

Minimum Energy Efficiency Standards (MEES) in the private rented sector - penalty charges

The Energy Efficiency (Private Rented Property)

(England and Wales) Regulations 2015 Regulation 38

Minimum energy efficiency standards (MEES) for domestic private rented properties

Penalty Charge Statement of Principles

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (*The Regulations*) require landlords to ensure that they do not let out substandard privately rented properties unless they have relevant statutory exemptions.

In relation to these Regulations, substandard privately rented properties refers to the definition in Regulation 22.

The Regulations are available the time of publish at www.legislation.gov.uk

At the time of publish government guidance for landlords is available online at www.gov.uk/guidance/domestic-private-rented-property-minimum-energy-efficiency-standard-landlord-guidance

Where the Stafford Borough Council (*The Authority*) determines that a Financial Penalty should be imposed for one or more breaches of Regulation 40, it shall have regard to this Statement of Principles.

The following tables present the starting values, aggravating and mitigating factors that are to be considered in determining the value of a financial penalty issued for one or more of the following offences:

- 1. Letting a sub-standard property for less than 3 months. (*Regulation 40(2)*)**
- 2. Letting a sub-standard property for 3 months or more. (*Regulation 40(3)*)**
- 3. Registered false or misleading information. (*Regulation 40(4)*)**
- 4. Failure to comply with a compliance notice. (*Regulation 40(5)*)**

General principles (to be applied to all financial penalties made for offences under these Regulations)
No financial penalty can be imposed greater than the statutory maximum values for each relevant offence as defined by Regulations 40(2) to 40(5) (Note 1)
Where more than one offences are included in a single financial penalty charge, the maximum financial penalty that can be imposed on a landlord per property when all penalties under these regulations are combined, is £5,000 as defined by Regulation 40(6)
No penalty charge shall be less than 20% of the starting value after all aggravating and mitigating factors are considered and after perpetrator income has been taken into account.
Mitigating factors will be considered based on evidence submitted by the landlord or their agent to the Housing Standards Team including any information provided following inspection and any representations that the landlord provides following service of a Notice of Intent to issue a Financial Penalty
In recovering the value of any financial penalty, The Council will consider the incomes, savings and assets of the perpetrator and where appropriate a payment plan considered.

1. Letting a sub-standard property for less than 3 months. (Regulation 40(2))	
Starting value of penalty charge (note 2)	£
1 st offence	400
2nd subsequent offence by same person/company	1000
Subsequent offences by same person/company	1600
Aggravating Factors (note 2)	
Acts or omissions demonstrating high culpability. (note 5)	200
Large housing portfolio (note 6)	200
Vulnerable occupant and/or significant harm occurred as result of housing conditions (note 7)	200
Mitigating Factors (note 4)	
Evidence of Low culpability (note 8)	-200
Rapid action taken to address failings (note 9)	-200

2. Letting a sub-standard property for 3 months or more. (Regulation 40(3))	
Starting value of penalty charge (note 2)	£
1 st offence	800
2nd subsequent offence by same person/company	2000
Subsequent offences by same person/company	3200
Aggravating Factors (note 2)	
Acts or omissions demonstrating high culpability. (note 5)	400
Large housing portfolio (note 6)	400
Vulnerable occupant and/or significant harm occurred as result of housing conditions (note 7)	400
Mitigating Factors (note 4)	
Evidence of Low culpability (note 8)	-400
Rapid action taken to address failings (note 9)	-400

3. Registered false or misleading information. (Regulation 40(4))	
Starting value of penalty charge (note 2)	£
1 st offence	200
2nd subsequent offence by same person/company	500
Subsequent offences by same person/company	800
Aggravating Factors (note 2)	
Acts or omissions demonstrating high culpability. (note 5)	100
Large housing portfolio (note 6)	100
Vulnerable occupant and/or significant harm occurred as result of housing conditions (note 7)	100
Mitigating Factors (note 4)	
Evidence of Low culpability (note 8)	-100
Rapid action taken to address failings (note 9)	-100

4. Failure to comply with a compliance notice. Regulation 40(5)	
Starting value of penalty charge (note 2)	£
1 st offence	400
2nd subsequent offence by same person/company	1000
Subsequent offences by same person/company	1600
Aggravating Factors (note 3)	
Acts or omissions demonstrating high culpability. (note 5)	200
Large housing portfolio (note 6)	200
Vulnerable occupant and/or significant harm occurred as result of housing conditions (note 7)	200

Mitigating Factors <i>(note 4)</i>	
Evidence of Low culpability <i>(note 8)</i>	-200
Rapid action taken to address failings <i>(note 9)</i>	-200
Partial Compliance <i>(note 10)</i>	-200

NOTES

NOTE 1 Maximum financial penalties as defined by Regulation 40

Offence	Statutory Maximum
Letting a sub-standard property for less than 3 months. Regulation 40(2)	£2000
Letting a sub-standard property for 3 months or more. (Regulation 40(3))	£4000
Registered false or misleading information. Regulation 40(4)	£1000
Failure to comply with a compliance notice. Regulation 40(5)	£2000

Note 2 Determining the starting value of a financial penalty.

