

- Deterrence of the offender from repeating the offence – Knowing that they risk being included on the database if the local authority actively exercises its discretionary powers of entry may deter some landlords from repeat offending, as they will be unable to simply move from one local housing authority to another and repeat the same offences as the information will be available to other local housing authorities.
- Deterrence of others from committing similar offences – Knowing that they risk being included on the database if the local authority actively exercises its discretionary powers of entry may deter some landlords from committing banning order offences in the first instance.

Before a local authority may make a discretionary entry, it must give the landlord or agent at least 21 days' notice advising that it has decided to place them on the database, and the notice must be provided within 6 months of the conviction or receipt of the second civil penalty.

When placing an entry onto the database, the local authority must record the following, and take reasonable steps to keep the information up to date.

The following information must be recorded where a landlord or agent is placed on the database:

- Full name and address of landlord or agent (or registered address for a company);
- Addresses of all properties owned, let, or managed by the landlord or agent;
- National Insurance number and date of birth of the landlord or agent (unless a company);
- Length of the ban
- Date for removal from the database
- Description of each Banning Order offence
- Description of each banned activity (when applicable)
- Local authority making the entry

A landlord or agent remains on the database for the period a Banning Order is in effect, or for at least two years for a discretionary entry.

When exercising these powers in relation to entries in the Database, Wigan Council will follow the provisions of both legislation and applicable Government guidance.

10.2. Other Court Convictions

Verdicts and sentences in criminal cases are made in open court and are usually a matter of public record. Evidence suggests that the public want to know about local court cases and judgements.

The Council may publish the outcome of criminal cases and basic personal information about the offender, and this will always be in accordance with guidance issued by the Criminal Justice System (Publishing Sentencing Outcome, CJS, 2011).

The reasons are to:

- Reassure the public that offences are dealt with;
- Increase trust and confidence in the criminal justice system;
- Improve the effectiveness of the criminal justice system;
- Discourage offending or re-offending.

Providing this information to the public is a legitimate way of engaging communities and making criminal justice more transparent and accountable, whilst also providing a deterrence effect for potential offenders.

11. Charging for Enforcement Action

The Housing Act 2004 allows us to charge for taking enforcement action, where enforcement action involves the service of statutory notices and orders notices.

In prosecution cases the Council will seek to recover the costs incurred in taking a prosecution case, which include administrative costs incurred for preparing the prosecution file; attendance at court and Legal costs for preparing and presenting the case.

In cases where a property has been let illegally, or where there has been a breach of legal requirements, the Council will consider applying to the First Tier Tribunal Service to recover rent from a landlord through a Rent Repayment Order. It will also give advice to tenants on how they may recover rents through applying to the Tribunal Service in these circumstances.

Where there is substantial financial gain for a landlord or owner through non-compliance with legislative requirements in the private rented sector, the Council will consider taking action to confiscate or recover monies gained through illegal activities under the Proceeds of Crime Act 2002.

See Appendix A for detailed information surrounding Civil Penalties.

12. Information and Data Management

In operating this Policy, the Council will collect and hold information, including personal data, such as case files and incident reports, containing personal information (names, addresses, contact details, etc), and timelines of events.

In some cases, the Council will also collect and hold copies of photos, video recordings, text/online messages, emails, tenancy agreements, etc., to use as an evidence base for any enforcement action taken.

Records will normally be held in electronic format, but may, on occasion, be held in hard copy.

The Council holds personal data in accordance with the General Data Protection Regulation (GDPR).

The Council will hold personal data as set out in the [Data Privacy Primary Notice](#) and [Private Sector Housing Privacy Notice](#).

The Council will retain information in line with the relevant Retention Schedule for Private Sector Housing.

13. Reviewing the Policy

The policy will be reviewed on a three-yearly basis, or as and when any significant changes are made to legislation or Council strategy which would affect the scope, objectives, functionality, or efficacy, of this policy as directed by the Council's Senior Management team. A review effected on the latter basis of a change in legislation or Council strategy.

14. Compliments and Complaints

If you are unhappy that the Council has taken enforcement action (for example a Notice has been served on you or work in default has been undertaken), we suggest that you first discuss the matter with the officer assigned to your case to aim to resolve the matter.

Officers of the Council will provide an effective and courteous service to landlords and others against whom enforcement action may be taken. Any complaints regarding the behaviour of staff will be dealt with according to Wigan Council's complaint procedure. If you feel that we have failed to act or treat you in accordance with the provisions outlined in this policy, then please contact us.

