

HOMES & COMMUNITIES COMMITTEE

11 JUNE 2018

ENERGY EFFICIENCY (PRIVATE RENTED PROPERTY)(ENGLAND AND WALES) REGULATIONS 2015

1.0 Purpose of Report

- 1.1 To set out the contents of the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 and the implications for Newark & Sherwood.

2.0 Introduction

- 2.1 The Regulations were approved by Parliament and made on 26 March 2015. The Regulations were subsequently amended in June 2016 to postpone the dates on which the Private Rented Sector Exemptions Register will open to domestic and non-domestic landlords.
- 2.2 The Regulations fulfil a duty placed on the Secretary of State in the Energy Act 2011 to introduce Regulations to improve the energy efficiency of buildings in the domestic and domestic private rented sector in England or Wales.

3.0 Background

- 3.1 The Regulations are intended to ensure that those tenants who most need more efficient homes, particularly vulnerable people, are able to enjoy a much better living environment and lower energy bills. Although newly built homes in the private rented sector tend to have higher energy-efficiency ratings than the average, there remains a stock of older, less modern properties, and many of these have poor energy efficiency and are difficult and costly to heat. These less efficient properties result in higher tenant energy bills and for many, the likelihood of living in fuel poverty.
- 3.2 Amongst EPC F and G rated properties in the sector, recent data shows that 45% of households are classified as fuel poor. Put simply, the PRS has a disproportionate share of the UK's least energy-efficient properties and fuel-poor households. Installation of energy efficiency measures can help address this.
- 3.3 The Regulations set out the minimum level of energy efficiency for private rented property in England and Wales. In relation to the domestic private rented sector the minimum level is an energy performance certificate (EPC) rating of band E. Landlords who are installing relevant energy efficiency improvements may, of course, aim above and beyond this current requirement if they wish.

4.0 The New Requirements

- 4.1 The minimum standard will apply to any domestic privately rented property which is legally required to have an EPC and which is let on certain tenancy types. Where these two conditions are met the landlord must ensure that the standard is met (or exceeded).
- 4.2 The minimum level of energy efficiency means that, subject to certain requirements and exemptions:

- a) from the 1 April 2018, landlords of relevant domestic private rented properties may not grant a tenancy to new or existing tenants if their property has an EPC rating of band F or G (as shown on a valid Energy Performance Certificate for the property);
- b) from the 1 April 2020, landlords must not continue letting a relevant domestic property which is already let if that property has an EPC rating of band F or G (as shown on a valid Energy Performance Certificate for the property).

4.3 In both cases this is referred to in the Regulations and in this guidance as the prohibition on letting sub-standard property. Where a landlord wishes to continue letting property which is currently sub-standard, they will need to ensure that energy efficiency improvements are made which raise the EPC rating to a minimum of E. In certain circumstances landlords may be able to claim an exemption from this prohibition on letting sub-standard property; this includes situations where the landlord is unable to obtain funding to cover the cost of making improvements, or where all improvements which can be made have been made, and the property remains below an EPC rating of Band E.

4.4 Where a valid exemption applies, landlords must register the exemption on the national PRS Exemptions Register.

4.5 Local authorities will enforce compliance with the domestic minimum level of energy efficiency. They may check whether a property meets the minimum level of energy efficiency and may issue a compliance notice requesting information where it appears to them that a property has been let in breach of the Regulations (or an invalid exemption has been registered in respect of it). Where a local authority is satisfied that a property has been let in breach of the Regulations it may serve a notice on the landlord imposing financial penalties. The authority may also publish details of the breach on the national PRS Exemptions Register.

4.6 Local Enforcement

Every Local Authority is the “enforcement authority” for their area and will be responsible for enforcing compliance with the minimum level of energy efficiency provisions within their geographic boundaries. A representative or authorised officer of the Local Authority may carry out the enforcement activities including using the information held on the national PRS Exemptions Register or produced in response to a compliance notice to monitor compliance and issue compliance and penalty notices where applicable.

