

Monmouthshire County Council

Protocol for the Enforcement of the Domestic Minimum Level of Energy Efficiency

December 2020

Introduction

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (henceforth “the Regulations”) are designed to tackle the least energy-efficient properties in England and Wales – currently those rated F or G on their Energy Performance Certificate (EPC). The Regulations establish a minimum level of energy efficiency for both domestic and non-domestic privately rented property.



This protocol will reflect the approach and ideals of the MCC Corporate Enforcement Policy in order to enforce and promote the Regulations. Where authorised, Monmouthshire County Council (MCC) Public Protection officers will check for different forms of non-compliance within the Regulations including:

- From 1 April 2018 granting a new tenancy for a domestic/non-domestic private rental property that is below the minimum level of energy efficiency rating of E.¹
- From 1 April 2020 continuing to let a domestic private rental property that is below the minimum level of energy efficiency rating of E²
- From 1 April 2023 continuing to let a non-domestic private rental property that is below the minimum level of energy efficiency of E.³

¹ Regulation 23 for domestic properties and Regulation 27 for non-domestic properties

² Regulation 23

³ Regulation 27

- Where the landlord has registered any false or misleading information on the government's [National PRS Exemptions Register](#),⁴
- Failed to comply with a compliance notice⁵

MCC will identify landlords who have private rental properties that are not meeting the minimum levels of energy efficiency. Assistance will then be provided to try and bring them into compliance. If they remain non-compliant after receiving guidance, then the case will be reviewed to determine if it would be appropriate to issue a penalty notice.

As part of its proactive enforcement approach, the Council may 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.

Government Guidance

The Department for Business Energy and Industrial Strategy have produced guidance for domestic properties published in 2017 and updated in 2020;

[*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*](#)

They also published guidance for non-domestic landlords in 2019

<https://www.gov.uk/government/publications/non-domestic-private-rented-property-minimum-energy-efficiency-standard-landlord-guidance>

MCC has had regard to this guidance when preparing this protocol on the enforcement of the Regulations.

⁴ Regulation 40(5) for domestic properties and Regulation 41(5) for non-domestic properties.

⁵ Regulation 38(1)(c)

Purpose of this protocol

In accordance with Regulation 34 Local Authorities are responsible for enforcing the requirements within their area. The purpose of this protocol is to describe how officers of MCC will enforce the Regulations.

Scope of the protocol

1. In the first instance MCC will advise Landlords who rent properties with an EPC rating of F or G (who are not subject to an appropriate exemption) they do not meet the minimum energy efficiency standard and are therefore contravening the Regulations.

Landlords will be given an appropriate time, normally 14 days, to respond to the notice, either showing evidence they now have a compliant EPC, or set out a plan to achieve the required energy efficiency level. The landlords will be warned if they continue to be in breach after the time given, an investigation will follow and formal enforcement action will be considered. The matter may also be referred to the Environmental Health Team under the Housing Act 2004.

MCC 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. MCC has the power to serve Compliance Notices⁶ to request information from the landlord that will help MCC determine whether a breach of the Regulations has occurred. MCC will consider serving Penalty Notices where a landlord fails to comply with a Compliance Notice⁷, or provides information under the Compliance Notice that shows that they don't comply with the Regulations.

3. MCC 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/or a publication penalty.⁸

4. If breaches under these Regulations are committed MCC will, where appropriate, serve a Penalty Notice. This protocol provides guidance for officers on how to determine the appropriate penalty. See Appendix 1 & 2.

5. Under the Regulations, the Local Authority may publish some details of the landlord's breach on a publicly accessible part of the PRS Exemptions Register.

⁶ Regulation 37(1)

⁷ Regulation 38(1) (c)

⁸ Regulation 40(4) for domestic properties, Regulation 41(4) for non-domestic properties.

MCC 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.⁹ Any request for review must be submitted to MCC within 28 days of the Penalty Notice being served. Requests for review after the prescribed time will be considered at MCC's discretion if there is good reason for failing to comply with the time limit set in the Notice.

7. If the penalty notice is affirmed upon review, the landlord may then appeal to the First Tier Tribunal if they believe it was issued either on an error of law or fact. They may also appeal if the penalty notice does not comply with the requirements of the Regulations, or based on the circumstances of the case it was inappropriate for the penalty notice to be served.¹⁰

⁹ Regulation 42.