Should you fail to reach a resolution, you do have a right of appeal to the First-Tier Tribunal (Property Chamber), depending on the type of Notice you have received. Information concerning the relevant appeal process will be included on any legal Notice you are served with.

As required by the Regulators Code, the authority has a Compliments and Complaints Procedure which allows all service users to give a compliment, give feedback or make a formal complaint. This can be accessed through the Council's website or by telephoning the contact centre.

15. Accessible Formats

For copies of this policy in alternative or accessible formats, please contact the email address pshadvice@wigan.gov.uk, or call on 01942 489204.

16. Further Information

For further information or questions regarding this policy, please contact us using the following details:

- Email: pshadvice@wigan.gov.uk
- Telephone: 01942 489204.
- Address: Wigan Council, Strategic & Private Sector Housing, PO Box 100, Wigan, WN1 3DS

17. Appendix A - Policy on Civil Penalties

Policy on Civil Penalties as an alternative to prosecution under The Housing and Planning Act 2016

Introduction

The Housing and Planning Act 2016 introduced Civil Penalties of up to £30,000 from 6th April 2017 as an alternative to prosecution for certain offences under the Housing Act 2004.

These are:

- **Section 30 (failure to comply with an Improvement Notice)**
- **Section 72 (offences in relation to licensing of HMOs)**
- **Section 95 (offences in relation to licensing of houses under Part 3 (Selective Licensing))**
- **Section 139(7) (failure to comply with an overcrowding notice)**
- **Section 234 (breach of Management Regulations in respect of an HMO)**

The power to impose a civil penalty as an alternative to prosecution for these offences was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

In determining the Civil Penalty amount, the Local Housing Authority will have regard to the statutory guidance issued under schedule 9 of the Housing and Planning Act 2016 and also to the Government's Department of Communities and Local Government (DCLG) developed Civil Penalty Matrix.

Burden of Proof

The criminal burden of proof, i.e. beyond all reasonable doubt, must be satisfied before a Civil Penalty can be issued as an alternative to prosecution. The Local Housing Authority must satisfy itself that there would be a realistic prospect of conviction, applied objectively, given the evidence available.

In assessing the evidence, regard must be given to the Code for Crown Prosecutors and, when deciding whether there is sufficient evidence to prosecute, consideration must be given as to whether the evidence can be used and is reliable.

Due regard must be given to any potential defense's available and, in certain circumstances, the Local Housing Authority may decide to conduct an interview under caution in accordance with PACE codes of practice to assist in determining whether the issue of a Civil Penalty is appropriate or not.

Factors in deciding whether to Prosecute or issue a Civil Penalty

Each case will be decided upon its own merits taking into account all the evidence available.

Where the Local Housing Authority considers that a Housing Act offence has been committed, it must decide whether to prosecute or to issue a civil penalty as an alternative to prosecution. The following factors, whilst not exhaustive, are examples of where it would usually be appropriate to consider prosecution:-

- The seriousness of the offence; e.g. breach of a Prohibition Order would be an offence only suitable for prosecution.
- Forms part of a wider prosecution; e.g. Health and Safety Inspection
- The antecedents of an individual; e.g. a landlord indicates that he / she has been regularly prosecuted for Housing Act or similar offences.

The following factors, whilst not exhaustive, are examples of where it would usually be appropriate to consider the issue of a Civil Penalty:-

- No evidence of previous non-compliance with appropriate legislation.
- Offence was committed as a result of a genuine mistake or misunderstanding, (these factors must be balanced against the seriousness of the offence)
- Prosecution is likely to have a serious adverse effect upon an individual's well-being; e.g. a landlord's physical or mental health, but always bearing in mind the seriousness of the offence.

Factors in determining the level of Civil Penalty

In order to ensure that the civil penalty is set at an appropriate level the following factors will be considered:-

- The seriousness of the offence, determined by the harm caused and the culpability of the offender
- The history of compliance by the offender
- The punishment of the offender for the offence
- The deterrent value to prevent the offender from repeating the offence
- The deterrent value to prevent others from committing similar offences
- Removing any financial benefit obtained from committing the offence

Harm Caused

In determining the level of harm the Local Housing Authority will have regard to:

- The person: i.e. physical injury, damage to health, psychological distress
- To the community; i.e. economic loss, harm to public health
- Other types of harm; i.e. public concern/feeling over the impact of poor housing condition on the local neighbourhood

The nature of the harm will depend on the personal characteristics and circumstances of the victim, e.g. the tenant.

Where no actual harm has resulted from the offence, the Local Housing Authority will consider the relative danger that persons have been exposed to as a result of the offender's conduct, the likelihood of harm occurring and the gravity of harm that could have resulted.

