

Enforcement Protocol: Minimum Energy Efficiency Standards and Financial Penalty Policy for Domestic Private Rented Properties in relation to The Energy Efficiency (Private Rented Property) (England And Wales) Regulations 2015 (As Amended)

Introduction

1. This policy sets out how the council will use notices of intention and civil penalties where landlords fail to meet or improve the energy efficiency standards of Private Rented Properties to the required standard.
2. The aim of the policy is to improve the standards of domestic private rented properties. Ensuring homes are of a certain standard, they are more energy efficient, and this supports fuel poverty, bringing down energy bills and reducing carbon emissions.
3. This Policy outlines:
 - (a) The regulations;
 - (b) How the council will undertake the enforcement duties and make decisions ensuring they are fair and accountable and within the legislation framework. (Enforcement protocol);
 - (c) A summary of the available penalties;
 - (d) Factors in determining the level of Civil Penalty;
 - (e) How decisions will be recorded;
 - (f) How a landlord can appeal the decision.
4. The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, as amended (most recently by the Energy Efficiency (Private Rented Property) (Amendment) (England and Wales) Regulations 2019) are referred to in this Policy as “the Regulations”.
5. 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).
6. The minimum level of energy efficiency means that, subject to certain requirements and exemptions:
 - (a) Since 1 April 2018, landlords of relevant domestic private rented properties must not grant a tenancy to new or existing tenants if their property has an EPC rating of F or G (as shown on a valid EPC for the property);

- (b) From 1 April 2020, landlords must not continue letting a relevant domestic property which is already let if that property has an EPC rating F or G (as shown on a valid EPC for the property). These requirements are referred to in the Regulations as “the prohibition on letting of sub-standard property”
- 7. Since 1 April 2019, a landlord of a sub-standard domestic Private Rented Property (below EPC E) may have to self-fund up to £3,500 (incl. VAT) to bring their property up to standard.
- 8. In certain circumstances, landlords may be able to claim an exemption from this prohibition on letting substandard property. Where a valid exemption applies, landlords must register the exemption on the National PRS Exemptions Register.
- 9. Private Sector Housing Officers are authorised to check for different forms of non-compliance with the Regulations and issue penalties for non-compliance. This document outlines the Council’s Civil Penalty Policy and protocol in relation to the Regulations.
- 10. Darlington Borough Council intends to identify landlords that are not meeting the minimum requirements and determine if it is then appropriate to make a financial penalty and if so, whether or not that financial penalty is published.
- 11. As part of a proactive enforcement approach, the Council will also carry out visits under the Housing Act 2004 to undertake assessments under the Housing Health and Safety Rating System. This approach will enable the Council to advise landlords on what actions are necessary for them to take in order for them to be compliant.

Outline of the Regulations

- 12. Minimum Energy Efficiency Standard (MEES) regulations set a minimum energy efficiency standard of Energy Performance Rating E for domestic private rented properties in England and Wales. Local authorities are required to enforce the Regulations which apply to new tenancies starting after 1 April 2018.
- 13. Since 1 April 2019, a landlord of a sub-standard domestic Private Rented Property (below EPC E) may have to self-fund up to £3,500 (incl. VAT) to bring their property up to standard, or file an exemption if one applies.
- 14. The minimum standards do not apply in the social housing sector.

Regulation 23: Prohibition on letting of sub-standard property

- 15. The minimum level of energy efficiency means that, subject to certain requirements and exemptions:
 - (a) Since 1 April 2018, landlords of relevant domestic private rented properties must not grant a tenancy to new or existing tenants if their property has an EPC rating of F or G (as shown on a valid EPC for the property);

- (b) From 1 April 2020, landlords must not continue letting a relevant domestic property which is already let if that property has an EPC rating F or G (as shown on a valid EPC for the property).
- 16. These requirements are referred to in the Regulations and in this policy as “the prohibition on letting of sub-standard property”.
- 17. Where a property is sub-standard, landlords must normally make energy efficiency improvements which raise the EPC rate to minimum E before they let the property. In certain circumstances, landlords may be able to claim an exemption from this prohibition on letting sub-standard property.
- 18. The tenancy types are:
 - (a) An assured tenancy (including an assured short hold tenancy) as defined in the Housing Act 1988;
 - (b) A regulated tenancy defined in the Rent Act 1977; and
 - (c) A domestic agricultural tenancy as set out in the Energy Efficiency (Domestic Private Rented Property) Order 2015.
- 19. Where a landlord appears to be, or to have been at any time within the preceding 12 months, in breach of regulation 23 “Prohibition on letting of sub-standard property”, the Council may under Regulation 37 serve a compliance notice on a landlord up to 12 months after the suspected breach.
- 20. This means that a person may be served with a notice after they have ceased to be the landlord of the property.
- 21. The Council may serve a penalty notice on a landlord in any case where it is satisfied that the landlord is, or has been at any time in the 18 months preceding the date of service of the penalty notice, in breach of one or more of regulations 23 or 37 imposing a financial penalty, a publication penalty, or both a financial penalty and a publication penalty.
- 22. A publication penalty means that the enforcement authority will publish some details of the landlord’s breach on a publicly accessible part of the Private Rented Sector (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 12 months.
- 23. Where the Council 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:
 - (a) Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than 3 months, the Local Authority may impose a financial penalty of up to £2,000 and may impose the publication penalty.

