

Enforcement Policy in relation to the Minimum Energy Efficiency Standards (MEES) Regulations 2015 (as amended)

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Glossary

Domestic Private Rented Property – any privately rented property that is a residential dwelling not used for commercial purposes (as defined in section 42 (1) (a) of the *Energy Act 2011*, subject to regulation 19 of the Regulations).

Energy Performance Certificate – a certificate (and associated report) that sets out the energy efficiency rating of a property and contains recommendations for ways in which the energy efficiency of the property could be improved.

Landlord – a person or entity that lets or proposes to let, a domestic private rented property. A tenant may also be a landlord if they in turn are letting some or all of the property to further tenants in such a way to constitute a tenancy in accordance with 42(1)(a) of the *Energy Act 2011*.

Minimum Level of Energy Efficiency – the prescribed minimum EPC allowed under the Regulations for domestic private rented property which is let (including on extension or renewal) from 1 April 2018, or which continues to be let from 1 April 2020, subject to any qualifying exemptions.

PRS Exemptions Register – the register established under regulation 36(1) of the Regulations, on which landlords of a sub-standard property may register certain information relating to the property (including grounds for exemption from compliance with the Regulations). The Register opened to domestic landlords from 1 October 2017.

Publication Penalty – is where an enforcement authority takes actions to publish some details of a landlord's breach on a publically accessible part of the PRS Exemptions Register.

The Regulations – *The Energy Efficiency (Private rented property)(England and Wales) Regulations 2015* (as amended).

Sub-Standard Property – a domestic private rented property with an EPC rating of F or G.

Tenancy – a contractual arrangement under which a tenant pays a landlord for use of an asset, in this case a domestic property (which may be either a building or a unit within a building). Relevant tenancies for the purposes of the Regulations are tenancies which fall within section 42(1)(a) of the *Energy Act 2011*.

1. Introduction & Background

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended) are referred to in this policy as 'the Regulations'. This policy will relate to domestic private rented properties only. It will also detail how Harrogate Borough Council will ensure landlords who currently rent out a property with an Energy Performance Certificate (EPC) rated F or G will be supported with advice in order for them to be compliant, and what relevant penalty may be served should they fail to comply.

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 has been produced by The Department for Business Energy and Industrial Strategy. The Council has had regard to this guidance when preparing this policy. The guidance has been created to support landlords to meet their obligations under the Regulations.

The Regulations were originally approved by Parliament on 26 March 2015, they have since been amended twice:

- On 21 June 2016 to postpone the dates on which the PRS (Private Rented Sector) Exemptions register opened to the domestic and non-domestic landlords, and
- On 15 March 2019, with respect to the domestic sector only, introduced a new self-funding element for domestic landlords, which takes effect if landlords are unable to access third-party funding to improve any EPC F or G properties they let. This spend element is capped at £3,500 (inc. VAT) per property.

The Private Rented Sector (PRS) Exemptions Register was established under Section 36(1) of the Regulations and opened to landlords from 1 October 2017. A landlord with a sub-standard property with an EPC rated F or G may submit evidence onto a database to apply for an exemption from the Minimum Energy Efficiency Standards. The local authority that covers that address has the authority to check and either accept the exemption request or request further works are completed. If found to be valid, a PRS exemption will last for 5 years. When that expires, the landlord must complete works to improve the energy efficiency of the property and gain a new EPC or submit a new exemption application.

The Council's Housing Strategy 2019-2024 aims to improve housing standards across all tenures by using enforcement powers and advice services to ensure that all housing in the district is safe and decent. The key action to deliver this is by continuing to support the Better Homes Scheme and carry out enforcement of energy efficiency standards. The Council intends to identify landlords that are not meeting the minimum requirements, seek compliance with the Regulations and determine if it is then appropriate to make a financial penalty and whether or not that penalty is published.

Relevant legislation

- Energy Act 2011
- Building Regulations 2010
- Energy Performance of Buildings (England and Wales) 2012
- Energy Efficiency (Private Rented property) (England & Wales) (Amendment) Regulations 2015 (as amended)

2. What is an Energy Performance Certificate (EPC) and when is an EPC required?

An EPC is awarded to a property following an assessment by a qualified and accredited Domestic Energy Assessor (DEA). This certificate awards the property a rating of A to G where A reflects that the property has a high energy efficiency & G reflects the property has a low energy efficiency. The associated report gives the property manager/owner details on how they could improve the property's energy efficiency, indicates how much it may cost to install energy efficiency measures and how much the works could save in fuel bills.

Since 2008 an EPC is required when a landlord advertises a property to rent, sell or if they have altered the property in a particular way. Since 1 April 2018 it has become unlawful for a property with an EPC rating of F or G to be let to a private tenant unless a valid PRS exemption has been submitted. From 1 April 2020 this applies to all existing tenancies that commenced from 1 October 2008.