¹⁰ Regulation 43.

Appendix 1

[The Energy Efficiency \(Private Rented Property\) \(England and Wales\) Regulations 2015](#)

Domestic Properties - Guidance for determining the level of a financial penalty

This appendix ensures that the penalty will be proportionate and reflect the severity of the Offence, and should be set high enough to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities. The offender's income and track record will be taken into account in each case. Therefore, as the maximum level of penalty varies depending on the type of breach under the Regulations any penalty will commensurate to the particular circumstance of any individual case.

Financial penalties for domestic properties (Regulation 40)

Where the Local Authority decides to impose a financial penalty, they have the discretion to decide on the amount of the penalty, up to maximum limits set by the Regulations. The maximum penalties are as follows:

(a) Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than 3 months, the Local Authority may impose a financial penalty of up to £2,000 and may impose the publication penalty.

(b) Where the landlord has let a sub-standard property in breach of the regulations for 3 months or more, the Local Authority may impose a financial penalty of up to £4,000 and may impose the publication penalty.

(c) Where the landlord has registered false or misleading information on the PRS Exemptions Register, the Local Authority may impose a financial penalty of up to £1,000 and may impose the publication penalty.

(d) Where the landlord has failed to comply with compliance notice, the Local Authority may impose a financial penalty of up to £2,000 and may impose the publication penalty.

Monmouthshire County Council will use the following as a guide to officers to determine the appropriate penalty for domestic properties.

When determining the financial penalty the MCC will take a staged approach, with Stage 1 and 2 combined in this instance:

Stage 1 – 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 will be used to determine the amount of penalty.

Stage 2 – This stage determines the offender’s history of legal compliance

Stage 3 – Penalty review. MCC will check the penalty is proportionate to the overall means of the offender and if there are multiple offences the Council will take the totality principle into account.

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

Stages 1 and 2:

Factors affecting culpability:

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

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%	% = Proportion of maximum penalty
High harm	50%	100%	

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

a) Not meeting minimum standard for less than 3 months¹¹: MAX £2,000

	Low Culpability	High Culpability

¹¹ Where the non compliance is less 3 months Reg 40(2)(a) sets the maximum financial penalty that can be applied.

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

b) Not meeting minimum standard for more than 3 months¹²: MAX £4,000

	Low Culpability	High Culpability
Low Harm	£1,000	£2,000
High Harm	£2,000	£4,000

c) Providing False and Misleading Information, Exemptions Register MAX £1,000

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

d) 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 £5000¹³

(Stage 2) Further consideration of Aggravating and Mitigating Factors

Officers may consider it appropriate to adjust the penalty from that determined in the table either up or down depending on particular aggravating or mitigating factors. This may include a Landlords previous history of non-compliance or good compliance with housing related regulatory requirements.

If factors come to light as part of the investigation that require any adjustments to the financial penalty, these factors will be included in the Financial Penalty.

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 either increase the penalty (up to the Maximum of £5000) or to reduce the penalty as they feel appropriate.

¹² Where the non compliance is more than 3 months Reg 40(3)(a) sets the maximum financial penalty that can be applied

¹³ Regulation 40(6)

Stage 3 – Review of the penalty

MCC 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.

Reductions

The Council must consider any factors which indicate a reduction in the penalty may be appropriate, and should have regard to the wider implications of the financial penalty on innocent third parties; for example the impact of the offender's ability to comply with the law or to make restitution to the victims/tenants

Reduction for admission of guilt

MCC will take into account a potential reduction in the penalty for an admission of guilt and/or with the cooperation with the investigation. The level of reduction will be decided upon the following factors

- When the offender admits guilt in the course of the investigation or thereafter
- The circumstances in which they admitted guilt
- The degree of cooperation with the investigation

Totality Principle

In addition to maximum penalties listed in Regulation 40, MCC will, when issuing a financial penalty for more than one offence (e.g penalties for more than one property), or where an offender has also been issued with another financial penalty, consider if 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.

Appendix 2

[The Energy Efficiency \(Private Rented Property\) \(England and Wales\) Regulations 2015](#)

Non-Domestic Properties -Guidance for determining the level of a financial penalty.

This Appendix ensures that the penalty will be proportionate and reflect the severity of the Offence, and should be set high enough to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities. The offender's income and track record will be taken into account in each case. Therefore, as the maximum level of penalty varies depending on the type of breach under the Regulations any penalty will commensurate to the particular circumstance of any individual case.

