



# Directorate of City Operations, Neighbourhoods and Regulatory Services. Energy Performance. Financial Penalty Enforcement Policy

The Energy Performance of Buildings (England and Wales) Regulations 2012. (SI 2012 No.3118) As amended by the Energy Performance of Buildings (England and Wales) (Amendment) (No.2) Regulations 2015 (SI 2015 No.1681)

## 1. Legal References

It is the statutory duty of every local weights and measures authority (LWMA) to enforce in their area:

- **the making available of Energy Performance Certificates (EPC's).**
- **the appropriate commissioning and obtaining of EPC's.**
- **the displaying of EPC's.**
- **the inclusion in advertisements of energy performance indicators.**
- **compliance with the requirements regarding Display Energy Certificates (DEC's).**
- **compliance with the requirements regarding air-conditioning inspections; and,**
- **ensuring that required documents are produced within seven days.**

Local weights and measures authorities have a range of measures at their disposal, from education and encouragement to the issuing of Penalty Charge Notices. It is for them to determine the course of action that is appropriate for the circumstances.

Enforcement bodies have responsibility to collect sufficient information on relevant buildings to plan and implement effective enforcement action. There are several publicly available data sources on which to base enforcement of all buildings caught by the provisions of the Regulations.

The City Council as a LWMA has authorised Environmental Health Officers from the Housing Service and Trading Standard Officers to check for different forms of non-compliance with the Regulations including:

### 1.1. Enforcement Duties

The following table contains a brief summary of the Energy Performance of Buildings (England and Wales) Regulations 2012 (SI 2012. No.3118) (as amended) and related provisions of the Building Regulations 2010 that it is the duty of local weights and measures authorities to enforce.

<b>Regulation</b>	<b>Area of responsibility</b>	<b>Relevant Person</b>
6(2) and 6(5)	The EPC is made available free of charge to any prospective buyer or tenant and given to the eventual buyer or tenant.	The relevant person (i.e. the seller or landlord)
7(2)	The relevant person must ensure that an EPC is commissioned before	The relevant person (i.e. the seller or landlord)

	marketing the building for sale or rent.	
7(3)	A person acting on behalf of the relevant person must satisfy themselves that an EPC has been commissioned before marketing on their behalf.	A person acting on behalf of the seller or landlord (e.g. the property or letting agent)
7(4) and 7(5)	The relevant person and the person acting on their behalf must use all reasonable efforts to ensure that the EPC is obtained within 7 days of the start of marketing.  The EPC must be obtained within the period of 21 days following the expiry of the 7-day period mentioned in 7(4).	The relevant person and/or a person acting on their behalf (e.g. the property or letting agent)
10(2)	The energy performance certificate must be valid and must be displayed in a prominent place clearly visible to members of the public who visit the building, where a building has a total useful floor area of over 500m <sup>2</sup> , is frequently visited by the public and an EPC has been made available	The owner or occupier.

## 1.2. Why is an EPC/DEC/air-conditioning inspection required?

The EU Directive on the energy performance of buildings (the Directive) came into effect progressively from 2007 and was transposed into UK regulations as an important part of the government's strategy to tackle climate change.

The principle underlying both the Directive and the regulations is to make the energy efficiency of buildings transparent, inform occupiers and users about their building's or system's current energy performance and make recommendations on how to improve energy efficiency.

### **1.3. What buildings require EPCs?**

Any reference to a building includes a reference to a building unit in that building, except where otherwise stated in the regulations.

Buildings need an EPC either on construction or when they are to be sold or rented out.

An EPC is valid for 10 years or until a newer EPC is produced for the same building no matter how many times the property is sold or rented out during that period. Existing occupiers and tenants will not require an EPC unless they sell, assign, or sublet their interest in a building.

A building offered for sale or rent, must include the energy performance indicator for the building as shown on the EPC, for example C, in any advertisements in the commercial media. There is no requirement to include the full EPC in these advertisements; however, there are some circumstances in which full EPCs must be displayed.

