

**MINIMUM ENERGY  
EFFICIENCY STANDARDS  
(MEES) (PRIVATE RENTED)  
(HOUSING IMPROVEMENT POLICY)**



Contents	Page	
1.0	Introduction	3
2.0	Key Extracts from the guidance	3
	Prohibition on letting sub-standard property	5
	EPCs and multi-let buildings	8
	Listed Buildings and EPC Compliance	9
	Exclusions and Exemptions	14
	The PRS Exemptions Register	16
3.0	Enforcement of the Domestic Minimum Energy Efficiency Standards	16
	Financial Penalty	18
	Publication Penalty	19
	General Approach	22
4.0	Changes to legislation / guidance	25
5.0	Resources	25
6.0	Publicity	25
7.0	Consultation	26
8.0	Implementation	26
9.0	Fairness	26
10.0	Review	26
11.0	Complaints and comments	27

## 1.0 INTRODUCTION

The Department for Business, Energy & Industrial Strategy has issued guidance for Landlords and Local Authorities on the minimum level of energy efficiency required to let domestic property under the *Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015*, as amended.

The latest version, at time of this policy, is available here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/788145/domestic-private-rented-property-minimum-standard-guidance-landlords-las.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/788145/domestic-private-rented-property-minimum-standard-guidance-landlords-las.pdf)

Further guidance is available here:

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

These guidance documents and the extracts thereof may be subject to change. It is recommended to check for the latest versions to be read in accordance with the policy.

## 2.0 KEY EXTRACTS FROM THE GUIDANCE:

The *Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015* as amended are designed to tackle the least energy-efficient properties in England and Wales – those rated F or G on their Energy Performance Certificate (EPC). The Regulations establish a minimum standard for both domestic and non-domestic privately rented property, effecting new tenancies from 1 April 2018. This policy relates to domestic property only.

The current domestic regulations aim to drive improvements to F or G rated homes.

The Regulations have been amended twice, and this guidance reflects the most up to date requirements. The most recent amendments, made on 15 March 2019, introduced a new self-funding element for domestic landlords, which takes effect if landlords are unable to access third-party funding to improve any EPC F or G properties they let to EPC E. This spend element is capped at £3,500 (inc. VAT) per property; chapter two describes the funding requirements in detail.

## Benefits of Energy Efficiency

EPC F and G rated properties waste energy. They impose unnecessary cost on tenants and the wider economy, and they contribute to avoidable greenhouse gas emissions. Increasing the energy efficiency of our domestic rental stock can help:

- manage the energy costs of tenants, including some of the most vulnerable;
- improve the condition of properties and help reduce maintenance costs;
- smooth seasonal peaks in energy demand, and thereby increase our energy security;
- reduce greenhouse gas emissions at relatively low cost.

## Tenants and Landlords

The Regulations are designed to ensure that those tenants who most need more thermally efficient homes, particularly vulnerable people and the fuel poor, are able to enjoy a more comfortable living environment and lower energy bills. Although newly built homes in the private rented sector (PRS) tend to have higher energy-efficiency ratings than the average, there remains a stock of older, often pre-1919 properties, which are less efficient and are difficult and costly to heat. These less efficient properties result in higher tenant energy bills, and for many, the likelihood of living in fuel poverty.

### Average Annual Cost of Energy

Data shows that in the PRS, the average modelled annual cost of energy for an EPC band G property is £3,105, and £2,124 for an EPC F rated property. This contrasts with an average annual cost of £1,425 for an EPC band E property<sup>1</sup>. Therefore, a tenant whose home is improved from EPC band F to EPC band E could expect to see their energy costs reduced by £700 a year so long as there were no wider changes in how they use energy in the property.

While tenants will benefit in terms of reduced energy bill spend, or through increased warmth, comfort and the associated health benefits, energy efficiency improvements also benefit landlords. When the Regulations were being designed, a number of landlords associations identified a range of benefits for landlords including increased tenant satisfaction and reduced void periods; reduced long-term property maintenance costs; and making properties more attractive and easier to let.

<sup>1</sup> Energy Cost data based on analysis of the 2016-17 English Housing Survey, using the Standard Assessment Procedure (SAP) methodology.

A 2016 report by Sustainable Homes on social housing, for instance, demonstrated that improving the energy efficiency of rental housing reduces both rent arrears and voids<sup>2</sup>. The research showed that:

- as homes become more efficient, they are void for a shorter period of time (31% less for band B properties than E or F);
- Cold homes have an average of 2 more weeks of rent arrears each year than higher efficiency homes,
- the wider costs of tackling rent arrears and voids are significant and can be reduced. Costs related to chasing overdue rent payments (including legal and court costs) decline by 35% for more efficient homes.

