

Policy for Imposing Financial and Publication Penalties

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

MEES Enforcement Policy

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1. Background Legal Context

On 1 October 2016, the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 ('the Energy Regs') came into force.

On 1 April 2018, a phased implementation of the Energy Regs began.

The Domestic Minimum Energy Efficiency Standard (MEES) Regulations ('MEES Regs') provide a minimum energy efficiency standard ('MEES') for domestic private rented properties.

Where a property falls below the MEES Energy performance indicator rating of Band E, a landlord is legally obligated to make energy efficiency improvements to raise the Energy Performance Certificate (EPC) to at least a Band E before they let the property as a rented dwelling.

The Energy Regs apply to all domestic private-rented properties which are let on specific types of tenancy agreements and which are legally required to have an EPC.

Part 2 Chapter 2 of the Energy Regs allows a tenant to request permission from a landlord to make energy efficiency improvements to a private rented property.

The Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2019 makes changes to Part 3 of the Energy Regs.

Under Part 3, regulation 23 of the Energy Regs, where private rented property's EPC is below the minimum level of energy efficiency, it is illegal for the landlord to:

- grant a new tenancy of a property (including an extension or renewal) after 1 April 2018;
- continue to let the property (on an existing tenancy) after 1 April 2020.

Since 1 April 2019, landlords of domestic properties with an EPC rating below E must carry out up to £3,500 worth of works to improve energy efficiency if they cannot obtain third-party funding to meet the costs (the £3,500 figure includes VAT).

The £3,500 cap is an upper ceiling and not a target nor a spending requirement; landlords may, if they wish to, spend more than £3,500 on energy efficiency improvement to their let property.

If a landlord can improve their property to Band E (or higher) for less than £3,500 then they will have met their obligation.

2. Introduction

Under most circumstances, a private sector tenant must, by law, be provided with an appropriate EPC certificate by a landlord. However, in some cases, statutory exemptions exist for certain types of properties whereby EPC legal provisions are not applicable.

Under regulation 34, North West Leicestershire District Council ('the Council') is under a statutory duty enforce the Energy Regs in respect of domestic private rented properties and may serve compliance notices on any landlord who is currently in breach of regulation 23 and any landlord who (at any time within the 12 months before the date of service of the compliance notice) has previously been in breach of Regulation 23.

A compliance notice enables the Council to monitor compliance by requesting relevant information which can include either clear copies of or, alternatively, originals 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 for the purpose of discharging its duties

The compliance notice may also require a landlord to register copies of the requested information on the Private Rented Sector (PRS) Exemptions Register.

The compliance notice will specify the name and address details of the person to whom the landlord must send the requested information as well as the date by which the requested information must be supplied which must not be less than one month from the date on which the compliance notice is served.

3. Objectives of the MEES Regs

The MEES Regs were created for a myriad of reasons which include:

- helping clinically vulnerable private rented tenants who are in most need of thermally efficient home environments
- tackling fuel poverty
- improving the energy efficiency of buildings
- helping tenants to reduce their energy bills

The regulations are also part of the Government's wider approach to reducing the UK greenhouse gas emissions and tackling climate change.

4. Landlords' Legal Duties

Under the MEES Regs, private landlords are legally required to take one of the actions listed below:

- They must ensure that their rented properties are, at the very least, EPC Band E
- Register a valid exemption on the PRS Exemption Register.

5. Exemptions and the PRS Exemption Register

There are valid exemptions which are available to a private landlord. It is, however, recommended that a private landlord has a clear understanding of the Energy Regs and how to register an exemption.

It is also recommended that a landlord refers to The Energy Act 2011 and the Government's guidance for the full details of the criteria required to register a valid exemption.

The PRS Exemptions Register is an online platform which allows a landlord (or an agent acting on their behalf) to register valid exemptions from the minimum energy efficiency requirements.

The Register can be accessed via the Department for Business, Energy & Industry Strategy ('BEIS') website.

All registered exemptions are valid for a period of five years unless otherwise stated.

It is unlawful to put false or misleading information on the Register.

