

# **Chesterfield Borough Council**

## **Enforcement of Energy Performance in Domestic Dwellings Policy**

**2022**

Owner: Private Sector Housing Manager

Date: July 2022

## **1. Introduction**

Chesterfield Borough Council are committed to improving energy efficiency and reducing fuel poverty within the boroughs privately rented accommodation.

We share the government's desire to improve domestic energy efficiency and contribute to reducing carbon emissions and other greenhouse gases, with the aim of helping to reduce the effects of global warming. Wasted energy imposes unnecessary costs on households and the wider economy.

Improving the energy efficiency of homes and ensuring that they are warm and free from related hazards will help to contribute to an improvement in the health and wellbeing of residents. This will, in turn help to reduce the amount of clinical interventions required for cold and damp related health conditions

Energy Performance of Buildings (England and Wales) Regulations 2012 have been introduced to ensure landlords have a valid Energy Performance Certificate (EPC) and The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 have been introduced to tackle the least energy efficient properties and establish a minimum standard for domestic privately rented properties.

This policy sits under the Private Sector Housing Enforcement Policy which sets out the Council's approach to Private Sector Housing enforcement in a clear and transparent way.

This policy includes the enforcement arrangements for the:

- Energy Performance of Buildings (England and Wales) Regulations 2012 and
- The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

## **2. Purpose of the Policy**

### **2.1 Energy Performance of Buildings (England and Wales) Regulations 2012**

With the introduction of minimum energy efficiency performance standards in the private rented sector Chesterfield Borough Council has collaborated with Derbyshire County Council to arrange for the delegation of enforcement powers.

Under Derbyshire County Council's revised Constitution, their duty (as a local weights and measures authority) to enforce the Energy Performance of Buildings (England and Wales) Regulations 2012 (as amended) has been delegated to Districts and Boroughs within Derbyshire; including Chesterfield Borough Council. This delegation was confirmed by the County Council's Director of Community Services on 26 July 2019.

The scope of the delegation is limited to domestic privately rented properties (as defined by s42 of the Energy Act 2011). The aim of this is to mirror our obligations as a local authority under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015.

The purpose of this policy is to describe how officers of Chesterfield Borough Council will enforce the above listed Regulations.

### **2.2 The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015**

In accordance with Regulation 34 Local Authorities are responsible for enforcing the minimum level of energy provisions within their area.

The Department for Business Energy and Industrial Strategy (BEIS) published guidance in 2017 and updated it in June 2018; Chesterfield Borough Council has had regard to this guidance when preparing this policy.

[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](#)

## **3. Scope of the policy**

This policy will detail the circumstances in which a valid EPC is required and requirements of:

- Energy Performance of Buildings (England and Wales) Regulations 2012
- The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015.

It will also detail the enforcement action and penalties that can be incurred in event of a breach of the above regulations.

## **4. Tenancies requiring an EPC**

The regulations apply to domestic privately rented properties in England and Wales that are let under certain types of tenancy and these are:

- An assured tenancy, including an assured shorthold tenancy as defined by the Housing Act 1988
- A regulated tenancy as defined by the Rent Act 1977
- A domestic agricultural tenancy as defined in the Energy Efficiency (Domestic Private Rented Property) Order 2015 which includes:
  - A tenancy that is an assured agricultural occupancy for the purposes of section 24 of the Housing Act 1988
  - A tenancy that is a protected occupancy for the purposes of section 3(6) of the Rent (Agriculture) Act 1976
  - A statutory tenancy for the purposes of section 4(6) of the Rent (Agriculture) Act 1976

The regulations do not apply to the social housing sector or any property where a landlord is registered as a social landlord as set out in Chapter 1 of Part 1 of the Housing Act 1996.

As well as tenancy type, the regulations only apply to domestic properties that are legally required to have an Energy Performance Certificate under the following legislation:

- The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007
- The Building Regulations 2010
- The Energy Performance of Buildings (England and Wales) Regulations 2012

## **5. Domestic properties that do not need an EPC**

If a landlord can demonstrate that the property falls into any of the following categories an EPC may not be required:

- A property that is listed for its architectural or historical merit, where compliance with minimum energy efficiency standards would alter its character or appearance
- A property that is used as a place for worship and religious activities
- A temporary property with a planned use of two years or less
- A House in Multiple Occupation (HMO) – bedsits, hostels or shared houses that have not been in single occupation in the past ten years
- Properties where it can be demonstrated that demolition is imminent
- Properties where it can be demonstrated that it is a furnished holiday let.