Factors that indicate a higher degree of harm include:

- Multiple victims
- Especially serious or psychological effect on the victim
- Victim is particularly vulnerable

Examples of Harm Categories

High	Housing defect giving rise to the offence poses a serious and substantial risk of harm to the occupants and/or visitors; for example, danger of electrocution, carbon monoxide poisoning or serious fire safety risk.
Medium	Housing defect giving rise to the offence poses a serious risk of harm to the occupants and/or visitors; for example, falls between levels, excess cold, asbestos exposure.
Low	Housing defect giving rise to the offence poses a risk of harm to the occupants and/or visitors; for example, localised damp and mould, entry by intruders.

Culpability

In determining culpability the Local Housing Authority will have regard to 4 levels of culpability.

Where the offender -

- Has the **intention** to cause harm, the highest culpability where an offence is planned.
- Is **reckless** as to whether harm is caused, i.e. the offender appreciates at least some harm would be caused but proceeds giving no thought to the

consequences, even though the extent of the risk would be obvious to most people.

- Has **knowledge** of the specific risks entailed by his actions even though he does not intend to cause the harm that results.
- Is **negligent** in their actions.

Examples of Culpability

Very High (Deliberate Act)	Intentional breach by landlord or property agent or flagrant disregard for the law e.g. where an unregistered gas fitter is allowed to carry out gas work and the landlord/property agent knows that he is not registered.
High (Reckless Act)	Serious or systemic failings, actual foresight of or wilful blindness to risk of offending but risks nevertheless taken by the landlord or property agent; e.g. failure to comply with HMO Management Regulations
Medium (Negligent Act)	Failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems for avoiding commission of the offence; e.g. part compliance with a schedule of works, but failure to fully complete all schedule items within notice timescale.
Low (Low or no culpability)	Offence committed with little or no fault on the part of the landlord or property agent; e.g. obstruction by tenant to allow contractor access, damage caused by tenants

Correlation between Harm and Culpability in determining the Civil Penalty Amount

In assessing the seriousness there is a need to consider both culpability and harm.

The table below sets out the interrelation between harm and culpability as a determinant of the appropriate Civil Penalty banding level to be applied.

Low Culpability/High Harm Band 4	Medium Culpability/High Harm Band 5	High Culpability/High Harm Band 6	Very High Culpability/High Harm Band 8
Low Culpability/Medium Harm Band 3	Medium Culpability/Medium Harm Band 4	High Culpability/Medium Harm Band 5	Very High Culpability/Medium Harm Band 7
Low Culpability/Low Harm Band 1	Medium Culpability/Low Harm Band 2	High Culpability/Low Harm Band 3	Very High Culpability/Low Harm Band 4

Level of Civil Penalty to be imposed

In determining the financial value of an imposed penalty, subject to a maximum of £30,000, the Local Housing Authority shall have regard to the Banding Levels referred to in Appendix 1.

Where there is more than one offence each offence will be given a banding level based upon the criteria identified in this Policy. Each of those offences may have a different banding level dependent upon the circumstances of the offence.

The Civil Penalty should be fair and proportionate given the circumstances of the case but in all instances should act as a deterrent and remove any gain as a result of the offence.

The starting point for the Civil Penalty will be the mid –point of the relevant band level and is based upon the assumption that no aggravating / mitigating factors apply to the offence.

An offender will be assumed to be able to pay a penalty up to the maximum amount unless they can demonstrate otherwise.

Aggravating Factors

The penalty may be increased by £1000 for each aggravating factor up to the maximum of the band level determined in Appendix 1.

Mitigating Factors

The penalty may be decreased by £1000 for each mitigating factor to the minimum of the band level determined in Appendix 1.

Sentencing Guidelines

When considering any relevant aggravating and mitigating factors due regard should, inter alia, be given to the Sentencing Council Guidelines.

Assessment of Assets and Income

Where the Local Housing Authority are satisfied that the assets and income (not just rental income) of the offender are such that it is just and appropriate to increase or reduce the penalty then the penalty may be increased or reduced on a sliding scale, dependent upon the financial circumstances of the offender, up to the maximum or minimum point of the banding level identified for the offence.

Reduction in Penalty Imposed

The Local Housing Authority may reduce the penalty imposed where corrective action is taken in respect of the offence committed in a timely and appropriate manner in circumstances where the Local Housing Authority have assessed the category of culpability as being low or medium.

Such reduction will only be applied where the corrective action has been taken prior to the service of the Final Notice.