A private landlord may register a valid exemption in the following situations:

- a) Cavity, external or internal wall-insulation has been recommended to help improve energy efficiency, but a recognised surveyor is of the expert written-opinion that such measures could potentially have a negative impact on the fabric or structure of the property (Reg 24(2))
- b) All relevant energy efficiency improvements have been made, within the cost-cap of £3,500 (this figure includes VAT) but the property still remains sub-standard (Reg 25(1)(a))
- c) there are no relevant energy efficiency improvements possible at the property (Reg 25(1)(b))
- d) The cost recommended for improvements exceeds the £3,500 cost-cap. (This figure of £3,500 includes VAT) MEES Regs
- e) A third party (such as a tenant, superior landlord, mortgage provider, freeholder, or planning authority) refuses to consent to the relevant energy efficiency improvements. However, the landlord must be able to demonstrate that they have made all reasonable efforts to obtain the consent before registering an exemption (Reg 31(1A))
- f) A surveyor or a qualified expert can confirm, in writing, that the recommended improvements would decrease the value of the property by more than 5% (Reg 32)
- g) A person may, on becoming a private landlord, register a valid (temporary) exemption under Regulation 33(1) if the person became the landlord by virtue of any of the following circumstances:
 - i. The grant of a lease due to a contractual obligation.
 - ii. Where a tenant becomes insolvent, and the landlord has been the tenant's guarantor.
 - iii. The landlord having been a guarantor, or a former tenant has exercised the right to obtain an overriding lease of a property under section 19 of the Landlord and Tenant (Covenants) Act 1995.
 - iv. A new lease has been deemed created by operation of law.
 - v. A new lease has been granted under Part 2 of the Landlord and Tenant Act 1954.
 - vi. A new lease has been granted by a court order, other than under Part 2 of the Landlord and Tenant Act 1954.
- h) When a person becomes a private landlord on purchasing a property, and on the date of purchase it was let to an existing tenant, a valid exemption may be registered under Regulation 33(3)

Temporary exemptions registered under Regulation 33 are valid for a maximum period of 6 months from the date the person became the private landlord of the property.

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>

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.

6. Removal of “No Cost to the Landlord” Exemption

The originally enacted regulations allowed for a “no cost to the landlord” exemption to be registered. However, the regulations were amended in 2019 to introduce the £3,500 cost cap, and this exemption was not available after 31 March 2019.

Owing to the changes, all “no cost to the landlord” exemptions registered on the PRS Exemptions Register before 1 April 2019 and which were originally expected to last five years, have since expired on 31 March 2020.

7. Government guidance

The Council will have regard to any guidance issued by BEIS when exercising its functions under the Energy Regs.

This policy takes effect from **25 April 2023** and will apply to all the relevant breaches of the Energy Regs which occur on the date the policy takes effect and thereafter.

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: [The domestic private rented property minimum standard \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk)

8. Compliance Notice

The Council will liaise with landlords of properties in breach of the Energy Regs informally at the first instance by sending them reminder letters and giving landlords of such properties adequate time frames within which to comply. Where breach of the regulations cannot be resolved informally through the warning letters, the Council will then proceed to initiate the penalty process as highlighted in this policy.

Where there is no action taken by the landlord after the first and second warning letters have been sent, and if it appears to the council that a private landlord is in breach of the prohibition on letting properties with an energy efficiency rating of F or G, the Council may serve a Compliance Notice (‘Comp. Notice’) on that private landlord requiring such information as it considers necessary to enable it to monitor compliance.

A Comp. Notice may also be served if it appears to the council that the private landlord was in breach of the regulations at any time in the 12 months preceding the date of service of the notice.

The Comp. Notice can formally request copies or originals of the following:

- The EPC for the property which was valid at the time the property was let
- Any other EPC
- Tenancy agreement
- Any qualifying assessment in relation to the property
- Any other document the council considers necessary to monitor compliance with the regulations

In addition, the Comp. Notice may require a private landlord to register copies of any of the above on the PRS Exemptions Register.

The Comp. Notice will specify the name and address of the officer of the Council to whom the documents or other information required must be supplied.

The Comp. Notice will also specify the time-period for compliance which will be no less than one month from the date the notice is served.

Under Regulation 37(4), a private landlord must comply with any Comp. Notice served on them by the Council; they must also allow the Council, when requested, to see and take copies of original documents.