The starting point for a financial penalty is based on the number of:

- Previous convictions, and
- Final Notices of a Financial Penalty as per Housing Act 2004 schedule 13a

issued to the same person or corporate entity for the same type of offence in the previous four years.

The Council will take into account any such convictions or financial penalties irrespective of the locality to which the offence relates.

Note 3 Aggravating factors.

After the starting point as per note 1 has been determined any relevant aggravating factors are considered and where appropriate to do so, the given value is added to the starting point to provide the maximum level of financial penalty.

At this stage it is possible for the notional penalty to be above the statutory maximum, but once mitigation and income are considered, if the value is still above the statutory maximum it will be capped as per the “general principles”.

Note 4 Mitigating factors.

After aggravating factors are considered and applied where appropriate, mitigating factors are considered and where there is sufficient evidence the relevant value will be discounted from the Financial Penalty.

In considering whether it is appropriate to include a mitigating factor, evidence shall be considered that has been gathered by the inspecting officer in the course of the investigation into the offence as well as any representations that have been provided following a Notice of Intent as per Housing Act 2004 Schedule 13a.

Note 5 Acts or omissions demonstrating high culpability.

This premium will be applied where, the person to which the financial penalty applies, acted in a reckless or deliberate manner in not complying with the statutory notice or previous relevant formal advice.

Note 6 Large housing portfolio.

The premium is applied where the perpetrator has control of or manages 10 or more units of accommodation.

For the purposes of this premium, the definition of a person having control and person managing are as defined by Housing Act 2004 Section 263.

Note 7 Vulnerable persons.

This factor will be applied if either the property is occupied by a vulnerable person or if significant harm has occurred as a result of the housing conditions.

A vulnerable person is defined as:

A person who suffers, or is at risk of suffering harm or detriment which the ordinary person would not suffer, or is at risk of suffering due to age, disability or severe financial insecurity”

This factor applies where an occupant is vulnerable and, due to the underlying failure to comply with the relevant legislation is placed at additional risk of harm compared with a non-vulnerable resident.

For purposes of this factor, significant harm is defined as physical or mental illness or injury that corresponds to one of the four classes of harm as recorded in Housing Act 2004 Section 9 Operating Guidance for the Housing Health and Safety Rating System available at the time of publish at www.gov.uk

Note 8 Low culpability.

This factor will apply where the perpetrator provides sufficient evidence that they only marginally fell short of their legal obligations, for instance:

- significant efforts were made to address the risk, breaches or offences, although they were inadequate to mitigate the underlying cause to issue the penalty;
- they have offered a reasonable defence for why they were unaware of the risk, breach or offence.
- Failings were minor and occurred as an isolated incident.

It will not be sufficient to claim not to have known of the legal requirement or deficiency that forms the underlying reason for the financial penalty in order to benefit from this factor.

It will also not apply where the underlying failure was due to the inaction of the perpetrator in properly managing rented properties, responding to complaints of poor

standards, carrying out routine visits, instructing others to assist where necessary etc.

Note 9 **Rapid action take to remedy failings.**

This factor will apply where, on notification of the offence, the perpetrator took rapid action to remedy the underlying failings which could mean:

- Undertaking remedial works as necessary to improve the energy efficiency and obtaining a replacement Energy Performance Certificate demonstrating that the property is no longer substandard as defined by Regulation 22
- Registering a relevant exemption as per the requirements of the schedule to Regulation 36(2)

In order to benefit from this factor, it is the responsibility of the perpetrator to provide sufficient evidence of compliance. It will not be sufficient to simply claim works have been completed, but to demonstrate that to the satisfaction of the Authority and to provide up dated Energy Performance Certification or exemption information as necessary

In assessing whether “rapid action” was taken, Stafford Borough Council will take into account the extent of the remedial works or actions required and the time taken from receipt of any requirement to action. This could be evidence of quotes for works, agreed start dates from contractors etc.

For the avoidance of doubt, the ending of a private rented tenancy will not be considered rapid action.

Note 10 **Partial Compliance**

This factor will apply when, on inspection by an officer from Stafford Borough Council following expiry of the Compliance Notice, partial but not complete compliance with the notice was observed. This will only be applied where, on a re-scored inspection the majority of works were carried out and in the opinion of the inspecting officer the remainder of works are to be completed within a defined time.