

Thanet District Council

Private Sector Housing

The Domestic Minimum Energy Efficiency Standard (MEES)

Policy for imposing financial and publication penalties under The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

01 December 2020

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Introduction

Background

1. Part 3 of The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (“the regulations”) came into force on 01 October 2017 in relation to domestic private rented property. The regulations were made under the Energy Act 2011.
2. The tenants of privately rented homes must be provided with an Energy Performance Certificate (“EPC”) by their landlord at the beginning of their tenancy, unless their property is subject to a statutory exemption. Every EPC provides an energy efficiency rating using a scale from A to G, with homes with an A rating being the most energy efficient, and those with a G rating being the least energy efficient.
3. The regulations provide for the prohibition on the letting of “substandard” property in respect of both domestic private rented properties and non-domestic (commercial) properties. A substandard property is one which has an energy efficiency rating of F or G.
4. Under Regulation 34, local authorities and local weights and measures authorities are under a statutory duty to enforce the regulations. The enforcement duties are shared between Thanet District Council (“the council”) and Kent County Council (Trading Standards). The council is responsible for enforcing the regulations in respect of domestic private rented properties, while Kent County Council is responsible for enforcing the regulations in respect of non-domestic (commercial) properties.
5. The prohibition on the letting of substandard property was first introduced in respect of new tenancies granted on or after 01 April 2018. The prohibition was later widened to include existing tenancies from 01 April 2020.
6. While the vast majority of tenants in privately rented homes must be provided with an EPC, there are some limited statutory exemptions. The regulations do not apply to properties that are not legally required to be subject to an EPC.

Purpose of the regulations

7. The regulations were designed to help ensure that those private tenants in most need of more thermally efficient homes, particularly vulnerable people and the fuel poor, are able to enjoy a more comfortable and healthier living environment and lower energy bills. They are also part of the Government’s wider strategy to reduce UK greenhouse gas emissions.

Duties of private landlords

8. Under the regulations, private landlords must either:
 - Ensure that their rented properties are subject to an energy efficiency rating of E or above; or
 - Register a valid exemption on the PRS Exemptions Register.
9. There are a number of valid exemptions available to private landlords, which are set out in the next section.

Penalty Notices

10. A private landlord who breaches a duty under the regulations may be subject to a Penalty Notice that imposes a financial and/or a publication penalty.

Government guidance

11. Local authorities should have regard to any guidance issued by the Department for Business, Energy & Industrial Strategy (“BEIS”) when exercising their functions under the regulations. Amended non-statutory guidance was issued by the department in April 2020, namely: *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*, which is available online at:

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

12. This policy sets out how the council will impose Penalty Notices in accordance with the regulations and Government guidance.

Commencement

13. This policy takes effect from 01 December 2020 and applies to all relevant breaches of duty which occur on or after this date.

Exemptions and the PRS Exemptions Register

Valid exemptions

14. There are a number of valid exemptions available to private landlords which are summarised below. However, private landlords must refer to the regulations, the Energy Act 2011 and the Government guidance for full details of the criteria needed to register a valid exemption. Independent legal advice should be sought if there is any doubt as to the validity of any potential exemption.

15. The following exemptions are valid for five years, unless otherwise stated.

Wall insulation - Regulation 24(2)

16. Where cavity, external or internal wall insulation has been recommended, but a recognised expert is of the 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 if the opinion has been provided in writing.

Relevant energy efficiency improvements undertaken - Regulation 25

17. 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.

18. A valid exemption may also be registered where 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.

Consent exemption - Regulation 31(1A)

19. If a third party (such as a tenant, superior landlord, mortgage, 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.

Devaluation exemption - Regulation 32

20. If, according to a recognised expert, the recommended improvements would decrease the value of the property by more than 5%, a private landlord may register a valid exemption if the opinion has been provided in a written report.

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

21. A person may, on becoming a private landlord in limited circumstances, register a valid (temporary) exemption. The circumstances specified under Regulation 33(1) 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.
22. 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).
23. 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

24. All exemptions must be registered on the PRS Exemptions Register, which is provided by the Government on gov.uk. The register can be found online here:
<https://prsregister.beis.gov.uk/NdsBeisUi/used-service-before>
25. Supporting evidence will need to be submitted when registering a valid exemption.
26. 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

27. 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 expired early on 31 March 2020, even though they were originally envisaged to last for five years. All affected landlords were contacted personally via the PRS Exemptions Register.

Compliance Notice

Purpose

28. 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, it may serve a Compliance Notice on that private landlord requiring such information as it considers necessary to enable it to monitor compliance.
29. 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.

