

## Blaby District Council **Policy**

### **POLICY FOR IMPOSING FINANCIAL AND PUBLICATION PENALTIES - The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (MEES Regulations)**

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\*Version number remains the same if no significant changes are made upon review.

## Document Definition / Approval & Review

### Defining the document type and how it is approved and reviewed

Blaby District Council policies ‘**outline a set of rules or principles that govern how the council (or services within the council) will operate**’.

Key published documents are approved for publication in line with the approval matrix illustrated in the Key Published Document Procedure.

Unless agreed by exception, key published documents must be reviewed at least **every 3 years** from the date of approval.

Significant updates/changes must also seek reapproval in line with the approval matrix.

## Scope

### To what and to whom this policy applies

This policy applies to all landlords of private rented properties in the District. It also impacts on the occupants and potential occupants of private rented properties in the District.

## Terms & Definitions

Definition of any acronyms, jargon, or terms that might have multiple meanings.

Term	Definition
PRS	Private rented sector
MEES	Minimum energy efficiency standards
EPC	Energy Performance Certificate
HMO	House in Multiple Occupation

## **POLICY FOR IMPOSING FINANCIAL AND PUBLICATION PENALTIES**

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

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## Policy Sections

### Section 1 Introduction – The purpose and reason for the policy

#### Background

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (“2015 Energy Regulations”) have the aim of tackling poor energy efficiency properties in the private rented sector to lower energy bills and reduce the risk of fuel poverty. The Regulations are also part of the Government’s wider approach to reduce the UK’s greenhouse gas emissions.

The Regulations came into force on various dates starting from 1 April 2018 and apply to all domestic private rented properties that are let on specific types of tenancy agreements and are legally required to have an Energy Performance Certificate (“EPC”).

The Regulations allow a tenant of a private rented property to request permission from their landlord to make energy efficiency improvements in the property they rent.

The Regulations require private sector landlords to do the following:

- From 1 April 2018 they must not grant a new tenancy of a property (including an extension or renewal), where the EPC is below the minimum level of energy efficiency (currently Band E).
- From 1 April 2020 they must not continue to let a property (on an existing tenancy) where the EPC is below the minimum level of energy efficiency.
- Where a property is sub-standard, landlords must make energy efficiency improvements which would raise the EPC rating to the minimum level before they let the property as a rented dwelling.
- Landlords of domestic properties with an EPC rating below E must carry out up to £3,500 (Inc. VAT) worth of works to improve the energy efficiency of the property if they cannot obtain third-party funding to meet the costs. The £3,500 cap is an upper ceiling, not a target or a spend requirement and landlords may spend more if they wish. If a landlord can improve their property to the minimum standard required for less than £3,500 then they will have met their obligation.

Whilst it is expected that majority of tenants in properties let as rented dwellings and homes must be provided with an appropriate EPC certificate, there are some statutory exemptions on properties which are not legally required to be subjected to an EPC. The enforcement of the requirement for rental properties to have a valid EPC is the local weights and measures authorities (Leicestershire County Council).

Blaby District Council is responsible for enforcing the regulations in respect of domestic private rented properties and may serve a compliance notice on a landlord who appears to be, or to have been at any time within the 12 months preceding the date of service of the compliance notice.

### Objective of the Minimum Energy Efficiency Regulations

The Regulations were set up with two primary aims, to reduce energy consumption for private rented tenants, especially those whom are vulnerable, and to contribute to Government's wider approach to reduce the UK greenhouse gas emissions.

### Duties of Landlords under the regulations

Under the regulations, private landlords are to take either of the listed actions below:

- Ensure that their rented properties are subject to an energy efficiency rating of E or above on their EPC or
- Register a valid exemption on the PRS Exemption Register.

## Section 2 – Exemptions and the PRS Exemptions Register

### Exemptions

There are valid exemptions which are available to private landlords. It is however recommended that private landlords have a clear understanding of the regulations as it relates to registering an exemption. It is also recommended that landlords refer to The Energy Act 2011 and the Government's guidance for the full details of the criteria required to register a valid exemption.

The PRS Exemptions Register is an online platform which allows landlords (or an agent acting on their behalf) to register valid exemptions from the minimum energy efficiency requirements. The Register can be accessed on the department for Business, Energy and Industrial Strategy ["BEIS"] website. Please note, it is a breach of the Regulations to put false or misleading information on the register.

All registered exemptions are valid for a period of five years unless otherwise stated.

