

ISLE OF WIGHT COUNCIL.

HOUSING RENEWAL SECTION, NEIGHBOURHOODS DIRECTORATE

**POLICY FOR MINIMUM ENERGY EFFICIENCY STANDARDS (MEES) PENALTIES**

Contents

1. Introduction
2. Financial Penalty Calculation
3. Transparency
4. How we Recover Penalties and Expenses
5. Policy Review

## 1. Introduction

- 1.1 The Local Authority is committed to improving the private rental sector housing on the Island, improving energy efficiency and reducing potential fuel poverty for vulnerable residents. In this regard, wasted domestic energy can create unnecessary costs to landlords, tenants and the wider economy as a whole, and by improving the energy efficiency of the housing on the Island there will be many benefits to the owners, occupiers and the Island as a whole. These benefits include:
- Support of the Council mission zero climate and environment strategy 2021-2040 [2570-Mission-Zero-Climate-and-Environment-Strategy-2021-2040-final.pdf \(iow.gov.uk\)](#) (Objective 4B Overall emissions from housing to be reduced by at least 85% by 2040)
  - Helping achieve corporate key area action B in the corporate plan 2021-2025 [Viewing Document: Corporate Plan 2021-2025 \(iow.gov.uk\)](#) – ‘Responding to climate change and enhancing the biosphere’
  - Assist with the corporate action of- ‘Continue to ensure the private sector housing stock is fit for purpose and compliant with current housing standards’
  - Support with the corporate action of- ‘...deliver the various home energy efficiency grant schemes to improve Island homes and reduce energy consumption’
  - Energy costs for tenants will be more manageable, reducing the threat of fuel poverty;
  - General improvement of the private rental market stock Island wide;
  - Reduced requirement of excess energy usage at peak times; and
  - Help achieve the Government aim of Net Zero carbon emissions by 2050
- 1.2 It has been a legal requirement for a landlord to have a valid Energy Performance Certificate (EPC) on the letting of a property since the 2007. An EPC is valid of 10 years, after which there is no requirement for a replacement, unless the property is sold or let to a new tenant.
- 1.3 The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 as amended (referred to as ‘the regulations’) were introduced on 1 April 2015. The regulations applied to existing private rented sector tenancies and includes any new tenancies from 1 April 2020. They have been designed to tackle the least energy efficient private residential dwellings, specifically those with an energy performance rating of band F or band G. This is known as the Minimum Energy Efficiency Standards, or MEES.
- 1.4 Under these regulations from 1 April 2020 landlords may not continue to let, or re-let, a private rental property with an EPC band rating of F or G. Therefore, if a landlord wishes to let a property that falls into either of these categories they must undertake relevant works to increase the band rating to a minimum of an E.
- 1.5 The Housing Renewal Section of the Local Authority has enforcement responsibilities relating to the MEES and will intervene with any apparent non-complaint property. Any enforcement decisions will be taken in line with the Neighbourhoods Enforcement Policy (currently Neighbourhoods enforcement Policy 2021-2024).
- 1.6 Financial penalties and publication notices are available where non-compliance with the standards exist, and this policy seeks to address the standards and how the financial penalties will be applied. Processes are defined within the regulations, and recipients of a financial penalty or notice have a right of appeal.

## 2. Financial Penalty Calculation

- 2.1 The following table details the penalties applicable for each breach. A Local Authority may not impose a financial penalty under both paragraphs (A) and (B) below in relation to the same breach of the Regulations. But they may impose a financial penalty under either paragraph (A) or paragraph (B), together with financial penalties under paragraphs (C) and (D), in relation to the same breach. Where penalties are imposed under more than one of these paragraphs, the total amount of the financial penalty may not be more than £5,000. If a landlord re-lets the property on a new tenancy agreement it would constitute a new breach and would incur a further penalty to a maximum of £5000.00.

