



Rushmoor Housing

Minimum
Energy Efficiency
Standards (MEES)
policy for
domestic dwellings

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Introduction

Rushmoor Borough Council (we) are committed to improving energy efficiency and reducing fuel poverty within its housing stock, particularly in the private rented sector.

We share the government's desire to improve domestic energy efficiency and contribute to reducing carbon emissions and greenhouse gases, with the aim of helping to reduce the effects of global warming.

Wasted energy imposes unnecessary costs to owners, tenants and the wider economy. By improving the energy efficiency of domestic privately rented properties there will be many benefits, for example:

- Energy costs for vulnerable tenants will be more manageable
- The general condition of privately rented properties will improve
- Energy availability will be maintained by smoothing out seasonal peaks in energy demand
- Greenhouse gas emissions will be reduced at a reasonably low cost

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (the regulations) are designed to tackle the least energy efficient properties and target those who have an Energy Performance Certificate (EPC) banding of F or G. The regulations establish a minimum standard for domestic privately rented properties, which were introduced from 1 April 2018 for new tenancies and from 1 April 2020 for all existing tenancies.

The minimum level of energy efficiency means that:

- From 1 April 2018, landlords of relevant domestic privately rented properties may not grant a new tenancy or renew an existing tenancy if it has an EPC band of F or G.
- From 1 April 2020, landlords may not continue to let or re-let a relevant domestic property if it has an EPC band of F or G.

Therefore, if a landlord wishes to continue to let a property that is below these minimum standards, they will need to carry out relevant works to raise the EPC banding to an E or above. There are exemptions to the requirements of the regulations, and these will be detailed further on in the policy.

The responsibility for enforcing the regulations sits with us. However, the responsibility for ensuring that a property has an Energy Performance Certificate in the first place is held by Trading Standards at Hampshire County Council (HCC). For more information about the requirement to have an EPC, please go to www.hants.gov.uk/business/tradingstandards/aboutus/contactus

This policy forms part of our overall Housing and Homelessness Strategy, which aims to enable people to live in good quality homes that are suitable for their needs. There is a connection between poor housing and poor health. By improving the energy efficiency of homes, ensuring that they are warm and free from hazards will help to contribute to an improvement in the health and wellbeing of the people living there. This will, in turn help to reduce the amount of clinical interventions required for cold and damp related health conditions.

A copy of the strategy is available at
www.rushmoor.gov.uk/housingstrategies

General principles of enforcement

We have an overarching Corporate Sanctions and Enforcement Policy that provides guidance on what can be expected from our regulatory services and how enforcement action is considered and taken, ensuring consistency and good practice.

The principles used to carry out our regulatory activities are:

- Proportionality
- Consistency

- Openness and accountability
- Risk assessment and targeting

Consideration will be given to:

- The Regulators' Compliance Code
- The code for crown prosecutors
- Equality and diversity

Enforcing Minimum Energy Efficiency Standards (MEES) in the private rented sector

Local authorities are responsible for enforcing Minimum Energy Efficiency Standards (MEES) in the private rented sector as set out by the The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015.

This enforcement includes monitoring and taking appropriate enforcement action against landlords who are letting properties that have an EPC band of F or G.

Details of the enforcement action that we can take in the event of a breach of the regulations is detailed further on in the policy.

Since 2008, it has been a requirement for an owner or landlord to have an EPC available on the sale, letting, major modernisation or construction of a property for the prospective owner or tenant. Further information on EPC requirements can be found at www.gov.uk/buy-sell-your-home/energy-performance-certificates

An EPC is valid for ten years and after that there is no requirement for a new one to be commissioned unless one of the above trigger points is reached i.e. the property is sold or let to a new tenant.

Trading Standards at Hampshire County Council are responsible for enforcing the part of the regulations requiring the landlord of a privately rented property to have an EPC. Further details can be found at www.hants.gov.uk/business/tradingstandards/businessadvice/goodsand-services/energyperformance

Domestic properties that do not need an (EPC)

If a landlord or a seller 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) where there are shared facilities, i.e. bathroom, WC or kitchen that is occupied by tenants who have individual tenancy agreements, unless the landlord has an EPC acquired prior to the property becoming an HMO
- Properties where it can be demonstrated that demolition is imminent
- Properties where it can be demonstrated that it is a furnished holiday let

Types of energy efficiency measures which will improve the EPC banding of a property

If a property has an EPC below a band E, the inspection report will detail a list of measures that must be carried out to comply with the MEES regulations and to bring the property up to a band E or above. The following is not an exhaustive list of the type of work that may be required to improve the energy efficiency of a property

- External or cavity wall insulation
- Solid floor insulation
- Insulation to a hot water cylinder
- Insulation to a loft or loft room
- Draughtproofing
- Low energy lighting
- High heat retention storage heater
- Solar panels
- Replacement of single glazed windows with e-rated double glazing
- Gas-fired condensing boilers

Paying for work to improve the energy efficiency in a property if you are a landlord

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 is required to spend. If the improvements are likely to cost more than this the landlord can do 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

Types of tenancies covered by MEES regulations

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

Exemptions to the requirements of the MEES regulations

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 which may last 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
- **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 pass over to a new owner or landlord. The register can be used by us 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.

Enforcement measures that can be used if the MEES regulations have not been followed

If we believe that a landlord has failed to fulfil their obligations set out by the MEES regulations, we can take appropriate enforcement action.