Buildings with a total useful floor area of more than 500m<sup>2</sup> which are frequently visited by the public and have a valid EPC must display it in a prominent location. It should be noted that having and displaying an EPC does not mean that a building does not also need a DEC if it meets the criteria.

### **1.4. What buildings require DEC?**

All buildings occupied by a public authority where the total useful floor area is greater than 250m<sup>2</sup> and frequently visited by the public must obtain and display a DEC. For buildings over 1,000 m<sup>2</sup>, the DEC will be valid for one year and the recommendation report for seven. For all other buildings, both the DEC and the recommendation reports will be valid for ten years.

It should be noted that having and displaying a DEC does not mean that a building does not also need an EPC if it meets the criteria.

### **1.5. What buildings require air-conditioning inspections?**

An air-conditioning inspection is required if the effective rated output of the system within a building is more than 12kW. These must be carried out at least every five years.

### **1.6. Situations where an EPC is not required**

An EPC is generally not required where the seller or landlord can demonstrate that the building is any of these:

- officially protected as part of a designated environment or because of their special architectural or historic merit where compliance with certain minimum energy efficiency requirements would unacceptably alter their character or appearance
- buildings used as places of worship and for religious activities

- temporary buildings with a planned time of use of two years or less
- Industrial sites, workshops, non-residential agricultural buildings with low energy demand and non-residential agricultural buildings which are in use by a sector covered by a national sectoral agreement on energy performance
- residential buildings which are intended to be used less than four months of the year or where the owner or landlord could reasonably expect the energy consumption of the building to be less than 25% of all year-round use
- stand-alone buildings with a total useful floor area of less than 50m<sup>2</sup> (i.e. buildings entirely detached from any other building)

A building does not need an EPC where the seller or landlord can demonstrate that it is furnished holiday accommodation as defined by HMRC and the holidaymaker is not responsible for meeting the energy costs.

Under certain circumstances buildings may be exempt where it may be demonstrated that they are to be demolished. This is subject to a number of conditions as set out in Regulation 8 of the primary Regulations.

There are no other exceptions to the EPC obligations although there may be some transactions which do not qualify as a sale or renting out. If in doubt, legal advice should be sought.

**There are no exceptions to the requirement to have a DEC. If the building has a total useful floor area greater than 250m<sup>2</sup> and is occupied by a public authority and frequently visited by the public, a DEC must be obtained and displayed.**

**There are no exceptions to the requirement to have an air-conditioning inspection if the effective rated output of the system within a building is more than 12kW.**

## 2. Policy and Sanctions

2.1. Newcastle City Council has had all due regard to the statutory guidance when preparing this policy on the enforcement of all the legislative provisions related to energy performance under the Regulations.

2.2. In accordance with Regulation 33 and 34 Local Authorities are responsible for enforcing the various legislative requirements within the Regulations. The purpose of this policy is to describe how officers of Newcastle City Council will enforce the Regulations.

2.3. The City Council will continue to offer advice how the standards can be met and request the Relevant Person to register an exemption if appropriate. The Council may in circumstances where a Relevant Person has a history of not complying with housing related regulatory requirements, decide to take formal action without giving an informal opportunity for the Relevant Person to comply.

2.4. The City Council has discretion to serve Compliance Notices to request information from the Relevant Person that will help them to decide whether there has been a breach. The City Council will Serve Compliance Notices where the additional

information is required. The Council will consider serving Penalty Charge Notices where a Relevant Person fails to comply with the Compliance Notice.

2.5. The Council will check the National Exemptions Registers and if it believes a Relevant Person has registered false or misleading information it will consider serving a financial and publication penalty.

2.6. If offences under these regulations are committed the Council will, where it considers it appropriate, serve a Penalty Charge Notice. This policy provides guidance for officers on how to determine the appropriate penalty.

