

# **South Cambridgeshire District Council's policy for the enforcement of the Minimum Energy Efficiency Standards in the Private Rented Sector**

## **1. Introduction**

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 ('the regulations') are designed to tackle the least energy-efficient properties in England and Wales, those with Energy Performance Certificates (EPC) that are rated F or G. The regulations establish a minimum standard of EPC band E for domestic privately rented properties, applicable to all relevant tenancies (assured, regulated or domestic agricultural) as of 1<sup>st</sup> April 2020.

F and G rated properties are the most energy inefficient housing. They impose unnecessary energy costs on tenants and the wider community and can lead to poor health outcomes with resulting resource pressure on health services. These properties also contribute to unavoidable greenhouse gas emissions. The regulations are designed to ensure tenants have thermally efficient homes, thus reducing fuel poverty and improving health outcomes.

The private rented sector (PRS) has a disproportionate share of the UK's least energy efficient properties and fuel poor households with over a third of all fuel poor households living in the PRS. The most recent Private Sector Housing Condition Survey carried out in 2011 for South Cambridgeshire District Council estimated that 5.7% (3,188) of private rented dwellings in south Cambridgeshire have an EPC rating below band E.

The regulations prohibit the letting of sub-standard properties. Since April 2018, landlords have not been able to grant tenancies to new or existing tenants if their property has an EPC rating of F or G. Since 1<sup>st</sup> April 2020, landlords have been prohibited from continuing to let a relevant property which has an EPC rating of F or G unless that property has a valid exemption registered on the government's PRS exemptions register. Where a property is sub-standard, landlords must make energy efficiency improvements which raise the EPC rating to a minimum E.

## **2. Government guidance**

The department for Business, Energy and Industrial Strategy (BEIS) originally produced guidance on these regulations in 2017 and were most recently updated in May 2020.

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

South Cambridgeshire District Council (the authority) has had regard for this guidance when preparing this policy on enforcing these regulations.

## **3. Purpose and scope of this policy**

Local Authorities are responsible for enforcing against non-compliance with the Minimum Energy Efficiency Standards; in accordance with regulations 34 and 35 of the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015. The purpose of this policy is to set out how the authority will enforce these regulations.

In the first instance, the Council will engage informally with landlords who rent properties with F and G EPC ratings to advise them of the regulations and that their rented properties do not meet the Minimum Energy Efficiency Standards. The Council will offer advice on how the standards can be met and how to register an exemption, if appropriate.

Landlords will be given an appropriate amount of time to make the necessary changes but will be cautioned that if they fail to meet an acceptable rating within the given deadline, formal enforcement action may be taken. In making a decision as to what, if any, enforcement action is appropriate the Council will refer to its own Corporate Enforcement Policy.

The Council may issue a Compliance Notice where it believes that a landlord may be in breach of the prohibition on letting a sub-standard property or a landlord has been in breach of the prohibition at any time in the past twelve months. A Compliance Notice may be served requiring information from that landlord to help them to decide whether that landlord has in fact breached the prohibition.

Where the Council is satisfied that a property has been let in breach of the regulations it may serve a Penalty Notice on the landlord imposing a financial penalty. The Council may also publish details of the breach on the PRS Exemptions Register, also known as a Publication Penalty.

The landlord may ask for the Penalty Notice to be reviewed (regulation 42) and if the penalty is upheld on review the landlord may appeal to the First-tier Tribunal.

#### **4. Calculating the financial penalty**

Where the Council decides to impose a financial penalty, they have discretion to decide the amount of penalty up to maximum limits set by the regulations, detailed as follows:

- a) Where a 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 a publication penalty.
- b) Where a landlord has let a sub-standard property in breach of the regulations for a period of more than 3 months, the Local Authority may impose a financial penalty of up to £4,000 and may impose a publication penalty.
- c) Where a 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 a publication penalty.
- d) Where the landlord has failed to comply with a Compliance Notice, the Local Authority may impose a financial penalty of up to £2,000 and may impose a publication penalty.

When determining a financial penalty the authority will use the following matrix as a guide to determine the appropriate penalty (amounts as a percentage of the maximum):

	<b>Low Culpability</b>	<b>High Culpability</b>
<b>Low Harm</b>	25%	50%
<b>High Harm</b>	50%	100%

The following factors that can affect culpability will be considered:

<b>High</b>	a) Landlord has a previous history of noncompliance of these regulations b) Landlord has knowingly or recklessly provided incorrect information in relation to these regulations
<b>Low</b>	a) It is a first offence by the landlord under these regulations b) Issues partially out of the control of the landlord has led to non-compliance

The following factors that can affect harm will be considered:

<b>High</b>	a) EPC rating of G for the property b) Vulnerable tenants occupying the property*
<b>Low</b>	a) EPC rating of F for the property b) No vulnerable tenants occupying the property

*\*Pregnant, over 70, health conditions exacerbated by the cold, children under 5, low income household.*

The tables below show the financial penalty amounts for each type of offence:

a) Breach of less than 3 months (Max penalty £2,000)

	<b>Low Culpability</b>	<b>High Culpability</b>
<b>Low Harm</b>	£500	£1,000
<b>High Harm</b>	£1,000	£2,000

b) Breach of more than 3 months (Max penalty £4,000)

	<b>Low Culpability</b>	<b>High Culpability</b>
<b>Low Harm</b>	£1,000	£2,000
<b>High Harm</b>	£2,000	£4,000

c) Providing false or misleading information (Max penalty £1,000)

	<b>Low Culpability</b>	<b>High Culpability</b>
<b>Low Harm</b>	£250	£500
<b>High Harm</b>	£500	£1,000

d) Failure to comply with a Compliance Notice (Max penalty £2,000)

	<b>Low Culpability</b>	<b>High Culpability</b>
<b>Low Harm</b>	£500	£1,000
<b>High Harm</b>	£1,000	£2,000

If two or more penalty notices apply the combined maximum per property, per breach is £5,000. The Council will consider any representations made by the landlord in a request to review the financial penalty applied. Officers will have regard to these factors and may adjust the penalty to increase up to the maximum of £5,000 or to reduce the penalty as appropriate.

### **5. Recovery of financial penalties**

If a landlord does not pay a financial penalty imposed on them, the Council 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 Council, stating that payment of the financial penalty was not received by a given date will be used as evidence of the landlord's non-compliance with the penalty notice.

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