The Regulations set out the **minimum level of energy efficiency** for private rented property in England and Wales. In relation to the domestic private rented sector the minimum level is an energy performance certificate (EPC) rating of **band E**. Landlords who are installing relevant energy efficiency improvements may, of course, aim above and beyond this current requirement if they wish.

### **Prohibition on letting sub-standard property**

The minimum standard will apply to *any* domestic privately rented property which is legally required to have an EPC and which is let on certain tenancy types. Where these two conditions are met the landlord must ensure that the standard is met (or exceeded); this is discussed in greater detail in chapter one.

Landlords of domestic property for which an EPC is not a legal requirement are not bound by the prohibition on letting sub-standard property.

The minimum level of energy efficiency means that, subject to certain requirements and exemptions:

- a) from the 1st April 2018, landlords of relevant domestic private rented properties may not grant a tenancy to new or existing tenants if their property has an EPC rating of band F or G (as shown on a valid Energy Performance Certificate for the property);
- b) from 1 April 2020, landlords must not continue letting a relevant domestic property which is already let if that property has an EPC rating F or G (as shown on a valid EPC for the property). Landlords are encouraged to take action as soon as possible to ensure that their properties reach EPC E by the deadline of 1 April 2020. These requirements are referred to in the Regulations and in this guidance as “the prohibition on letting of sub-standard property”. Where a property is sub-

---

<sup>2</sup> [www.sustainablehomes.co.uk/research-project/rent-arrears/](http://www.sustainablehomes.co.uk/research-project/rent-arrears/)

standard, landlords must normally make energy efficiency improvements which raise the EPC rate to minimum E before they let the property.

In certain circumstances, landlords may be able to claim an exemption from this prohibition on letting sub-standard property.

Where a valid exemption applies, landlords must register the exemption on the PRS Exemptions Register.

### **Enforcement of the Minimum Level of Energy Efficiency**

Local authorities are responsible for enforcing compliance with the domestic minimum level of energy efficiency. They may check whether a property meets the minimum level of energy efficiency and may issue a compliance notice requesting information where it appears to them that a property has been let in breach of the Regulations (or an invalid exemption has been registered in respect of it).

Where a local authority is satisfied that a property has been let in breach of the Regulations it may serve a notice on the landlord imposing financial penalties. The authority may also publish details of the breach on the PRS Exemptions Register. The landlord may ask the Local authority to review the penalty notice and, if the penalty is upheld on review, the landlord may then appeal the penalty notice to the First-tier Tribunal.

A local authority may also serve a penalty notice for the lodging of false information on the PRS Exemptions Register. (For more information see section 3.0)

### **Properties covered by the minimum level of energy efficiency provisions**

The Regulations apply to domestic privately rented properties in England and Wales which are:

- a. let under certain types of domestic tenancy (Regulation 19)
- b. which are legally required to have an Energy Performance Certificate (EPC)

For the avoidance of doubt, this means that where a domestic private rented property meets these two conditions, it will be covered by the Regulations, irrespective of property type, length of tenancy, location, listed status, property size or any other characteristic. Conversely, where a property is let on a relevant tenancy type but is not legally required to have an EPC, or if it is required to have an EPC but is not let on a relevant tenancy, that property will not be covered and will not be required to comply with the Regulations.

## EPC – Ten Year Validity

Once an EPC is lodged on the EPC register (the EPC assessor is responsible for ensuring this happens) it is valid for a period of ten years. A new EPC is not required each time there is a change of tenancy (or even when the property is sold), provided the earlier certificate is no more than ten years old. An owner, landlord or tenant will be free to commission a further EPC within that ten-year period if they choose. If a voluntary EPC of this type is produced and lodged for a property which is already legally required to have a valid EPC, then this new EPC will become the current one for the property, replacing the earlier one.

Once an EPC reaches the ten-year point and expires, there is no automatic requirement for a new one to be commissioned. A further EPC will only be required the next time a trigger point is reached.

There is also no requirement to produce a new EPC after carrying out energy efficiency improvement works to comply with the Regulations. However, for the purposes of the Regulations, it is recommended that landlords do commission a fresh, post installation EPC. A new EPC will reflect the improvements made, alongside any change to the energy efficiency rating of the property. A post installation EPC will, in all likelihood, be the easiest way for a landlord to demonstrate that they have complied with the Regulations<sup>3</sup>.

