below show the penalty matrix for each type of offence

<b>a) Breach is less than 3 months: Maximum fine £2,000</b>			
	Low culpability	High culpability	Notes
Low harm	£500	£1000	% = Proportion of maximum penalty
High harm	£1000	£2000	

<b>b) Breach is more than 3 months: Maximum fine £4,000</b>			
	Low culpability	High culpability	Notes
Low harm	£1000	£2000	% = Proportion of maximum penalty
High harm	£2000	£4000	

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c) Providing false or misleading information: Maximum fine £1,000			
	Low culpability	High culpability	Notes
Low harm	£250	£500	% = Proportion of maximum penalty
High harm	£500	£1000	

d) Failing to comply with a Compliance Notice: Maximum fine £2,000			
	Low culpability	High culpability	Notes
Low harm	£500	£1000	% = Proportion of maximum penalty
High harm	£1000	£2000	

Principles the council will take into account when applying a civil penalty:

- Harm to the tenant.** The greater the harm or potential harm to the tenant, the higher the penalty should be.
- Offender's history of failing to comply with their obligations.** Landlords are expected to be aware of their legal obligations and responsibilities. This could be when actions are seen as deliberate or they should have known they were in breach of their legal duties.
- Punishment of the offender.** The civil penalty route should not be seen as an easy option compared to prosecution. Whilst the penalty should follow the matrix, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and has demonstrated that there are consequences for not complying with their responsibilities.
- Prevent further offences.** The level of the penalty should be set high enough, so it is likely to deter the offender from repeating the same offence again, or any other offence.
- Deter others from committing similar offences.** Although it is not made known to the public when someone is served a civil penalty, it is possible landlords may find out as in their local area landlords become aware through informal channels. By setting a high enough penalty it should both punish the offender and deter other landlords from doing the same.
- Remove financial benefit.** The offender may have obtained a financial benefit as a result of committing the offence, so it is crucial to ensure they have not benefited as a result of the offence. It should not be cheaper to offend than to ensure a property is well maintained and

properly managed.

Culpability - Responsibility for a fault or wrong. Being culpable, is a measure of the degree to which a person, can be held morally or legally responsible for action and inaction.

Harm - The damage to something which is caused by a particular course of action.



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**Urgent Business: Waiver of the Six Month Councillor Attendance Rule**

Relevant Portfolio Holder	Councillor Karen Ashley
Portfolio Holder Consulted	Yes
Relevant Head of Service	Head of Legal, Democratic and Property Services
Report Author Claire Felton	Job Title: Head of Legal, Democratic and Property Services Contact <a href="mailto:c.felton@bromsgroveandredditch.gov.uk">c.felton@bromsgroveandredditch.gov.uk</a> email:
Wards Affected	Crabbs Cross
Ward Councillor(s) consulted	
Relevant Strategic Purpose(s)	An Effective and Sustainable Council
Non-Key Decision	
If you have any questions about this report, please contact the report author in advance of the meeting.	

**1. RECOMMENDATIONS**

**Council is asked to RESOLVE that:-**

**in accordance with Section 85 of the Local Government Act 1972, Council approves Councillor Gareth Prosser's non-attendance at meetings until the end of the 2022/23 municipal year on the grounds of continued ill health and that the Council's best wishes be conveyed to him.**

**2. BACKGROUND**

- 2.1 Councillor Gareth Prosser, has been unable to attend meetings recently, due to experiencing a period of ill health. The purpose of this report is to propose that Council approve his continuing absence for a period which exceeds six months up to the date of the next local elections in May 2023.
- 2.2 The extension would not prevent Councillor Prosser from returning to attending meetings prior to the local elections in May 2023, should his health recover. However, this waiver of the six month rule would provide greater flexibility.

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**3. OPERATIONAL ISSUES**

- 3.1 Councillor Prosser last attended a Committee meeting on 7<sup>th</sup> July 2022. There are not due to be any further Council meetings prior to the expiry of six months from this date, on 7<sup>th</sup> January 2023. Therefore, a request is being made at this Council meeting for Members to consider approving Councillor Prosser's non-attendance until the end of the 2022/23 municipal year.
- 3.2 Councillor Prosser's term of office as a Councillor representing Crabbs Cross ward is due to end in May 2023.
- 3.3 As two Members represent Crabbs Cross ward, local residents will continue to be able to access support from a Borough Councillor representative.

**4. FINANCIAL IMPLICATIONS**

- 4.1 There are no specific financial implications.
- 4.2 Councillor Prosser does not hold a position that has a Special Responsibility Allowance (SRA).

**5. LEGAL IMPLICATIONS**

- 5.1 Section 85 of the Local Government Act 1972 states that if a member of a local authority fails, throughout a period of six consecutive months from the date of their last attendance, to attend a meeting of the authority, they shall cease to be a member of the Council. An exception applies if their non-attendance has been approved by Council before the expiry of the six-month period.
- 5.2 If the waiver is not granted, no election is to be held for a casual vacancy that occurs within six months of the day on which the Councillor whose office is vacant would have retired as per Section 89 of the Local Government Act 1972.
- 5.3 The Council Procedure Rules in the Council's constitution allow for urgent items of business to be considered, where requested by a Member, subject to the agreement of the Mayor, the Leader, the Chief Executive and the Monitoring Officer and their collective decision as to whether to consider the item shall be conclusive. In this instance, given there are not due to be any further Council meetings prior to 7<sup>th</sup> January 2023 and to Councillor Prosser's recent experience of ill health, they have agreed that this should be considered on an exceptional basis as urgent business.

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**6. OTHER - IMPLICATIONS**

**Relevant Strategic Purpose**

- 6.1 Management of Council business, including Member support, is conducted in such a way as to deliver an Effective and Sustainable Council.

**Climate Change Implications**

- 6.2 There are no specific climate change implications.

**Equalities and Diversity Implications**

- 6.3 Supporting Members in being able to take extended absence due to ill health will have a positive impact on the Council's general equality duty with regards to the protected characteristics under the Equality Act 2010.

**7. RISK MANAGEMENT**

- 7.1 No specific risks have been identified.

**8. APPENDICES and BACKGROUND PAPERS**

None.

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9. **REPORT SIGN OFF**

<b>Department</b>	<b>Name and Job Title</b>	<b>Date</b>
Portfolio Holder	Councillor Karen Ashley.	November 2022
Lead Director / Head of Service	Claire Felton, Head of Legal, Democratic and Property Services.	November 2022
Financial Services	Pete Carpenter, Interim Section 151 Officer.	November 2022
Legal Services	Claire Felton, Head of Legal, Democratic and Property Services.	November 2022