

Amber Valley Borough Council

Policy on the Enforcement of Energy Performance of Buildings (England and Wales) Regulations 2012 and the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015.

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Energy Performance of Buildings (England and Wales) Regulations 2012

With the introduction of minimum energy efficiency performance standards in the private rented sector the Council has collaborated with Derbyshire County Council to arrange for the delegation of enforcement powers.

Under Derbyshire County Council's revised Constitution, their duty (as a local weights and measures authority) to enforce the Energy Performance of Buildings (England and Wales) Regulations 2012 (as amended) has been delegated to Districts and Boroughs within Derbyshire; including Amber Valley Borough Council. This delegation was confirmed by the County Council's Director of Community Services on 26 July 2019.

The scope of the delegation by Derbyshire County Council is limited to domestic private rented property (as defined by s42 of the Energy Act 2011). The aim of this is to mirror the Council's obligations as a local authority under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015.

Amber Valley Borough Council has approved the delegated arrangements set out above.

Regulation	Requirement	Penalty for breach
6(2) and 6(5)	The EPC is made available free of charge to any prospective tenant, and given to the eventual tenant.	£200 (dwelling)

7(2)	The relevant person must ensure that an EPC is commissioned before marketing the building for rent.	£200 (dwelling)
7(3)	A person acting on behalf of the relevant person must satisfy themselves that an EPC has been commissioned before marketing on their behalf.	£200 (dwelling)
7(4) and 7(5)	The relevant person and the person acting on their behalf must use all reasonable efforts to ensure that the EPC is obtained within 7 days of the start of marketing. The EPC must be obtained within the period of 21 days following the expiry of the 7 day period mentioned in 7(4).	£200 (dwelling)

Defence

The Council will consider any defence that is allowed within regulation 37 which sets out the circumstances in which a person shall not be liable to a penalty charge for not making an EPC available to a prospective tenant. These include where a person is able to demonstrate that they have made all reasonable efforts to obtain an EPC since becoming subject to the duty, and where the prospective tenant required urgent relocation and an EPC was given as soon as reasonably practicable thereafter.

Reviews

Regulation 39 sets out an enforcement authority's obligations regarding the conduct of reviews of the issuing of penalty charge notices. These include considering any representations made by the recipient of the penalty charge notice and deciding whether to confirm or withdraw the penalty charge notice. It also sets out the circumstances in which the authority shall withdraw the penalty charge notice.

Appeals

If the recipient of the penalty charge notice is dissatisfied with the confirmation of the notice after the review, they may appeal to a county court on any of the grounds specified in regulation 40.

Minimum EPC Requirements in the Private Rented Sector

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 are designed to tackle the least energy efficient properties in England and Wales – those rated F or G on their Energy Performance Certificate (EPC). The Regulations establish a minimum standard for both domestic and non-domestic privately rented property, affecting new tenancies from 1 April 2018.

Officers are authorised to check for different forms of non-compliance with the Regulations including:

- from 1 April 2018 whether the property is sub-standard and let in breach of Regulation 27 (which may include continuing to let the property after 1 April 2020)
- where the landlord has registered any false or misleading information on the government's National PRS Exemptions Register or has failed to comply with a compliance notice.

Government Guidance

The Department for Business Energy and Industrial Strategy have produced guidance published in 2017 and updated it in June 2018;

[*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*](#)

In accordance with Regulations 33 and 34 Local Authorities are responsible for enforcing the minimum level of energy provisions within their area. The purpose of this policy is to describe how officers of Amber Valley Borough Council will enforce the Regulations.

Scope of the policy

1. In the first instance the Council will informally inform Landlords who rent properties with an EPC of F or G that they do not meet the minimum energy efficiency standard. The Council will offer advice on how the minimum standard can be met and request Landlords to register an exemption if appropriate.

Landlords will be given an appropriate time to make the necessary changes but will be warned that if they continue to be in breach after the time given, an investigation will follow and formal enforcement action will be considered

The Council may in circumstances where a landlord has a history of not complying with housing related regulatory requirements, decide to take formal action without giving an informal opportunity for the landlord to comply.

2. The Council has discretion to serve Compliance Notices to request information from the landlord that will help them to decide whether there has been a breach. Amber Valley Borough Council will serve Compliance Notices where the additional

information is required. The Council will consider serving Penalty Notices where a landlord fails to comply with the Compliance Notice.

3. Officers will check entries on to the National PRS Exemptions Register and if it is believed that a landlord has registered false or misleading information it will consider serving a financial and publication penalty.