EPCs relate to the property rather than to the owner or occupier and remain valid irrespective of the owner. Therefore, an EPC obtained by a previous owner of the property will remain valid after a property is sold on, so long as it is less than ten years old. EPCs relate to the property rather than how it is used or occupied. Therefore, an EPC obtained by a previous owner of the property will remain valid after a property is sold on, so long as it is less than ten years old.

---

<sup>3</sup> Alternatively, a landlord would be able to demonstrate compliance by providing evidence that any energy efficiency improvements made since the EPC was carried out, were assumed to deliver the necessary SAP (standard assessment procedure) points to improve the property to band E or above. So, for instance, on the EPC Energy Efficiency Rating, a property will be rated F or G if it has a SAP score of between 1 and 38; an E rating meanwhile will be awarded to a property with a SAP score of between 39 and 54. If a landlord did not wish to commission a fresh post-improvement EPC they would, at the very least, need to be able to demonstrate that the improvement, or improvements, they had made were sufficient to boost the SAP score to a minimum of 39. The recommendations report which accompanies a standard EPC sets out the rating a property is expected to achieve after installing individual recommended measures.

## EPCs and multi-let buildings

### Houses in Multiple Occupation (HMO)

Please note that currently there is no legal requirement to obtain an EPC upon the letting of an individual non-self-contained unit within a property, such as a bedsit or a room in a house in multiple occupation (HMO). However, the property in which the unit/room is situated may already have its own EPC covering that property as a whole; this could be because the property had been bought within the past ten years, or because it had previously been rented out on a whole-property basis. If a property as a whole has a valid, legally required EPC and that EPC shows an energy efficiency rating of F or G, then the owner/landlord will not be able to issue new tenancies for non-self-contained units/rooms within the property until steps are taken to comply with the Regulations.

In some cases, particularly for buildings which may contain multiple self-contained units which are let to different tenants, there may be multiple EPCs covering varying parts of the building. There may also be a separate EPC relating to the envelope of the building as a whole. These separate EPCs may provide varying energy efficiency ratings and, depending on circumstances, may have been produced at different times.

For the purposes of the minimum standard Regulations, the minimum EPC requirement is linked to the “property” being let which can be either a “[whole] building or part of a building”. In cases where the property being let is a discrete unit within a building (for example a room in a house share which is rented out on an individual basis), rather than the entire building, and where there is an EPC for the entire building, but also one for the discrete space being let, then the relevant EPC will be the one for the discrete space. Where there is only an EPC for the entire building (and where an EPC for the discrete space is not legally required) then that whole-building EPC will be the relevant EPC.

The landlord, then, should identify which EPC relates to the “property” that is subject to the relevant tenancy (or tenancies) and take action to improve the energy efficiency rating to the minimum standard, if necessary. A landlord should seek independent legal advice if they are in any doubt about which EPC is required.

As the relevant EPC will be the one related to the property being let, the landlord will only be required to install relevant measures which improve the energy performance of that property. In some cases, measures installed to improve the energy efficiency of a discrete space may also improve the energy efficiency of other spaces or units within a multi-let building. This is entirely acceptable.



## Circumstances where an EPC may not be required

Guidance<sup>4</sup> issued by the Ministry of Housing, Communities and Local Government (MHCLG) notes that an EPC is not required where the landlord (or the seller, if relevant) can demonstrate that the building is any of the following:

- a building that is officially protected<sup>5</sup> 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;
- a building used as places of worship and for religious activities;
- a temporary building 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 sectorial agreement on energy performance;
- 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); or
- HMO's (Houses in Multiple Occupation, for example these can be bedsits, hostels, shared houses etc) which have not been subject to a sale in the previous ten years, or which have not been let as a single rental in the past ten years.

A building will also not need an EPC where the landlord can demonstrate that it is furnished holiday accommodation as defined by HMRC and the holiday-maker is not responsible for meeting the energy costs. Under certain circumstances buildings may also be exempt from the requirement to obtain an EPC where it may be demonstrated that they are to be demolished. This is subject to a number of strict conditions as set out in regulation 8 of the Energy Performance of Buildings (England and Wales) Regulations 2012.

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

## Listed Buildings and EPC Compliance

There is a common misunderstanding regarding listed buildings and whether they are exempt from the legal requirement to obtain an EPC. Listed properties, and buildings within a conservation area, will not necessarily be exempt from the requirement to

<sup>4</sup> [www.gov.uk/government/publications/energy-performance-certificates-for-the-construction-sale-and-let-of-dwellings](http://www.gov.uk/government/publications/energy-performance-certificates-for-the-construction-sale-and-let-of-dwellings)

<sup>5</sup> Listed buildings on the Historic England (or Welsh equivalent) at: <https://historicengland.org.uk/listing/the-list/>

have an EPC when they are sold or let and it will be up to the owner of a listed building to understand whether or not their particular property is required to have one. Where a listed domestic private rented property, or a property within a conservation area, is required to have an EPC, that property will be within scope of the minimum energy efficiency standard and will need to be compliant (complying means either being at a minimum of EPC band E, or having a valid exemption registered for it). If a property is not legally required to have an EPC, then that property will not be covered by the minimum standard Regulations, and no exemption will be necessary.