2.7. Under Regulation 39, the City Council may publish some details of the Relevant Person's breach on a publicly accessible part of the relevant Register. Newcastle City Council will place the information on the relevant register at the appropriate time, for a minimum of 12 months.

2.8. The Relevant Person has the right to ask for a Penalty Charge Notice to be reviewed under Regulation 42. Any request for review must be submitted to the Council within one 3 calendar month of the Penalty Charge Notice being served. Requests for review after the prescribed time will be considered at the City Council's discretion

2.9. Other Types of Enforcement Action that may be taken In appropriate circumstances consideration will be given to informal action such as warning letters or advice, in an effort to secure compliance, and will be done so in accordance with the Enforcement Policy.

### **3. Statutory Guidance.**

The Ministry of Housing, Communities & Local Government ("MHCLG") has published relevant guidance on the various aspects of the legislation at:

<https://www.gov.uk/government/collections/energy-performance-certificates>

3.1. There is also statutory guidance to which enforcement authorities must have regard to in relation to enforcing the various legislative provisions.

3.2. This guidance is intended to help enforcement agencies to understand and enforce the requirements of the Energy Performance of Buildings (England and Wales) Regulations 2012. It has been updated to reflect the requirements of the Energy Performance of Buildings (England and Wales) (Amendment) (No. 2) Regulations 2015 which came into effect on 9 October 2015.

The Government guidance for enforcement authorities can be found at:

<https://www.gov.uk/government/publications/local-weights-and-measures-guidance-for-energy-certificates-and-air-conditioning-inspections-for-buildings>

### **4. Determining the level of the financial penalty**

4.1. It is the decision of the enforcement authority or its authorised officers to determine what action is appropriate when they find 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 relevant person regarding the benefits of knowing the cost-effective energy efficiency improvements they could make may be all the encouragement needed to ensure compliance with the requirements. However, in some cases, it may be that only imposing a financial penalty will do.

4.2. It is for the enforcement authority or its authorised officer to decide what is the appropriate action in the circumstances.

4.3. The table following summarises the penalties that may be imposed by the enforcement authority or its authorised officer, through serving a penalty charge notice.

<b>Regulation</b>	<b>Requirement</b>	<b>Penalty for breach</b>
6(2) and 6(5)	The EPC is made available free of charge to any prospective buyer or tenant and given to the eventual buyer or tenant.	£200 (dwelling)  Calculated according to the formula in 38(2) (non-dwelling). Minimum £500. Maximum £5000.
7(2)	The relevant person must ensure that an EPC is commissioned before marketing the building for sale or rent.	£200 (dwelling)  Calculated according to the formula in 38(2) (non-dwelling). Minimum £500. Maximum £5000.
7(3)	A person acting on behalf of the relevant person must satisfy themselves that an EPC has been commissioned before marketing on their behalf.	£200 (dwelling)  Calculated according to the formula in 38(2) (non-dwelling). Minimum £500. Maximum £5000.
7(4) and 7(5)	The relevant person and the person acting on their behalf must use all reasonable efforts to ensure that the EPC is obtained within 7 days of the start of marketing.  The EPC must be obtained within the period of 21 days following the expiry of the 7-day period mentioned in 7(4).	£200 (dwelling)  Calculated according to the formula in 38(2) (non-dwelling). Minimum £500. Maximum £5000.

10(2)	The energy performance certificate must be valid and must be displayed in a prominent place clearly visible to members of the public who visit the building, where a building has a total useful floor area of over 500m <sup>2</sup> , is frequently visited by the public and an EPC has been made available.	£500
11(2)	The energy performance indicator of the building expressed in the energy performance indicator must be stated in any advertisement of the sale or rental in commercial media.	£200

### **Regulation 38(2)**

(2) Subject to the minimum and maximum penalty charges prescribed by paragraph (3), the penalty charge for the purposes of paragraph (1)(a)(ii) shall be—

(a) where the building constitutes a hereditament, 12.5% of the rateable value of the hereditament.