Contents of Compliance Notice

30. 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.
31. In addition, a Compliance Notice may require a private landlord to register copies of any of the above on the PRS Exemptions Register.
32. 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.

Duty of private landlords to comply with a Compliance Notice

33. 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

Financial penalties

34. 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:
- 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 **£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**.
35. In respect of any one tenancy, a private landlord cannot, owing to Regulation 40(6), be subject to multiple financial penalties that exceed a total of more than £5,000.

Financial penalty policy

36. 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:
 - First breach under the regulations: **£1,000**
 - All other breaches: **£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:
 - First breach under the regulations: **£2,000**
 - All other breaches: **£4,000**
 - Registering false or misleading information on the PRS Exemptions Register under Regulation 36(2):
 - First breach under the regulations: **£500**
 - All other breaches: **£1,000**
 - Failing to provide information to the council demanded by a Compliance Notice, in contravention of Regulation 37(4)(a):
 - First breach under the regulations: **£1,000**
 - All other breaches: **£2,000**
37. For the purposes of this policy, the “first breach” means the first breach by the private landlord of any duty under the regulations, and does not refer to the first breach under each specific type of breach. For example, a private landlord may first fail to comply with a Compliance Notice, and be subject to a (first breach) financial penalty of £1,000. If it is later found that the private landlord has, for more than three months, been in breach of the prohibition on letting substandard property, this breach will not be a first breach, and so a further financial penalty of £4,000 will be payable.
38. For the purposes of identifying a first breach, only Penalty Notices that have been served on the private landlord within the previous five-year period will be taken into account.

39. In accordance with Regulation 40(6), where a private landlord has committed multiple breaches in respect of a single tenancy and, having regard to this policy, the financial penalties would, in total, exceed £5,000, one or more of the financial penalties would be adjusted down such that the statutory maximum of £5,000 is not exceeded.

Publication penalties

40. A publication penalty under Regulation 39 means publication on the PRS Exemptions Register, by the council, of the following information:

- The name of the private landlord, but only when the landlord is not an individual;
- Details of the breach;
- The address of the property at which the breach occurred;
- The amount of financial penalty imposed.

41. 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.

Publication penalty policy

42. The council has determined to impose a publication penalty in respect of all breaches that are subject to a Penalty Notice, unless there are exceptional circumstances.

43. The council has also determined that all breaches will be registered on the PRS Exemptions Register for a period of three years, with the option to reduce this period in exceptional circumstances.

Penalty Notice

Scope and contents of a Penalty Notice

44. If the council decides to impose a financial and/or publication penalty, 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 occurred in the 18 months preceding the date of the service of the notice.
45. The Penalty Notice will set out:
- The provision of the regulations the council believes the private landlord has breached;
 - The particulars the council considers necessary to identify the breach;
 - 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);
 - The amount of the financial penalty imposed and how it has been calculated;
 - Whether a publication penalty has been imposed;
 - The time period in which any financial penalty must be paid (which must not be less than one month);
 - The name and address of the person to whom any financial penalty must be paid and the method of payment;
 - The effect of Regulation 42, which sets out the right to request a review of the council's decision to serve a Penalty Notice;
 - The effect of Regulations 43 to 44, which set out the right of appeal against any decision to confirm a Penalty Notice;
 - The effect of Regulation 45, which sets out the council's power to recover any unpaid financial penalty as a debt;
 - 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.
46. 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.

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

47. A private landlord served with a Penalty Notice is entitled to request that the council reviews its decision to serve the notice. The council will accept such a request if it is received within the period of one month, beginning with the day on which the Penalty Notice is served.
48. 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").
49. To ensure fairness and transparency, every decision to confirm a Penalty Notice following a request for review will be subject to approval by a senior manager of the council. In the first instance, the decision to confirm a Penalty Notice will be proposed by the Private Sector Housing Manager, who will provide an assessment of any written representations received. The proposal will be reviewed by the Director of Housing and Planning, or an officer of

similar or higher seniority, and a final decision made by that senior manager. From time to time, the job titles of officers are altered by the council and any reference to the Private Sector Housing Manager or the Director of Housing and Planning may be deemed to include a reference to any future equivalent post.

Appeals against a Notice of Decision

50. A private landlord on whom a Notice of Decision has been served may, if the Penalty Notice has been confirmed, 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.

51. Appeals must be brought within 28 days of the date on which the Notice of Decision was sent.

52. Once an appeal has been made, the Penalty Notice is suspended until the appeal has been finally determined or withdrawn.

53. 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 sees fit.