Financial Penalties for Non – Domestic Properties Regulation 41

Where the Local Authority decides to impose a financial penalty, they have the discretion to decide on the amount of the penalty, up to maximum limits set by the Regulations. The maximum penalties are as follows:

(a) Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than 3 months, the Local Authority may impose a financial penalty of up to £5,000 or 10% of the rateable value of the property (whichever is greater, but not exceeding £50,000) and may impose the publication penalty.

(b) Where the landlord has let a sub-standard property in breach of the regulations for 3 months or more, the Local Authority may impose a financial penalty of up to £10,000 or 20% of the rateable value of the property (whichever is the greater, but not exceeding £150,000) and may impose the publication penalty.

(c) Where the landlord has registered false or misleading information on the PRS Exemptions Register, the Local Authority may impose a financial penalty of up to £5,000 and may impose the publication penalty.

(d) Where the landlord has failed to comply with compliance notice, the Local Authority may impose a financial penalty of up to £5,000 and may impose the publication penalty.

Monmouthshire County Council will use the following as a guide to officers to determine the appropriate penalty for non-domestic properties.

When determining the financial penalty the MCC will take a staged approach, with Stage 1 and 2 combined in this instance:

Stage 1 – 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 will be used to determine the amount of penalty.

Stage 2 – This stage determines the offender’s history of legal compliance

Stage 3 – Penalty review. MCC will check the penalty is proportionate to the overall means of the offender and if there are multiple offences the Council will take the totality principle into account.

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

Stages 1 and 2:

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, extended period of time since non-compliance.

Low: EPC score close to minimum acceptable EPC rating (E), short period of non-compliance.



	Low culpability	High culpability	Notes
Low harm	25%	50%	% = Proportion of maximum penalty
High harm	50%	100%	

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

- e) Not meeting minimum standard for less than 3 months¹⁴: MAX £5,000 or 10% of rateable value (rv) whichever is greater (subject to cap of £50,000)

	Low Culpability	High Culpability
Low Harm	£1250 or 2.5%rv	£2500 or 5%rv
High Harm	£2500 or 5%rv	£5000 or 10%rv

- f) Not meeting minimum standard for more than 3 months¹⁵: MAX £10,000 or 20% of rateable value, whichever is greater (subject to cap of £150,000)

	Low Culpability	High Culpability
Low Harm	£2500 or 2.5%rv	£5,000 or 5%rv
High Harm	£5,000 or 5%rv	£10,000 or 10%rv

- g) Providing False and Misleading information; MAX £5,000

	Low Culpability	High Culpability
Low Harm	£1250	£2500
High Harm	£2500	£5000

- h) Failing to comply with a Compliance Notice; MAX £5,000

	Low Culpability	High Culpability
Low Harm	£1250	£2500
High Harm	£2500	£5000

(Stage 2) Further consideration of Aggravating and Mitigating Factors

Officers may consider it appropriate to adjust the penalty from that determined in the table either up or down depending on particular aggravating or mitigating factors. This may include a Landlords previous history of non-compliance or good compliance with housing related regulatory requirements.

¹⁴ Where the non compliance is less 3 months Reg 41(2)(a) sets the maximum financial penalty that can be applied.

¹⁵ Where the non compliance is more than 3 months Reg 41(3)(a) sets the maximum financial penalty that can be applied

If factors come to light as part of the investigation that require any adjustments to the financial penalty, these factors will be included in the Financial Penalty.

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

Officers in conjunction with their respective Team Leader will have regard to these factors and either increase the penalty, or to reduce the penalty as they feel appropriate.

Stage 3 – Review of the penalty

MCC 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.

Reductions

The Council must consider any factors which indicate a reduction in the penalty may be appropriate, and should have regard to the wider implications of the financial penalty on innocent third parties; for example the impact of the offender's ability to comply with the law or to make restitution to the victims/tenants

Reduction for admission of guilt

MCC will take into account a potential reduction in the penalty for an admission of guilt and/or with the cooperation with the investigation. The level of reduction will be decided upon the following factors

- When the offender admits guilt in the course of the investigation or thereafter
- The circumstances in which they admitted guilt
- The degree of cooperation with the investigation

Totality Principle

MCC will, when issuing a financial penalty for more than one offence, or where an offender has also been issued with another financial penalty, consider if 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.