Guidance issued by the Ministry of Housing, Communities and Local Government (MHCLG) on EPC requirements<sup>6</sup> states:

*Buildings protected as part of a designated environment or because of their special architectural or historical merit are exempt from the requirements to have an energy performance certificate insofar as compliance with minimum energy performance requirements would unacceptably alter their character or appearance.*

*To comply with minimum energy performance requirements, many of the recommendations in an EPC report e.g. double glazing, new doors and windows, external wall insulation, and external boiler flues would likely result in unacceptable alterations in the majority of historic buildings. These can include buildings protected as part of a designated environment or because of their special architectural or historical merit (e.g. listed buildings or buildings within a conservation area). In these cases, an EPC would not be required.*

*Building owners will need to take a view as to whether this will be the case for their buildings. If there is any doubt as to whether works would unacceptably alter the character or appearance of a building, building owners may wish to seek the advice of their local authority's conservation officer.*

In all cases it is vital that a landlord understands whether their property is legally required to have an EPC at any time from 01 April 2018 onwards, and whether it is or is not exempt from having to comply with the minimum level of energy efficiency provisions. If there is any doubt about whether a property (or the building it is in) is legally required to have an EPC (or whether an existing EPC is legally required or voluntary), or about any of the other criteria described above, advice should be sought from the local trading standards team.

Some examples of EPC requirements, Ten year Validity and the Minimum Energy Efficiency Standards are contained within the guidance starting on page 23.

---

<sup>6</sup> [www.gov.uk/government/publications/energy-performance-certificates-for-the-construction-sale-and-let-of-dwellings](http://www.gov.uk/government/publications/energy-performance-certificates-for-the-construction-sale-and-let-of-dwellings)

### **Subletting of domestic property**

The responsibility for not letting a domestic property below EPC E applies to any person who lets, or proposes to let, a domestic private rented property. If the original tenancy allows a tenant to sublet the property, and that tenant proposes to enter into a sub-tenancy as a new landlord to a sub-tenant, then that original tenant/new landlord should not let the property until the minimum standard is reached, or until a valid exemption has been registered.

In the case of subletting, an original tenant/new landlord may (subject to the terms of their tenancy) need to obtain consent from their superior landlord before making improvements to meet the minimum standard. Note that from 01 April 2020, there is a continuing obligation on all domestic landlords to ensure the requirements of the Regulations are met (even where there has been no change or renewal of a tenancy), so the superior landlord should have already taken steps to improve a property to E before a post April 2020 subletting occurs.

The extent to which a tenant is allowed to sublet a property will depend on the specific provisions of their particular tenancy. Even where subletting is permitted, the tenancy may make specific provision for which party would be liable for improvement costs in any given situation. For this reason, superior landlords, sub-landlords and tenants are advised to consult their tenancy, and seek their own advice, when considering their rights and responsibilities under their tenancy.

### **The Housing Health and Safety Rating System (HHSRS)**

While not directly related to the minimum level of energy efficiency, landlords should be aware of the Housing Health and Safety Rating System (HHSRS). The HHSRS is used to assess health and safety in residential properties, and was introduced by the *Housing Act 2004*. It assesses a range of potential hazards, including damp, excess cold and excess heat and categorises them according to seriousness.

Local authorities have strong powers under the *Housing Act 2004* to tackle poor property conditions which may impact peoples' health. They must take enforcement action where the most serious hazards are present.

If a local authority identifies a serious "category 1" hazard, it has a duty to take the most appropriate action. It may also take action for less serious category 2 hazards where this is considered the most satisfactory course of action. The HHSRS does not deal with a property being inefficient from an energy point of view; rather, action can be taken if there is excess cold or damp at the property, for example, but these two hazards can overlap in a situation where a property needs improvement from an energy efficiency perspective.

Depending on the case, local authorities may aim to deal with problems informally at first, but if this is unsuccessful they may take legal action against a landlord requiring them to carry out improvements to the property; for example, by installing central

heating and/or insulation to improve cold properties. Where a legal notice is served under the *Housing Act 2004*, the landlord will have to meet the cost of the required work.

