



CIVIL (FINANCIAL) PENALTY POLICY and Enforcement Protocol:

Minimum Energy Efficiency Standards

URBAN RENEWAL DEPARTMENT

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Introduction

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, as amended (most recently by the Energy Efficiency (Private Rented Property) (Amendment) (England and Wales) Regulations 2019) are referred to in this Policy as “the Regulations”.

The Regulations are designed to tackle the least energy-efficient properties in England and Wales – those rated F or G on their Energy Performance Certificate (EPC). The Regulations establish a minimum standard of EPC band E for domestic private rented properties, affecting new tenancies and renewals since 01 April 2018. The Regulations now applies to all properties in scope from 1 April 2020.

There are no exceptions to the requirement to comply with the Regulations. If a domestic property is legally required to have an EPC and is being let on one of the relevant tenancy types then it will be covered by the Regulations, and non-compliance is unlawful.

The minimum level of energy efficiency means that, subject to certain requirements and exemptions:

- a) since 1 April 2018, landlords of relevant domestic private rented properties must not grant a tenancy to new or existing tenants if their property has an EPC rating of F or G (as shown on a valid EPC for the property);
- b) from 1 April 2020, landlords must not continue letting a relevant domestic property which is already let if that property has an EPC rating F or G (as shown on a valid EPC for the property).

These requirements are referred to in the Regulations as “the prohibition on letting of sub-standard property”. Where a property is sub-standard, landlords must normally make energy efficiency improvements which raise the EPC rate to minimum E before they let the property. In certain circumstances, landlords may be able to claim an exemption from this prohibition on letting sub-standard property

Where a valid exemption applies, landlords must register the exemption on the National PRS Exemptions Register. Full details of exemptions, and how to register an exemption are set out [here](#).

Bury Council Officers are authorised to check for different forms of non-compliance with the Regulations and issue penalties for non-compliance. This document outlines the Council’s Civil Penalty Policy and protocol in relation to the Regulations.

Bury Council intends to identify landlords that are not meeting the minimum requirements and determine if it is then appropriate to make a financial penalty and if so, whether or not that financial penalty is published.

As part of the proactive enforcement approach, the Council will also carry out visits under the Housing Act 2004 to undertake assessments under the Housing Health and Safety Rating System. This approach will enable the Council to advise landlords on what actions are necessary for them to take in order for them to be compliant.

Protocol

1. In the first instance the 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 and are therefore committing an offence under the Regulations.

Landlords will be given an appropriate time, normally 14 days, to respond to the notice, either showing evidence that they now have a compliant EPC or to set out a plan to achieve the required energy efficiency level. They 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, both under the Regulations and the Housing Act 2004.

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.

2. The Council has the power to serve Compliance Notices to request information from the landlord that will help them to decide whether there has been a breach. Bury 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 or provides information under the Compliance Notice that shows that they don't comply with the Regulations.

3. 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.

4. If breaches under these regulations are committed the Council will, where appropriate, serve a Penalty Notice. This protocol provides guidance on how Officers will determine the appropriate penalty.

5. Under regulation 39 the Local Authority may publish some details of the landlord's breach on a publicly accessible part of the PRS Exemptions Register. Bury Council will place the information on the register at the appropriate time, for a minimum of 12 months.

6. The Landlord has the right to ask for a Penalty Notice to be reviewed under Regulation 42. Any request for review must be submitted to the Council within 28 days of the Penalty Notice being served. Requests for review after the prescribed time will be considered at the Council's discretion if there is good reason for failing to comply with the time limit set in the Notice.

EPC Guidance for Landlords

To arrange an assessment in order to determine a property's EPC rating and (if necessary what improvement works are needed to bring the minimum standard) A search for an accredited assessor to undertake a domestic EPC assessment can be undertaken [here](#).

Since 2008 all rental properties (with few exceptions) have been required to have a valid EPC before being let on a new tenancy. Therefore, you should already have an EPC for your rental property, and to not have one is unlawful. If you do not have an EPC for the property that you rent, you should make arrangements to obtain one immediately. To find out the current EPC rating for you property, you can search for a PDF copy using the property postcode [here](#).

Regulation and penalties

Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, as amended that it is the duty of local authorities to enforce:

- Regulation 23 A landlord may not let a domestic property with an EPC rating of F or G unless they meet the criteria for an exemption and that exemption has been registered on the PRS Exemptions Register.
- Regulation 37(4)(a) and (b) A landlord must comply with the requirements of any compliance notice issued by an enforcing authority and allow the enforcing authority to take copies of any original documentation produced.