### Available Exemptions

Exemptions may be available in the following circumstances:

- a) Wall insulation - Regulation 24(2). Where cavity, external or internal wall insulation has been recommended, but a recognised surveyor is of the expert written 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.
- b) Relevant energy efficiency improvements undertaken - Regulation 25. Where all relevant energy efficiency improvements have been made within the cost cap of £3,500 (including VAT) but the property remains substandard, a private landlord may register a valid exemption.
- c) A valid exemption may be registered where it is established 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.
- d) Consent exemption - Regulation 31(1A). If a third party (such as a tenant, superior landlord, mortgage provider, 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.
- e) Devaluation exemption - Regulation 32. If, according to a surveyor or a qualified expert, the recommended improvements would decrease the value of the property by more than 5%, a private landlord may register a valid exemption. It is recommended that such opinion /report be provided in written form.
- f) Temporary exemption in certain circumstances - Regulation 33(1) and (3). A person may, on becoming a private landlord in limited circumstances, register a valid (temporary) exemption under the circumstances specified under Regulation 33(1) which are:
  - i. The grant of a lease due to a contractual obligation;
  - ii. Where a tenant becomes insolvent and the landlord has been the tenant's guarantor;
  - iii. 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;
  - iv. A new lease has been deemed created by operation of law;
  - v. A new lease has been granted under Part 2 of the Landlord and Tenant Act 1954;

- vi. A new lease has been granted by a court order, other than under Part 2 of the Landlord and Tenant Act 1954.
- g) 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).
- h) 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

All exemptions must be registered on the PRS Exemptions Register. The register can be found online here: <https://prsregister.beis.gov.uk/NdsBeisUi/used-service-before> .

Supporting evidence will need to be submitted when registering a valid exemption.

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.

### Section 3 – Government Guidance

The Council will have regard to any guidance issued by the Department for Business, Energy & Industrial Strategy (“BEIS”) when exercising their functions under the regulations. This policy takes effect from December 2023 and will apply to all the relevant breaches of regulations which occur on the date the policy takes effect and thereafter.

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, is available online at:

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



## Section 4 – Compliance Notices

The Council will liaise with landlords of properties in breach of the regulations informally at the first instance by sending them reminder letters giving landlords of such properties adequate time frames for compliance. Where breach of the regulations cannot be resolved informally through the warning letters, the Council will then proceed to initiate the penalty process in this policy.

Where there is no action taken by the landlord after the warning letter(s) have been sent, and 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, the Council may serve a Compliance Notice on that private landlord requiring such information as it considers necessary to enable it to monitor compliance.

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.

Giving at least one month, the compliance notice enables the enforcement authority to monitor compliance by requesting relevant information which can include copies or the original of:

- 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;
- any other relevant document that the enforcement authority requires in order to carry out its functions.

The compliance notice may also require the landlord to register copies of the requested information on the PRS Exemptions Register.

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.

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.

## **Section 5 – Penalties**

### **Financial and Publication penalties**

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 as follows:

- 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 of £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.

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

### **MEES Financial Penalties Policy**

The Council has determined to take the following approach when imposing financial penalties under the regulations. The Council has discretion to offer an early payment reduction if a landlord pays the penalty charge within 14 days beginning with the day the penalty charge is served. However, should a subsequent appeal be made the discount will be removed.

- a) Breaching the prohibition on letting a property with an F or G rating, in contravention of Regulation 23, for less than three months. Breach under the regulations: £1,000 for the first breach under the regulations for the property. £2,000 for any subsequent breach under the regulations for the property. A 33% early payment discount would be applied if it is paid within 14 days.
- b) Breaching the prohibition on letting a property with an F or G rating, in contravention of Regulation 23, for three or more months. £2,000 for the first breach under the regulations for the property. £4,000 for any subsequent breach under the regulations for the property. A 33% early payment discount would be applied if it is paid within 14 days.
- c) Registering false or misleading information on the PRS Exemptions Register under Regulation 36(2). Breach under the regulations: £1,000. A 33% early payment discount would be applied if it is paid within 14 days.
- d) Failing to provide information to the Council demanded by a Compliance Notice, in contravention of Regulation 37(4)(a). Breach under the regulations: £2,000. A 33% early payment discount would be applied if it is paid within 14 days.

For the purposes of this policy, where a landlord having been previously fined up to £5,000 for having failed to satisfy the requirements of the 2015 Energy Regulations then proceeds to unlawfully let a sub-standard property on a new tenancy, a further financial penalty of up to £5,000 can be issued. The maximum penalty amount remains but the ability to issue a further financial penalty starts again with a new tenancy.

Where a House in Multiple Occupation (HMO) is legally required to have an EPC (Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 and if it is let on one of the qualifying tenancy types, then it will be required to comply with the minimum level of energy efficiency. However, individual rooms within HMOs are not required to have their own EPCs. Therefore, a property which is an HMO will only have an EPC if one is required for the property as a whole.

In accordance with Regulation 40(6), where a private landlord has committed multiple breaches in respect of a single tenancy and, where such circumstance would make the financial penalty to such landlord to go beyond the £5,000 limit, the Council would consider adjusting one or more of the financial penalties in such a manner that the maximum of £5,000 permitted under the MEES regulations is not exceeded.

## Publication penalties

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

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

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.

## The Council's Publication Penalty policy

The Council shall impose a publication penalty in respect of all breaches that are subject to a Penalty Notice, unless there are allowed and permitted representations received.