- (b) Where the landlord has let a sub-standard property in breach of the Regulations for 3 months or more, the Local Authority may impose a financial penalty of up to £4,000 and may impose the publication penalty.
- (c) 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.
- (d) Where the landlord has failed to comply with the compliance notice, the Local Authority may impose a financial penalty of up to £2,000 and may impose the publication penalty.

A summary of the available penalties & Factors in determining the level of Civil Penalty

24. The process for determining the financial penalty to be imposed has two steps.

Seriousness of the offence (the more serious the offence the higher the penalty).

Offence	Band 1	Band 2	Band 3
The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015	Providing false or misleading information on the PRS Exemptions Register.	Renting out a non-compliant property - Breach for less than three months; failed to comply with a compliance notice	Renting out a non-compliant property - Breach for three months or more

Level of severity

Band	Band 1	Band 2	Band 3
Low	£400	£800	£2,500
Medium	£600	£1,200	£3,000
High	£800	£1,600	£3,500
Very high	£1,000	£2,000	£4,000

The level of severity within the allotted band determines the level of the financial penalty.

- 25. Where penalties are imposed under more than one of bands, the total amount of the financial penalty may not be more than £5,000.
- 26. 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.

Further Guidance

[The Domestic Private Rented Property Minimum Standard](#)

Enforcement Protocol: Minimum Energy Efficiency Standards

27. In the first instance the Council will informally advise Landlords who rent properties with an EPC of F or G that they do not meet the minimum energy efficiency standard and are therefore committing an offence under the Regulations.
28. Landlords will be given an appropriate time, normally 14 days, to respond to this advice, either showing evidence that they now have a compliant EPC or to set out a plan to achieve the required energy efficiency level.
29. Additionally, the Council will proactively promote the energy efficiency retrofit grants that are available, such as the Green Homes Local Authority Delivery Scheme, to engage positively with non-compliant landlords of domestic properties in the first instance.
30. They 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, both under the Regulations and the Housing Act 2004.
31. 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.
32. The Council has the power to serve Compliance Notices to request information from the landlord that will help them to decide whether there has been a breach. Darlington Borough Council will serve Compliance Notices where additional information is required.
33. The Council will consider serving Penalty Notices where a landlord fails to comply with the Compliance Notice or provides information under the Compliance Notice that shows that the property does not comply with the Regulations.
34. 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 penalty.
35. If breaches under these regulations are committed the Council will, where appropriate, serve a Penalty Notice. This protocol provides guidance on how officers will determine the appropriate penalty.
36. 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.
37. Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, as amended that it is the duty of local authorities to enforce:
 - (a) Regulation 23 - A landlord may not let a domestic property with an EPC rating of F or G unless they meet the criteria for an exemption and that exemption has been registered on the PRS Exemptions Register.

- (b) Regulation 37(4)(a) and (b) - A landlord must comply with the requirements of any compliance notice issued by an enforcing authority and allow the enforcing authority to take copies of any original documentation produced. If an enforcement authority believes a landlord may be in breach of regulation 23, they may serve the landlord with a compliance notice under regulation 37, requesting information to help them determine whether a breach has occurred.
38. The Council may serve a compliance notice up to 12 months after a suspected breach occurred.
39. Any notice that is served under the Regulations must be in writing and may be sent in hard copy or electronically. Where a notice is served on a corporate body it may be given to the secretary or clerk of that body if a suitable named individual cannot be identified. Where a notice is served on a partnership, it may be addressed to any partner, or to a person who has control or management of the partnership business.