9. Financial and Publication Penalties

There are 4 breaches under the Energy Regs for which a private landlord may be given a Financial Penalty (Fin. Pen.).

Regulation 40 sets out the breaches and the statutory maximum amounts that may be imposed in respect of each type of breach. These are as follows:

Breaching the prohibition on letting a property with an F or G rating, in contravention of Regulation 23, for less than 3 months:

Statutory maximum financial penalty of £2,000

Breaching the prohibition on letting a property with an F or G rating, in contravention of Regulation 23, for 3 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 CN, in contravention of Regulation 37(4)(a):

Statutory maximum financial penalty £2,000

In respect of any one tenancy, a private landlord cannot, owing to Regulation 40(6), be subject to multiple financial penalties that exceeds a total of more than £5,000.

10. MEES – Financial Penalty Policy

The Council has determined to take the following approach when imposing a Fin. Pen. under the Energy Regs. The Council has discretion to offer an early payment reduction if a landlord pays the penalty charge within 14 days beginning with the day the penalty charge notice is served. However, should a subsequent appeal be made the discount will be removed.

Breaching the prohibition on letting a property with an F or G rating, in contravention of Regulation 23, for less than 3 months:

For the first breach under the Energy Regs for the property: £1,000 with 33% early payment discount

For any subsequent breach under the Energy Regs for the property: £2,000 with 33% early payment discount.

Breaching the prohibition on letting a property with an F or G rating, in contravention of Regulation 23, for 3 or more months:

For the first breach under the Energy Regs at the property: £2,000 with 33% early payment discount.

Registering false or misleading information on the PRS Exemptions Register under Regulation 36(2):

Breach under the Energy Regs: £1,000 with 33% early payment discount.

Failing to provide information to the council demanded by a Comp. Notice, in contravention of Regulation 37(4)(a):

Breach under the Energy Regs: £2,000 with 33% early payment discount.

For the purposes of this policy, where a landlord having been previously fined up to £5,000 for having failed to satisfy the requirements of the Energy Regs 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.

The maximum remains but the ability to issue a further Fin. Pen. starts again with a new tenancy.

11. Houses in Multiple Occupation

Where a House in Multiple Occupation ('HMO') is legally required to have an EPC under the provisions of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 and where it is let on one of the qualifying tenancy types, then the HMO, as a whole, is required to comply with the minimum level of energy efficiency.

However, individual rooms within HMOs are not required to have their own EPCs.

In accordance with Regulation 40(6), where a private landlord has committed multiple breaches in respect of a single tenancy and, where such circumstances would make the financial penalty to such landlord go beyond the £5,000 limit, the Council would consider adjusting one or more of the Fin. Pens. in such a way that the maximum of £5,000 (as permitted under the MEES Regs) is not exceeded.

12. Publication Penalties

Under Regulation 39, a Publication Penalty ('Pub. Pen.') means publication of the following information by the Council, on the PRS Exemptions Register:

- The name of the private landlord, but only where the landlord's name is not an individual;
- Details of the breach;
- The address of the property at which the breach occurred;
- The amount of Fin. Pen. imposed.

Under the provisions of Regulation 39(2), the Council may decide how long the details of each breach should stay on the PRS Exemptions Register, subject to a minimum period of 12 months.

13. The Council's Publication Penalty Policy

The Council shall impose a Pub. Pen. in respect of all breaches that are subject to a Penalty Notice ('Penalty notice'), unless there are allowed and permitted representations received.

The Council is also determined that all breaches will be registered on the PRS Exemptions Register for a period of minimum 12 months, but not more than 24 months.

14. Penalty Notice Scope

If the Council decides to impose a Fin. Pen. and/or a Pub. Pen. for a breach of the regulations, it will serve a Penalty Notice on the offender.

A Penalty Notice may be served in respect of an ongoing breach or a breach that has occurred in the 18 month period leading up to the date of the service of the Penalty Notice

Where a landlord fails to take the action required by a Penalty Notice, within the period specified in that Penalty Notice, then the Council can serve a further Penalty Notice, however the total amount of all fines, for the same breach, remains capped at £5,000.