3. Landlord Obligations

It is vital that Landlords understand whether their property is legally required to have an EPC. If there is any doubt advice can be sought from the local Trading Standards team or the Private Sector Renewal Team at Harrogate Borough Council.

Landlords must gain an EPC when legally obliged to do so. Since 1 October 2008 the trigger point for an EPC is when the property is re-let, put up for sale or modified. An EPC is valid for 10 years and a brand new EPC is not required each time there is a change of tenant, provided the earlier EPC is less than 10 years old. When the EPC expires, there is no need to gain a new one unless a trigger point is reached.

A landlord must supply any new tenant with a copy of the property's EPC at no cost to the tenant. Should the EPC have a rating of F or G, the landlord must make energy efficiency improvements to the property to improve the property to a minimum of an E rating and then either instruct an assessor to do a new EPC or complete an exemption on the PRS Exemption Register. Since 1 April 2020 landlords must not continue to let a property or renew a tenancy with an EPC rating of F or G, as this is a sub-standard property. Should the landlord for any reason not be able to increase the property's energy efficiency, they must search for the valid exemption on the PRS Exemption Register and provide the evidence required to have that exemption authorised.

Landlords are only obliged to make energy efficiency improvements that are recommended on the EPC. Where a landlord has registered a valid exemption, this exemption will expire after 5 years. After that time, the landlord must improve the property to meet the minimum standard or register a new exemption.

Should a landlord be served with a compliance notice, they must supply the evidence requested by the date given by the Council. Should they fail to provide the information requested or fail to register an exemption on the PRS exemption register, this may result in a penalty notice being served.

4. Process/Procedure

The purpose of this policy is to set out how Harrogate Borough Council's Private Sector Renewal team will enforce the Regulations and deal with landlords failing to comply with the Regulations.

Appendix A shows the course of action required by landlords if their property is awarded an EPC rating of F or G.

Appendix B shows the course of action the Council may take to impose a compliance notice or financial penalty should they believe the landlord has failed to meet the Regulations.

When the Council becomes aware of a privately rented domestic property with an EPC of F or G, which does not meet the minimum energy efficiency standard, the Council will initially check the PRS Exemptions Register. The Council then has discretion to serve a Compliance Notice to request information from the landlord that will help them to decide whether there has been a breach. The Council may serve a Compliance Notice where additional information is required. The Council may serve Penalty Notices where a landlord fails to comply with the Compliance Notice.

If the Council believes a landlord has registered false or misleading information on the PRS Exemptions Register it may serve a financial Penalty Notice and a Publication Penalty.

If offences under the Regulations are committed the Council will, where appropriate, serve a Penalty Notice and a Publication Penalty.

5. Compliance Notices (Regulation 37)

The Council may serve a Compliance Notice to a landlord up to 12 months after a suspected breach. This means that a person may be served with a Compliance Notice after they have ceased to be the landlord of a property.

A Compliance Notice will request either original or copies of the following:

- 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; or
- 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 an exemption on the PRS exemption register.

The Compliance Notice will specify:

- The date the requested information must be supplied by, (this will be at least 1 calendar month from the date the notice is served); and
- The name and address of the person that the landlord must send the requested information to.

6. Publication Penalty (Regulation 39)

The Council may serve a Publication Penalty in relation to a Penalty Notice under the Regulations, and publish some details of the landlord's breach on a publicly accessible part of the PRS Exemptions Register. The information will remain on the register for a minimum of 12 months.

7. Financial Penalties (Regulations 38-45)

The Council may serve a Penalty Notice and impose the following financial penalties should a landlord fail to comply with the Regulations:

- a) Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than 3 months, Harrogate Borough Council may impose a financial penalty of £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, Harrogate Borough Council may impose a financial penalty of £4,000 and may impose the publication penalty.
- c) Where the landlord has registered false or misleading information on the PRS Exemptions Register, Harrogate Borough Council may impose a financial penalty of £1,000 and may impose the publication penalty.
- d) Where the landlord has failed to comply with the compliance notice, Harrogate Borough Council may impose a financial penalty of £2,000 and may impose the publication penalty.

The Council may not impose a financial penalty under both paragraphs (a) and (b) above in relation to the same breach of the Regulations. This is clarified in the table below.

If two or more Penalty Notices apply, the combined maximum per property per breach will be £5000. The maximum penalty amounts apply per property and per breach of the Regulations. However, if after having been previously fined up to £5,000 for having failed to satisfy the requirements of the Regulations and a landlord proceeds to unlawfully let a sub-standard property on a new tenancy, the Council may again levy financial penalties of up to £5,000 in relation to the new tenancy.

Infringement	Penalty (less than three months in breach)	Penalty (three months or more in breach)
Renting out a non-compliant property	Up to £2,000, and/or Publication penalty.	Up to £4,000, and/or Publication penalty.
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	

8. Appeals (Regulation 43)

The landlord has the right to ask for a Penalty Notice to be reviewed under Regulation 43. Any request must be submitted to the Council within 1 calendar month of the Penalty Notice being served. Requests for a review after the prescribed time will be considered at the Council's discretion.