## **6. Exemptions to the requirements of the Minimum Energy Efficiency Standards Regulations (MEES)**

If landlords are unable to comply with the regulations, they may be able to register an exemption on the Private Rented Sector (PRS) Exemptions Register.

The landlord must set up an account on the PRS Exemptions Register and the information that must be provided for all exemptions includes:

- The address of the property the exemption relates to
- The exemption that the landlord is registering
- A copy of a valid EPC for the property, along with any other relevant information

Landlords can apply for an exemption for up to five years from the date of registration. All exemptions are made on a self-certification basis and recorded on the PRS Exemptions Register. Details of the exemptions that can be registered are as follows:

- High cost – this is where the cost of carrying out even the cheapest recommended improvements to the energy efficiency of the property would be more than £3,500 (including VAT)
- All improvements made – this is where all the relevant energy efficiency improvements have been made within the £3,500 limit and the property remains below an EPC band E.
- Wall insulation – this is where the recommended wall insulation systems are not suitable for the property as determined in writing by an expert advisor, in that they may have a potentially negative impact on the fabric or structure of the property
- Consent – this is where third party consent is required prior to the installation of the improvements. This may be consent for planning permission, from a mortgage lender or from a superior landlord, but that consent cannot be obtained.
- Devaluation – this is where a landlord has obtained a report from an independent surveyor advising that the installation of specific energy efficiency measures would reduce the market value of the property by more than five per cent
- New landlord – this is where a person has become a landlord suddenly and it would be inappropriate or unreasonable for them to comply with the regulations immediately. This exemption lasts for six months from the date that the landlord takes control of the property.

Exemptions cannot be transferred to a new owner or landlord. The register can be used by Councils as a tool to support the enforcement of the MEES Regulations.

The public have limited access to the PRS Exemptions Register, where basic information can be found. [Search for exemptions - PRS exemptions register](#)

[beis.gov.uk](https://www.beis.gov.uk)

## **7. Paying for work to improve the energy efficiency in privately rented dwelling**

Landlords are responsible for funding energy improvements to their properties to bring the EPC band to E or above. However, there is a maximum amount of £3,500 that a landlord can be required to spend. If the improvements are likely to cost more than this the landlord can carry out the improvements up to that amount, and register “all improvements made” on the exemptions register, details of which can be found at

[www.gov.uk/government/publications/private-rented-sector-minimum-energy-efficiency-standard-exemptions/guidance-on-prs-exemptions-and-exemptions-register-evidence-requirements](https://www.gov.uk/government/publications/private-rented-sector-minimum-energy-efficiency-standard-exemptions/guidance-on-prs-exemptions-and-exemptions-register-evidence-requirements)

## 8. Energy Performance of Buildings (England and Wales) Regulations 2012

### 8.1 Initial informal approach

In the first instance Chesterfield Borough Council will informally advise Landlords where they suspect a breach has been committed in relation to the Energy Performance of Buildings (England and Wales) Regulations 2012. The Council will offer advice how the standards can be met and request landlords register an exemption if appropriate.

Landlords will be given an appropriate time to comply or to register relevant exemptions, but will be warned that if they continue to be in breach after the time given, an investigation will follow and formal enforcement action will be considered

The Council may in circumstances where a landlord has a history of not complying with housing related regulatory requirements, decide to take formal action without giving an informal opportunity for the landlord to comply.

The Council will check the National PRS Exemptions Register and if it believes a landlord has registered false or misleading information it will consider serving a financial and publication penalty.

If offences under these regulations are committed the Council will, where appropriate, serve a Penalty Notice.

### 8.2 Defence (Regulation 37)

The Council will consider any defence that are allowed within regulation 37 which sets out the circumstances in which a person shall not be liable to a penalty charge for not making an EPC available to a prospective tenant. These include where a person is able to demonstrate that they have made all reasonable efforts to obtain an EPC since becoming subject to the duty, and where the prospective tenant required urgent relocation and an EPC was given as soon as reasonably practicable thereafter.