**While some landlords of F and G rated rental properties may be able to claim valid exemptions from the requirement to improve a property to EPC E, this exemption will not excuse them from meeting the existing obligation keep their property free from serious hazards. Failure to do so may result in enforcement action regardless of the fact that the property may be exempt from the minimum level of energy efficiency.**

Because the HHSRS is so important to local authority enforcement of decent standards, and thereby the protection of peoples' health, the Government has commissioned a scoping review to assess how well the HHSRS works in practice and ensure it is fit for purpose.

The Government has also supported the *Homes (Fitness for Human Habitation) Act 2018* which came into force on 20th March 2019 and requires landlords to ensure that their properties are kept free of potentially serious hazards at the start of and throughout a tenancy. Where a landlord fails to do so, their tenants will be able to seek redress in the courts.

### **Relevant energy efficiency improvements and recommendations reports (regulation 24)**

For the purposes of the Regulations, “relevant energy efficiency improvements” which a landlord may choose to install to enable a sub-standard property to reach EPC E (either a single measure, or a combination of measures as appropriate) are any energy efficiency improvements recommended for the property through any of the following:

- an energy efficiency recommendations report (including the recommendations report accompanying a valid EPC)<sup>7</sup>, or
- a report prepared by a surveyor<sup>8</sup>, or
- a Green Deal Advice Report (GDAR)

A recommended energy efficiency measure will only be a “relevant energy efficiency improvement” for the purposes of the Regulations if:

- third-party funding is available to cover the full cost of purchasing and installing the improvement(s); or

---

<sup>7</sup> “Recommendations report” has the meaning given in Part 1, section 4 (1) of The Energy Performance of Buildings (England and Wales) Regulations 2012: “recommendations made by an energy assessor for the cost-effective improvement of the energy performance of a building or building unit”.

<sup>8</sup> A qualified surveyor is one who is on the Royal Institution of Chartered Surveyors' register of valuers. The register can be accessed via RICS's website at: [www.ricsfirms.com](http://www.ricsfirms.com).

- where third-party funding is unavailable, the improvement(s) can be purchased and installed for **£3,500 or less (inclusive of VAT)** using the landlord's own funding; or
- the improvement(s) can be installed through a combination of landlord self-funding and third-party funding with a total cost of £3,500 or less (inclusive of VAT).

### **Landlord self-funding and the cost cap**

If a landlord of an EPC F or G rated property is unable to secure third-party funding, they will need to use their own funds to cover the costs of improving their property to EPC E (or as close as possible). This requirement is subject to a spending cap of **£3,500 (inclusive of VAT)**. This cap applies to the *overall* cost of improving the property, not to the cost of individual measures. Therefore, a landlord of an EPC F or G property need only invest a total sum of money up to the level of the cap in improving their property, and need not invest in multiple measures which, individually, cost £3,500 (or less).

Moreover, the cap is an upper ceiling – it is not a target or a spend requirement. If a landlord can improve their EPC F or G property to E (or higher) for less than £3,500 then they will have met their obligation and need take no further action. (Analysis suggests that the *average* cost of improving an EPC F or G rated property to band E is £1,200.)

In cases where a landlord is unable to improve their property to E within the £3,500 cap, then they should install all measures which can be installed up to the £3,500 cap, and then register an exemption on the basis that “all relevant improvements have been installed and the property remains below E” (see chapters four and five for exemption advice). Analysis suggests that, for F and G rated properties which cannot be improved to band E within the £3,500 cap, the combined *average* cost of the improvement, or improvements, which can be made is £2,000.

### **The £3,500 cost cap – spending on energy efficiency improvements incurred on or after 01 October 2017**

When calculating their spend within the cost cap, landlords may take account of any energy efficiency improvement costs incurred since 01 October 2017, including where funding was obtained through a third party. Therefore, where energy efficiency improvements have been made to an EPC F or G rated property since 01 October 2017, the landlord may subtract the cost of these previous energy efficiency improvements from the £3,500 limit (inclusive of VAT) to determine the value of the remaining energy efficiency improvements must make.

## Exclusions and Exemptions

Any exemptions from the prohibition on letting substandard property which are claimed by a landlord may not pass over to a new owner or landlord upon sale or other transfer of that property. If a let property is sold or otherwise transferred with an exemption in place, the exemption will cease to be effective and the new owner will need to either improve the property to the minimum standard at that point, or register an exemption themselves where one applies, if they intend to continue to let the property.

If a landlord is intending to register an exemption because a “relevant energy efficiency improvement” cannot be installed, the exemption may only be registered if the improvement in question is the only “relevant improvement” which can be made to the property.

