

Thurrock Council – Private housing

Statement of principles: determining the amount of penalty charge – Energy Efficiency 2015

Purpose of this statement of principles

This statement sets the principles that Thurrock Council will apply in exercising its powers under the Energy Efficiency [Private Rented Sector] England and Wales Regulations 2015 to impose a civil penalty on a landlord/owner of a private rented domestic property who lets their property below energy performance certificate [EPC] rating of E before granting a new tenancy to new or existing tenants.

Legal powers – Regulations 34 and 35

The council has authority for enforcement in their area and will be responsible for enforcing compliance and carrying out enforcement activities including using the information held on the national PRS Exemptions Register and serve penalty notices where applicable.

Enforcement

The council will enforce compliance with the domestic minimum level of energy efficiency and will issue a compliance notice requesting information where it appears that a property has been let in breach of the Regulations or an invalid exemption has been registered in respect of it.

Authorised officers will issue a civil penalty notice when the council is satisfied that a property been let in breach of the following Regulations including failing to register their exemption for that property rather than improve it to E.

- from 1 April 2018, the landlord/owner of domestic private rented property has granted a tenancy to new or existing tenants with EPC rating of F and G on a valid EPC for the property
- from 1 April 2020, all domestic private rental properties must be a minimum of EPC band E but the landlord/owner has continued letting their property on EPC rating of band F or G – this exclude landlords with valid exemption registered for them on the National PRS exemption register
- from 1 April 2018, HMOs must comply with these minimum standards if the property has been built, sold or rented as single unit at any time in the past 10 years

The council will consider serving a penalty notice on a landlord up to 18 months after the suspected breach. This means that a person may be served with a penalty notice after they have ceased to be the landlord of a property.

Exemption from civil penalty

Landlords may apply to claim an exemption from this prohibition on letting substandard property from 1 October 2017, this includes where the landlord is unable to obtain 'no cost funding' to make those improvements or where all the improvement can be made have been made and property remains below rating of E.

Although exemptions are made on self-certification basis, the council remains responsible for monitoring and auditing this process to ensure that exemptions are registered complies with the Regulations.

Publication – regulation 39

The council will publish details of the landlord breaches on the National PRS exemption register.

This will include:

- the landlord's name [except where the landlords is an individual]
- the address of the property in relation to which the breach occurred
- the amount of any financial penalty

Main principles for issuing a penalty charge are to:

- lower the risk to the tenants health and safety and well being
- reduce fuel poverty
- promote compliance of landlords in the private rented sector
- improve property conditions
- eliminate any financial gain or benefit from non-compliance with regulation
- education landlords on the associated risks of non-compliance
- be proportionate to the nature of the breach of legislation and the risk posed
- aim to prevent future non-compliance

Setting the levels of the penalty charge

The council is satisfied it has evidence of non-compliance and the breach allows for the council to require the owner/ landlord to pay a penalty charge under Regulation 40.

Financial penalties

The maximum penalties the council will impose are

- a) where the landlord has let a substandard property in breach off the Regulations for a period of less than 3 months, the council will impose a financial penalty of up to **£2,000** and will impose the publication penalty
- b) where the landlord has let a substandard property in breach of the regulations for 3 months or more, the council will impose a financial penalty of up to **£4,000** and will impose the publication penalty
- c) where the landlord has registered false or misleading information on the PRS Exemption Register, the council will impose a financial penalty of **£1,000** and will impose the publication penalty
- d) where the landlord has failed to comply with the compliance notice, the council will impose financial penalty of **£2,000**, and will impose the publication penalty

The council may not impose a financial penalty under points [a] and [b] above in relations to the same breach of the Regulations, but may impose a financial penalty under either points [a] or [b] together with financial penalties [c] and [d] in relation to same breach. Where penalties are imposed under more than one of these points, the total amount of the financial penalty will not exceed **£5,000**.

Penalties

The penalty notice may include a financial penalty, a publication penalty or both. The penalty notice will include:

- the breach the landlord has committed under the regulations
- if the landlord must take any action to remedy the breach, if so, the date in which the actions must be taken
- the financial penalty details and how it was calculated
- information on how to pay the penalty notice – for example, name and address to whom it must be paid and the method of payment
- give details of the review and appeal processes, including the name and address whom a review must be sent and the date by which the request must be sent
- explain that if the landlord does not pay their financial penalty within the specified period, the council will bring court proceedings to recover the money from the landlord

The council has the right at any time to review or withdraw a penalty notice under Regulation 42. This includes when new information comes to light. Also, any mitigating factors will be considered in the council's rights to make representation to withdraw or vary the civil penalty.

Appeals

A landlord also has the right to ask the council to review its decision to serve a penalty notice. This request must be in writing. The council will consider everything the landlord has said in the request and decide whether or not to withdraw the penalty notice.

The council will withdraw the penalty notice if either:

- they are satisfied that the landlord has not committed the breach set out in the penalty notice
- although they are satisfied the landlord committed the breach, they are satisfied that the landlord took all reasonable steps and exercised all due diligence to avoid committing the breach
- they decide that because of the circumstances of the landlord's case, it was most not appropriate for the penalty notice to be served

Should the decision be to uphold the penalty notice, however, the landlord can then appeal to the First Tier Tribunal against that decision if they consider either:

- the penalty notice was based on an error of fact or an error of law
- the penalty notice does not comply with a requirement imposed by the regulations
- it was inappropriate to serve a penalty notice on them in the particular circumstances

Role of the First Tier Tribunal

A landlord who is served with a notice may appeal to the Tribunal who will rehear the council's authority 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.

Recovery of penalty charge

The council can apply to a County Court for a court order to enforce the civil penalty and recover the debt where the landlord has not paid within 28 days of the service of the charge notice and either the landlord:

- has not made an appeal to the first tier tribunal
- has made an appeal which has since been determined in the council's favour

Sums paid may be used by the council to assist in the enforcement and promotion of standards in private sector housing.

Review of statement of principles and penalty charges

This statement will be reviewed annually and published with the fees and charges for private sector housing.

Penalty charges 2018/19

Offence	Band width penalty
Property let with Energy Performance Certificate [EPC] E or below *	£1,000 to £4,000
Registered false or misinformation on PRS Exemption Register	£1,000
Failure to comply with compliance notice	£2,000

* Extra penalty charge will be applicable if deemed appropriate when setting the penalty level charge if the council are satisfied it has evidence of non-compliance and the harm/risk posed to the public