The Penalty Notice will set out the following:

- a) the provision within the Energy Regs the Council believes the private landlord has breached;
- b) the particulars the Council considers necessary to identify the breach;
- c) the action the Council requires the private landlord to take to remedy the breach;
- d) the timescale in which remedial action must be taken (which must not be less than one month);
- e) the amount of the Fin. Pen. imposed and how it has been calculated including any applicable discount;
- f) whether a Pub. Pen. has been imposed;
- g) the time-period in which any Fin. Pen. must be paid (which must not be less than one month from the date the Penalty Notice was served)
- h) the name and address of the person to whom any Fin. Pen. must be paid and the method of payment.
- i) The effect of Regulation 42, which sets out the right to request a review of the Council's decision to serve a Penalty Notice
- j) the effect of Regulations 43 to 44, which sets out the right of appeal against any decision to confirm a Penalty Notice
- k) The effect of Regulation 45, which sets out the Council's power to recover any unpaid Fin. Pen. as a debt;
- l) the name and address of the person to whom any request to review the Council's decision (i.e. to serve a Penalty Notice) must be sent and the period within which such a request must be made (which must not be less than one month).

If a private landlord fails to take the action required by a Penalty Notice (i.e. to remedy a breach) then the Council may serve a further Penalty Notice.

15. Landlords' Rights re Penalty Notice

A private landlord, on whom the Council has served a Penalty Notice is entitled to request a review of the Council's decision to serve the notice. The Council will accept such a request if it is received within the period of one month (commencing the day on which the Penalty Notice was served).

A request for a review, together with any representations received, will be carefully considered by the Council before it makes a final decision as to whether to confirm or withdraw the Penalty Notice.

Once the Council has made its decision, it will notify the private landlord of that decision by serving a Notice of Decision Following a Review of a Penalty Notice ("Dec. Notice"). To ensure

fairness and transparency, every decision to confirm a Penalty Notice following a request for review, will be subject to approval by the Regulatory Services Manager.

16. Appealing a Decision Notice

A private landlord, on whom a Penalty Notice or Dec. Notice has been served, may appeal to the First-tier Tribunal ('the Tribunal') on the grounds that:

- The issue of the Penalty Notice was based on an error of fact; or
- The issue of the Penalty notice was based on an error of law; or
- The Penalty Notice does not comply with a requirement imposed by the Energy Regs; or
- In the circumstances of the case, it was not appropriate for the Penalty Notice to be served.

Appeals must be brought within 28 days from the date on which the Penalty Notice was served. Once an appeal has been made, the Pen. No. is suspended until the appeal has been finally determined by the Tribunal or withdrawn by the landlord.

The Tribunal has the power to quash or affirm the Penalty Notice.

If the Tribunal decides to affirm the Penalty notice, it may do so in its original form or with such modification as it may deem fit.

The address and contact details of the Tribunal are as follows:

<https://www.gov.uk/courts-tribunals/first-tier-tribunal-general-regulatory-chamber>

First-tier Tribunal (General Regulatory Chamber) HM Courts and Tribunals Service PO Box 9300 Leicester LE1 8DJ

Email: grc@justice.gov.uk

Phone number: 020 39368963

17. Unpaid Financial Penalties – Implications and enforcement

The Council will take corresponding action to recover any unpaid Fin. Pens. (or part thereof) within the time period stipulated in a Penalty Notice and in line with the Council's debt recovery policy.

18. Multiple Breaches

In respect of any single tenancy, the Council may not impose a combination of Fin. Pens. on an offender that, in total, exceeds the statutory maximum of £5,000.

However, when considering imposing more than one Penalty Notice on an offender (resulting from the offender committing 1 or more breaches at multiple properties) the Council will carefully consider whether the cumulative Fin. Pen. would be just and proportionate, in the circumstances, having regard to the offending behaviour, as a whole.

The Council shall operate and maintain a just, equitable and proportionate approach.

19. Further Help and Advice

If you would like further advice or clarification, contact North West Leicestershire District Council by telephone on 01530 454545 or by email at

environmental.protection@nwleicestershire.gov.uk

Alternatively, you can write to us at: North West Leicestershire District Council, PO Box 11051, Coalville, LE67 0FW.

