

Manchester City Council

Domestic Private Rented Property Energy Efficiency Policy

Introduction

Manchester is committed to becoming completely carbon-neutral by 2038 – the first city in the UK to make such a commitment.

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

Purpose and objective

Manchester City 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:

- Manchester City Council: Corporate Enforcement 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

***Housing Compliance and Enforcement
Manchester City Council
April 2020***

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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%	

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

Aggravating and Mitigating Factors

Officers may adjust the penalties from those determined by the matrix if there are particular 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.