If an enforcement authority believes a landlord may be in breach of regulation 23, they may serve the landlord with a compliance notice under regulation 37, requesting information to help them determine whether a breach has occurred. They may serve a compliance notice up to 12 months after a suspected breach occurred.

The enforcement authority may serve a compliance notice that requests information from that landlord which will help them to decide whether that landlord has in fact breached the prohibition. The fact that an enforcement authority may serve a compliance notice on a landlord up to 12 months after the suspected breach means that a person may be served with a compliance notice after they have ceased to be the landlord of the property. It is good practice, therefore, for landlords to retain any records and documents relating to a let property that may be used to demonstrate compliance with the Regulations.

Any notice that is served under the Regulations must be in writing and may be sent in hard copy or electronically. Where a notice is served on a corporate body it may be given to the secretary or clerk of that body if a suitable named individual cannot be identified. Where a notice is served on a partnership, it may be addressed to any partner, or to a person who has control or management of the partnership business.

Compliance Notice

A compliance notice served by an enforcement authority may request either the original or copies of the following information:

- the EPC that was valid for the time when the property was let;
- any other EPC for the property in the landlord's possession;
- the current tenancy agreement used for letting the property;
- any Green Deal Advice Report in relation to the property;
- any other relevant document that the enforcement authority requires in order to carry out its compliance and enforcement functions.

The compliance notice may also require the landlord to register copies of the requested information on the PRS Exemptions Register. The compliance notice will specify:

- the name and address of the person that a landlord must send the requested information to;
- the date by which the requested information must be supplied (the notice must give the landlord at least one calendar month to comply).

The landlord must comply with the compliance notice by sending the requested information to the enforcement authority and allow copies of any original documents to be taken. Failure to provide documents or information requested by a compliance notice, or failure to register information on the PRS Exemptions Register as required by a compliance notice, may result in a penalty notice being

served. The enforcement authority may withdraw or amend the compliance notice at any time in writing, for example where new information comes to light. The enforcement authority may also use the documents provided by the landlord or any other information it holds to decide whether the landlord is in breach of the Regulations.

It is the decision of the enforcement authority or its authorised officer to determine what action is appropriate when they determine that breaches of the regulations are being committed. It may be that providing advice and information is sufficient to ensure compliance. In some cases educating the landlord regarding the benefits of making cost-effective energy efficiency improvements to their property may be all the encouragement needed to ensure compliance with the requirements. However, in some cases, it may be that only imposing a penalty will do. It is for the enforcement authority or its authorised officer to decide what is the appropriate action in the circumstances. Below outlines the penalties that may be imposed by the enforcement authority or its authorised officer, through serving a penalty notice:

Summary of available penalties:

- Regulation 40(2)(a) and (b) A domestic landlord has breached regulation 23 and at the time the penalty notice is served has, or had, been in breach for less than three months. A financial penalty not exceeding £2,000, and a publication penalty
- 40(3)(a) and (b) A domestic landlord has breached regulation 23 and at the time the penalty notice is served has, or had, been in breach for three months or more. A financial penalty not exceeding £4,000, and a publication penalty
- 40(4)(a) and (b) A domestic landlord has registered false or misleading information on the PRS Exemptions Register. A financial penalty not exceeding £1,000, and a publication penalty
- 40(5)(a) and (b) A domestic landlord has failed to comply with a compliance notice served under regulation 37(4)(a) A financial penalty not exceeding £2,000, and a publication penalty
- The total financial penalties imposed on the Landlord in relation to the breaches in regulations outlined above must be no more than £5,000

Publication Penalty

A publication penalty means that Bury 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 view by the public for at least 12 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;
- the amount of any financial penalty imposed.

The Council may decide how much of this information to publish. However, the Council may not place this information on the PRS Exemptions Register while the penalty notice could be, or is being reviewed by the Council or while the Council's decision to uphold the penalty notice could be, or is being, appealed.

Factors in determining the level of Civil Penalty

In determining the Civil Penalty amount, Bury Council will have regard to the statutory guidance outlined above and also to the Bury Civil Penalty Policy for Housing Standards (taking into account Culpability of the offender and the potential for tenant harm) to ensure a cohesive approach is taken.

