



# **Telford and Wrekin** **Council**

## **Duties relating to Energy** **Performance Certificates**

### **Procedure and policy for** **enforcement of the regulations** **together with a statement of** **principles for determination of a** **penalty charge**

## **Telford and Wrekin Council**

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

#### **Order of Contents**

<b>Introduction and the legislation</b>
<b>Enforcement procedure</b>
<b>Statement of principles for determination of penalty charge</b>

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## **1. Introduction and the legislation**

The Energy Performance of Buildings (England and Wales) Regulations 2012 introduced a number of legal requirements that from applied the 9<sup>th</sup> January 2013 in relation to Energy Performance Certification of Buildings etc.

The Regulations can be found at the link below:-

<http://www.legislation.gov.uk/uksi/2012/3118/contents/made>

The requirements apply to a 'relevant person' which is defined in Regulation 2 of the Regulations, but for practical purposes of enforcement by the Borough of Telford and Wrekin Council the focus will be on the private rented sector, in the first instance.

Those agents involved in marketing rented properties should now be aware of how the legislation relates to them.

## **2. Enforcement Procedure**

### **2.1 Identify a breach of the Regulations**

During the course of investigating a suspected breach of the regulations, an officer of the Council will identify the failure to comply with the requirements of the Energy Performance Certification of Buildings etc during the course of an intervention at the premises of a 'relevant person'

### **2.2 Enforcement**

An authorised officer of the Borough of Telford & Wrekin may, if he believes that a person has committed a breach of any duty under regulation 6(2), 6(5), 7(2), 7(3), 7(4), 7(5), impose a penalty charge of £200 on that person.

A penalty charge notice may not be given after the end of the period of six months beginning with the day (or in the case of a continuing breach the last day) on which the breach of duty was committed. A penalty charge notice must state the officer's belief that the person has committed a breach of duty; give such particulars of the circumstances as may be necessary to give reasonable notice of the breach of duty; require that person, within a period specified in the notice –

- (i) to pay a penalty charge specified in the notice; or
- (ii) to give notice to the enforcement authority that he wishes the authority to review the notice;

Furthermore it must state the effect of regulation 41; specify the person to whom and the address at which the penalty charge may be paid and the method or methods by which payment may be made; and specify the person to whom and the address at which a notice requesting a review may be sent (and to which any representations relating to the review may be addressed).

The period specified under paragraph (3)(c) of the regulations must not be less than 28 days beginning with the day after that on which the penalty charge notice was given.

The enforcement authority may extend the period for complying in any particular case if they consider it appropriate to do so.

The Borough of Telford and Wrekin Council may, if they consider that the penalty charge notice ought not to have been given, give the recipient a notice withdrawing the penalty charge notice.

The Borough of Telford and Wrekin Council must withdraw a penalty charge notice where the recipient can demonstrate that he took all reasonable steps and exercised all due diligence to avoid breaching the duty or a regulation 37 (defence) applies.

Details on how the Borough of Telford & Wrekin will consider each case is given in the Statement of Principles for Determining the Amount of a Penalty Charge, see Section 3 of this document.

## 2.3 Appeals

If, within the period specified under regulation 36(3)(c) (or that period as extended under regulation 36(5)), the recipient of the penalty charge notice gives notice to the Borough of Telford & Wrekin requesting a review, the authority shall

- (a) consider any representations made by the recipient and all other circumstances of the case;
- (b) decide whether to confirm or withdraw the notice; and
- (c) give notice of their decision to the recipient.

A notice confirming the penalty charge notice must also state the effect of regulations 40 and 41 (appeal to the County Court and recovery of penalty charges).

If the authority are not satisfied that –

- (a) the recipient committed the breach of duty specified in the notice;
- (b) the notice was given within the time allowed by regulation 36(2) and complies with the other requirements imposed by these Regulations; and
- (c) in the circumstances of the case it was appropriate for a penalty charge notice to be given to the recipient,

they shall withdraw the penalty charge notice.

If, after a review, the penalty charge notice is confirmed by the authority, the recipient may, within the period of 28 days beginning with the day after that on which the notice under regulation 39(1)(c) is given, appeal to the **county court** against the penalty charge notice.

The contact details for the purpose of appeal are:

Stoke-on-Trent Combined Court  
Bethesda Street  
Hanley  
Stoke-on-Trent  
ST1 3BP  
[hearings.stoke.countycourt@justice.gov.uk](mailto:hearings.stoke.countycourt@justice.gov.uk)  
01782 854 000

The county court may extend the period for appealing against the notice.