The Council is also determined that all breaches will be registered on the PRS Exemptions Register for a period of minimum twelve months but not more than two years.

## Penalty Notice Scope

If the Council decides to impose a financial and/or publication penalty on breach of the regulations, 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 has occurred in the 18 months that precedes the date of the service of the Penalty notice. Where a landlord fails to take the action required by a penalty notice within the period specified in that penalty notice in accordance with paragraph (2) (c) a further penalty notice can be served. The total of all fines for the same breach remains capped at £5,000.

The Penalty Notice will set out:

- a) The provision of the regulations the Council believes the private landlord has breached;
- b) The particulars the Council considers necessary to identify the breach;

- c) 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);
- d) The amount of the financial penalty imposed and how it has been calculated including any applicable discount;
- e) Whether a publication penalty has been imposed;
- f) The time period in which any financial penalty must be paid (which must not be less than one month from the date the Penalty notice was served);
- g) The name and address of the person to whom any financial penalty must be paid and the method of payment;
- h) The effect of Regulation 42, which sets out the right to request a review of the Council's decision to serve a Penalty Notice;
- i) The effect of Regulations 43 to 44, which sets out the right of appeal against any decision to confirm a Penalty Notice;
- j) The effect of Regulation 45, which sets out the Council's power to recover any unpaid financial penalty as a debt;
- k) 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.

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.

### [The right of private landlord to request a review of the Council's decision to serve a Penalty Notice](#)

A private landlord who has been served with a Penalty Notice is under the regulations, entitled to request a review of the Council's decision to serve the notice. The Council will accept such a request if it is received within the period of one month, starting from the day on which the Penalty Notice is served.

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”).

To ensure fairness and transparency, every decision to confirm a Penalty Notice following a request for review will be subject to approval by the Environmental Health Manager / Head of Service.

### Appeals against a Notice of Decision

A private landlord on whom a Penalty Notice or Notice of Decision (after review) has been served may 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.

Appeals must be brought within 28 days from the date on which the Penalty Notice was sent.

Once an appeal has been made, the Penalty Notice is suspended until the appeal has been finally determined by the First-tier Tribunal or withdrawn by the landlord.

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 may deem fit.

The address and contact details of the First-tier Tribunal can be found at:

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

First-tier Tribunal (General Regulatory Chamber)

HM Courts and Tribunals Service

PO Box 9300 Leicester

LE1 8DJ

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Tel: 020 39368963

### Financial penalty reduction criteria

As with criminal prosecutions, an early acceptance of guilt by a guilty landlord and/or managing agent is in the public interest. It saves public time and public money.

An offender can demonstrate an early acceptance of guilt by paying a financial penalty within 14 days from the date the Penalty Notice was served. It is the Council's policy that if cleared payment is made within this time period, the offender can benefit from a 33% reduction in the amount of financial penalty payable.

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, then 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 no longer be available to the offender.

### Implications of Unpaid Financial penalties

The Council will take corresponding action to recover any unpaid financial penalty (or part thereof) within the time period stipulated in a Penalty Notice.

An application for an order of the County Court will be made in respect of all unpaid financial penalties.

If court action is taken to recoup any unpaid financial penalty either in full or partial, the Council would seek to recover interest and any court expenses incurred, in addition to claiming the full amount of unpaid financial penalty.

### Enforcement of Unpaid Financial penalties

If an offender does not comply with an order of the court, the Council will make an application to enforce the judgement. The most likely types of enforcement action which may be taken by the local authority are shown below:

- a) Court bailiffs
- b) Charging order including application for an Order of sale of property belonging to the offender

c) Attachment to earnings order where it is established that the offender is in paid employment.

### Multiple breaches - General principles

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. The Council will however operate a just, equitable and proportionate approach at all times.

## Section 6 – Additional Information

### Help and further advice

If you would like further advice or clarification, contact Blaby District Council, Environmental Health Team by telephone on 0116 275 0555 or by email at [environmental.health@blaby.gov.uk](mailto:environmental.health@blaby.gov.uk). Alternatively, you can write to us at: Environmental Health, Blaby District Council, Council Offices, Desford Road, Narborough LE19 2EP.

### Making a complaint

The Environmental Health Team aims to provide the best possible service at all times. However, if you are not happy with the service you have received, please contact us at the above address. We shall ensure all complaints are addressed rightly, appropriately and responded to accordingly.

## Section 7 – Equalities Impact Assessment

This legislation is designed to have a positive impact on all occupants of private rented sector accommodation irrespective of any protected characteristics.

## Section 8 – Carbon Neutral / Net Zero Benefits

One of the primary purposes of the MEES Regulations is to reduce the amount of greenhouse gasses due to the use of heating in domestic premises. This policy has a positive environmental impact as it allows the Council to take action against landlords



where there are breaches of the MEES Regulations. This should also act as an incentive for landlords to comply with the MEES Regulations.