

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 – Civil Penalty Policy

Introduction

Regulation 38 of The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 enables the Council as the Enforcement Authority the power to issue a financial penalty if they are satisfied that there is or has been in the 18 months preceding the date of service of the penalty notice a breach of one of more of the following:

- Prohibition on letting sub-standard property (Regulation 23).
- Providing false or misleading information on the Private Rented Sector (PRS) Exemption Register (Regulation 36(2)).
- Failure to comply with a compliance notice (Regulation 37 (4)(a)).

Government Guidance

The Department for Business Energy and Industrial Strategy have produced guidance published in October 2017 and updated in May 2020;

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

Sefton Council has had regard to this guidance when preparing this policy on the enforcement of the minimum standards.

Purpose of this policy

In accordance with Regulation 34 and 35 Local Authorities are responsible for enforcing the minimum level of energy provisions within their area. The purpose of this policy is to describe how officers of Sefton Council will enforce the Regulations.

Scope of the policy



In the first instance The Council will informally notify Landlords who rent properties with an EPC of F or G that they do not meet the minimum energy efficiency standard. The Council will offer advice as to how the standards can be met and request Landlords to register an exemption if appropriate.

Landlords will be given an appropriate time to make the necessary changes but will be warned that if they continue to be in breach after the time given, an investigation will follow, and formal enforcement action will be considered.

The Council may in circumstances where a landlord has a history of not complying with housing related regulatory requirements, decide to take formal action without giving an informal opportunity for the landlord to comply.

The Council has discretion to serve Compliance Notices to request information from the landlord that will help them to decide whether there has been a breach. Sefton Council will serve Compliance Notices where the additional information is required. The Council will consider serving Penalty Notices where a landlord fails to comply with the Compliance Notice.

The Council will check the National PRS Exemptions Register
<https://prsregister.beis.gov.uk/NdsBeisUi/register-search-exemptions>

and if it believes a landlord has registered false or misleading information it will consider serving a financial and publication penalty.

If offences under these regulations are committed the Council will, where appropriate, serve a Penalty Notice. This policy provides guidance for officers on how to determine the appropriate penalty.

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. The Council will place the information on the register at the appropriate time, for a minimum of 12 months.

The Landlord has the right to ask for a Penalty Notice to be reviewed under Regulation 42. Any request for review must be submitted to the Council within one calendar month of the Penalty Notice being served. Requests for review after the prescribed time will be considered at the Council's discretion.

Guidance for determining the level of financial penalty.

Where the Local Authority decides to impose a financial penalty, they have the discretion to decide on the amount of the financial penalty. Regulation



40 of The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 specifies the maximum financial penalty for each breach in relation to domestic private rented property. The maximum financial penalties are as follows:

Renting out a non-compliant property for less than 3 months	£2,000
Renting out a non-compliant property for 3 months or more	£4,000
Providing false or misleading information on the PRS Exemption Register	£1,000
Failure to comply with a compliance notice	£2,000

The financial penalty amounts apply per property and per breach of the Regulations and the total of the financial penalties imposed must be no more than £5,000.

The Council is also entitled to impose a publication penalty on the offender in addition to the financial penalty imposed in all cases related to domestic properties.

The following matrix will be used as a guide to determine the appropriate penalty:

	Low culpability	High culpability	Notes
Low harm	25%	50%	% = proportion of maximum penalty
High harm	50%	100%	% = proportion of maximum penalty

Factors Affecting Culpability:

High: Landlord has a previous history of non-compliance with these and other 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 with housing related regulatory requirement. 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.

Aggravating and Mitigating Factors

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

Factors may 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.