For example, if several “relevant improvements” have been identified, and one of these would require planning consent, and planning consent is subsequently sought and refused, the landlord should take steps to make the other improvements which do not require planning consent, rather than register a “consent exemption” and neglect those improvements which are viable.

- Where all the “relevant energy efficiency improvements” for the property have been made (or there are none that can be made) but the property remains substandard (regulation 25) - if the measure or package of measures purchased and installed by the landlord does not improve the property to EPC E, the landlord need not take any further action if there are no additional measures which can be selected without pushing the overall costs above the £3,500 cap (inc. VAT). The situation must be registered on the PRS Exemptions Register and supported by the necessary evidence. The exemption will last five years; after five years it will expire and the landlord must try again to improve the property’s EPC rating to meet the minimum level of energy efficiency. If this cannot be achieved, a further exemption may be registered.
- Where a recommended measure is not a “relevant energy efficiency improvement” because the cost of purchasing and installing it would exceed the £3,500 cap (inc. VAT) (“high cost” exemption) - The prohibition on letting property below an EPC E does not apply if the cost of making even the cheapest recommended improvement would exceed the £3,500 cap (inc. VAT). This exemption should only be used where there are no improvements which can be made for £3,500 or less. The landlord must register this on the PRS Exemptions Register. To support this exemption, the landlord must provide evidence in the form of three quotations from different installers, each showing that the cost of the cheapest recommended improvement exceeds the £3,500 cap (inc. VAT). Copies of these three quotes must be uploaded onto the Exemptions Register. Once registered, the exemption will be

valid for five years; after which time it will expire and the landlord must try again to improve the property's EPC rating to meet the minimum level of energy efficiency. If this still cannot be achieved, then a further exemption may be registered. If one or more recommended improvements can be made for £3,500 or less, and these improvements fail to improve the property to EPC E, then the exemption which should be registered is the one described above where: 'All the "relevant energy efficiency improvements" for the property have been made but the property remains sub-standard'.

- **Relevant energy efficiency improvements - wall insulation (regulation 24(3))** - The Regulations recognise that certain wall insulation systems cannot, or should not, be installed in certain cases even where they have been recommended and where the costs do not exceed £3,500 (or where third-party funding can be secured to cover the costs of installing them). If a landlord intends to rely on the special provisions relating to wall insulation in order to let a sub-standard property, they must register the property and all required information on the PRS Exemptions Register.
- **Third party consent exemption (regulation 31)** - It is not practical to provide an exhaustive list of all situations where third party consent could apply. Information on when and where consent is required will be contained within relevant documentation for the property, for example in the landlord's lease or mortgage condition documents, or within the current tenancy agreement. If a landlord is in any doubt about whether consent is required for a measure in their property, they should seek appropriate advice.

Landlords are also strongly advised to speak to their local authority planning department if they are in any doubt about whether planning consent is needed to implement a particular improvement, particularly where the building to be improved is listed or within a conservation area.

- **Property devaluation exemption (regulation 32 and regulation 36 (2))** - An exemption of five years from meeting the minimum standard will apply where the landlord has obtained a report from an independent surveyor who is on the Royal Institution of Chartered Surveyors (RICS) register of valuers advising that the installation of specific energy efficiency measures would reduce the market value of the property, or the building it forms part of, by more than five per cent. After five years the exemption will expire and the landlord will again need to try to improve the property to meet the minimum standard, or register another valid exemption.
- **Temporary exemption due to recently becoming a landlord (regulation 33 & regulation 36 (2))** - The Regulations acknowledge that there are some limited circumstances where a person may have become a landlord suddenly and as such it would be inappropriate or unreasonable for them to be required to comply with the Regulations immediately. Check the guidance for the circumstances. In particular, from 01 April 2020, when the minimum standard applies to all domestic private rented properties that are occupied by tenants, a temporary exemption of six

months will apply from the date from which a person became a landlord on purchasing an interest in a property and, on the date of the purchase, it was let on an existing tenancy.

### **The PRS Exemptions Register**

If a landlord considers that an exemption applies allowing them to continue to let a property below the minimum energy efficiency standard, that landlord will need to upload details and evidence of the exemption to the PRS Exemptions Register - a centralised self-certification register.

Only those domestic F and G rated properties which are covered by the Regulations, and which qualify for a valid exemption, should be registered. This means that landlords need not register domestic F or G properties which are not covered by the Regulations (for example buildings which are not legally required to have an EPC - see section 1.1.4 - or which have not been subject to a new tenancy agreement - during the period 01 April 2018 to 01 April 2020 only).

