

**POLICY FOR IMPOSING FINANCIAL AND PUBLICATION PENALTIES -
The Energy Efficiency (Private Rented Property) (England and Wales)
Regulations 2015 (MEES Regulations)**

Background:

1. The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (“2015 Energy Regulations”) came into force on the 1st October 2016 using powers conferred to the Secretary of State in the Energy Act 2011. The rules came into force on various dates beginning with the 1st April 2018 and apply to all domestic private rented properties that are let on specific types of tenancy agreements and are legally required to have an Energy Performance Certificate (“EPC”).

2. Part Two of the 2015 Energy 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.

3. Part Three of the Regulations outlines that private sector landlords must **not**, after 1st April 2018 grant a new tenancy of a property (including an extension or renewal), nor continue to let the property (on an existing tenancy) from the 1st of April 2020, where the EPC is below the minimum level of energy efficiency.

4. The Domestic Minimum Energy Efficiency Standard (MEES) Regulations set a minimum energy efficiency standard (“MEES”) for domestic private rented properties. The MEES Energy performance indicator rating of minimum Band E 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.

5. The Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2019 makes changes to Part 3 of the 2015 Energy Regulations. Since 1 April 2019, landlords of domestic properties with an EPC rating below E must carry out up to £3,500 (Inc. VAT) worth of works improving their energy efficiency if they cannot obtain third-party funding to meet the costs. 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.

6. 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 be subjected to an EPC.

7. Under Regulation 34, local authorities and local weights and measures authorities are under a statutory duty as enforcement authorities, to enforce the regulations. Stroud District 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 Regulation 23.

8. Giving at least one month, 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.

9. 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.

Objective of the Minimum Energy Efficiency Regulations:

10. The regulations were set up with the aim of ensuring that private rented tenants in most need of thermally efficient homes, especially those classified as being most vulnerable; to reduce fuel poverty and poor energy efficiencies at properties and to lower energy bills. The regulations are also part of the Government's wider approach to reduce the UK greenhouse gas emissions.

Duties of Landlords under the regulations:

11. Under the regulations, private landlords are to take either of the listed actions 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

12. 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.

13. The PRS Exemptions Register is an online platform which allows landlords (or an agent acting on their behalf) to register valid exemptions from the minimum energy efficiency requirements. The Register can be accessed on the department for Business, Energy and Industrial Strategy ["BEIS"] website. Please note, it is a breach of the Regulations to put false or misleading information on the register.

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

Exemptions may be available in the following circumstances:

a. Wall insulation - Regulation 24(2)

Where cavity, external or internal wall insulation has been recommended, but a recognised surveyor is of the expert written opinion that such insulation would have a potentially negative impact on the fabric or structure of the property, a private landlord may register a valid exemption.

b. Relevant energy efficiency improvements undertaken - Regulation 25

Where all relevant energy efficiency improvements have been made within the cost cap of £3,500 (inc. VAT) but the property remains substandard, a private landlord may register a valid exemption.

c. A valid exemption may be registered where it is established there are no relevant energy efficiency improvements possible at the property, or when the lowest cost recommended improvement exceeds the £3,500 (Inc. VAT) cost cap.

d. Consent exemption - Regulation 31(1A)

If a third party (such as a tenant, superior landlord, mortgage provider, freeholder, or planning authority) refuses to consent to the relevant energy efficiency improvements, a private landlord may register a valid exemption. However, the private landlord must be able to demonstrate that they have made all reasonable efforts to obtain the consent before registering an exemption.

e. Devaluation exemption - Regulation 32

If, according to a surveyor or a qualified expert, the recommended improvements would decrease the value of the property by more than 5%, a private landlord may register a valid exemption. It is recommended that such opinion /report be provided in written form.

f. Temporary exemption in certain circumstances - Regulation 33(1) and (3)

A person may, on becoming a private landlord in limited circumstances, register a valid (temporary) exemption under the circumstances specified under Regulation 33(1) which are:

- The grant of a lease due to a contractual obligation;
- Where a tenant becomes insolvent and the landlord has been the tenant's guarantor;
- 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;
- A new lease has been deemed created by operation of law;
- A new lease has been granted under Part 2 of the Landlord and Tenant Act 1954;
- A new lease has been granted by a court order, other than under Part 2 of the Landlord and Tenant Act 1954.

g. 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).

