

## **BOROUGH COUNCIL OF KING'S LYNN AND WEST NORFOLK**

### **RECORD OF DECISION TAKEN BY OFFICERS UNDER DELEGATED POWERS**

This is a record of a decision taken by an officers under delegated powers and where necessary taken in consultation with members and officers.

#### **Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015**

**Delegated Power**

Specify the particular delegated power being exercised by reference to the Delegation Scheme or Cabinet minute and date.

Cabinet 25/6/2018

CAB28: Compliance and Enforcement - Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

Full council 19/7/2018

Item C34i

**Decision Taken**

- i) Modify the Councils Minimum Energy Efficiency Enforcement policy so as permit financial penalties in accordance with Section 3.0 of the attached report.
- ii) Modify the penalty calculation methodology in accordance with Section 3.0 of the attached report.

**Reasons for the Decision**

The decision has been taken in order to allow the council to take appropriate and robust action when enforcing the Minimum Energy Efficiency Regulations.

**Options considered**

Keeping the existing financial penalties and penalty calculation methodology.

**Any declarations of interest and details of any dispensations granted in respect of interests.**

None

**List of Background papers**

Amendment of Compliance and Enforcement - Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

**Authorisation**

Post Held: Debbie Gates, Executive Director for Central Services

Signature

Date 15 October 2021

**Consultation with members/officers**

**If the decision is taken following consultation with the members/officers, please give details:**

**Signed by Member as consulted:** Cllr Sam Sandell – Portfolio Holder People & Communities

Date 15 October 2021

# **Amendment of Compliance and Enforcement - Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015**

## **1.0 Background**

The government's ambition is to improve the energy performance of privately rented properties as improving a home's energy efficiency helps the occupants keep warm, reduces their energy bills and provides better protection for their health and wellbeing. Those benefits are particularly important to households on lower incomes and in homes which are expensive to heat.

For example, BEIS energy cost analysis shows that those households in the private rented sector who live in F or G rated properties face significantly higher energy costs of keeping warm than typical households, needing to pay on average over £600 per year more than E rated private rented properties and almost £1,000 per year more than the average home.

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (the Regulations) fulfil a duty placed upon the Secretary of State in the Energy Act 2011 to introduce Regulations to improve the energy efficiency of buildings in the domestic private rented sector.

In summary

- From 1 April 2018 – all tenancies starting new or renewing after this date **MUST** have at least an E-rating on the property's Energy Performance Certificate (EPC) by law.
- From 1 April 2020 – all other privately rented homes (i.e. those on continued leases) **MUST** have at least an E-rating on the EPC to be lawfully let out.

Where the landlord wishes to let a property which does not meet the standard, he/she will need to ensure that energy efficiency improvements are made to meet the minimum E rating using any available third-party funding arrangements or self-fund up to a £3,500 maximum spending. The spending cap does not apply where third-party funding is available to fully cover the costs of identified improvements.

A 2019 amendment changed the No Third Party Finance Exemption on the National PRS Exemption Register from 5 years as stated in the 2015 Regulations to expire on 1 April 2020.

Whether a landlord seeks a High Cost Exemption on the Register claiming that an EPC F or G property cannot be improved for £3,500 or less, he/she must submit quotes from three different installers each providing evidence that the cost of the requisite energy efficiency measure is greater, than the spending cap.

The Regulations only apply to those domestic properties which are legally required to have an EPC. This means properties required to have an EPC by any of the following;

- a) The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007;
- b) The Building Regulations 2010;
- c) The Energy Performance of Buildings (England and Wales) Regulations 2012.

It is the landlord's responsibility to ensure they meet these requirements and have an EPC rated E (or better) as evidence that their property is legal to rent out (unless the property is exempt).

A copy of the EPC certificate must be provided by landlords to all tenants at the property whose tenancies began on or after 1st October 2015 (required under the Deregulation Act 2015).

A domestic private rented sector property will be considered sub-standard if the EPC rating is F or G, unless an exemption applies. If there is an EPC in place which shows that the property is a band F or G, then it must not be let; otherwise the landlord is liable to penalties.

It is also important to note however that if a landlord lets a property in breach of the Regulations, the breach does not affect the validity or legality of the tenancy itself, so the rent continues to be payable.