The maximum level of reduction to be applied will be 30% of the penalty amount and each case will be considered on its own merits.

Civil Penalties

Multiple Offences

Where the Local Housing Authority are satisfied that more than one offence has been committed concurrently in respect of a single property, they may issue multiple Civil Penalty Notices for each offence (e.g. where there are multiple breaches of the HMO Management Regulations).

Multiple Penalties

Where satisfied on the merits of the case and/or where the Local Housing Authority consider that issuing multiple penalties at the same time would result in an excessive cumulative penalty, nothing in this policy shall require the authority to do that. The authority may take action in respect of one or some of the offences and warn the offender that future action in respect of the remaining offences will be taken if they continue.

Process for Imposing Penalty Charges

Where it has been determined that a Financial Penalty may be appropriate to impose as an alternative to prosecution, the Local Housing Authority will apply the following process:-

Notice of Intent

- A “Notice of Intent” shall be served on the person suspected of committing the offence. The Notice shall specify:
 - a. The amount of any proposed financial penalty
 - b. The reasons for proposing the financial penalty
 - c. Information about the right to make representation to the Local

Housing Authority

- The person to which the notice relates will be given 28 days to make written representation to the Local Housing Authority about the proposal to impose a financial penalty.

- Following the 28 day period the Local Housing Authority will decide:
 - a. Whether to impose a financial penalty on the person, and
 - b. The value of any such penalty imposed.

Final Notice

- If the Local Housing Authority decides to impose a financial penalty, a final notice shall be issued imposing that penalty. The final notice will specify:
 - a. the amount of the financial penalty,
 - b. the reasons for imposing the penalty,
 - c. information about how to pay the penalty,
 - d. the period for payment of the penalty,
 - e. information about rights of appeal to the First tier Tribunal
 - f. the consequences of failure to comply with the notice.

Consequences of Non-Compliance and Miscellaneous Provisions

If, after any appeal has been finally determined or withdrawn, a person receiving a financial penalty does not pay all or part of the penalty charge, the Local Housing Authority will recover the penalty by order from a County Court. Where appropriate, the Local Housing Authority will also seek to recover the costs incurred in taking this action from the person to which the financial penalty relates.

Financial Penalties are an alternative to criminal proceedings and as such if a penalty is imposed, no criminal proceedings will be initiated for the same offence.

The Local Housing Authority may, at any time:

- a. Withdraw a notice of intent or final notice
- b. reduce the amount specified in a notice of intent or final notice

Where the Local Housing Authority decides to take either action, it will write to the person to whom the notice was given.

Record of the Decision

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

Database of Rogue Landlords and Letting Agents

Upon commencement of the statutory provisions relating to the national Rogue Landlord and Letting Agents Database, where a person has received two financial penalties under this legislation in any 12 month period for offences occurring within their Local Housing Authority area. The Local Housing Authority may make an entry on the national database. When considering making an entry, the authority will have regard to any guidance issued by the Secretary of State.

Banding Levels of Financial Penalties imposed under the Housing Act 2004 (the Act)

Band 1	£0 - 4999
Band 2	£5000 - 9999
Band 3	£10000 – 14999
Band 4	£15000 - 17999
Band 5	£18000 - 20999
Band 6	£21000 - 23999
Band 7	£24000 - 26999
Band 8	£27000 - 30000

The starting point in each band will be the mid-point, i.e. for Band 3 the mid-point will be £12,500

18. Appendix B - Electrical Safety Statement of Principles

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

Statement of Principles for Determining Financial Penalties

Purpose of statement

This statement is to define the principles that will be applied by Wigan Council (“the Authority”) when determining the level of financial penalty under Regulation 11 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (“ the Regulations”)

Legal background

Duties placed upon relevant landlords

The Regulations impose duties in relation to electrical installations (Regulation 3) on all relevant private landlords, including those operating Houses in Multiple Occupations (HMOs).

The duties with which a Landlord must comply are listed in Table 1 under the section heading Principles in determining sum.

There is an additional duty placed upon the private landlord to comply with a remedial notice served by the Authority. There is no specific penalty for a breach of duty to comply with a remedial notice. Any such breach though, will indicate additional culpability in failure to comply with the duties laid out in Regulation 3.

Enforcement

Where the Authority has reasonable grounds to believe that, in relation to premises situated within its area, a relevant landlord is in breach of one or more of the duties under the Regulations 3(1)(a), (1)(b), (1)(c), (4) and (6) and the most recent report under regulation 3(3) does not indicate that urgent remedial action is required, the Authority must serve a remedial notice on the landlord to include the necessary remedial action within 21 days.

