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DRAFT STATUTORY INSTRUMENTS

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**2015 No.**

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

**PART 3**

Minimum level of energy efficiency

CHAPTER 6

Penalties – domestic and non-domestic PR property

**Penalty notices**

**38.**—(1) An enforcement authority may, on or after 1st April 2018, serve a notice on L (a “penalty notice”) in any case where it is satisfied that L is, or has been at any time in the 18 months preceding the date of service of the penalty notice, in breach of one or more of the following—

- (a) regulation 23,
- (b) regulation 27,
- (c) regulation 37(4)(a),

imposing a financial penalty, a publication penalty, or both a financial penalty and a publication penalty, in accordance with this Chapter.

(2) A penalty notice must—

- (a) specify the provision of these Regulations which the enforcement authority believes L has breached,
- (b) give such particulars as the enforcement authority considers necessary to identify the matters constituting the breach,
- (c) specify—
  - (i) any action the enforcement authority requires L to take to remedy the breach,
  - (ii) the period within which such action must be taken,
- (d) specify—
  - (i) the amount of any financial penalty imposed and, where applicable, how it has been calculated,
  - (ii) whether the publication penalty has been imposed,
- (e) require L to pay any financial penalty within a period specified in the notice,
- (f) specify the name and address of the person to whom any financial penalty must be paid and the method by which payment may be made,
- (g) state the effect of regulations 42 to 45, and
- (h) specify—

- (i) the name and address of the person to whom a notice requesting a review in accordance with regulation 42 may be sent (and to whom any representations relating to the review must be addressed), and
- (ii) the period within which such a notice may be sent.

(3) Each of the periods specified under paragraph (2)(c) and (e) must not be less than one month, beginning on the day on which the penalty notice is served.

(4) Where L fails to take the action required by a penalty notice within the period specified in that penalty notice in accordance with paragraph (2)(c), the enforcement authority may issue a further penalty notice.

### **Publication penalty**

**39.**—(1) In this Chapter, the “publication penalty” means publication on the PRS Exemptions Register of such of the following information in relation to a penalty notice as the enforcement authority decides—

- (a) where L is not an individual, L’s name,
- (b) details of the breach of these Regulations in respect of which the penalty notice has been issued,
- (c) the address of the property in relation to which the breach has occurred, and
- (d) the amount of any financial penalty imposed.

(2) The information in paragraph (1) must be published for a minimum period of 12 months, and may be published for such longer period as the enforcement authority may decide.

(3) A publication penalty does not take effect until—

- (a) the period specified for requesting a review under regulation 38(2)(h)(ii) has expired or, where a review has been requested, the enforcement authority has not served notice of its decision under regulation 42(2)(c), and
- (b) the period specified for any appeal against the penalty notice has expired or, where an appeal is made, until the appeal has been determined.

### **Breaches in relation to domestic PR property**

**40.**—(1) The penalties set out in this regulation apply where L is, or was, the landlord of a domestic PR property.

(2) Where L has breached regulation 23 and, at the time the penalty notice is served has, or had, been in breach for less than three months, the penalties are—

- (a) a financial penalty not exceeding £2,000, and
- (b) the publication penalty.

(3) Where L has breached regulation 23 and, at the time the penalty notice is served has, or had, been in breach for three months or more, the penalties are—

- (a) a financial penalty not exceeding £4,000, and
- (b) the publication penalty.

(4) Where L has registered false or misleading information under regulation 36(2), the penalties are—

- (a) a financial penalty not exceeding £1,000, and
- (b) the publication penalty.

(5) Where L has failed to comply with a compliance notice in breach of regulation 37(4)(a), the penalties are—

- (a) a financial penalty not exceeding £2,000, and
- (b) the publication penalty.

(6) Where an enforcement authority imposes financial penalties on L in relation to a breach of regulation 23 in respect of a domestic PR property—

- (a) under paragraph (2) or (3), and
- (b) under one or both of paragraphs (4) and (5),

the total of the financial penalties imposed on L must be no more than £5,000.

### **Breaches in relation to non-domestic PR property**

**41.**—(1) The penalties set out in this regulation apply where L is, or was, the landlord of a non-domestic PR property.

(2) Where L has breached regulation 27 and, at the time the penalty notice is served has, or had, been in breach for less than three months, the penalties are—

- (a) a financial penalty not exceeding whichever is the greater of—
  - (i) £5,000, and
  - (ii) 10% of the rateable value of the property,provided that the financial penalty must not exceed £50,000, and
- (b) the publication penalty.

(3) Where L has breached regulation 27 and, at the time the penalty notice is served has, or had, been in breach for three months or more, the penalties are—

- (a) a financial penalty not exceeding whichever is the greater of—
  - (i) £10,000, and
  - (ii) 20% of the rateable value of the property,provided that the financial penalty must not exceed £150,000, and
- (b) the publication penalty.

(4) Where L has registered false or misleading information under regulation 36(2), or has failed to comply with a compliance notice in breach of regulation 37(4)(a), the penalties are—

- (a) a financial penalty not exceeding £5,000, and
- (b) the publication penalty.

(5) In this regulation—

“local non-domestic rating list” means a local non-domestic rating list maintained in accordance with section 41 of the Local Government Finance Act 1988(1),

“rateable value”, in relation to a non-domestic PR property, means the rateable value shown for the property on a local non-domestic rating list at the time the penalty notice is served.

### **Reviews, waiving and modification of penalties**

**42.**—(1) L may, within the period specified under regulation 38(2)(h)(ii), serve notice on the enforcement authority requesting a review of its decision to serve a penalty notice.

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(1) 1988 c.41. Section 41 was amended by paragraphs 19 and 79(3) of Schedule 5 to the Local Government and Housing Act 1989 (c.42), paragraph 59 of Schedule 13 to the Local Government Finance Act 1992 (c.14), section 60(1) of the Local Government Act 2003 (c.26), and sections 29(2) to (5) and 30(2) of the Growth and Infrastructure Act 2013 (c.27).

(2) Where L gives notice in accordance with paragraph (1), or where the enforcement authority decides to review its decision to serve a penalty notice in any other case, the enforcement authority must—

- (a) consider any representations made by L and all other circumstances of the case,
- (b) confirm or withdraw the penalty notice, and
- (c) serve notice of its decision to L.

(3) If, on a review under paragraph (2), the enforcement authority—

- (a) ceases to be satisfied that L committed the breach specified in the penalty notice,
- (b) is satisfied that L took all reasonable steps and exercised all due diligence to avoid committing the breach specified in the penalty notice, or
- (c) decides that in the circumstances of the case it was not appropriate for a penalty notice to be served on L,

the enforcement authority must serve a further notice on L withdrawing the penalty notice.

(4) A notice confirming the penalty notice must state the effect of regulations 43 to 45.

(5) On a review under paragraph (2), the enforcement authority may—

- (a) waive a penalty,
- (b) allow L additional time to pay any financial penalty,
- (c) substitute a lower financial penalty where one has already been imposed, or
- (d) modify the application of a publication penalty.