Compliance Notice

40. A compliance notice served by an enforcement authority may request either the original or copies of the following information:
- (a) The EPC that was valid for the time when the property was let;
 - (b) Any other EPC for the property in the landlord's possession;
 - (c) The current tenancy agreement used for letting the property;
 - (d) Any Green Deal Advice Report in relation to the property;
 - (e) Any other relevant document that the enforcement authority requires in order to carry out its compliance and enforcement functions. The compliance notice may also require the landlord to register copies of the requested information on the PRS Exemptions Register.
41. The compliance notice will specify:
- (a) The name and address of the person that a landlord must send the requested information to;
 - (b) The date by which the requested information must be supplied (the notice must give the landlord at least one calendar month to comply).
42. The landlord must comply with the compliance notice by sending the requested information to the enforcement authority and allow copies of any original documents to be taken. Failure to provide documents or information requested by a compliance notice, or failure to register information on the PRS Exemptions Register as required by a compliance notice, may result in a penalty notice being served.
43. The enforcement authority may withdraw or amend the compliance notice at any time in writing, for example where new information comes to light.

44. The enforcement authority may also use the documents provided by the landlord or any other information it holds to decide whether the landlord is in breach of the Regulations.
45. It is the decision of the enforcement authority or its authorised officer to determine what action is appropriate when they determine that breaches of the regulations are being committed.
46. It may be that providing advice and information is sufficient to ensure compliance. In some cases educating the landlord regarding the benefits of making cost-effective energy efficiency improvements to their property may be all the encouragement needed to ensure compliance with the requirements.
47. However, in some cases, it may be that only imposing a penalty will do. It is for the enforcement authority or its authorised officer to decide what is the appropriate action in the circumstances.

Penalty Notice

48. The penalties set out in this regulation apply where L is, or was, the landlord of a domestic private rented property. Below outlines the penalties that may be imposed by the enforcement:
 - (a) Where L has breached regulation 23 and, at the time the penalty notice is served has, or had, been in breach for less than three months, the penalties are—
 - (i) A financial penalty not exceeding £2,000, and
 - (ii) The publication penalty.
 - (b) Where L has breached regulation 23 and, at the time the penalty notice is served has, or had, been in breach for three months or more, the penalties are—
 - (i) A financial penalty not exceeding £4,000, and
 - (ii) The publication penalty.
 - (c) Where L has registered false or misleading information under regulation 36(2), the penalties are—
 - (i) A financial penalty not exceeding £1,000, and
 - (ii) The publication penalty.
 - (d) Where L has failed to comply with a compliance notice in breach of regulation 37(4)(a), the penalties are—
 - (i) A financial penalty not exceeding £2,000, and
 - (ii) The publication penalty.
49. The total financial penalties imposed on the Landlord in relation to the breaches in regulations outlined above must be no more than £5,000.

Factors in determining the level of Civil Penalty

50. In determining the Civil Penalty amount, Darlington Borough Council will have regard to the statutory guidance outlined above and also to the Civil Penalty Policy for Housing Standards (taking into account Culpability of the offender and the potential for tenant harm) to ensure a cohesive approach is taken.
51. The process for determining the financial penalty to be imposed has two steps. The culpability of the offender as set out in the regulations and the level of severity taking into account the potential for tenant harm. Collectively these factors identify the seriousness of the offence. The seriousness is then categorised, which then will be used to determine the amount of penalty as shown in the tables below.

Seriousness of the offence (the more serious the offence the higher the penalty).

Offence	Band 1	Band 2	Band 3
The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015	Providing false or misleading information on the PRS Exemptions Register.	Renting out a non-compliant property - Breach for less than three months; failed to comply with a compliance notice	Renting out a non-compliant property - Breach for three months or more

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Consideration of Aggravating and Mitigating Factors

52. Officers may then consider it appropriate to adjust the penalty from that determined in the table either up or down. If there are particular aggravating or mitigating factors such as landlord has a previous history of non-compliance with housing related regulatory requirements. Factors may come to light as part of the investigation for the breaches these adjustments will be made and included in the Financial Penalty.
53. Factors affecting severity can include:
- (a) First breach under these regulations, no previous history of non-compliance of with Housing related regulatory requirements.
 - (b) Complex issues partially out of control of the landlord have led to non-compliance.

- (c) EPC score close to minimum acceptable EPC rating (E).
 - (d) Low EPC rating e.g. G or close to G rating.
 - (e) No vulnerable tenants and/or short period of non-compliance.
 - (f) A determination of the offender's history of legal compliance.
 - (g) Landlord has failed to comply with requests to comply with these regulations.
 - (h) Knowingly or recklessly providing incorrect information in relation to exemptions to these regulations.
 - (i) Vulnerable tenants occupying property and/or, extended period of time since non-compliance.
54. 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.
55. The Council must check whether the level of penalty is proportionate to the overall means of the defendant. If necessary the initial amount may be amended to ensure it fulfils the general principles outlined above.
56. The Council will, when issuing a financial penalty for more than one offence, or where an offender has also been issued with another financial penalty, consider the total penalties are just and appropriate to the offending behaviour and make adjustments accordingly. The overriding principle is that the overall penalty must be just and proportionate.
57. The penalty notice will:
- (a) Specify the provision of these Regulations which the enforcement authority believes the landlord has breached;
 - (b) Give such particulars as the enforcement authority considers necessary to identify the matters constituting the breach;
 - (c) Specify—
 - (i) Any action the enforcement authority requires the landlord to take to remedy the breach;
 - (ii) The period within which such action must be taken;
 - (d) Specify—