## 2.0 Penalty Notices

From the 1<sup>st</sup> April 2018, the enforcement authority may serve a penalty notice (relating to a financial penalty, publication penalty or both) on the landlord where they are satisfied that the landlord is, or has been in the last 18 months;

- a) in breach of the prohibition on letting sub-standard property (which may include continuing to let the property after 1<sup>st</sup> April 2020) or;
- b) in breach of the requirement to comply with a compliance notice or;
- c) has uploaded false or misleading information to the PRS Exemptions Register.

The fact that an enforcement authority may serve a penalty notice on a landlord up to 18 months after the suspected breach means that a person may be served with a penalty notice after they have ceased to be the landlord of a property.

Where the enforcement 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;

Infringement	Penalty (less than three months in breach)	Penalty (three months or more in breach)
Renting out a non-compliant property	<ul style="list-style-type: none"> <li>• Up to £2,000, and/or</li> <li>• Publication penalty.</li> </ul>	<ul style="list-style-type: none"> <li>• Up to £4,000, and/or</li> <li>• Publication penalty.</li> </ul>
Providing false or misleading information on the PRS Exemptions Register	Up to £1,000, and/or Publication penalty	
Failing to comply with a compliance notice	Up to £2,000, and/or Publication penalty	

Table A

It is important to note that the maximum amount of the financial penalty may not be more than £5,000. This applies per property and per breach of the Regulations. This means that, if after having been previously fined up to £5,000 for having failed to satisfy the requirements of the Regulations, a landlord proceeds to unlawfully let a sub-standard property on a new tenancy;

the enforcement authority may again levy financial penalties up to £5,000 in relation to that new tenancy.

The enforcement authority may also issue a publication penalty where some of the details of the landlords breach will be logged 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 view by the public for at least 12 months.

### **3.0 Proposed Changes**

It was recommended that the Council adopt a policy that penalties will be imposed in line with the maximums stated within the Regulations (Table A), however, given the lack of enforcement technical advice for enforcing authorities, it was proposed that where a landlord is evidently in breach of the Regulations and where it is their first offence, the first penalty notice issued would not contain a financial penalty element but would require the landlord to remedy the situation by either registering a valid exemption on the PRS Exemptions Register or completing the relevant and appropriate works within a reasonable period. Should the landlord fail to complete the works within the notice period then they would be served with a further penalty notice containing a financial penalty element (not exceeding the financial penalty maximums).

It was proposed that a staged approach to the application of financial penalties would allow landlords the opportunity to fully understand the Regulations as they were new, and remedy matters in respect to their first breach in advance of a financial penalty being issued.

In addition, it was proposed that where a landlord fails to comply fully with a compliance notice or registers false or misleading information on the PRS Exemptions Register then a financial penalty element would apply to a first penalty notice.

It was also recommended that where a publication penalty is available, that such a penalty be applied, with publication on the Register for a period of 12 months. This publication period will be subject to review as further detailed enforcement guidance is issued by BEIS.

Section 9.0 of the adopted policy stated;

***It is proposed that the policy in respect of enforcement of the Regulations will be reviewed in line with those changes proposed by BEIS and/or where further enforcement guidance is issued or where it is deemed appropriate.***

***It is proposed that any future changes as to the enforcement of the Regulations will be agreed and authorised by way of an officer decision supported by the relevant portfolio holder.***

Given BEIS guidance and the length of time these Regulations have now been in force, hence familiar to landlords, it is proposed to remove the no-financial penalty for first offence element and modify the penalty calculations in accordance with tables below.

This will provide an appropriate deterrent to those landlords who may wish to transgress the Regulations and any consideration as to whether to proceed with a penalty will be subject to the relevant public interest test.

The Borough Council of King's Lynn & West Norfolk will use the following matrix as a guide to officers in determining the appropriate penalty;

	<b>Low Culpability</b>	<b>High Culpability</b>	<b>Notes</b>
<b>Low Harm</b>	25%	50%	% = Proportion of maximum penalty
<b>High Harm</b>	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.

## Tables to show penalty for each type of offence:

### Breach is less than 3 months: MAX £2000

	Low Culpability	High Culpability
Low Harm	£500	£1000
High Harm	£1000	£2000

### Breach is more than 3 months: MAX £4000

	Low Culpability	High Culpability
Low Harm	£1000	£2000
High Harm	£2000	£4000

### Providing False or Misleading Information: MAX £1000

	Low Culpability	High Culpability
Low Harm	£250	£500
High Harm	£500	£1000

### 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.

In addition to the above the authority may also issue a publication penalty in respect to those breaches identified.

### Aggravating and Mitigating Factors

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

If factors 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.