Exemptions are registered on a self-certification basis, and registration of an exemption does not attract a fee or charge. Exemptions are valid from their date of registration. Enforcement authorities will monitor and audit to ensure that exemptions comply with the Regulations, but a landlord does not have to wait to hear from their local authority before they can rely on the exemption (and they may never be contacted by their enforcing authority if the authority is satisfied that the exemption is compliant).

The information requirements for each exemption are set out in the guidance document and vary by exemption.

If a let property is sold or otherwise transferred with an exemption registered, the exemption will cease to be effective and the new owner will need to either improve the property to the minimum standard at that point, or register an exemption where one applies, if they intend to continue to let the property.

## **3.0 ENFORCEMENT OF THE DOMESTIC MINIMUM LEVEL OF ENERGY EFFICIENCY**

In all cases it is recommended that a landlord contacts the Authority and attempt to resolve any dispute informally first. Both parties may take expert advice before the matter progresses to the First-tier Tribunal.

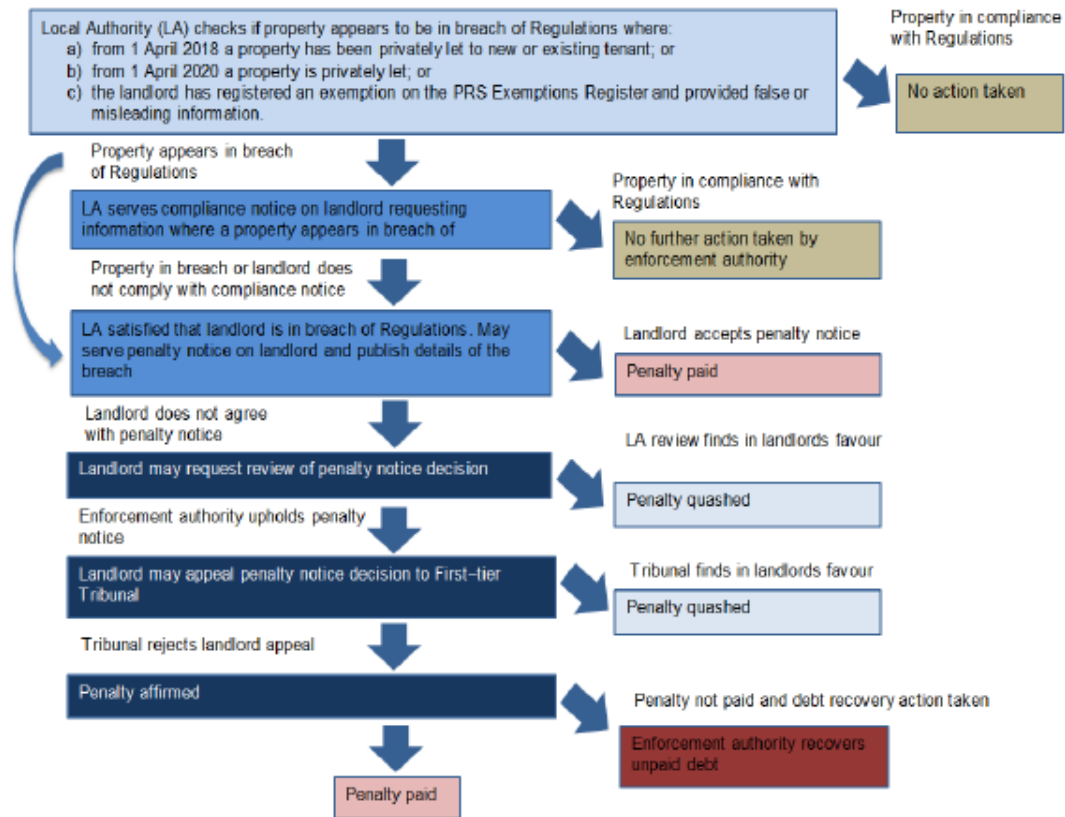
Where it is believed that a landlord may be in breach of the prohibition on letting a sub-standard property or a landlord has been in breach of the prohibition at any time in the past 12 months, the Authority may serve a compliance notice that requests information from that landlord to help decide whether that landlord has in fact breached the prohibition.



The Authority may serve a compliance notice on a landlord up to 12 months after the suspected breach. This means that a person may be served with a compliance notice after they have ceased to be the landlord of the property.

Any enforcement will follow the following process, (subject to legislative changes):

### Compliance and Enforcement Flow Chart



#### Service of compliance notice:

Any notice served will be in writing and may be sent in hard copy and/or electronically.

Where a notice is served on a corporate body it may be given to the secretary or clerk of that body if a suitable named individual cannot be identified.

