

Appendix 6 – Statement of Principles for The Energy Efficiency (Private Rented Properties) (England and Wales) Regulations 2015

Introduction

The regulations aim to ensure that private rented tenants have thermally efficient homes, especially those classified as being most vulnerable; to reduce fuel poverty and poor energy efficiency and to lower energy bills. The regulations are also part of the Government's wider approach to reduce the UK greenhouse gas emissions from existing housing stock.

Gloucester City Council has prepared and published a statement of principles and it must follow this guide when deciding on the amount of a penalty charge. The Council may revise its statement of principles at any time, but where it does so, it will publish a revised statement.

When deciding on the amount for the penalty charge, the Council will have regard to the statement of principles published at the time when the breach in question occurred.

The legal framework

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, also referred to as The Domestic Minimum Energy Efficiency Standard (MEES) Regulations came into force on the 1st October 2016 using powers conferred to the Secretary of State in the Energy Act 2011. The regulations set a minimum energy efficiency standard ("MEES") for domestic private rented properties. The MEES Energy performance indicators sets a minimum rating of a band E EPC rating and where a property is sub-standard, landlords must make energy efficiency improvements which would raise the EPC rating to at least a minimum of Band E before they let the property as a rented dwelling.

Part Two of the regulations allows the tenant of a private rented property to request permission from their landlord to make energy efficiency improvements in the property they rent.

Part Three of the regulations outlines the minimum level of energy efficiency and that a landlord must not grant a new tenancy of a property (including an extension or renewal to an existing tenancy), nor continue to let a property (on an existing tenancy) where the EPC rating is below the minimum band 'E' unless there is valid exemption registered. It further sets out the regulatory framework requiring landlords to deliver relevant energy efficiency improvements, for enforcing authorities to serve compliance notices and penalty notices, the appeals process and the recovery of financial penalties.

The Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2019 made changes to require landlords of domestic properties with an EPC rating below E to carry out up to £3,500 (Inc. VAT) worth of works improving their energy efficiency. The £3,500 cap is an upper ceiling, not a target or a spend

requirement and landlords may spend more if they wish. If a landlord can improve their property to E (or higher) for less than £3,500 then they will have met their obligation.

Where a House in Multiple Occupation (HMO) is legally required to have an EPC (Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 and if it is let on one of the qualifying tenancy types, it will be required to comply with the minimum level of energy efficiency. However, individual rooms within HMOs are not required to have their own EPCs. Therefore, a property which is an HMO will only have an EPC if one is required for the property as a whole.

Whilst it is expected that majority of tenants in properties let as rented dwellings and homes must be provided with an appropriate EPC certificate, there are some statutory exemptions on properties which are not legally required to have an EPC.

Duties of Landlords under the regulations

Under the regulations, private landlords who rent their property are to meet either of the criteria listed below:

- Ensure that their rented properties are subject to an energy efficiency rating of E or above on their EPC or
- Register a valid exemption on the PRS Exemption Register.

Exemptions and the PRS Exemption Register

There are valid exemptions which are available to private landlords. It is however recommended that private landlords have a clear understanding of the regulations as it relates to registering an exemption. It is also recommended that landlords refer to The Energy Act 2011 and the Government's guidance for the full details of the criteria required to register a valid exemption.

All registered exemptions are valid for a period of five years unless otherwise stated. All exemptions must be registered on the PRS Exemptions Register. The register can be found online here: <https://prsregister.beis.gov.uk/NdsBeisUi/used-service-before>. Please note, it is a breach of the Regulations to put false or misleading information on the register. Supporting evidence will need to be submitted when registering a valid exemption.

If a let property is sold, any exemption registered on the PRS Exemptions Register by the previous owner is not transferable to the new owner. The new owner will be required to improve the property or register their own valid exemption.

The purpose of a compliance notice

Under Regulation 34, local authorities are under a statutory duty as enforcement authorities, to enforce the regulations. Gloucester City Council is responsible for

enforcing the regulations in respect of domestic private rented properties and may serve a compliance notice on a landlord who appears to be, or to have been at any time within the 12 months preceding the date of service of the compliance notice, in breach of the regulations. The Council will engage with landlords of properties in breach of the regulations informally at the first instance by sending them reminder letters giving landlords an adequate time frame to respond to the requests for information. Where breach(es) of the regulations cannot be resolved informally through the warning letters, the Council will then issue a financial penalty process as set out below in this policy.