Where a local housing authority is satisfied, on the balance of probabilities, that a landlord has failed to comply with the remedial notice, the Authority may, if the necessary consent is given, arrange for an authorised person to take the remedial action specified in the Remedial Notice and/or Urgent Remedial Action.

Penalty

Where the Authority is satisfied, beyond all reasonable doubt, that a landlord has breached any duty imposed by Regulation 3 of the Regulations may require the landlord to pay a penalty charge of such amount as the authority may determine.

The amount of the penalty charge must not exceed £30,000.

Where a local housing authority decides to impose a penalty charge, the Authority must serve notice of that fact on the landlord.

Principles

The Authority considers it good practice to prepare and publish a statement of principles which it proposes to follow in determining the amount of a penalty charge.

Principles for service of fixed penalty charge

The purpose of a penalty charge is:

- i. To ensure a relevant landlord gains no financial advantage from not complying with the regulations.
- ii. To improve protection of the public by acting as a deterrent to relevant landlords.
- iii. To reduce the likelihood of future non-compliance
- iv. Influence behaviour of relevant landlords
- v. To reclaim the Authority's expenses to ensure taxpayers are not unfairly penalised.

Principles in judgement of duty breach

A Team Leader in Environmental Health/Housing Standards (or equivalent in the event of change of title) shall review the evidence and determine whether beyond any reasonable doubt a breach of any duty under Regulation 3 of the Regulations has occurred.

In doing so that person may make any reasonable request for information from the investigating officer's case file or question the officer as they consider necessary to make a determination.

Principles in determining sum

The Authority will serve a fixed penalty notice on a relevant landlord who breaches any duty imposed upon them by Regulation 3 of the Regulations.

The financial penalty shall be the accumulative total of the sums shown in Table 1 for each breach of duty identified.

TABLE 1.

Offences of breaches under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.			
Relevant Offences	Relevant paragraph of Regulation 3	First penalty (£)	Subsequent penalties (£)
Note that the maximum fine per breach is £30,000			

Failure to ensure that the electrical safety standards are met during any period when the residential premises are occupied.	(1)(a)	1000	2000
Failure to ensure every electrical installation in the residential premises is inspected and tested at regular intervals by a qualified person of intervals of not more than 5 years or lesser time as specified in the report.	(1)(b)	1000	2000
Failure to obtain a report from the person conducting that inspection and test, which gives the results of the inspection and test and the date of the next inspection and test;	(3)(a)	250	500
Failure to supply a copy of that report to each existing tenant of the residential premises within 28 days of the inspection and test;	(3)(b)	250	500
Failure to supply a copy of that report to the local housing authority within 7 days of receiving a request in writing for it from that authority;	(3)(c)	250.00	500.00
Failure to retain a copy of that report until the next inspection and test is due and supply a copy to the person carrying out the next inspection and test;	(3)(d)	250.00	500.00
Failure to supply a copy of the most recent report to— I. any new tenant of the specified tenancy to which the report relates before that tenant occupies those premises; and II. any prospective tenant within 28 days of receiving a request in writing for it from that prospective tenant.	(3)(e)	250.00	500.00
Failure to ensure that further investigative or remedial work is carried out by a qualified person within— a) 28 days; or b) the period specified in the report if less than 28 days	(4)	1,000.00	1,000.00

Failure to obtain written confirmation from a qualified person that the required further investigative or remedial work has been carried out and that- (i) the electrical safety standards are met; or (ii) further investigative or remedial work is required;	(5)(a)	250	500.00
Failure to supply written confirmation, together with a copy of the report under subparagraph (3)(a) which required the further investigative or remedial work to each existing <u>tenant</u> of the residential premises within 28 days of completion of the further investigative or remedial work; and	(5)(b)	250.00	500.00
Failure to supply that written confirmation, together with a copy of the report under subparagraph (3)(a) which required the further investigative or remedial work to the <u>local housing authority</u> within 28 days of completion of the further investigative or remedial work.	(5)(c)	250.00	500.00
Additional weighting for culpability and severity			
Additional penalty where a breach of Regulation 3(1)(a) or 3(4) occurs; and <ul style="list-style-type: none"> • One to three Code 2 items are identified on the report. • One Code 1 or four or more Code 2 Items are identified on the report. • More than one Code 1 items are identified on the report. 		0.00	0.00
		250.00	500.00
		500.00	1,000.00
Additional penalty in respect of a breach of Regulation 3(1)(b) where additional culpability through failure to comply with the subsequently served remedial notice occurs	N/A	2000.00	5000.00