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

PRS Exemptions Register:

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15. 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>

16. Supporting evidence will need to be submitted when registering a valid exemption.

17. 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.

Removal of “no cost to the landlord” exemption:

18. 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 01 April 2019 and which were originally expected to last five years, have since expired on 31 March 2020.

Government guidance:

19. The Council will have regard to any guidance issued by the Department for Business, Energy & Industrial Strategy (“BEIS”) when exercising their functions under the regulations. This policy takes effect from 2nd February 2022 and will apply to all the relevant breaches of regulations which occur on the date the policy takes effect and thereafter.

20. 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>

Compliance Notice:

21. The Council will liaise with landlords of properties in breach of the regulations informally at the first instance by sending them reminder letters giving landlords of such properties adequate time frame. Where breach of the regulations cannot be resolved informally through the warning letters, the Council will then proceed to initiate the penalty process as highly in this policy.

22. Where there is no action taken by the landlord after the 1st and 2nd 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 on that private landlord requiring such information as it considers necessary to enable it to monitor compliance.

23. A Compliance 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.

Compliance Notice Contains the following:

24. A Compliance Notice may in particular 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.

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

26. A Compliance 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 notice will also specify the time period for compliance, which will be no less than one month from the date the notice is served. It is the duty of private landlords to comply with a Compliance Notice.

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

Financial and Publication penalties

28. 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.

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 three 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 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.

29. 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.

MEES Financial Penalties Policy

30. The council has determined to take the following approach when imposing financial penalties under the regulations:

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

a) Breach under the regulations: £2,000. However, the council's reduction criteria would be considered as may be applicable.

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

b) Breach under the regulations: £4,000. However, the council's reduction criteria would be considered as may be applicable.

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

c) Breach under the regulations: £1,000. However, the council's reduction criteria would be considered as may be applicable.

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

d) Breach under the regulations: £2,000. However, the council's reduction criteria would be considered as may be applicable.

31. 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 2015 Energy Regulations 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 financial penalty starts again with a new tenancy.

32. 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, then such 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.

33. In accordance with Regulation 40(6), where a private landlord has committed multiple breaches in respect of a single tenancy and, where such circumstance would make the financial penalty to such landlord to go beyond the £5,000 limit, the council would consider adjusting one or more of the financial penalties in such a manner that the maximum of £5,000 permitted under the MEES regulations is not exceeded.

Publication penalties

34. A publication penalty under Regulation 39 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 financial penalty imposed.

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

The Council's Publication Penalty policy

36. The council shall impose a publication penalty in respect of all breaches that are subject to a Penalty Notice, unless there are allowed and permitted representations received.

37. The council is also determined that all breaches will be registered on the PRS Exemptions Register for a period of minimum twelve months but not more than two years.

Penalty Notice Scope

38. If the council decides to impose a financial and/or publication penalty on 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 months that precedes 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 in accordance with paragraph (2) (c) a further penalty notice can be served. The total of all fines for the same breach remains capped at £5,000.

39. *The Penalty Notice will set out:*

- a) The provision of the regulations 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, and the timescale in which that action must be taken (which must not be less than one month);
- d) The amount of the financial penalty imposed and how it has been calculated including any applicable discount;
- e) Whether a publication penalty has been imposed;
- f) The time period in which any financial penalty must be paid (which must not be less than one month from the date the Penalty notice was served)
- g) The name and address of the person to whom any financial penalty must be paid and the method of payment.
- h) The effect of Regulation 42, which sets out the right to request a review of the council's decision to serve a Penalty Notice.
- i) The effect of Regulations 43 to 44, which sets out the right of appeal against any decision to confirm a Penalty Notice.
- j) The effect of Regulation 45, which sets out the council's power to recover any unpaid financial penalty as a debt;
- k) The name and address of the person to whom any request to review the council's decision to serve a Penalty Notice must be sent, and the period in which that request must be made.

40. If a private landlord fails to take the action required by a Penalty Notice to remedy the breach, the council may serve a further Penalty Notice.

The Right of private landlord to request a review of the council's decision to serve a Penalty Notice

41. A private landlord who has been served with a Penalty Notice is under the regulations, 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, starting from the day on which the Penalty Notice is served.

42. Representations may be submitted by a private landlord to support their request for a review. 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 ("Notice of Decision").

