

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

Introduction

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (the Regulations) are designed to improve the standard of the least energy efficient private sector rental properties in England and Wales which are those rated F or G on their Energy Performance Certificate (EPC).

The Regulations provide that from April 2020, domestic privately rented property must have an EPC rating of at least E, unless it is among a small number of properties that can claim and register an exemption. Social housing is not included.

In the Bath and North East Somerset area, many privately let dwellings have been identified as not having an EPC and a further tranche of properties that have an EPC rating of F or G and are not registered as being exempt.

The Council has a duty to enforce the Regulations; this will be done collaboratively by Trading Standards and Housing Services. Officers will be authorised to deal with different forms of non-compliance with the Regulations which include:

- the property being sub-standard and let in breach of Regulation 23
- the landlord having registered any false or misleading information on the government's national PRS Exemptions Register
- the landlord having failed to comply with a Compliance Notice

The Council intend to serve Compliance Notices on those landlords whose properties do not meet the minimum standards and then decide if it appropriate to take further action such as imposing a financial penalty and publishing the penalty.

We will make advice available to landlords, by way of advice leaflets, which will explain what action they need to take in order to become compliant and what financial help might be available.

Government Guidance

The Department for Business Energy and Industrial Strategy have produced guidance for landlords published in 2017, updated on 4th May 2020 which can be found at:

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

This guidance has been taken into consideration when preparing this policy.

Bath and North East Somerset Enforcement Policies

The Public Protection and Health Improvement Service Enforcement Policy and the Housing Services Enforcement & Licensing Policy have both been taken into consideration when drafting this policy document.

Where there are inconsistencies between those documents and this policy, it is intended that this policy shall take precedence.

<https://www.bathnes.gov.uk/document-and-policy-library/housing-enforcement-and-licensing-policy>

<https://www.bathnes.gov.uk/document-and-policy-library/public-protection-enforcement-policy>

Purpose of this Policy

Local Authorities must enforce the provisions of the Regulations within their area. (Regulation 33).

The purpose of this policy is to set out how authorised officers in Bath and North East Somerset will enforce the Regulations and maintain minimum housing standards.

Our General Approach

Bath and North East Somerset Trading Standards and Housing Services will aim to be:

Open

We are committed to the open provision of information and advice in a format that is accessible and easily understood.

Proportionate

The decision on which enforcement action is appropriate, where there is a breach of the Regulations, is a judgment based on the circumstances of the case and will take account of several factors including, as appropriate:

- The length of time over which the breach has subsisted
- Environmental and Health Impact based on the EPC rating.

Consistent and Fair

All officers will ensure that everyone they come into contact with will receive fair and equitable treatment irrespective of their race, ethnicity, gender, disability, religious beliefs, political views or sexual orientation.

Helpful

Advice and guidance will be available to provide help to those wishing to understand the Regulations with a view to better compliance.

As part of our publicity campaign and advice and guidance we will also provide guidance about the Government proposals for future minimum energy efficiency standards to help landlords plan ahead.

Targeted

We aim to prioritise and direct our regulatory enforcement based on intelligence received and risk assessment of harm caused by non-compliance.

Our Approach in Enforcing the Regulations

- We will serve a Compliance Notice on landlords that we believe let out property which does not meet the minimum standard of the Regulations.
- We will serve a Compliance Notice on landlords that we believe have registered an Exemption where they were not entitled to do so.
- The Compliance Notices will give the landlord at least one calendar month from the date the Notice is served to either show that the property does meet the minimum standard of the Regulations or to register an Exemption.
- There will be no engagement with the landlord prior to the service of a Compliance Notice as the Regulations have been well-publicised and the Compliance Notice will give the landlord time to carry out works and avoid formal enforcement action.
- If the landlord fails to comply with the Compliance Notice the Council may serve a Penalty Notice on the landlord, where it is satisfied that the landlord is, or has been at any time in the 18 months preceding the date of the service of the penalty notice, in breach of the Compliance Notice or the prohibition on letting sub-standard property.
- The Council will check the National PRS Exemptions Register and if it believes that a landlord has registered false or misleading information it may serve a Penalty Notice on the landlord.
- If a sub-standard property is let in breach of the Regulations, the Council may serve a Penalty Notice on the landlord.
- This policy provides guidance for officers on how to determine the appropriate financial penalty in a Penalty Notice. See Appendix 1
- A Penalty Notice will include the following information:

- a) The provisions of the Regulations which the Council believes the landlord as breached.
 - b) Identify the matters constituting the breach
 - c) Any action the Council requires the landlord to take to remedy the breach AND the period within which such action must be taken (being not less than one month from date of service of the Penalty Notice)
 - d) the financial penalty and how it has been calculated
 - e) Whether the publication penalty has been imposed
 - f) The period, being not less than one month from date of service of the Penalty Notice, in which the penalty must be paid.
- The landlord is entitled to serve a notice on the Council requesting a review of its decision to serve a Penalty Notice and in that case:
 - a. The Council must consider any representations made by the landlord and all other circumstances
 - b. Confirm or withdraw the penalty notice and
 - c. Serve notice on the landlord of its decision
- The review will be carried out by the Team Manager, Safety and Standards for the Council.