(b) where no other building (other than a building which is exempt from Part 2 by virtue of—

(i) regulation 5(1)(a), (b), (d) or (e), or

**(ii) for a building which is not a dwelling, regulation 5(1)(c) or (g)), forms a part of the same hereditament, 12.5% of the rateable value of the hereditament of which the building forms a part.**

(c) where the building comprises more than one hereditament, 12.5% of the sum of the rateable values of each hereditament that comprise the building: and

(d) where—

(i) one or more buildings (other than a building which is exempt from Part 2 by virtue of—

(aa) regulation 5(1)(a), (b), (d) or (e), or



(bb) for a building which is not a dwelling, regulation 5(1)(c) or (g)) form part of the same hereditament; or

(ii) the building is not, or does not form part of, a hereditament which appears on a local non-domestic rating list at the relevant time, £750.

**(3) The minimum and maximum penalty charges for the purposes of paragraph (2) are £500 and £5000 respectively.**

In accordance with the provisions of the level of financial penalties for matters enforced by the Weights and Measures authority will be determined by the CITY council. The statutory guidance does not go into any significant level of detail in this regard.

Each of those factors will be considered as a part of the Housing Services & Trading Standards Service's decision-making process and they are:

- a. The history of compliance/non-compliance**
- b. The severity of the breach**
- c. Deliberate concealment of the activity and/or evidence**
- d. Knowingly or recklessly supplying false or misleading evidence**
- e. The intent of the landlord/agent, individual and/or corporate body**
- f. The attitude of the landlord/agent**
- g. The deterrent effect of a prosecution on the landlord/agent and others**
- h. The extent of financial gain as a result of the breach**

Although the City Council has therefore a wide discretion in determining the appropriate level of financial penalty in any particular case and regard has been given to the statutory guidance when making this policy.

## **APPENDIX 1 The processes that the City Council will use.**

In order to determine the level of financial penalty under The Energy Performance of Buildings (England and Wales) Regulations 2012. As amended by the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015. All stages are subject to statutory time limits.

### **STEP ONE – Determining the offence category**

The City Council will determine the breach category using only the culpability and category of harm factors below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting to make an overall assessment.

The City Council may also apply a discretionary factor in order to reflect consistency across England and may consider decisions in other UK jurisdictions where they contain some relevant and persuasive content.

#### **Culpability**

**Very high:** Where Relevant Person intentionally breached, or flagrantly disregarded, the law or has/had a high public profile which may include any significant role in a trade or business representative organisation and knew their actions were unlawful  
**High:** Actual foresight of, or wilful blindness to, risk of a breach but risk nevertheless taken

**Medium:** Breach committed through act or omission which a person exercising reasonable care would not commit

**Low:** Breach committed with little fault, for example, because:

- Significant efforts were made to address the risk although they were inadequate on the relevant occasion
- There was no warning/circumstance indicating a risk
- Failings were minor and occurred as an isolated incident

#### **Harm**

The following factors relate to both actual harm and risk of harm. Dealing with a risk of harm involves consideration of both the likelihood of harm occurring and the extent of it if it does.

#### **Category 1 – High Likelihood of Harm –**

- Serious adverse effect(s) on individual(s) and/or having a widespread impact due to the nature and/or scale of the Relevant Person's business
- High risk of an adverse effect on individual(s) – including where persons are vulnerable. A wide definition of vulnerability will be used. See Appendix 2 for a non-exhaustive list.