54. As of 01 December 2020, the address and contact details of the First-tier Tribunal were:

First-tier Tribunal (General Regulatory Chamber)

HM Courts and Tribunals Service
PO Box 9300
Leicester
LE1 8DJ

Email: grc@justice.gov.uk | Tel: 0300 123 4504

55. The address of the First-tier Tribunal may change from time to time, but the latest address will be detailed on any Notice of Decision served and can be found at:

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

Reduction for an early acceptance of guilt

Public interest

56. As with criminal prosecutions, the council is of the opinion that an early acceptance of guilt is in the public interest. It saves public time and money.

Demonstrating early acceptance of guilt

57. An offender can demonstrate an early acceptance of guilt by paying a financial penalty within 21 days of the date the Penalty Notice was served. If cleared payment is made within this time period, the offender can benefit from a 25% reduction in the amount of financial penalty payable.
58. A Penalty Notice will set out the financial penalty amount having regard to this policy and an amount equal to 75% of that sum, which would be accepted if received within the 21-day period.
59. 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 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 not be available.

Unpaid financial penalties

County Court

61. The council will take robust action to recover any financial penalty (or part thereof) not paid within the time period set out in a Penalty Notice.
62. An application for an order of the County Court will usually be made in respect of all unpaid financial penalties. A certificate signed by the Chief Finance Officer of the council stating that the financial penalty (or part thereof) has not been paid will be accepted by the court as conclusive evidence of that fact.
63. In taking court action, the council would seek to recover interest and any court expenses incurred, in addition to claiming the full amount of unpaid financial penalty.

Enforcement

64. If an offender does not comply with an order of the court, the council will usually make an application to enforce the judgement. The type of enforcement action pursued would depend on the circumstances of the case and the amount owed. The most likely types of enforcement action are shown below.

Court bailiffs

65. A court bailiff will ask for payment. If the debt is not paid, the bailiff will visit the offender's home or business address to establish whether anything can be seized and sold to pay the outstanding debt.

Charging order - Order of sale

66. The council can apply to place a charging order on any property owned by the offender. If a debt remains outstanding after a charging order has been registered, the council can make an application for an order of sale. The property would then be subject to an enforced sale and the proceeds used to settle the debt owed to the council.

Attachment to earnings order

67. If the offender is in paid employment, the council can apply to the court for an attachment to earnings order. Such an order would require the offender's employer to make salary deductions. Amounts would be deducted regularly at the direction of the court until the debt owed to the council has been fully discharged.

Multiple breaches

General principles

68. 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 behaviour as a whole.
69. Taking into account the principle of totality ensures that the cumulative effect of any sanctions imposed by the council does not constitute an unjust and disproportionate punishment.

Determining a just and proportionate punishment

70. The council will initially determine the amount of financial penalty that should be imposed in respect of each of the breaches identified at the properties under consideration. Subject to the statutory maximum for each tenancy, the council will then add up the financial penalties and make an assessment as to whether the cumulative total is just and proportionate.
71. If the council considers the cumulative total to be just and proportionate, it will normally impose a financial penalty for each breach identified. However, if the council considers the cumulative total to be unjust and disproportionate, the council may use its discretion and decide not to impose a financial penalty in respect of every breach under consideration.

Help and advice

72. If you would like further advice or clarification, the Private Sector Housing Team can help. Please ring us on 01843 577437 and speak to one of our officers. We can also be contacted by email on: housing.conditions@thanet.gov.uk.
73. Alternatively, you can write to us at:
- Private Sector Housing
Thanet District Council
PO Box 9
Cecil Street
Margate
Kent CT9 1XZ

Making a complaint

74. The Private Sector Housing Team aims to provide the best possible service. However, if you are not happy with the service you receive you can make a formal complaint.
75. More information about how to make a formal complaint can be found on the council's website at: www.thanet.gov.uk. Alternatively, you can call, email or write to us:
- Telephone: 01843 577000 | Email: customer.feedback@thanet.gov.uk
- Address: Customer Feedback, Thanet District Council, PO Box 9, Cecil Street, Margate, Kent, CT9 1XZ.
76. If, after having gone through the council's formal complaints process, you believe that the council has not handled your complaint properly, you have the right to request an independent investigation by the Local Government and Social Care Ombudsman. The Ombudsman Service will review your complaint and decide if it is appropriate to carry out an investigation. The service is free of charge.
77. You can make a complaint online or by phone at:
- The Local Government and Social Care Ombudsman**
Telephone: 0300 061 0614 | Website: www.lgo.org.uk.

Document history

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Version 1	01 December 2020	Cabinet - 19 November 2020	692

Private Sector Housing

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