Where, on the review, the Council finds that

- it is no longer satisfied that the landlord committed the breach specified in the Penalty Notice, or
- 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
- decides that in the circumstances of the case it was not appropriate for a penalty notice to be served on the landlord,

it will serve a further notice on the landlord withdrawing the Penalty Notice.

On review, the Council may:

- (i) waive a penalty
- (ii) allow the landlord additional time to pay any financial penalty
- (iii) substitute a lower financial penalty
- (iv) modify the application of a publication penalty.

The Council will advise the Landlord of the outcome of the review in writing.

- 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, which can be found at:
<https://prsregister.beis.gov.uk/NdsBeisUi/register-search-exemptions>

- Bath and North East Somerset Council will place information on the register at the appropriate time for a minimum of 12 months.
- Bath and North East Somerset Council may also consider prosecution for breaches. Prosecution will be used in respect of the more serious or recurrent breaches, or where other enforcement actions have failed to secure compliance. The circumstances where this option will be used are expanded on in the Public Protection Enforcement Policy. <https://www.bathnes.gov.uk/document-and-policy-library/public-protection-enforcement-policy>

Appeal to First-Tier Tribunal

Where the landlord has asked the Council to review a decision to serve a Penalty Notice and on review the Penalty Notice is upheld then the landlord may appeal to the First-Tier Tribunal, within 28 calendar days of the Council's decision, on the grounds that:

- The Penalty Notice was based on an error of fact or an error of law
- The Penalty Notice did not comply with a requirement imposed by the Regulations
- It was inappropriate to serve a Penalty Notice on them in the particular circumstances.

The Penalty Notice will not have effect while the appeal is ongoing.

The First-Tier may decide to:

- Quash or Affirm the Penalty Notice in its original or modified form.

More information can be found here. <https://www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber>

Recovery of Financial Penalty as a Debt

The Council may seek recovery of any financial penalty that remains unpaid through County Court proceedings, after:

1. the conclusion of any review which upheld the Penalty Notice and
2. the expiration of time-limit for an appeal to the First Tier Tribunal, or
3. the decision of the First Tier Tribunal to uphold the Penalty Notice, whether or not modified.

Appendix 1

Guidance for Determining the Level of a Financial Penalty

Financial Penalties (Regulation 40)

Where the Local Authority decides to impose a financial penalty, it has the discretion to decide on the amount of the penalty, up to maximum limits set by the Regulations, subject to an overall cap of £5,000. The Council may also impose a publication penalty.

Penalty for letting a domestic property with an EPC rating of less than Band 'E' For Less than 3 months	Up to £2,000 and/or Publication Penalty
Penalty for letting a domestic property with an EPC rating of less than Band 'E' For More than 3 months	Up to £4000 and/or Publication Penalty
Providing false or misleading information on the PRS Exemptions Register	Up to £1000 and/or Publication Penalty
Failing to Comply with Compliance Notice	Up to £2000 and /or Publication Penalty
Penalties are cumulative but subject to a cap of £5000	

Financial Penalty for Each Non-Compliant Property

Bath and North East Somerset Council will use the following matrix to determine the appropriate penalty in each case:

Rating on Energy Performance Certificate	Penalty for letting a domestic private rented property with an EPC rating of less than Band 'E' (A sub-standard domestic property)			
	Penalty where the landlord has been in breach for Less than 3 months	Penalty where the landlord has been in breach for More than 3 months	Providing false or misleading information on PRS Exemptions Register	Failing to Comply with Compliance Notice
EPC F	£1000	£2000	£500	£1000
EPC G	£2000	£4000	£1000	£2000
More than one penalty may be imposed, subject to a maximum penalty of £5000				

The levels of penalty directly reflect the maximum penalties for each type of breach.

For the most serious breaches (EPC rating of G) the maximum fine is imposed in each case.

Recognising that the harm to the environment through carbon emissions and to public health is significant but not as serious as those with a G rating, properties with a F rating attract penalties of 50% of the maximum.

The culpability of the Landlord in breach follows that set by the legislature and the differing levels of maximum penalty for each type of breach.