Whilst a Penalty Notice is under review, in exceptional circumstances the Council may waive the penalty, allow the landlord additional time to pay or substitute a lower financial penalty where one has already been imposed.

In cases where the Council has decided to uphold the penalty notice, the landlord may then appeal to the First-tier Tribunal against that decision if they think that:

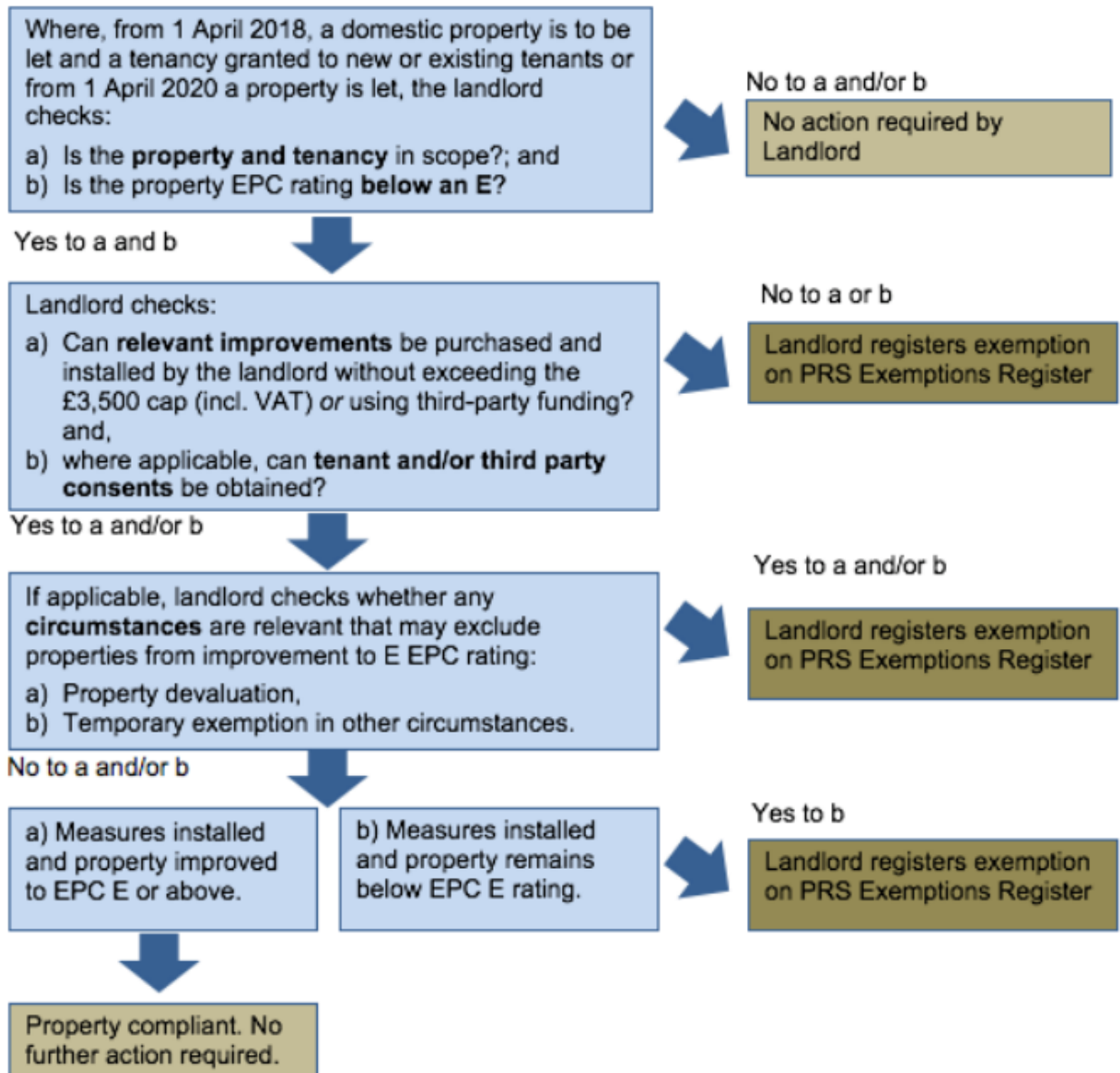
- The penalty notice was based on an error of fact or an error of law;
- The penalty notice does not comply with a requirement imposed by the Regulations;
or
- It was inappropriate to serve a penalty notice on them in the particular circumstances.

9. 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.

Appendix A

Minimum Level of Energy Efficiency Provisions Flow Chart



Appendix B

Compliance & Enforcement Flowchart

Compliance and Enforcement Flow Chart