Breaches of the regulations that will attract enforcement action are:

- Where a property with an EPC band below an E, has been privately let to a new or existing tenant from 1 April 2018 and that does not have an exemption registered on the PRS Exemptions Register
- Where a property with an EPC band below an E, has been privately let from 1 April 2020 and that does not have an exemption registered on the PRS Exemptions Register
- Where a landlord has registered false or misleading information for an exemption on the PRS Exemptions Register

If we suspect that a landlord may be in breach of the regulations, we may serve a **compliance notice** on them. This will require the landlord to provide us with all relevant information to help us to establish whether there has been a breach. We can serve a compliance notice on a landlord up to twelve months after the suspected breach has taken place. The compliance notice must be made in writing and may be sent in hard copy or electronically.

The following information will be requested as part of the compliance notice:

- A copy of the EPC certificate that was valid when the property was rented out
- A copy of the tenancy agreement provided when the property was rented out

- Details of any energy improvements that the landlord has made to the property
- A copy of an Energy Advice Report for the property
- Any other documents that the landlord can provide to help us establish whether a breach has occurred

The compliance notice must include:

- The name and address of the person that a landlord must send the information to
- The date by which the requested information must be supplied, this must be at least one calendar month

On receipt of the information, we will decide whether a breach of the regulations has occurred. If no breach has been determined, no further action will be taken.

We may withdraw or amend the compliance notice if new information comes to light.

See Appendix 1 for enforcement flow chart.

Penalties for breaching the MEES regulations

Once we have established that there has been a breach of the regulations from the information in the compliance notice, we can then consider further enforcement action.

We may serve a financial penalty notice or publication notice if we are satisfied that there has been a breach of the MEES regulations. The criteria considered for enforcement action is:

- That there has been a breach of the regulations for letting a substandard property after 1 April 2018 or continuing to let a substandard property after 1 April 2020
- The compliance notice has not been complied with
- The landlord has uploaded false or misleading information to the PRS Exemptions Register

A financial penalty notice can be served up to eighteen months after the breach has occurred. The penalties can be applied for each breach and for each property where a breach has occurred.

The penalty notice will include:

- The provision of the regulations that we consider the landlord has breached
- Details of the breach
- Details of action that the landlord must take to remedy the breach and the date by which this action must be taken (this must be a minimum of one month after the notice has been issued)
- Details of how much the financial penalty is and how it has been calculated
- Details of whether a publication penalty has been imposed

- Details of the date that the financial penalty must be paid. An explanation of the review and appeals process, including the name and address of the person to whom the appeal should be made to and the date by which it must be made. This should include details of the First-tier Tribunal and how to contact them
- Details of the process that will be followed if the landlord does not pay the financial penalty within the set time advising that we may take court action to recover the money

As well as, or instead of the financial penalty, we can publish details of the breach for a set time of at least twelve months. This is referred to as a “publication penalty” that will be registered on the PRS Exemptions Register.

The information that we can publish on the PRS Exemption Register is:

- The landlord’s name (except where the landlord is an individual)
- Details of the breach
- The address of the property where the breach occurred
- The amount of any financial penalty imposed, if applicable

This information cannot be displayed during the appeal period

The financial penalties for each breach of the regulations and are as follows:

BREACH	PENALTY
Letting out a non-compliant property for less than three months	£2,000 and/or a publication penalty
Letting out a non-compliant property for three months or more	£4,000 and/or a publication penalty
Providing false or misleading information on the PRS Exemptions Register	£1,000 and/or a publication penalty
Failure to comply with a compliance notice	£2,000 and/or a publication penalty

The maximum financial penalty that a landlord can be fined per property is £5,000. However, should the landlord re-let the property on a new tenancy we can bring further financial penalties of up to £5,000 for the new breach.

How we will recover financial penalties

If the landlord does not pay the financial penalty we may take the landlord to court to recover the money. We must provide a certificate signed by the person with responsibility for our financial affairs stating that the payment was not received by the given date. This will be accepted as evidence of the landlord's non-compliance with the penalty notice.

Rights of appeal for the landlord

If a landlord does not agree with the financial penalty notice, they can ask us to review its decision. A financial penalty notice can be withdrawn if the following criteria is met:

- New evidence has been provided by the landlord confirming that the breach did not occur
- A breach did occur, but the landlord has taken all reasonable steps to avoid the breach
- After consideration of the circumstances of the case we do not feel that it was appropriate to issue the financial penalty notice

If, after consideration of the appeal or request for a review from the landlord, we decide to uphold the financial penalty notice, the landlord has the right to appeal to the First-Tier Property Tribunal. The circumstances under which the landlord can make this appeal is:

- There was an error of fact or law by us when the financial penalty notice was served
- The financial penalty notice does not comply with the requirements of the regulations
- The landlord feels that it was inappropriate for us to serve a financial penalty notice considering his circumstances

Complaints

We are committed to providing a good quality service and we need to know that we are getting things right. If not, please let us know, as feedback, both positive and negative, is an opportunity to learn and improve services. If you are not happy

with the response or explanation we give, you can find out how to make a formal complaint at www.rushmoor.gov.uk/complaint. You can also ask us for information by emailing customerservices@rushmoor.gov.uk or by calling **01252 398 399**

Policy Review

This policy will be updated and reviewed annually. The Head of Operational Services can agree changes to the policy in consultation with the Cabinet member for Operational Services.

Appendix 1 - Enforcement flow chart - MEES