The compliance notice enables the enforcement authority to monitor compliance by requesting relevant information which can include copies or the original of:

- the EPC that was valid for the time when the property was let;
- any other EPC for the property in the landlord's possession;
- the current tenancy agreement used for letting the property;
- any Green Deal Advice Report in relation to the property;
- any other relevant document that the enforcement authority requires in order to carry out its functions.

The compliance notice may also require the landlord to register copies of the requested information on the PRS Exemptions Register. The compliance notice will specify both the name and address of the person that a landlord must send the requested information to and the date by which the requested information must be supplied.

The purpose of imposing a financial penalty

The purpose of the Council exercising its regulatory powers is to reduce health inequalities and safeguard our residents, who are affected by poor housing conditions, poor property management and unprofessional landlords.

The aims of financial penalties on landlords are to:

- Lower the risk to tenants health and safety.
- Reimburse the costs incurred by the Council in taking enforcement action and arranging remedial action in default of the landlord.
- Change the behaviour of the landlord and prevent future non-compliance.
- Eliminate financial gain or benefit from non-compliance with the regulations.
- Be proportionate to potential harm outcomes, the nature of the breach, and the cost benefit to comply with these legal requirements.

Determining the amount of a financial penalty

In deciding whether it would be appropriate to impose a penalty, the authority will take full account of the particular evidence, facts and circumstances of the breach(es) under consideration.

There are four breaches under the regulations for which a private landlord may be imposed with a financial penalty. Regulation 40 sets out the breaches and the statutory maximum amounts that may be imposed in respect of each type of breach. Gloucester City Council has determined to adopt the maximum penalty amounts under these regulations.

These are as follows:

- Breaching the prohibition on letting a property with a EPC band F or G, in contravention of Regulation 23, for less than three months: Statutory maximum financial penalty of £2,000.
- Breaching the prohibition on letting a property with a EPC band F or G, in contravention of Regulation 23, for three or more months: Statutory maximum financial penalty £4,000.
- Registering false or misleading information on the PRS Exemptions Register under Regulation 36(2): Statutory maximum financial penalty £1,000.
- Failing to provide information to the council demanded by a Compliance Notice, in contravention of Regulation 37(4)(a): Statutory maximum financial penalty £2,000.

In respect of any one tenancy, a private landlord cannot be subject to multiple financial penalties that exceeds a total of more than £5,000. However, where a landlord having been previously fined up to £5,000 then proceeds to unlawfully let a sub-standard property on a new tenancy, a further financial penalty of up to £5,000 can be issued.

Procedural matters for Penalty Charge Notices

The Regulations set out the procedural steps which must be taken before the Council can impose a requirement on a landlord to pay a penalty charge.

- The Council must be satisfied that the landlord has failed to comply with the requirements of a notice or has been at any time in the 18 months preceding the date of the service of the penalty notice, breached one or more of the regulations (listed above).
- Where a landlord serves a notice of representation requesting a review of the decision within one month from when the penalty charge notice is served, the council will consider any representations made by the landlord and either confirm or withdraw the penalty and serve a notice of its decision.
- A landlord who has made a representation of a penalty charge notice and has been served with a notice confirming or varying the penalty charge notice, may appeal to the First-tier Tribunal against the Council's decision. Appeals should be made within 28 days from the notice served of the Council's decision on review. The penalty charge notice will be suspended until the case has been determined.

Details of how to make a representations and appeals will be included with the notices and supporting documentation. The Council will notify the landlord of its decision by notice, which will be either to confirm, vary or withdraw the penalty charge notice.

To ensure fairness and transparency and following a review, every decision to confirm a Penalty Notice will be subject to approval by the Team Leader or Manager.

If the penalty charge remains unpaid then the charges and administrative costs will be raised as a charge against the property whilst repayment opportunities and debt recovery methods are exhausted. However, in cases where a landlord has requested a review of the penalty charge notice, recovery will not commence until after one month from the date of the notice served giving the Council's decision to vary or confirm the penalty charge notice. Where landlords do make an appeal to the First-tier Tribunal, recovery will commence after one month from when the appeal is determined or withdrawn.

Further 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, is available online at:

<https://www.gov.uk/guidance/domestic-private-rented-property-minimum-energy-efficiency-standard-landlord-guidance>

[The Energy Efficiency \(Private Rented Property\) \(England and Wales\) Regulations 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk/2015/legislation.gov.uk)

[The Energy Efficiency \(Private Rented Property\) \(England and Wales\) \(Amendment\) Regulations 2019 \(legislation.gov.uk\)](https://www.legislation.gov.uk/2019/legislation.gov.uk)

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