<p>Additional penalty in respect of a breach of Regulation 3(1)(a) or 3(4) where additional culpability through failure to comply with the subsequently served remedial notice occurs; and</p> <ul style="list-style-type: none"> • One to three Code 2 items are identified on the report. • One Code 1 or four or more Code 2 items are identified on the report. • More than one Code 1 items are identified on the report. 		<p>2,000.00</p> <p>3,000.00</p> <p>4,000.00</p>	<p>10,000.00</p> <p>15,000.00</p> <p>20,000.00</p>
---	--	---	--

An early payment reduction of 25% shall apply to first offences only if paid within 14 days.

Service of Notice of Intent to Serve Penalty Notice

The Authority will serve a notice of its intention to issue a fixed penalty notice within 6 months of non-compliance with a remedial notice in accordance with regulations 11 of the Regulations.

Representation and Review

The landlord may, within the period of 28 days beginning with the day after that on which the notice of intent was served, make written representations to the Authority about the proposal to impose a financial penalty on the private landlord.

The authority will review its decision based on landlord’s representations when made in writing within 28 days from the date stated on the Notice of Intent. All reviews will be conducted by the manager responsible for Environmental Health or alternatively a manager above that level in the corporate structure. The payment period (including the early payment reduction period) shall be suspended whilst the Authority conducts its review.

Where a landlord can show on the balance of probabilities that the sum of the fixed penalty will cause unreasonable hardship to him or his family the reviewer may use discretion to extend the allowable payment period by varying the penalty notice. In extreme cases a senior manager may use their discretion to reduce or waive the penalty but must have consideration of the capital and rental value of the subject premises in doing so.

Issue of Financial Penalty – Final Notice

After the end of the period of 28 days in which time the landlord may make representations, the Authority must decide whether to impose a financial penalty and, if so, the amount of that penalty.

Where the Authority decides to impose a financial penalty, it must serve a “Final Notice” on the landlord imposing that penalty and requiring it to be paid within the period of 28 days beginning with the day after that on which the notice was served.

Appeals

A landlord on whom a final notice is served may appeal to the First-tier Tribunal against the decision to impose the penalty or the amount of the penalty.

Revision of statement

The Authority may revise this statement of principles at any time and, where it does so, it will publish the revised statement.

19. Appendix C - Mees Policy Statement of Principles

Wigan Council Domestic Private Rented Property Energy Efficiency Policy Introduction

This policy has been developed in accordance with the Councils' Housing Standards Policy and Government guidance "The Domestic Private Rented Property Minimum Standard" issued by the Department for Business Energy and Industrial Strategy.

Purpose and objective

Wigan Council (the 'Council') has prepared and published this policy which it will have regard to when exercising its powers under the Energy Efficiency (Private Rented Sector) (England and Wales) Regulations 2015 (the 'Regulations').

Part 3 of the Regulations sets out the domestic minimum level of energy efficiency:

- From 1 April 2018, the landlord/owner of a domestic private rented property cannot grant a new tenancy to new or existing tenants where the Energy Performance Certificate (EPC) rating is F or G unless a valid exemption is in place. Houses in Multiple Occupation (HMO's) must also comply with these minimum standards if the property has been built, sold or rented as a single unit at any time in the past 10 years.
- From 1 April 2020, all domestic private rental properties must be a minimum of EPC band E unless a valid exemption is in place.

The purpose and objective of the policy is to secure compliance within the Council's enforcement area.

Enforcement

General

The Council has responsibility for enforcing compliance with the Regulations and carrying out enforcement activities including using the information held on the national PRS Exemptions Register and serving penalty notices where applicable.

In line with its Corporate Enforcement Policy the Council will, wherever possible and appropriate, adopt an informal approach to resolve matters where a landlord has let a property with an EPC of F or G. The Council will provide advice and guidance on how the energy efficiency standards can be met and request a landlord to register an exemption where appropriate.

Landlords will be given reasonable time to implement the requirements but where cooperation is not forthcoming formal enforcement action may commence. The Council reserves the right to commence formal action without giving an informal opportunity in cases where the breach is considered to be serious and/or the landlord has a history of not complying with housing regulations.

Formal action may also include enforcement action taken under other legislation such as a notice requiring remedial works to be carried out (e.g. Improvement Notice) to ensure properties meet the minimum domestic energy efficiency standards. Please note, a landlord cannot assume that satisfying the requirements under the Housing Act 2004 will automatically mean they have met the requirements of the Regulations. A landlord will still need to commission a new EPC that confirms that the property meets the minimum E standard.