4. If offences under these regulations are committed the Council will, where appropriate, serve a Penalty Notice. This policy provides guidance for officers on how to determine the appropriate penalty.

5. Under regulation 39 the Local Authority may publish some details of the landlord's breach on a publicly accessible part of the PRS Exemptions Register. Amber Valley Borough Council will place the information on the register at the appropriate time, for a minimum of 12 months.

6. The Landlord has the right to ask for a Penalty Notice to be reviewed under Regulation 42. Any request for review must be submitted to the Council within one calendar month of the Penalty Notice being served. Requests for review after the prescribed time will be considered at the Council's discretion.

Under the above legislation each enforcement authority must set its financial penalty policy. As set out in the regulations the **maximum** penalties are as follows:

- a. Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than three months, a financial penalty of up to £2,000 and may also impose the publication penalty
- b. Where the landlord has let a sub-standard property in breach of the regulations for three months or more, a financial penalty of up to £4,000 and may also impose the publication penalty
- c. Where the landlord has registered false or misleading information on the PRS Exemptions Register, a financial penalty of up to £1,000 and may also impose the publication penalty
- d. Where the landlord has failed to comply with compliance notice, a financial penalty of up to £2,000 and may also impose the publication penalty.

The Council will apply the following table to calculate the actual level of penalty for each of the separate breaches of the enforcement of minimum energy efficiency standards in the private rented sector is as follows;

	Low Culpability	High Culpability	
Low Harm	25%	50%	Proportion of the maximum to be imposed
High Harm	50%	100%	

Factors affecting culpability:

High: Landlord has a previous history of non-compliance with housing related regulatory requirements and/or Landlord has failed to comply with requests to comply with these regulations. Knowingly or recklessly providing incorrect information in relation to exemptions to these regulations

Low: First offence under these regulations, no previous history of non-compliance of with Housing related regulatory requirements. Complex issues partially out of control of the landlord have led to non-compliance.

Factors affecting Harm:

High: Very Low EPC score. Vulnerable tenants occupying property for an extended period of time since non-compliance.

Low: No vulnerable tenants, Higher EPC score close to minimum accepted EPC rating.

- a. Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than three months, a financial penalty of £2,000 and will impose the publication penalty

	Low Culpability	High Culpability
Low Harm	£500	£1,000
High Harm	£1,000	£2,000

- b. Where the landlord has let a sub-standard property in breach of the regulations for three months or more, a financial penalty of £4,000 and will impose the publication penalty

	Low Culpability	High Culpability
Low Harm	£1,000	£2,000
High Harm	£2,000	£4,000

- c. Where the landlord has registered false or misleading information on the PRS Exemptions Register, a financial penalty of £1,000 and will impose the publication penalty

	Low Culpability	High Culpability
Low Harm	£250	£500
High Harm	£500	£1,000

d. Where the landlord has failed to comply with compliance notice, a financial penalty of £2,000 and will also impose the publication penalty.

	Low Culpability	High Culpability
Low Harm	£500	£1,000
High Harm	£1,000	£2,000

Notes to accompany the policy

Landlords should refer to Government guidance designed for landlords on compliance with these regulations.

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

A local authority may not impose a financial penalty under both paragraphs a. and b. above in relation to the same breach of the Regulations, but they may impose a financial penalty under either paragraph a. or paragraph b., together with financial penalties under paragraphs c. and d., in relation to the same breach. Where penalties are imposed under more than one of these paragraphs, the total amount of the financial penalty may not be more than £5,000.

It is important to note that this maximum amount of £5,000 applies per property, and per breach of the Regulation. This means that the local enforcement authority may levy financial penalties up to £5,000 every time a landlord unlawfully lets the same substandard property on a new tenancy.

Publication Penalty

A publication penalty means that the enforcement authority will publish some details of the landlord's breach on a publicly accessible part of the PRS Exemptions Register. The enforcement authority can decide how long to leave the information on the Register, but it will be available for the public to view for at least twelve months.

The information that the enforcement authority may publish is:

- The landlord's name (except where the landlord is an individual)
- Details of the breach
- The address of the property in relation to which the breach occurred, and
- The amount of any financial penalty imposed.

The enforcement authority may decide how much of this information to publish. Information must not be published on the PRS Exemptions Register while the penalty notice could be or is being reviewed by the local authority, or is subject to an appeal to the First-tier Tribunal.

Circumstances in which a penalty notice may be served

From 1 April 2018, the enforcement authority may serve a penalty notice (relating to a financial penalty, a publication penalty or both) on the landlord where they are satisfied that the landlord is, or has been in the last eighteen months:

- In breach of the prohibition on letting sub-standard property (which may include continuing to let the property after 1 April 2020) or
- In breach of the requirement to comply with a compliance notice or
- Guilty of uploading false or misleading information to the Exemptions Register.