4.7 Discussions have taken place across the county as to how the regulations will be enforced as both County Council Officers and District Officers can be authorised. It would seem appropriate for District/Borough Officers to take the lead on this function as they are the Officers most commonly visiting private rented sector properties and have local knowledge of letting agents and landlords.

4.8 Officers are required under Regulation 35 to be formally authorised to enforce the provisions of the regulations.

4.9 Financial Penalties

Where the Local Authority decides to impose a financial penalty, they have the discretion to decide on the amount of the penalty, up to maximum limits set by the Regulations. The maximum penalties are as follows:

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

4.10 A local authority may not impose a financial penalty under both paragraphs (a) and (b) above in relation to the same breach of the Regulations but they 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.

4.11 It is important to note that this maximum amount of £5,000 applies per property and per breach of the Regulation. Given this, it means that, if after having been previously fined up to £5,000 for having failed to satisfy the requirements of the regulations, a landlord proceeds to unlawfully let a substandard property on a new tenancy; the local enforcement authority may again levy financial penalties up to £5,000 in relation to that new tenancy.

4.12 It is important to note that the maximum penalty amounts apply per property and per breach of the Regulations.

4.13 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 enforcement authority 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.

4.14 If a landlord does not pay a financial penalty imposed on them, the enforcement authority may take the landlord to court to recover the money. In proceedings for the recovery of a financial penalty a certificate signed by or on behalf of the person with responsibility for the financial affairs of the enforcement authority and stating that payment of the financial penalty was or was not received by a given date, will be accepted as evidence of the landlord's non-compliance with the penalty notice.

- 4.15 Set out below is a table showing the maximum penalty available for the various offences. As stated above the enforcing authority can set its own level of penalty up to the maximum within the regulations and the table shows the level of penalty proposed.

Infringement	Penalty (less than three months in breach)	Penalty (three months or more in breach)	Penalty (three months or more in breach)	Penalty (three months or more in breach)
	Maximum	Proposed	Maximum	Proposed
Renting out a non-compliant property	Up to £2,000, and/or Publication penalty	£1,500	Up to £4,000, and/or Publication penalty.	£3,000
Providing false or misleading information on the PRS Exemptions Register	Up to £1,000, and/or Publication penalty	£750	Up to £1,000, and/or Publication penalty	£750
Failing to comply with a compliance notice	Up to £2,000, and/or Publication penalty	£1500	Up to £2,000, and/or Publication penalty	£1,500

5.0 Proposals

- 5.1 It is proposed that the following Officer designations are authorised to enforce the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

Designation	Authority
Business Manager – Environmental Health & Licensing	To issue compliance Notice To withdraw or amend compliance Notice To impose financial penalty (Penalty Notice) To issue a publication penalty (Penalty Notice) To amend withdraw a Penalty Notice
Assistant Business Manager - Environmental Health	To issue compliance Notice To withdraw or amend compliance Notice To impose financial penalty (Penalty Notice) To issue a publication penalty (Penalty Notice) To amend withdraw a Penalty Notice
Senior Environmental Health Officer	To issue compliance Notice To withdraw or amend compliance Notice
Environmental Health Officer	To issue compliance Notice To withdraw or amend compliance Notice

5.2 It is further proposed that the penalties as set out in paragraph 4.15 are adopted as the penalties under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

6.0 Budget Implications

6.1 It is not anticipated that there will be any substantial or sustained income from the enforcement of these Regulations.

7.0 Equalities Implications

7.1 There are not considered to be any equalities implications arising from this report.

8.0 RECOMMENDATIONS that:

- (a) the introduction of the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 be noted;**
- (b) the Officers as set out on paragraph 5.1 be authorised to enforce the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015; and**
- (c) the financial penalties as set out in paragraph 4.15 be adopted.**

Reason for Recommendations

To have enforcement procedures in place to effectively implement the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

Background Papers

Nil

For further information please contact Alan Batty Business Manager - Environmental Health & Licensing on (01636) 655467.

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