## **Category 2 – Medium Likelihood of Harm**

- Adverse effect on individual(s) (not amounting to Category 1)
- Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect.
- Tenants and/or legitimate Relevant Persons substantially undermined by the conduct.
- The City Council's work as a regulator is inhibited
- Tenant or prospective tenant misled

## **Category 3- Low Likelihood of Harm**

- Low risk of an adverse effect on actual or prospective tenants.
- Public misled but little or no risk of actual adverse effect on individual(s)
- We will define harm widely and victims may suffer financial loss, damage to health or psychological distress (especially vulnerable cases). There are gradations of harm within all of these categories. The nature of harm will depend on personal characteristics and circumstances of the victim and the assessment of harm will be an effective and important way of taking into consideration the impact of a particular crime on the victim. In some cases, no actual harm may have resulted, and enforcement authority will be concerned with assessing the relative dangerousness of the offender's conduct; it will consider the likelihood of harm occurring and the gravity of the harm that could have resulted.

## **To the community**

Some offences cause harm to the community at large (instead of or as well as to an individual victim) and may include economic loss, harm to public health, or interference with the administration of justice.

## **STEP TWO - Starting point and category range**

Having determined the category that the breach falls into, the City Council will refer to the following starting points to reach an appropriate level of civil penalty within the category range. The City Council's enforcement officers will then consider further adjustment within the category range for aggravating and mitigating features.

## **Obtaining financial information**

Guidance advises that local authorities should use their powers under Schedule 5 to the CRA 2015 to, as far as possible, make an assessment of a Relevant Person's assets and any income (not just rental or fee income) they receive when determining an appropriate penalty.

The City Council will use such lawful means as are at its disposal to identify where assets might be found. In setting a financial penalty, the City Council may conclude that the Relevant Person is able to pay any financial penalty imposed unless the City Council has obtained, or the Relevant Person has supplied, any financial information to the contrary.

The subject of a Compliance Notice will be expected to disclose to the City Council such data relevant to his/her financial position to facilitate an assessment of what that person can reasonably afford to pay.

Where the City Council's enforcement officers are not satisfied that they have been given sufficient reliable information, the officers will be entitled to draw reasonable inferences as to the person's means from evidence it has received, or obtained through its own enquiries, and from all the circumstances of the case which may include the inference that the person can pay any financial penalty.

Appendix 1 provide give the minimum and maximum financial penalties for each harm category and level of culpability for certain types of breaches under the Regulations:

### **Context**

Below is a list of some, but not all factual elements that provide the context of the breach and factors relating to the Landlord or Agent. The Trading Standards Service will identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In particular, relevant recent conviction (Appendix 3) are likely to result in a substantial upward adjustment.

In some cases, having considered these factors, it may be appropriate to move outside the identified category range which will not exceed the statutory maximum permitted in any case.

### **Factors increasing seriousness**

#### **Aggravating factors:**

- Previous breaches of the legislation
- Previous convictions, having regard to:
  - the nature of the offence to which the conviction relates and its relevance to the current breach; and,
  - the time that has elapsed since the conviction:

#### **Other aggravating factors may include:**

- Motivated by financial gain
- Deliberate concealment of illegal nature of activity
- Established evidence of wider/community impact
- Obstruction of the investigation
- Record of poor compliance
- Refusal of advice or training or to become a member of an Accreditation scheme

### **Factors reducing seriousness or reflecting personal mitigation**

- No previous or no relevant/recent breaches
- No previous convictions or no relevant/recent convictions
- Steps voluntarily taken to remedy problem

- High level of co-operation with the investigation, beyond that which will always be expected
- Good record of relationship with tenants
- Self-reporting, co-operation, and acceptance of responsibility
- Good character and/or exemplary conduct
- Mental disorder or learning disability, where linked to the commission of the breach
- Serious medical conditions requiring urgent, intensive, or long-term treatment and supported by medical evidence

### **STEP THREE - General principles to consider in setting a penalty**

The City Council will finalise the appropriate level of penalty so that it reflects the seriousness of the offence and the City Council must take into account the financial circumstances of the Relevant Person if representations are made by the Relevant Person following the issue of a Compliance Notice. The level of financial penalty will reflect the extent to which the conduct fell below the required standard.