Such an appeal must be on one (or more) of the following grounds –

- (a) that the recipient did not commit the breach of duty specified in the penalty charge notice;

- (b) that the notice was not given within the time allowed by regulation 36(2) or does not comply with any other requirement imposed by these Regulations; or
- (c) that in the circumstances of the case it was inappropriate for the notice to be given to the recipient.

An appeal against a penalty charge notice shall be by way of a rehearing; and the court shall either uphold the notice or quash it.

If the penalty charge notice is withdrawn or quashed, the authority shall repay any amount previously paid as a penalty charge in pursuance of the notice.

### **2.3 Recovery of the penalty**

As detailed in Article 10 of the Order, the Council may recover the monetary penalty on the order of a court, as if payable under a court order. In proceedings for the recovery of the amount due, a certificate which is signed by the enforcement authority's chief finance officer (within the meaning of section 5 of the Local Government and Housing Act 1989(1)); and (b) states that the amount due has not been received by a date specified in that certificate is conclusive evidence of that fact, and a certificate to that effect and purporting to be signed is to be treated as being signed, unless the contrary is proved.

The penalty fines received by Telford & Wrekin Council may be used by the authority for any of its functions.

## **3. Statement of principles for determination a penalty charge under the Regulations**

### **3.1 Statement of Principles**

This statement sets out the principles that the Council will apply in exercising its powers to require a relevant agent to pay a penalty charge.

The Council will have regard to satisfying the balance of probabilities that the agent / property manager has failed to join a redress scheme as required by the regulations.

This statement sets out the principles which the Council will apply and will have regard to when exercising its powers under Regulation 36 of the Regulations. These state that:

*“An authorised officer of an enforcement authority may, if he believes that a person has committed a breach of any duty under regulation 6(2), 6(5), 7(2), 7(3), 7(4), 7(5), 14(3), 18(1), 20, 21, or 35(5), or the EPC construction duty, give a penalty charge notice to that person.”*

### **3.2 Applicable principles**

#### **3.2.1 The purpose of imposing a financial penalty**

The primary purpose of the Council's exercise of its regulatory powers is to protect the interests of the public, although they may have a punitive effect.

The primary aims of financial penalties will be to:

- change the behaviour of the landlord
- aim to deter future non-compliance, and that of other agents/managers
- eliminate any financial gain or benefit from non-compliance with the regulations.

### **3.2.2 Criteria for the imposition of a financial penalty**

By virtue of Regulation 36, a failure to comply with the requirements of the regulations allows the Council to give a penalty charge notice.

In considering the imposition of a penalty the Council will have regard to the evidence of a breach of the requirement.

In deciding whether it would be appropriate to impose a penalty, the Council will take full account of the particular facts and circumstances of the breach under consideration.

### **3.2.3 Amount of penalty charge**

Regulation 38 states the amount of the penalty charge for breaches of 6(2), 6(5), 7(2), 7(3), 7(4) or 7(5) shall be £200.

Telford and Wrekin Council will take into account any representations the relevant person makes during the 28 day period following the penalty charge notice being given.

The Regulations have been in force since 2013, so lack of awareness cannot be considered;

Extenuating circumstances will be taken into account.

Payment will be required within a period not less than 28 days beginning with the day on which the penalty charge notice was served. Payment of the penalty charge notice will be accepted by cheque, made payable to Telford and Wrekin Council or by credit or debit card which can be accepted over the telephone or at Darby House, Addenbrooke House or Wellington Civic Centre. The penalty charge notice will be credited against [R9109 DEAF DE61 Z99](#)

## **Appendix A – Buildings to which these Regulations do not apply**

- (a) buildings officially protected as part of a designated environment or because of their special architectural or historical merit, in so far as compliance with certain minimum energy performance requirements would unacceptably alter their character or appearance;
- (b) buildings used as places of worship and for religious activities;
- (c) temporary buildings with a time of use of two years or less;
- (d) industrial sites, workshops and non-residential agricultural buildings with low energy demand;
- (e) non-residential agricultural buildings which are in use by a sector covered by a national sectoral agreement on energy performance;
- (f) residential buildings which are used or intended to be used –
  - (i) for less than four months of the year, or
  - (ii) for a limited annual time of use and with an expected energy consumption of less than 25% of what would be the result of all-year use; and
- (g) stand-alone buildings with a total useful floor area of less than 50m<sup>2</sup>.