- (i) The amount of any financial penalty imposed and, where applicable, how it has been calculated;
 - (ii) Whether the publication penalty has been imposed;
- (e) Require the landlord to pay any financial penalty within a period specified in the notice;
- (f) Specify the name and address of the person to whom any financial penalty must be paid and the method by which payment may be made;
- (g) State the effect of regulations 42 to 45, and
- (h) Specify—
- (i) The name and address of the person to whom a notice requesting a review in accordance with regulation 42 may be sent (and to whom any representations relating to the review must be addressed), and
 - (ii) The period within which such a notice may be sent.
58. Where a landlord fails to take the action required by a penalty notice within the period specified in that penalty notice, the enforcement authority may issue a further penalty notice.
59. The Council will check that the penalty is proportionate to the overall means of the offender and if there are multiple offences the Council will ensure the maximum penalty does not exceed £5,000. If two or more Penalty Notices apply, the statutory maximum per set of breaches at an individual property at a single point of time will be £5000.

Review of the penalty

60. A landlord has the right to ask the enforcement authority to review its decision to serve a penalty notice.
61. Where the penalty has been amended following a review. The landlord will be served a Notice after the review with an explanation of any adjustment made.
62. A landlord has the right to ask the enforcement authority to review its decision to serve a penalty notice.
63. Any request for review must be submitted to the Council within 28 days of the Penalty Notice being served.
64. Requests for review after the prescribed time will be considered at the Council's discretion if there is good reason for failing to comply with the time limit set in the Notice.

65. Appeals concerning penalties are initially to be made to the Council. This request must be made in writing (by a period of fourteen days beginning with the day after that on which the notice was given) to:

Private Sector Housing, Feethams, Darlington Town Hall, DARLINGTON, DL1 5QT.

66. When the Council receives the request, everything the landlord has said in the request will be considered and a decision will be made whether or not to withdraw the penalty notice.
67. On a review the Council may—
- (a) Waive a penalty;
 - (b) Allow the landlord additional time to pay any financial penalty;
 - (c) Substitute a lower financial penalty where one has already been imposed; or
 - (d) Modify the application of a publication penalty.
68. The Council must serve a further notice on the landlord withdrawing the penalty notice if, on a review the Council—
- (a) Ceases to be satisfied that the landlord committed the breach specified in the penalty notice;
 - (b) Is satisfied that the landlord took all reasonable steps and exercised all due diligence to avoid committing the breach specified in the penalty notice; or
 - (c) Decides that in the circumstances of the case it was not appropriate for a penalty notice to be served on Landlord.
69. If the Council does not decide to withdraw the penalty notice, a decision may be made 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.
70. The Council will inform the landlord of the decision reached in writing If the Council upholds a penalty notice on appeal.

Appeals

71. If, after a review, a penalty notice is confirmed by the enforcement authority, The landlord may appeal to the First-tier Tribunal on the grounds that—
- (a) The issue of the penalty notice was based on an error of fact;
 - (b) The issue of the penalty notice was based on an error of law;
 - (c) The penalty notice does not comply with a requirement imposed by these Regulations; or

- (d) In the circumstances of the case it was inappropriate for the penalty notice to be served on Landlord.

Record of the Decision

- 72. A record of each decision and the reasons for the financial / publication penalty will be made by an appropriate officer and how the amount of the penalty was obtained and the reasons for imposing it.

Recovery of financial penalties

- 73. 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 and 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.
- 74. The Council 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, against the penalty notice.

Publication Penalty

- 75. A publication penalty means that Darlington Borough Council will publish some details of the landlord's breach on a publicly accessible part of the PRS Exemptions Register. The Council can decide how long to leave the information on the Register, but it will be available for view by the public for at least 12 months.
- 76. The information that the Council may publish is:
 - (a) The landlord's name (except where the landlord is an individual);
 - (b) Details of the breach;
 - (c) The address of the property in relation to which the breach occurred;
 - (d) The amount of any financial penalty imposed.
- 77. The Council may decide how much of this information to publish. However, the Council may not place this information on the PRS Exemptions Register while the penalty notice could be, or is being reviewed by the Council or while the Council's decision to uphold the penalty notice could be, or is being, appealed.