### 8.3 Penalty Amounts (Regulation 38)

Regulation	Requirement	Penalty for breach
6(2) and 6(5)	The EPC is made available free of charge to any prospective tenant, and given to the eventual tenant.	£200 (dwelling)
7(2)	The relevant person must ensure that an EPC is commissioned before marketing the building for rent.	£200 (dwelling)
7(3)	A person acting on behalf of the relevant person must satisfy themselves that an	£200 (dwelling)

	EPC has been commissioned before marketing on their behalf.	
7(4) and 7(5)	The relevant person and the person acting on their behalf must use all reasonable efforts to ensure that the EPC is obtained within 7 days of the start of marketing. The EPC must be obtained within the period of 21 days following the expiry of the 7 day period mentioned in 7(4).	£200 (dwelling)

#### **8.4 Reviews (Regulation 39)**

Regulation 39 sets out an enforcement authority's obligations regarding the conduct of reviews of the issuing of penalty charge notices. These include considering any representations made by the recipient of the penalty charge notice and deciding whether to confirm or withdraw the penalty charge notice. It also sets out the circumstances in which the authority shall withdraw the penalty charge notice.

#### **8.5 Appeals (Regulation 40)**

If the recipient of the penalty charge notice is dissatisfied with the confirmation of the notice after the review, they may appeal to a county court on any of the grounds specified in regulation 40.



## **9 The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015**

Landlords should refer to Government guidance designed for landlords on compliance with these regulations. <https://www.gov.uk/guidance/domestic-private-rented-property-minimum-energy-efficiency-standard-landlord-guidance>

### **9.1 Initial informal approach**

In the first instance Chesterfield Borough Council will informally advise Landlords who rent properties with an EPC of F or G that they do not meet the minimum energy efficiency standard. The Council will offer advice how the standards can be met and request landlords register an exemption if appropriate.

Landlords will be given an appropriate time to make the necessary improvements or to register relevant exemptions, but will be warned that if they continue to be in breach after the time given, an investigation will follow and formal enforcement action will be considered

The Council may in circumstances where a landlord has a history of not complying with housing related regulatory requirements, decide to take formal action without giving an informal opportunity for the landlord to comply.

The Council may serve Compliance Notices to request information from the landlord that will help them to decide whether there has been a breach. Chesterfield Borough Council will serve Compliance Notices where the additional information is required. The Council will consider serving Penalty Notices where a landlord fails to comply with the Compliance Notice.

The Council will check the National PRS Exemptions Register and if it believes a landlord has registered false or misleading information it will consider serving a financial and publication penalty.

If offences under these regulations are committed the Council will, where appropriate, serve a Penalty Notice.

### **9.2 Circumstances in which a penalty notice may be served (Regulation 38)**

The Council may serve a penalty notice (relating to a financial penalty, a publication penalty or both) on the landlord where they are satisfied that the landlord is, or has been in the previous eighteen months:

- In breach of the prohibition on letting sub-standard property or
- In breach of the requirement to comply with a compliance notice or
- Guilty of uploading false or misleading information to the Exemptions Register.

A person may be served with a penalty notice after they have ceased to be the landlord of a property.

### **9.3 Publication Penalty (Regulation 39)**

A publication penalty means that the Council will publish some details of the landlord's breach on a publicly accessible part of the PRS Exemptions Register. The Council can decide how long to leave the information on the Register, but it will be available for the public to view for at least twelve months.

The information that the Council may publish is:

- The landlord's name (except where the landlord is an individual)
- Details of the breach
- The address of the property in relation to which the breach occurred, and
- The amount of any financial penalty imposed.

The Council can decide how much of this information to publish. Information must not be published on the PRS Exemptions Register while the penalty notice could be or is being reviewed by the Council, or is subject to an appeal to the First-tier Tribunal.

#### 9.4 Financial penalties (Regulation 40)

Under the above legislation each enforcement authority must set its financial penalty policy. As set out in the regulations the **maximum** penalties are as follows:

<b>Breach</b>	<b>Penalty</b>
Letting a sub-standard property for less than 3 months	up to £2,000 plus a publication penalty
Letting a sub-standard property for 3 months or more,	up to £4,000 plus a publication penalty
Registering false or misleading information on the PRS Exemptions Register,	up to £1,000 plus a publication penalty
Failing to comply with compliance notice	up to £2,000 plus a publication penalty
Maximum cumulative penalty to be applied against an individual property  (NB This penalty can be repeated if the property remains sub- standard and is let on a new tenancy.	up to £5,000

Chesterfield Borough Council will impose the maximum level of penalty for each breach. However, where two or more penalty notices apply the combined maximum penalty, per property will not exceed £5000 as stated in the Regulations.