There may be charges attached to the service of a remedial notices under the Housing Act 2004. A failure to comply could result in the Council carrying out remedial work in default which will be re-charged to a landlord. In addition, a Civil Penalty Notice may be served upon or legal proceedings instigated against a landlord for failure to comply.

Formal action under the Regulations may include service of a compliance notice on a landlord where further information is required, and a financial penalty notice and/or a publication penalty where there has been a breach of the regulations.

The Council will check the National PRS Exemptions Register. Where there is evidence to suggest that the landlord has registered false or misleading information the Council will investigate and will consider this an aggravating factor.

Compliance Notice

Where a landlord appears to have breached the Regulations in the preceding 12 months, the Council may serve a compliance notice requesting information from the landlord/former landlord, for example, inspection of a tenancy agreement or energy performance certificate ("EPC").

The Council will consider serving a Financial Penalty Notice where a Compliance Notice is not complied with within the specified time limit.

Financial penalties

The Council may serve a financial penalty where it is satisfied that a landlord has breached the Regulations.

The Council will consider serving a Financial Penalty Notice on a landlord up to 18 months after a suspected breach. This means that a person may be served with a penalty notice after they have ceased to be the landlord of a property.

The maximum financial penalties the Council will impose for each offence are set out below:

Infringement	Penalty
Renting out a non-compliant property	If less than 3 months in breach - Up to £2,000, and/or publication penalty. If more than 3 months in breach - Up to £4,000, and/or publication penalty.
Failing to comply with a compliance notice	Up to £2,000, and/or publication penalty

NB. The maximum penalty amounts apply per property and per breach of the Regulations.

Where penalties are imposed under more than one of these points, the total amount of the financial penalty will not exceed £5,000.

When setting the penalty, the Council will have regard to culpability and harm and consider whether any aggravating or mitigating factors apply as set out in Appendix 1.

Publication Penalty

In addition to or as an alternative to a financial penalty the Council may serve a publication penalty where it is satisfied that a landlord has breached the Regulations.

The effect of a publication penalty will be that details of the landlord breach(es) are published on the National PRS exemption register.

This will include:

- the landlord's name [except where the landlord is an individual]
- the address of the property in relation to which the breach occurred
- details of breach(es)
- the amount of any financial penalty

Any publication must be for a minimum of 12 months, but we will use our discretion to publish for longer in line with the harm/culpability matrix outlined in Appendix 1.

Review and Appeals

The Council has the right at any time to review or withdraw a penalty notice including when new information comes to light. A landlord can ask the Council to review its decision by making a written request. The Council may withdraw the penalty notice if:

- they are satisfied that the landlord has not committed the breach
- they are satisfied that the landlord took all reasonable steps and exercised all due diligence to avoid committing the breach
- they decide that because of the circumstances of the case, it was not appropriate for the penalty notice to be served on the landlord

Should the decision be to uphold the penalty notice the landlord can appeal to the First Tier Tribunal against that decision if they consider either:

- the penalty notice was based on an error of fact or an error of law
- the penalty notice does not comply with a requirement imposed by the regulations
- it was inappropriate to serve a penalty notice on them in the particular circumstances

The Tribunal will hear evidence of the Council's decision to impose the penalty and can quash the penalty notice or affirm the penalty notice in its original or a modified form.

The Council can apply to a County Court for a court order to enforce the penalty and recover the debt where the landlord has not paid within 28 days of the service the charge notice and either the landlord:

- has not made an appeal to the first tier tribunal
- has made an appeal which has since been determined in the council's favour

Sums paid may be used by the Council to assist in the enforcement and promotion of standards in private sector housing.

This policy will be reviewed periodically or in line with changes in relevant legislation, or the Regulators code.

Background information/sources

Relevant background/further information can be found in the following:

- Wigan Council Housing Standards Policy
- Government Guidance: Department for Business, Energy & Industrial Strategy, The Domestic Private Rented Property Minimum Standard: Amended March 2019
- Energy Efficiency (Private Rented Sector) (England and Wales) Regulations 2015: SI 2015 No. 962
- Energy Efficiency (Private Rented Sector) (England and Wales) (Amendment) Regulations 2019: SI 2019 No. 595

Wigan Council
Domestic Private Rented Property Energy Efficiency Policy

Appendix 1

In determining the level of penalty, the Council will have regard to the seriousness of the offence, determined by the harm caused and the culpability of the offender.

