

# Thurrock Council

## Policy for the enforcement of the domestic minimum level of energy efficiency

### Introduction

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (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 Private Housing team is 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

Thurrock Council is aware of 1,350 properties in its area have an EPC rating of F or G. We intend to identify landlords that are not meeting the minimum requirements and determine if it is then appropriate to make a financial penalty and whether or not that penalty is published.

The council has published a Statement of Principles for determining the amount of penalty charge.

In addition we will advise landlords what actions is necessary for them to take in order for them to be compliant.

### Government guidance

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

[GOV.UK: 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.](#)

Thurrock 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, 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 Thurrock Council will enforce the Regulations.

## Scope of the policy

1. The council will promote details of the domestic private rented property minimum standards under the Energy Efficiency regulations to landlords and managing agent to meet their obligations and comply with legislative requirements.
2. This education will provide landlords/managing agents time to make the necessary changes required.
3. The council's website contains useful information of energy efficiency measures to help landlords and tenants improve their homes and manage fuel poverty
4. The council will identify landlords with an EPC of F and G through investigate methods and check the National PRS Exemption Register if the property has claimed an exemption from this prohibition on letting sub-standard property or will check if it believes a landlord has registered false or misleading information it will consider serving a financial and publication penalty.
5. Landlords suspected of breaching the regulations or an invalid exemption has been registered in respect of it or a new owner has failed to register a valid exemption, can expect to receive a compliance notice, requesting further information from the council that they do not meet the minimum efficiency standard. This information will help the council to decide whether there has been a breach.
6. The council will carry out an investigation and formal enforcement action will be considered.
7. Landlords who failed to comply with law and the council is satisfied that a property has been let in breach of the Regulations will serve a notice on the landlord imposing financial penalties. This policy provides guidance for officers on how to determine the appropriate penalty. See Appendix 1
8. The council will also offer advice how the standards can be met and request Landlords to register an exemption if appropriate. This process may require a Part 1 Inspection under Housing Health Safety Rating System (HHSRS). When the landlord refuses or fails to carry out those repairs under an improvement notice, the council will impose a financial civil penalty on the landlord/owner or consider prosecution for breaching their improvement notice.
9. 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. Thurrock Council will place the information on the register at the appropriate time, for a minimum of 12 months.
10. 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.
11. The landlord has the right to appeal to the First Tier Tribunal who will rehear the council's decision to impose the civil penalty. They have the power to quash the penalty notice or affirm the penalty notice in its original or a modified form.

## Appendix 1 – guidance for determining the level of a financial penalty

### [The Energy Efficiency \(Private Rented Property\) \(England and Wales\) Regulations 2015.](#)

The maximum level of penalty varies on the type of breach under the Regulations.

#### *Financial penalties (Regulation 40)*

*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.*

**Thurrock Council will use following matrix as a guide to officers to determine the appropriate penalty.**

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

#### **Factors affecting culpability:**

- **High** – Landlord has a previous history of non-compliance with 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 regulation
- **Low** – First offence under these regulations, no previous history of non-compliance of with Housing related regulatory requirements. 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.

Tables to show penalty for each type of offence are provided below.

**Breach is less than 3 months – maximum £2,000**

| Harm      | Low culpability | High culpability |
|-----------|-----------------|------------------|
| Low harm  | £500            | £1000            |
| High harm | £1000           | £2000            |

**Breach is more than 3 months – maximum £4,000**

| Harm      | Low culpability | High culpability |
|-----------|-----------------|------------------|
| Low harm  | £1,000          | £2,000           |
| High harm | £2,000          | £4,000           |

**Providing false and misleading information – maximum £1,000**

| Harm      | Low culpability | High culpability |
|-----------|-----------------|------------------|
| Low harm  | £250            | £500             |
| High harm | £250            | £1,000           |

**Failing to comply with a compliance notice – maximum £2,000**

| Harm      | Low culpability | High culpability |
|-----------|-----------------|------------------|
| Low harm  | £500            | £1,000           |
| High harm | £1,000          | £2,000           |

**If two or more penalty notices apply**

If two or more penalty notices apply, the combined maximum per property per breach will be £5,000.

**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 £5,000) 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.