This penalty can be repeated up to £5000 for the new breach, if the property remains sub-standard and is let on a new tenancy.

### **9.5 Reasons for Adopting the Maximum Penalty Approach**

- The central objective of imposing a penalty is deterrence. The level of the penalty must be sufficient to deter landlords from contravening regulatory requirements.
- In particular, the level of the penalty must be sufficiently high to have the appropriate impact. It should incentivise the landlord to change their conduct and bring them into compliance.
- The level of the penalty should be sufficiently high that the landlord recognises that it is not more profitable for them to break the law and pay the consequences, than it is to comply with the law in the first instance. The level of penalty should therefore discourage bad conduct and encourage good practices and a culture of compliance across the private housing sector.
- The Council will incur considerable costs when imposing penalties on landlords and there is no other mechanism to recover these costs, other than through the income derived from penalties.

### **9.6 Reviews, waiving and modification of penalties (Regulation 42)**

An enforcement authority may decide to review its decision to serve a penalty notice, for example, when new information comes to light.

A landlord also has the right to ask the enforcement authority to review its decision to serve a penalty notice. This request must be made in writing. The penalty notice must tell the landlord how long they have to make this request, and to whom it must be sent. When the Council receives the request, they must consider everything the landlord has said in the request and decide whether or not to withdraw the penalty notice.

The Council must withdraw the penalty notice if:

- They are satisfied that the landlord has not committed the breach set out in the penalty notice
- Although they still believe 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, or
- They decide that because of the circumstances of the landlord's case, it was not appropriate for the penalty notice to be served.

If the Council decides not to withdraw the penalty notice, they might decide to waive or reduce the penalty, allow the landlord additional time to pay, or modify the publication penalty. They must explain the appeals process and how financial penalties can be recovered.

Mitigating factors can be taken into consideration during the review of the penalty notice with a reduction of up to £500 per breach, for relevant mitigating factors.

Whatever they decide, the Council must inform the landlord of their decision in writing and should do so at the earliest opportunity.

### **9.7 What is the burden of proof for a financial penalty?**

The proof for civil offences is 'on the balance of probabilities'. However a tribunal would expect the Council to prove 'beyond reasonable doubt' that the landlord has committed the offence.

### **9.8 Appeals to the First-tier Tribunal (General Regulatory Chamber) (Regulation 43 & 44)**

Where a landlord asks the Council to review a decision to serve a penalty notice, and on review, they decide to uphold the penalty notice, the landlord may then appeal to the First-tier Tribunal against that decision 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, or
- It was inappropriate to serve a penalty notice on them in the particular circumstances.

If a landlord does appeal, the penalty notice will not have effect while the appeal is ongoing.

The First-tier Tribunal may decide to quash, confirm or modify the penalty notice. If the penalty notice is quashed, the Council must reimburse the landlord for any financial penalty already paid under the notice.

### **9.9 Recovery of Financial Penalties (Regulation 45)**

If a landlord does not pay a financial penalty imposed on them, the Council may take the landlord to court to recover the 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 or was not received by a given date will be accepted as evidence of the landlord's non-compliance with the penalty notice.

Note however that the Council may not take the landlord to court to recover the money:

- a. During the period in which the landlord could ask the Council to review their decision to serve the penalty notice, or while they are reviewing their decision to serve the penalty notice, or
- b. During the period in which the landlord could appeal to the First-tier Tribunal, or while there is an ongoing appeal to the First-tier Tribunal.

## **10 Policy implementation and Review**

This policy will be implemented and managed by the Private Sector Housing Team. It will be reviewed and updated as necessary on an annual basis.

## **11. Comments or Complaints about this Policy**

Chesterfield Borough Council encourages all customer feedback about its services and any queries, complaints, compliments, or suggestions about this policy are welcome.

These can be made to and marked for the attention of the Private Sector Housing Manager. Email to: [hia@chesterfield.gov.uk](mailto:hia@chesterfield.gov.uk) Write to: Private Sector Housing Manager, Town Hall, Rose Hill, Chesterfield S40 1LP.

If you feel that any queries or concerns have not been dealt with to your satisfaction, please refer to the Councils Formal complaints policy. [Comments, compliments and complaints \(chesterfield.gov.uk\)](https://www.chesterfield.gov.uk/Comments-compliments-and-complaints)