An enforcement authority may serve a penalty notice on a landlord up to eighteen months after the suspected breach. A person may be served with a penalty notice after they have ceased to be the landlord of a property.

Requirements for a penalty notice

The penalty notice may include a financial penalty, a publication penalty or both. The penalty notice must:

- Explain which of the provisions of the Regulations the enforcement authority believes the landlord has breached
- Give details of the breach
- Tell the landlord whether they must take any action to remedy the breach and, if so, the date within which this action must be taken (the date must be at least a month after the penalty notice is issued)
- Explain whether a financial penalty is imposed and if so, how much and, where applicable, how it has been calculated
- Explain whether a publication penalty has been imposed
- Where a financial penalty is imposed, tell the landlord the date by which payment must be made, the name and address of the person to whom it must be paid and the method of payment (the date must be at least a month after the penalty notice is issued)
- Explain the review and appeals processes, including the name and address of the person to whom a review request must be sent, and the date by which the request must be sent and
- Explain that if the landlord does not pay any financial penalty within the specified period, the enforcement authority may bring court proceedings to recover the money from the landlord.

A further penalty notice may be issued if the action required in the penalty notice is not taken in the time specified.

When an enforcement authority issues a penalty notice which carries a right of appeal, they must tell the landlord about that right of appeal. A landlord has 28 calendar days to submit an appeal from the date of the local authority's decision. The suggested wording is:

'You have a right of appeal against this decision to the General Regulatory Chamber (GRC) of the First-tier Tribunal. If you wish to appeal you should do so within 28 days of the date of this letter by writing to PO Box 9300 Leicester LE1 8DJ, grc@justice.gov.uk, 0300 1234504.

Circumstances in which a penalty notice may be reviewed or withdrawn

An enforcement authority may decide to review its decision to serve a penalty notice, for example, when new information comes to light.

A landlord also has the right to ask the enforcement authority to review its decision to serve a penalty notice. This request must be made in writing. The penalty notice must tell the landlord how long they have to make this request, and to whom it must

be sent. When the enforcement authority receives the request, they must consider everything the landlord has said in the request and decide whether or not to withdraw the penalty notice.

The enforcement authority must withdraw the penalty notice if:

- They are satisfied that the landlord has not committed the breach set out in the penalty notice
- Although they still believe the landlord committed the breach, they are satisfied that the landlord took all reasonable steps and exercised all due diligence to avoid committing the breach, or
- They decide that because of the circumstances of the landlord's case, it was not appropriate for the penalty notice to be served.

If the enforcement authority does not decide to withdraw the penalty notice, it might decide to waive or reduce the penalty, allow the landlord additional time to pay, or modify the publication penalty, and must explain the appeals process and how financial penalties can be recovered.

Whatever they decide, the enforcement authority must inform the landlord of their decision in writing and should do so at the earliest opportunity.

Recovery of Financial Penalties

If a landlord does not pay a financial penalty imposed on them, the enforcement authority may take the landlord to court to recover the money. In proceedings for the recovery of a financial penalty, a certificate signed by or on behalf of the person with responsibility for the financial affairs of the enforcement authority, stating that payment of the financial penalty was or was not received by a given date will be accepted as evidence of the landlord's non-compliance with the penalty notice.

Note however that the enforcement authority may not take the landlord to court to recover the money:

- a. During the period in which the landlord could ask the enforcement authority to review their decision to serve the penalty notice, or while they are reviewing their decision to serve the penalty notice, or
- b. During the period in which the landlord could appeal to the First-tier Tribunal, or while there is an ongoing appeal to the First-tier Tribunal.

Appeals to the First-tier Tribunal (General Regulatory Chamber)

Where a landlord asks the enforcement authority to review a decision to serve a penalty notice, and on review, they decide to uphold the penalty notice, the landlord may then appeal to the First-tier Tribunal against that decision if they think that:

- The penalty notice was based on an error of fact or an error of law
- The penalty notice does not comply with a requirement imposed by the Regulations, or
- It was inappropriate to serve a penalty notice on them in the particular

- circumstances.

If a landlord does appeal, the penalty notice will not have effect while the appeal is ongoing.

The First-tier Tribunal may decide to quash, confirm or modify the penalty notice. If the penalty notice is quashed, the enforcement authority must reimburse the landlord for any financial penalty already paid under the notice.

Head of Housing Services
30th January 2020