

Walsall Council Policy for the Enforcement of: The Domestic Minimum Level of Energy Efficiency (MEES)

Introduction

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended) (henceforth “the Regulations”) are designed to tackle the least energy-efficient properties in England and Wales – 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, effecting new tenancies from 1 April 2018.

The Council's Housing Enforcement Policy, enforcement objectives include: “where required privately rented accommodation meets minimum energy efficiency ratings and that Energy Performance certificates are provided.”

To meet this objective, officers are authorised to check for different forms of non-compliance with the Regulations including:

- from 1 April 2018 whether the property is sub-standard and let in breach of Regulation 27 (which may include continuing to let the property after 1 April 2020)(see section 1.2);
- where the landlord has registered any false or misleading information on the government's “National PRS Exemptions Register”, or has failed to comply with a compliance notice (see section 6.1.2 below).

Walsall Council commissioned a stock condition survey in 2019 which estimated that there were 779 dwellings in the private rented sector that have an EPC rating of For G. Work as commenced on identifying these landlords. The government also provides access to an ‘open-source’ database that lists all new EPCs issued. This data is added to periodically and it is currently up to date to 31 March 2020. The latest update of dwellings from January to end of March 2020 highlighted 20 additional private rented dwellings with F and G EPCs.

We have commenced identifying individual private landlords and agents that are not meeting the minimum requirements. The majority of these have responded positively and secured new EPCs that are above F and G rated. Others are yet to do so and officers are determining if it is appropriate to make a financial penalty and whether or not that penalty is published. In addition we will advise landlords what actions is necessary for them to take in order for them to be compliant.

The Housing Standards and Improvement Service has undertaken considerable publicity on this matter over the last 12-18 months with flyers and updates to landlords and agents and via partner organisations. The proposal is in accordance with our statutory duties under the Home Energy Conservation Act (HECA) Action Plan

Government Guidance

The Department for Business Energy and Industrial Strategy have produced guidance published in 2017 and updated in June 2018; 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

Walsall 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 33 and 34 Councils are responsible for enforcing the minimum level of energy provisions within their area. The purpose of this policy is to describe how officers of Walsall Council will enforce the Regulations

Scope of the policy

1. In the first instance the Council will informally inform 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 how the standards can be met (including where relevant possible opportunities for external funding to assist them in meeting their obligations) 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.

2. 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. Walsall 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.

3. The Council will check the National PRS Exemptions Register and if it believes a landlord has registered false or misleading information it will consider serving a financial and publication penalty.

4. 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. See Table 1 below.

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

6. 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 (1) calendar month of the Penalty Notice being served. Requests for review after the prescribed time will be considered at the Council's discretion.

Note: Action under these Regulations does not prohibit the council from taking additional and or alternative action for example other enforcement action against category 1 hazards that may also exist within the same dwelling.

Table 1: Fines calculation for MEES.

If a local authority confirms that a property is (or has been) let in breach of the Regulations, they may serve a financial penalty up to 18 months after the breach and/or publish details of the breach for at least 12 months. Local authorities can decide on the level of the penalty, up to maximum limits set by the Regulations.

The maximum penalties amounts apply per property and per breach of the Regulations. They are:

- up to £2,000 and/or publication penalty for renting out a non-compliant property for less than 3 months
- up to £4,000 and/or publication penalty for renting out a non-compliant property for 3 months or more
- up to £1,000 and/or publication for providing false or misleading information on the PRS Exemptions Register
- up to £2,000 and/or publication for failure to comply with a compliance notice

The maximum amount a landlord / agent can be fined per property is £5,000 in total under these regulations.

Officers will use the following to levy fines for offences under MEES. The maximum penalty fine is £5,000 per offence.

<u>First offence*</u>

Officers have the discretion to not levy the maximum fine but to instead issue a financial penalty fines of 50% of the maximum permissible fine.
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<u>Second and any subsequent offences*</u> by same landlord / agent (irrespective of property) financial penalty fine of up to £5,000.
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<u>*Explanatory Note:</u>

Where the council finds a number of breaches at the same time by the same landlord / agent these will all normally be considered first offences. For example;

If the council reports to a landlord 6 breaches for 6 different properties all at the same time they will be considered first offences.

Where a landlord resolves for example, 4 of the cases but fails to resolve the remaining 2 within the specified timescale these remaining 2 cases will be normally be considered second and subsequent offences and fines levied at £5,000 for each case.