In determining the level of **harm**, the Council will have regard to:

- The person: i.e. physical injury, damage to health, psychological distress
- To the community; i.e. economic loss, harm to public health
- Other types of harm; i.e. public concern/feeling over the impact of poor housing condition on the local neighbourhood

The nature of the harm will depend on the personal characteristics and circumstances of the victim(s), e.g. the tenant. Where no actual harm has resulted, the Council will consider the relative danger that persons have been exposed to, and the likelihood and gravity of harm that could have resulted. Factors indicating a higher degree of harm include multiple victims, a very low EPC score, fuel poverty, and vulnerable tenant(s) occupying the property for an extended period of time since non-compliance.

In determining **culpability**, the Local Housing Authority will have regard to whether the offender:

- Has the **intention** to cause harm and/or is **reckless** as to whether harm is caused
- Has **knowledge** of the specific risks entailed by his actions even though he does not intend to cause the harm that results and/or is **negligent** in their actions.

Factors indicating a higher degree of culpability include landlord having a previous history of non compliance with housing related regulatory requirements and/or Landlord has failed to comply with requests to comply with these regulations, knowingly or recklessly providing incorrect information in relation to exemptions to these regulations.

The tables below set out the interrelation between harm and culpability as a guide to determine appropriate penalty to be applied.

	Low Culpability	High culpability	Notes
Low harm	50%	75%	%= proportion of the maximum financial penalty
High harm	75%	100%	%= proportion of the maximum financial penalty

	Low Culpability	High culpability	Notes
Low harm	12 Months	18 Months	=number of months for publication penalty
High harm	18 Months	24 Months	=number of months for publication penalty

Aggravating and Mitigating Factors

Officers may adjust the penalties from those determined by the matrix if there are aggravating or mitigating factors (factors that are particular to a case which make it more or less serious).

Where these factors come to light as part of the investigation these adjustments will be made, and details included in the notice. Where these are provided in representations from a landlord in a request to review after the notice has been served consideration will be given and the landlord served a notice after the review with an explanation of any adjustments made.

20. Appendix D - Smoke Alarms Statement of Principles

Statement of Principles.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Introduction

As of the 1st October 2015, a “relevant landlord” of a “specified tenancy” of residential premises must ensure during any period on or after 1st October 2015 when the premises are occupied under the tenancy that:

1. A smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation.
2. A carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and
3. Checks are made by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy.

Enforcement

Where the Local Housing Authority has reasonable grounds to believe that:

- There are no or insufficient number of smoke alarms or Carbon Monoxide Detectors in the property as required by the regulations or;
- The Smoke Alarms or Carbon Monoxide Detectors were not working at the start of a tenancy or licence.

Then the Authority must serve on the Landlord in a method prescribed by the Regulations a Remedial Notice detailing the actions the landlord must take to comply with the Regulations. If after 28 days, the Landlord has not complied with the Remedial Notice the Local Authority must issue a Penalty Charge shall be levied through a penalty charge notice (PCN).

Principles to be followed in determining the amount of a Penalty Charge

The Authority considers that in the interests of proportionality, a lesser penalty will be merited on the occasion of a first offence only and that prompt payment of the penalty on that first occasion should attract a reduced penalty in recognition of early admission of liability.

The level of penalty should, however, as a minimum, cover the cost of all works in default, officer time, recovery costs, administration fee and a fine. This reflected in the calculation of the first-time offence charge.

The Legislation allows the Local Authority to set PCN levels up to a maximum of £5000. Having ensured proportionality, the Enforcement Policy and the interests of regulation, repeat offences should attract a progressively higher penalty in view of a continuing disregard for the legal requirements and tenant safety.

Level of Penalty Charge

The Penalty Charge shall be set at **£550.00** for the first offence but this will be **reduced to £400 if paid within a 14-day period** from the date of service.

	Level of PCN	Reduction for early payment
First offence	£550.00	-\$150.00
Second offence	£2500.00	None
Third and subsequent offences	£5000.00	None

No discount will be given for prompt payment after the first occasion.

Recovery of Penalty Charge

The local housing authority may recover the penalty charge as laid out in the Regulations on the order of a Court, as if payable under a Court Order.

Appeals in relation to a penalty charge notice

The landlord can request in writing, in a period that must not be less than 28 days beginning with the day on which the penalty notice was served, that the local housing authority review the penalty charge notice.

The local housing authority must consider any representation and decide whether to confirm, vary or withdraw the penalty charge notice. A landlord who is served with a notice confirming or varying a penalty charge notice may appeal to the First-tier Tribunal against the local housing authority's decision.