**Havant Borough Council**

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

**Statement of Principles for Determining Financial Penalties**

**January 2025**

**Introduction**

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 were introduced to tackle the least energy-efficient properties in England and Wales, referred to in the Regulations as 'sub-standard properties' – meaning 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 since 1 April 2018, and existing tenancies since 1 April 2020. The Regulations are commonly referred to as MEES (Minimum Energy Efficiency Standards).

Whilst the Regulations relate to both domestic and non-domestic private rented property, this Policy is concerned solely with the enforcement of domestic private rented properties.

Non-statutory guidance has been issued by the Government to assist local authorities with policy preparation and enforcement work. This policy has been developed in accordance with the Government guidance, "The Domestic Private Rented Property Minimum [Standard](https://assets.publishing.service.gov.uk/media/5eb00785e90e0723b847d644/Domestic_Private_Rented_Property_Minimum_Standard_-_Landlord_Guidance_2020.pdf)" issued by the Department for Business Energy and Industrial Strategy, in addition to the Private Sector Housing Enforcement Policy.

Landlord guidance is also available [here](https://www.gov.uk/guidance/domestic-private-rented-property-minimum-energy-efficiency-standard-landlord-guidance).

**Legal framework**

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 were introduced on 1 April 2016, using the powers conferred by the Energy Act 2011. The Regulations introduced measures to improve the energy efficiency of private rented property in England and Wales.

The Regulations apply to all domestic private rented properties which are let (or sub-let) under one of the following types of domestic tenancy:

* an assured tenancy (including an assured shorthold tenancy) defined in the Housing Act 1988
* a regulated tenancy defined in the Rent Act 1977
* a domestic agricultural tenancy as set out in the Energy Efficiency (Domestic Private Rented Property) Order 2015

The Regulations exclude registered providers of social housing, social landlords, low cost rental accommodation and low cost home ownership accommodation.

The Regulations impose the following duties:

* 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)
* since 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)
* where a property does not achieve the required EPC rating, landlords must normally make energy efficiency improvements which raise the EPC rate to a minimum rating of E before they let the property
* in certain circumstances, landlords may be able to claim an exemption from this prohibition on letting a property that does not meet the minimum EPC rating. All exemptions must be registered on the Government's Private Rented Sector (PRS) Exemptions Register <https://prsregister.beis.gov.uk>
* since 15 March 2019, amendments to the Regulations meant that if a landlord of an EPC F or G rated property is unable to secure third-party funding, they need to use their own funds to cover the costs of improving their property to EPC rating of E (or as close as possible). This requirement is subject to a spending cap of £3,500 (inclusive of VAT)

**Circumstances in which a compliance notice may be served (Regulation 37)**

A compliance notice may be served where the council believes that a landlord may be in breach of the prohibition on letting, or continuing to let, sub-standard property (with an EPC rating of F or G).

A compliance notice may request either the original or copies of the following information:

* the EPC that was valid for the time when the property was let
* any other EPC for the property in the landlord's possession
* the current tenancy agreement used for letting the property
* any Green Deal Advice Report in relation to the property; and
* any other relevant document that the council 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.

The council may withdraw or amend the compliance notice at any time in writing, for example where new information comes to light.

The council may use the documents provided by the landlord, or any other information it holds, to decide whether the landlord is in breach of the Regulations.

**Circumstances in which a penalty notice may be served (Regulation 38)**

The council may serve a penalty notice (relating to a financial penalty, a publication penalty or both) on the landlord where they are satisfied that the landlord is, or has been in the last 18 months:

* in breach of the prohibition on letting, or continuing to let, sub-standard property;
* in breach of the requirement to comply with a compliance notice; or
* has uploaded false or misleading information to the Exemptions Register

Since a penalty notice may be served on a landlord up to 18 months after the suspected breach, a person may be served with a penalty notice after they have ceased to be the landlord of a property. Prior to issuing a penalty notice, a compliance notice will normally be served, requesting information from the landlord which will help determine whether that landlord is in breach of the duties.

The penalty notice may include a financial penalty of up to £5000.00, a publication penalty, or both. A publication penalty means that the enforcement authority will publish some details of the landlord's breach on a publicly accessible part of the PRS Exemptions Register

The penalty notice will:

* explain which of the provisions of the Regulations the council believes the landlord has breached
* give details of the breach
* tell the landlord whether they must take any action to remedy the breach and, if so, the date within which this action must be taken (the date must be at least a month after the penalty notice is issued)
* explain whether a financial penalty is imposed and if so, how much and, where applicable, how it has been calculated
* explain whether a publication penalty has been imposed
* where a financial penalty is imposed, tell the landlord the date by which payment must be made, the name and address of the person to whom it must be paid and the method of payment (the date must be at least a month after the penalty notice is issued)
* explain the review and appeals processes, including the name and address of the person to whom a review request must be sent, and the date by which the request must be sent; and
* explain that if the landlord does not pay any financial penalty within the specified period, the council may bring court proceedings to recover the money from the landlord.

A further penalty notice may be issued if the action required in the penalty notice is not taken in the time specified.

**Circumstances in which a penalty notice may be reviewed or withdrawn (Regulation 42)**

The council may decide to review its decision to serve a penalty notice, for example when new information comes to light.

A landlord also has the right to ask the council to review its decision to serve a penalty notice. This request must be made in writing within 28 days. When the council receives the request, a decision will be made on whether or not to withdraw the penalty notice based on the information received.