When determining the financial penalty the Council will take the following approach:

- Three factors are considered, the culpability of the offender, the potential for tenant harm and the severity of risk. Collectively these factors identify the seriousness of the offence. The seriousness is then categorised, which then will be used to determine the amount of penalty.
- A determination of the offender’s history of legal compliance
- A Penalty review. The Council will check that the penalty is proportionate to the overall means of the offender and if there are multiple offences the Council will ensure the maximum penalty does not exceed £5,000.

Officers will first consider factors affecting culpability and harm to choose a starting point from the table below for the financial penalty under consideration.

Factors affecting culpability:

High: Landlord has failed to comply with requests to comply with these regulations. Knowingly or recklessly providing incorrect information in relation to exemptions to these regulation

Low: First breach under these regulations, no previous history of non-compliance of with Housing related regulatory requirements. Complex issues partially out of control of the landlord have led to non-compliance.

Factors affecting harm/risk:

High: Low EPC rating e.g. G or close to G rating, vulnerable tenants occupying property and/or, extended period of time since non-compliance.

Low: EPC score close to minimum acceptable EPC rating (E), No vulnerable tenants and/or short period of non-compliance.

	Low Culpability	High Culpability	Notes
Low Harm	25%	50%	% is the proportion of maximum penalty imposed
High Harm	50%	100%	

Tables to show starting points for penalty for each type of breach:

Not meeting minimum standard for less than 3 months: MAX £2,000

	Low Culpability	High Culpability
Low Harm	£500	£1000

High Harm	£1000	£2000
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Not meeting minimum standard for more than 3 months: MAX £4,000

	Low Culpability	High Culpability
Low Harm	£1000	£2000
High Harm	£2000	£4000

Providing False and Misleading information; MAX £1,000

	Low Culpability	High Culpability
Low Harm	£250	£500
High Harm	£500	£1000

Failing to comply with a Compliance Notice; MAX £2,000

	Low Culpability	High Culpability
Low Harm	£500	£1000
High Harm	£1000	£2000

If two or more Penalty Notices apply, the statutory maximum per set of breaches at an individual property at a single point of time will be £5000.

Further consideration of Aggravating and Mitigating Factors

Officers may then consider it appropriate to adjust the penalty from that determined in the table either up or down. If there are particular aggravating or mitigating factors such as Landlord has a previous history of non-compliance with housing related regulatory requirements.

Factors may come to light as part of the investigation for the breaches these adjustments will be made and included in the Financial Penalty. Details of these factors will be included in the Penalty Notice.

In addition factors may be provided in representations from a landlord in his request to review after the Penalty Notice has been served.

Officers will have regard to these factors and adjust the penalty to increase (up to the Maximum of £5000) or to reduce the penalty as they feel appropriate.

Review of the penalty

The Council must check whether the level of penalty is proportionate to the overall means of the defendant. If necessary the initial amount may be amended to ensure it fulfils the general principles outlined above. The Council will, when issuing a financial penalty for more than one offence, or where an offender has also been issued with another financial penalty, consider the total penalties are just and appropriate to the offending behaviour and make adjustments accordingly.

The overriding principle is that the overall penalty must be just and proportionate.

The landlord will be served a Notice after the review with an explanation of any adjustment made.

Record of the Decision

A record of each decision and the reasons for the financial / publication penalty will be made by an appropriate officer and how the amount of the penalty was obtained and the reasons for imposing it.

Appeals

A landlord also has the right to ask the enforcement authority to review its decision to serve a penalty notice. Appeals concerning penalties are initially to be made to the Council. This request must be made in writing (by a period of fourteen days beginning with the day after that on which the notice was given) to:

Urban Renewal

Bury Town Hall

Knowsley Street

Bury

BL9 0SW

When the Council receives the request, everything the landlord has said in the request will be considered and a decision will be made whether or not to withdraw the penalty notice. The Council must withdraw the penalty notice if:

- the Council is satisfied that the landlord has not committed the breach set out in the penalty notice;
- although the Council still believes the landlord committed the breach, the Council is satisfied that the landlord took all reasonable steps, and exercised all due diligence to avoid committing the breach; or
- the Council decides that because of the circumstances of the landlord's case, it was not appropriate for the penalty notice to be served.

If the Council does not decide to withdraw the penalty notice, a decision may be made to waive or reduce the penalty, allow the landlord additional time to pay, or modify the publication penalty, and must explain the appeals process and how financial penalties can be recovered. The Council will inform the landlord of the decision reached in writing

If the Council upholds a penalty notice on appeal, the landlord has a right to appeal to the First Tier Tribunal (General Regulatory Chamber).