The financial penalty should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the breach; it should not be cheaper to breach than to take the appropriate precautions and a fundamental principle involved is that there should be no financial gain to the perpetrator from the commission of the breaches.

If issuing a financial penalty for more than one breach, or where the offender has already been issued with a financial penalty, the City Council enforcement officers will consider whether the total penalties are just and proportionate to the offending behaviour and will have regard to the factors in STEP EIGHT below.

### **STEP FOUR- Compliance Notice**

The City Council will issue a Compliance Notice under Regulation 35. **The** Relevant Person, to produce for inspection a copy of a valid energy performance certificate; a recommendation report; or an inspection report. The requirement may not be imposed more than six months after the last day on which the person concerned was subject to such a duty in relation to the building. It is the duty of a person subject to such a requirement to comply with it within the period of seven days beginning with the day after that on which it is imposed.

### **STEP FIVE – Consideration of representations and review of financial penalty where appropriate**

The City Council should review the penalty and, if necessary adjust the initial amount reached at STEP FOUR, and represented in the Notice of Intent, to ensure that it fulfils the general principles set out below. Any quantifiable economic benefit(s) derived from the breach, including through avoided costs or operating savings, should normally be added to the total financial penalty arrived at in STEP TWO.

Where this is not readily available, the City Council may draw on information available from enforcing authorities and others about the general costs of operating within the law. Whether the penalty will have the effect of putting the offender out of business will be relevant but in some serious cases this might be an acceptable outcome.

### **STEP SIX – Reductions**

The City Council enforcement officers will consider any factors which indicate that a reduction in the penalty is appropriate and in so doing will have regard to the following factors relating to the wider impacts of the financial penalty on innocent third parties; such as (but not limited to):

- The impact of the financial penalty on the Relevant Person's ability to comply with the law or make restitution where appropriate
- The impact of the financial penalty on employment of staff, service users, customers, and the local economy. The following factors will be considered in setting the level of reduction.

When deciding on any reduction in a financial penalty, consideration will be given to:

- The stage in the investigation or thereafter when the offender accepted liability
  - The circumstances in which they admitted liability
  - The degree of co-operation with the investigation
- The maximum level of reduction in a penalty for an admission of liability will be one-third. In some circumstances there will be a reduced or no level of discount. This may occur for example where the evidence of the breach is overwhelming or there is a pattern of breaching conduct. Any reduction should not result in a penalty which is less than the amount of gain from the commission of the breach itself.

### **STEP SEVEN - Additional actions**

In all cases the City Council's enforcement officers must consider whether to take additional action. These may include further enforcement action itself or reference to other organisations where appropriate.

### **STEP EIGHT – Totality of breaching conduct**

Where the offender is issued with more than one financial penalty, the City Council's enforcement officers should consider the following. As the total financial penalty is inevitably cumulative the officers should determine the financial penalty for each individual breach based on the seriousness of the breach and taking into account the circumstances of the case including the financial circumstances of the Relevant Person so far as they are known, or appear, to the City Council.

The City Council should add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate total is not just and proportionate the Trading Standards Service should consider how to reach a just and proportionate total financial penalty.

There are a number of ways in which this can be achieved. For example: Where a Relevant Person is to be penalised for two or more breaches or where there are multiple breaches of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious breach a financial penalty which reflects the totality of the conduct where this can be achieved within the maximum penalty for that breach. No separate penalty should be imposed for the other breaches.

Where a Relevant Person is to be penalised for two or more breaches that arose out of different incidents, it will often be appropriate to impose separate financial penalties for each breach. The City Council should add up the financial penalties for each breach and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the City Council should consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be imposed. Where separate financial penalties are passed, the City Council must take care to ensure that there is no double-counting.

**STEP NINE** – Recording the decision. The enforcement officer making a decision about a financial penalty will record their decision giving reasons for coming to the amount of financial penalty that will be imposed.