The council must withdraw the penalty notice if:

* they are satisfied that the landlord has not committed the breach set out in the penalty notice
* although they still believe the landlord committed the breach, they are satisfied that the landlord took all reasonable steps, and exercised all due diligence to avoid committing the breach; or
* they decide that because of the circumstances of the landlord's case, it was not appropriate for the penalty notice to be served

If the council does not decide to withdraw the penalty notice, it might decide to waive the penalty, allow the landlord additional time to pay, substitute a lower financial penalty where one has already been imposed or modify the publication penalty, and must explain the appeals process and how financial penalties can be recovered.

The council will inform the landlord of their decision in writing, at the earliest opportunity.

**Recovery of financial penalties (Regulation 45)**

If a landlord does not pay a financial penalty imposed on them, the council may take the landlord to court to recover the money.

The council may not take the landlord to court to recover the money:

* during the period in which the landlord could ask the council to review their decision to serve the penalty notice, or while they are reviewing their decision to serve the penalty notice; or
* 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

**Appeals to the First-tier Tribunal (General Regulatory Chamber) (Regulations 43 and 44)**

Where a landlord asks the council to review a decision to serve a penalty notice and, on review, they decide to uphold the penalty notice, the landlord may then appeal to the First-tier Tribunal against that decision within 28 days if they think that:

* the penalty notice was based on an error of fact or an error of law
* the penalty notice does not comply with a requirement imposed by the Regulations; or
* it was inappropriate to serve a penalty notice on them in the particular circumstances

If a landlord does appeal, the penalty notice will not take effect while the appeal is ongoing. A landlord may also wish to seek legal advice as part of considering or making an appeal if they have not already done so.

**Links with other legislation**

Alongside The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, The Housing Act 2004 gives Local Authorities the power to enforce standards in the private rented sector using the Housing Health and Safety Rating System (HHSRS).

The EPC rating of a property cannot be considered in isolation. Even if a property meets an EPC rating of E, landlords will need to provide adequate heating and thermal comfort. Enforcement action may be taken by Havant Borough Council which may include service of notice(s) requiring remedial works to be carried out (for example, an improvement notice). There may be charges attached to the service of notices under the Housing Act 2004, and the Authority can prosecute or issue penalties of up to **£30,000** if hazards including excess cold are identified in a property and not rectified.

Additionally, satisfying the requirements under the Housing Act 2004 does not automatically mean the requirements of the Regulations have been met. In circumstances where a Housing Act notice has been complied with, a new EPC will need to be commissioned that confirms that the property meets the minimum E standard.

**Determination of the level of penalty (financial penalty and publication penalty)**

Local authorities are responsible for determining appropriate penalties up to the limits prescribed by the Regulations. This statement sets out the principles that Havant Borough Council will apply in exercising its powers to require a relevant landlord to pay a financial penalty.

The Government introduced financial penalties as a means of preventing landlords from profiting from non-compliance with legislation and to ensure compliant landlords are not disadvantaged. Penalties for non-compliance are also intended to influence behaviour change and result in pre-enforcement action on the part of those landlords who might otherwise fail to act.

Financial penalty and publication notice period

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

Havant Borough Council will use the following matrix to determine the appropriate penalty.

|  |  |  |
| --- | --- | --- |
| Infringement | Financial penalty (£) First Offence | Publication notice period |
| a) Let a sub-standard property less than 3 months | 2,000 | 12 months |
| b) Let a sub-standard property 3 months or more | 4,000 | 12 months |
| c) Registered false or misleading information on the PRS Exemptions Register | 1,000 | 12 months |
| d) Failed to comply with compliance notice (for information) (to register on the PRS Exemption Register) | 2,000 | 12 months |
| Maximum | 5,000 | 12 months (any greater period to a maximum of 3 years as the Authority may decide) |

The Authority may not impose a financial penalty under both paragraphs (a) and (b) above in relation to the same breach of the Regulations. But may impose a financial penalty under either paragraph (a) or paragraph (b), together with financial penalties under paragraphs (c) and (d), in relation to the same breach. Where penalties are imposed under more than one of these paragraphs, the total amount of the financial penalty may not be more than £5,000.00

The penalty applies per property, per breach of Regulation. If after being fined up to £5,000, a landlord proceeds to unlawfully let a sub-standard property on a new tenancy, the authority may again levy a financial penalty in relation to that tenancy.

**Early payment incentive**

Fines that are paid within 14 days of the date of the penalty notice will be reduced by **25%** to incentivise early payment. This is in line with Sentencing Guidelines and Havant Borough Council Civil Penalty Policy.

**Publication Penalty (Regulation 39)**

The Publication Penalty means the council may publish details of the landlord's breach(es) on the publicly accessible Government's Private Rented Sector (PRS) Exemptions Register for 12 months (or for any greater period as this Authority may decide).

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. In most circumstances the duration will be 12 months.

Circumstances in which a publication period of longer than 12 months will be considered includes (but not restricted to):

The circumstances in which a publication period of longer than 12 months will be considered includes (but not restricted to):

* multiple breaches and/or over multiple properties.
* where the landlord is known to have committed other housing-related offences and/or breaches of duty.
* any other aggravating factors where the authority deems a longer publication period to be appropriate.

The information that the council may publish is:

* the landlord's name (except where the landlord is an individual).
* details of the breach.
* the address of the property in relation to which the breach occurred; and the amount of any financial penalty imposed.

The council may decide how much of this information to publish. However, the authority may delay placing this information on the PRS Exemptions Register while the penalty notice could be, or is being reviewed by the council, or while their decision to uphold the penalty notice could be, or is being, appealed.

**Signed**: 

**Name**: Alex Robinson

**Title** Executive Head of Place

**Date**: