

1.0 Background

The government's ambition is to improve the energy performance of privately rented properties as improving a home's energy efficiency helps the occupants keep warm, reduced their energy bills and provides better protection for their health and wellbeing. Those benefits are particularly important to households on lower incomes and in homes which are expensive to heat. This ambition clearly accords with the aim of Broxtowe Borough Council (the Council) to reduce the Borough's carbon emissions to net zero by 2027.

For example, the Department for Business Energy and Industrial Strategy (BEIS) energy cost analysis shows that those households in the private rented sector who live in F or G rated properties (A being the most energy efficient and G being the least energy efficient) face significantly higher energy costs of keeping warm than typical households, needing to pay on average over £600 per year more than E rated private rented properties and almost £1,000 per year more than the average home.

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (the Regulations) fulfil a duty placed upon the Secretary of State in the Energy Act 2011 to introduce Regulations to improve the energy efficiency of buildings in the domestic private rented sector. The Regulations are also referred to as the Minimum Energy Efficiency Standard Regulations (MEES Regulations). Some years later, BEIS published guidance for landlords and Local Authorities regarding the minimum level of energy efficiency required to let domestic property under the Regulations.

In summary:

Since 1 April 2020, landlords can no longer let or continue to let properties covered by the Regulations if they have an EPC rating below E, unless they have a valid exemption in place.

The Regulations only apply to those domestic properties which are legally required to have an EPC. This means properties required to have an EPC by virtue of the requirements of legislation which currently includes the following:

- a) The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007;
- b) The Building Regulations 2010;
- c) The Energy Performance of Buildings (England and Wales) Regulations 2012.

It is the landlord's responsibility to ensure they meet these requirements and have an EPC rated E (or better) as evidence that their property is legal to rent out (unless the property is exempt, see below).

A copy of the EPC certificate must be provided by landlords to all tenants at the property whose tenancies began on or after 1st October 2015 (required under the Deregulation Act 2015).

A domestic private rented sector property will be considered sub-standard if the EPC rating is F or G, unless an exemption applies. If there is an EPC in place which shows that the property is a band F or G, then it must not be let (unless an exemption applies); otherwise the landlord is liable to penalties.

It is also important to note however, that if a landlord lets a property in breach of the Regulations, the breach does not affect the validity or legality of the tenancy itself, so the rent continues to be payable.

2.0 Exemptions

Only appropriate, permissible and cost-effective improvements are required under the Regulations. Landlords will be eligible for an exemption from reaching the minimum standard where they can provide evidence that one of the following applies:

a) All relevant improvements made exemption

If the property is still below EPC E after improvements have been made up to the cost cap (£3,500 incl VAT), or there are none that can be made.

This exemption lasts 5 years. After that it will expire and the landlord must try again to improve the property's EPC rating to E. If it is still not possible, they may register a further exemption.

b) High cost exemption

If no improvement can be made because the cost of installing even the cheapest recommended measure would exceed £3,500 (including VAT).

This exemption lasts 5 years. After that it will expire and the landlord must try again to improve the property's EPC rating to E. If it is still not possible, they may register a further exemption.

c) Wall insulation exemption

If the only relevant improvements for the property are:

cavity wall insulation

external wall insulation

or internal wall insulation (for external walls)

AND

written expert advice has been obtained showing that these measures would negatively impact the fabric or structure of the property (or the building of which it is part).

This exemption lasts 5 years. After that it will expire and the landlord must try again to improve the property's EPC rating to E. If it is still not possible, they may register a further exemption.

d) Third party consent exemption

If the relevant improvements for the property need consent from another party, such as a tenant, superior landlord, mortgagee, freeholder or planning department, and despite the landlord's best efforts that consent cannot be obtained, or is given subject to conditions they could not reasonably comply with.

This exemption lasts:

5 years

or, where lack of tenant consent was the issue, until the current tenancy ends or is assigned to a new tenant

e) Property devaluation exemption

If the landlord has evidence showing that making energy efficiency improvements to their property would devalue it by more than 5%. In order to register this exemption, the landlord will need a report from an independent surveyor. This surveyor needs:

- to be on the Royal Institute of Chartered Surveyors (RICS) register of valuers
- to advise that the installation of the relevant improvement measures would reduce the market value of the property, or the building it forms part of, by more than 5%

This exemption lasts 5 years. After that it will expire and the landlord must try again to improve the property's EPC rating to E. If it is still not possible, they may register a further exemption.

f) Temporary exemption due to recently becoming a landlord

If the landlord has recently become a landlord under certain circumstances as defined, they will not be expected to take immediate action to improve their property to EPC E. They may claim a 6 month exemption from the date they became a landlord.

This exemption lasts 6 months from the date they became the landlord. After that it will expire and they must have either:

- i) improved the property to EPC E
- or ii) registered another valid exemption, if one applies

3.0 Enforcement and penalties

The Regulations are enforced by local authorities who have a range of powers to check and ensure compliance.

The Regulations mean that, since 1 April 2018, private landlords may not let domestic properties on new tenancies to new or existing tenants if the Energy Efficiency Certificate (EPC) rating is F or G (unless an exemption applies).

From 1 April 2020 the prohibition on letting F and G properties extended to all relevant properties, even where there has been no change in tenancy.

If a local authority believes a landlord has failed to fulfil their obligations under the Regulations, they can serve the landlord with a compliance notice. If a breach is confirmed, the landlord may receive a financial penalty.

3.1 Non-compliance with the Regulations

A local authority may check for different forms of non-compliance, including one or more of the following:

- from 1 April 2018, if a property is let in breach of the Regulations
- from 1 April 2020, if a property continues to be let in breach of the Regulations

- If any false or misleading information has been registered on the PRS Exemptions Register

3.2 Compliance notices

If a local authority believes a landlord may be in breach, they may serve a compliance notice requesting information to help them decide whether a breach has occurred. They may serve a compliance notice up to 12 months after a suspected breach occurred.

A compliance notice may request information on:

- the EPC that was valid for the time when the property was let
- the tenancy agreement used for letting the property
- information on energy efficiency improvements made
- any Energy Advice Report in relation to the property
- any other relevant document

3.3 Penalties

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 you can be fined per property is £5,000 in total.

4.0 Right of review and right of appeal

If a person served with a penalty notice does not agree with it, they may ask the local authority to review its decision. The local authority can withdraw the penalty notice if:

- new evidence shows a breach has not occurred

- a breach has occurred, but evidence shows the landlord took all reasonable steps to avoid the breach
- they decide that because of the circumstances of the case, it was not appropriate to issue a penalty

If a local authority decides to uphold a penalty notice, a landlord may appeal to the First-tier Tribunal if they think that:

- 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 you in the particular circumstances

5.0 Adoption of a Policy

Given that there is a requirement for the Local Authority to enforce compliance with the Regulations it is appropriate for the Council to determine what penalties be applied for breaches of the Regulations.

The Regulations provide discretion for enforcing authorities in setting the level of financial penalties relevant to any breaches.

The proposed matrix for adoption by Broxtowe Borough Council is given in the policy document at Appendix 2.