43. To ensure fairness and transparency, every decision to confirm a Penalty Notice following a request for review will be subject to approval by the Head of Environmental Health.

Appeals against a Notice of Decision

44. A private landlord on whom a Penalty Notice or Notice of Decision (after review) has been served may appeal to the First-tier 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 regulations; or
- In the circumstances of the case, it was inappropriate for the Penalty Notice to be served.

45. Appeals must be brought within 28 days from the date on which the Penalty Notice was sent.

46. Once an appeal has been made, the Penalty Notice is suspended until the appeal has been finally determined by the First-tier Tribunal or withdrawn by the landlord.

47. The First-tier Tribunal has the power to quash or affirm the Penalty Notice. If the First-tier Tribunal decides to affirm the Penalty Notice, it may do so in its original form or with such modification as it may deem fit.

48. The address and contact details of the First-tier Tribunal can be found at:

<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
Tel: 020 39368963

Financial penalty reduction criteria

49. As with criminal prosecutions, an early acceptance of guilt by a guilty landlord and/or managing agent is in the public interest. It saves public time and public money.

50. An offender can demonstrate an early acceptance of guilt by paying a financial penalty within 21 days from the date the Penalty Notice was served. It is the council's policy that if cleared payment is made within this time period, the offender can benefit from a 25% reduction in the amount of financial penalty payable.

51. An offender would not be demonstrating an early acceptance of guilt if they decided to request a review of the council's decision to serve a Penalty Notice. If the Council, then confirms a Penalty Notice after such a request, the full amount of the financial penalty will be payable and the option to make a payment in the reduced sum will no longer be available to the offender.

52. Where a landlord has not committed any other relevant housing offence which is within the remit of Private Sector Housing service, a 25% reduction would be applied to the financial penalty and a payment of 75% would be payable.

53. A 25% reduction would be applied to the financial penalty where the EPC score at the time of the offence was close to the minimum standard (within 5 sap point).

54. The council would apply a 25% where landlord provides the Council with evidence to enable a financial assessment of their assets and income and that assessment deems income is insufficient.

Example:

Stage 1: A landlord commits a breach offence that meets the £4,000 maximum penalty criteria
Stage 2: The Council checks its records for prosecution and civil penalties related to housing offences covered by the Housing Renewal team and was able to confirm the breach of MEES is a first time offence and reduces its penalty by 25% to £3,000.

Stage 3: The EPC rating for the property was within the 5 sap points of reaching the minimum standard and the council reduces the penalty by a further 25%. £3,000 is reduced by 25% to £2250.

Implications of Unpaid Financial penalties

55. The council will take corresponding action to recover any unpaid financial penalty (or part thereof) within the time period stipulated in a Penalty Notice.

56. An application for an order of the County Court will be made in respect of all unpaid financial penalties.

57. If court action is taken to recoup any unpaid financial penalty either in full or partial, the council would seek to recover interest and any court expenses incurred, in addition to claiming the full amount of unpaid financial penalty.

Enforcement of Unpaid Financial penalties

58. If an offender does not comply with an order of the court, the council will make an application to enforce the judgement. The most likely types of enforcement action which may be taken by the local authority are shown below:

a) Court bailiffs

b) Charging order including application for an Order of sale of property belonging to the offender c) Attachment to earnings order where it is established that the offender is in paid employment.

Multiple breaches - General principles

59. In respect of any single tenancy, the Council may not impose a combination of financial penalties 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 as a consequence of that offender committing one or more breaches at multiple properties, the Council will carefully consider whether the cumulative financial penalty would be just and proportionate in the circumstances having regard to the offending behavior as a whole. The Council will however operate a just, equitable and proportionate approach at all times.

Help and further advice

60. If you would like further advice or clarification, contact Stroud District Council, Housing Renewal Team by telephone on 01453 754478 or by email at environmental.health@stroud.gov.uk . Alternatively, you can write to us at: Housing Renewal Team, Stroud District Council, Ebley Mill, Ebley Wharf, Stroud, Gloucestershire GL5 4UB

Making a complaint

61. The Housing Renewal Team aims to provide the best possible service at all times. However, if you are not happy with the service you have received, please contact us at the above address. We shall ensure all complaints are addressed rightly, appropriately and responded to accordingly.