

Policy for the Enforcement of the Domestic Minimum Level of Energy Efficiency

Since 1 April 2020 all liable private rented sector properties must comply with the regulations

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Contents

Introduction.....	1
Government Guidance	2
Purpose of this policy	2
Scope of the policy	2
Appendix 1	3
Guidance for determining the level of a financial penalty	3

Introduction

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (henceforth “the Regulations”) 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.

The Council’s enforcement objectives include:

“where required privately rented accommodation meets minimum energy efficiency ratings and that Energy Performance Certificates are provided.”

To meet this objective, private housing service 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)(see section 1.2);
- 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 (see section 6.1.2 below).

Luton Council intend to identify landlords that are not meeting the minimum requirements and determine if it is then appropriate to make a financial penalty and whether or not that penalty is published.

In addition the council will advise landlords what actions is necessary for them to take in order for them to be compliant.

Government Guidance

The Department for Business Energy and Industrial Strategy have produced guidance published in 2017 and updated 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](#)

Luton Council has taken into consideration this guidance when preparing this policy on the enforcement of MEES.

Purpose of this policy

In accordance with Regulation 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 the council intend to 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 how the standards 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. Luton 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. The council will check the [National PRS Exemptions Register](#) and if it believes 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. See Appendix 1
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. The 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.

Appendix 1

Guidance for determining the level of a financial penalty

[The Energy Efficiency \(Private Rented Property\) \(England and Wales\) Regulations 2015](#)

The maximum level of penalty varies on the type of breach under the Regulations

Financial penalties (Regulation 40)

Where the local authority decides to impose a financial penalty, they have the discretion to decide on the amount of the penalty, up to maximum limits set by the regulations. The maximum penalties are as follows:

Where the landlord has let a sub-standard property in breach of the regulations for a period of less than three months, the local authority may impose a financial penalty of up to £2,000 and may impose the publication penalty.

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

- a. Where the landlord has registered false or misleading information on the PRS Exemptions Register, the local authority may impose a financial penalty of up to £1,000 and may impose the publication penalty.
- b. Where the landlord has failed to comply with compliance notice, the local authority may impose a financial penalty of up to £2,000 and may impose the publication penalty.

Council will use following matrix as a guide to officers to determine the appropriate penalty

	Low culpability	High culpability	Notes
Low harm	25%	50%	% = Proportion of maximum penalty
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 the requests from the council to comply with the MEES regulations. Knowingly or recklessly providing incorrect information in relation to exemptions to these regulation

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

Tables to show penalty for each type of offence

a. Breach is less than three months: Max £2,000

	Low culpability	High culpability
Low harm	£500	£1000
High harm	£1000	£2000

b. Breach is more than three months: Max £4,000

	Low culpability	High culpability
Low harm	£1,000	£2,000
High harm	£2,000	£4,000

c. Providing false and misleading information: Max £1,000

	Low culpability	High culpability
Low harm	£250	£500
High harm	£250	£1000

d. Failing to comply with a compliance notice: Max £2000

	Low culpability	High culpability
Low harm	£500	£1000
High harm	£1000	£2000

If two or more penalty notices apply the combined maximum per property per breach will be £5000

Aggravating and mitigating factors

Officers may wish to adjust the penalty from that determined in the matrix, if there are particular aggravating or mitigating factors.

Factors may come to light as part of the investigation for the offences these adjustments will be made and included in the financial penalty. Details of these factors will be included in the penalty notice.

In addition 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 adjust the penalty to increase (up to the maximum of £5000) or to reduce the penalty as they feel appropriate.

The landlord will be served a notice after the review with an explanation of any adjustment made.