	Matters that can cause a penalty	Penalty
A	Letting out a non-compliant property for less than 3 months	£2000.00 and / or publication
B	Letting out a non-compliant property for 3 months or more	£4000.00 and / or publication
C	Providing false or misleading information of the PRS Exemptions register	£1000.00 and / or publication
D	Failure to comply with a <b>Compliance Notice</b>	£2000.00 and / or publication

The amount of penalty charge will be ascertained by assessing the situation in regard to the severity of the offence, the culpability of the offender, the track-record of the offender, and the actual harm to the occupiers based on reasoned objective measures, and then using a calculation by percentage of maximum penalty levels for consistency.

Each case can then be reviewed further to consider if it is appropriate to raise or lower the penalty.

- 2.2. **Severity of the offence inclusive of actual harm.** The more serious the offence, the higher the penalty should be.
- 2.3 Assessment of Severity;

**Serious Impact.** EPC ratings of G rating will fall into this category by default. F rated properties will also be in this category where there is evidence of housing defects under the Housing Health and Safety Rating System (HHSRS) which relate to the hazards of excess cold, dampness and mould growth, or excess heat. Where actual harm to any occupiers has occurred due to the poor energy efficiency of the property it will be deemed a serious impact.

**Serious severity multiplier is 100% of the maximum financial penalty.**

**Minor Impact.** Unless considered to be serious using the reasoning above the severity will be deemed to be Minor.

**Minor severity multiplier is 75% of the maximum financial penalty.**

- 2.4 **Culpability and track record of the offender.** A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations. An assessment will be based on evidenced previous interventions in

this and other local authorities, as well as consideration to the extent of the knowledge the offender should have when operating in the business, and efforts made by the offender to comply with matter in question.

## 2.5 Assessment of Culpability;

**Deliberate-** An intentional breach, or flagrant disregard for the law, for example by the offender informing the authority they will not attempt to comply with the requirements.

**Deliberate culpability multiplier is 100% of the maximum financial penalty.**

**Reckless-** An actual foresight or wilful blindness to the risk of offending but decision to take the risk nevertheless, for example failing to comply with a strict liability in the MEES regulations. This is the default category of culpability without any evidence of the other levels.

**Reckless culpability multiplier is 90% of the maximum financial penalty.**

**Negligent-** The failure to take reasonable care to put in place and enforce proper systems for avoiding the offence, for example partial compliance with a schedule or work to an enforcement notice but failure to fully comply.

**Negligent culpability multiplier is 80% of the maximum financial penalty.**

**Low or no culpability-** The offence committed has some fault on the part of the offender but there are other circumstances for example obstruction by the tenant to allow a contractor access for repairs, or damage caused by the tenant.

**Low culpability multiplier is 70% of the maximum financial penalty.**

## 2.6 Assessment of Track Record;

**1<sup>st</sup> offence-** no previous conviction, civil penalty or financial penalty imposition for housing standards related offences in the previous four years irrespective of the locality to which the offence relates.

**1<sup>st</sup> offence multiplier is 75% of the maximum financial penalty.**

**Further offence multiplier is 100% of the maximum financial penalty.**

## 2.7 Review of Financial Penalty. Each case will be reviewed to establish whether there is presence of mitigating evidence to either raise or lower the amount of the financial penalty. The review will also consider if a Publication Notice is also appropriate.

**Case officer to review with manager, and final outcome to be documented and signed as an officer decision.**

## 3. Transparency

### 3.1 The calculation will be undertaken in a transparent manner, with officer calculations explained with the addition of supporting justification to establish the level of financial penalty in a statement of reasons.

## 4. How we Recover Penalties and Expenses

4.1 Financial penalty charges are payable by various methods, preferably this will be received in one payment. Payment plans will be available, however the Local Authority would expect the penalty to be paid within one year. The Local Authority reserve the right to add any administrative costs incurred by the payment plan agreement.

4.2 If the financial penalty is not paid by the landlord following the service of the Penalty Notice within a reasonable amount of time, or a suitable payment plan arrangement cannot be agreed or achieved, the Local Authority will seek to recover the amount by the Court process.

## **5. Policy Review**

5.1 This policy will be reviewed at any date of change in legislation or as considered necessary by the service manager.