## **APPENDIX 2 – Non exhaustive list of vulnerable people**

- Young adults and children
- Persons vulnerable by virtue of age Persons vulnerable by virtue of disability or sensory impairment
- People on a low income
- Persons with a Drug or alcohol addiction
- Victims of domestic abuse
- Children in care or otherwise vulnerable by virtue of age
- People with complex health conditions
- People exploited where English is not their first language.
- Victims of Trafficking or sexual exploitation
- Refugees Asylum seekers
- People at risk of harassment or eviction
- People at risk of homelessness.



### **APPENDIX 3 – Non exhaustive list of relevant offences /breaches Housing law or landlord and tenant related Offences under:**

- The Public Health Acts of 1936 and 1961
- The Building Act 1984
- The Environmental Protection Act 1990
- The Town and Country Planning Act 1990
- The Prevention of Damage by Pests Act 1949
- The Protection from Eviction Act 1977
- The Local Government (Miscellaneous Provisions) Acts of 1982 and 1976
- The Housing Grants, Construction and Regeneration Act 1996
- The Local Government and Housing Act 1989
- The Housing Act 2004

Offences involving fraud Offences in which the victim has been deprived of money, property, or other benefit by misrepresentation/deception on the part of the offender including:

- Theft
- Burglary
- Fraud
- Benefit fraud (particularly where tenants are in receipt of Housing Benefit)
- Conspiracy to defraud
- Obtaining money or property by deception
- People trafficking

Being struck off as a company director

Offences involving violence A conviction for the offence of:

- Murder
- Manslaughter
- Arson
- Malicious wounding or grievous bodily harm
- Grievous bodily harm with intent
- Actual bodily harm
- Grievous bodily harm
- Robbery
- Criminal damage where the intent was to intimidate or was racially aggravated
- Common assault
- Common assault which is racially aggravated
- Assault occasioning actual bodily harm
- Possession of an offensive weapon

- Possession of a firearm Offences involving drugs - Consideration should be given to the nature of the offence and what bearing it could have on the Landlord or Agents business activities.
- The nature, quantity, purity, and class of drugs should be taken into account. In addition, where an offence of possession with intent to supply is involved regard should be had to the role and importance of, the subject in the supply chain Offences involving sexual offences
- An offence contained in schedule 3 of the Sexual Offences Act 2003.
- Unlawful discrimination - Unlawful discrimination can include findings of an Industrial Tribunal on unlawful employment practice such as discrimination under the Disability Discrimination Act. Consideration should be given to the nature of the unlawful discrimination and what bearing it could have on the management of a licensable property.
- Other offences - Modern Slavery/ Human Trafficking Offences involving the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control of another person, for the purpose of exploitation is likely to attach a lower level of culpability.

## APPENDIX 4 – Financial Penalty in the case of a breach of:

- A failure to provide an EPC free of charge to any prospective buyer or tenant and given to the eventual buyer or tenant.
- A failure by the relevant person to ensure that an EPC is commissioned before marketing the building for sale or rent.
- A failure by the relevant person and the person acting on their behalf must use all reasonable efforts to ensure that the EPC is obtained within 7 days of the start of marketing.
- A failure to obtain an EPC within the period of 21 days following the expiry of the 7-day period mentioned in Regulation 7(4).

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5000.

	Starting Point (£)	Range Min (£)	Range Max (£)
<b>Low Culpability</b>			
Harm Category 3	500	500	1000
Harm Category 2	1000	1000	1500
Harm Category 1	1550	1550	1750
<b>Medium Culpability</b>			
Harm Category 3	2000	2000	3000
Harm Category 2	2250	2250	3250
Harm Category 1	2500	2500	3500
<b>High Culpability</b>			
Harm Category 3	2750	2750	3750
Harm Category 2	3000	3000	4000
Harm Category 1	3250	3250	4250
<b>Very High Culpability</b>			
Harm Category 3	3500	3500	4500
Harm Category 2	3750	3750	4750
Harm Category 1	4000	4000	5000