Where a notice is served on a partnership, it may be addressed to any partner, or to a person who has control or management of the partnership business.

**Compliance notice:**

A compliance notice may request either original, or copies of;

- the EPC that was valid for the time when the property was let;
- any other EPC for the property in the landlord's possession;
- the current tenancy agreement used for letting the property;
- any Green Deal Advice Report in relation to the property;
- any other relevant document that the enforcement authority requires in order to carry out its compliance and enforcement functions.

The compliance notice will specify:

- the name and address of the person that a landlord must send the requested information to;
- the date by which the requested information must be supplied (the notice must give the landlord at least one calendar month to comply).

The compliance notice may also:

- require the landlord to register copies of the requested information on the PRS exemptions register
- be amended or withdrawn at any time in writing, for example where new information comes to light.

The Authority may use the documents provided by the landlord or any other information it holds to decide whether the landlord is in breach of the regulations.

**Penalties**

Failure to provide documents or information requested by a compliance notice, or failure to register information on the PRS Exemptions Register as required by a compliance notice, may result in a penalty notice being served.

The Authority may serve a Financial Penalty and / or a Publication Penalty.

**Financial Penalty**

The Authority will decide the amount of penalty up to the maximum within the regulations. These are:

Infringement	Penalty (under 3 months in breach)	Penalty (three months or more in breach)
Renting out a non-compliant property	(A) Up to £2,000, and/or Publication penalty.	(B) Up to £4,000, and/or Publication penalty.
Providing false or misleading information on the PRS Exemptions Register	(C) Up to £1,000, and/or Publication penalty	
Failing to comply with a compliance notice	(D) Up to £2,000, and/or Publication penalty	

It is important to note that the maximum penalty amounts apply **per property, and per breach** of the Regulations.

The Authority will not impose a financial penalty under both (A) and (B) above in relation to the same breach of the Regulations. But it may impose a financial penalty under either (A) or (B), together with financial penalties under (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.

*Calculation of penalty:*

The penalty will be calculated taking into account whether it is a first or subsequent offence. This is in relation to the occurrence of an offence for a specific property.

Any offence in relation to a property will be considered a first offence unless:

- A penalty notice has already been issued in respect of that property, and
- The individual committing the offence is the individual who was served the penalty notice.

It will, in respect of the penalty for renting out a property, take into account whether the EPC indicates a F or G rating. The letting of a G rated property, as indicated by the registered EPC, will carry a higher penalty.

The following are indicative penalties but the Local Authority will consider any other factors that it feels are relevant

Track Record	EPC Rating	Renting out a non-compliant property (in breach less than 3 months)
Up to max £2000		
1st Offence	F	£1,250
	G	£1,500
Subsequent Offence(s)	F	£1,750
	G	£2,000
Track Record	EPC Rating	Renting out a non-compliant property (in breach for 3 months or more)
Up to max £4000		
1st Offence	F	£2,500
	G	£3,000
Subsequent Offence(s)	F	£3,500
	G	£4,000

Track Record	EPC Rating	Providing false, or misleading, information
Up to max £1000		
1st Offence	N/A	£750
Subsequent Offence(s)	N/A	£1,000

Offences	Failing to comply with a compliance notice
up to max £2000	
Failure to provide documents requested by LA in Compliance Notice	£1,500
Failure to register an exemption on the PRS exemptions register	£500
Failure to provide documents requested by LA, and failure to register an exemption	£2,000

The penalty will be raised against the individual who lets the domestic private rented property to the tenant, where there are multiple individuals who have let the property

the penalty will be apportioned between them taking into account an assessment of culpability.

This will be determined on a case by case basis in relation to the evidence.

### **Publication Penalty**

The Authority will publish some details of the landlord's breach on a publicly accessible part of the PRS Exemptions Register. The information will be available for at least 12 months up to a time decided by the Authority.

The information that may be published is:

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

The Authority will not publish the information until after the end of the appeal period, or in the event the notice is appealed after the appeal has been decided.

### **Penalty Notice:**

The Authority may serve a penalty notice (relating to a financial penalty, a publication penalty or both) on the landlord where they are satisfied that the landlord is, or has been in the last 18 months:

- in breach of the prohibition on letting sub-standard property (which may include continuing to let the property after 1 April 2020) or
- in breach of the requirement to comply with a compliance notice or
- has uploaded false or misleading information to the Exemptions Register.

The Authority may serve a penalty notice on a landlord up to 18 months after the suspected breach. A person may be served with a penalty notice after they have ceased to be the landlord of a property.

The penalty notice may include a financial penalty, a publication penalty or both. The penalty notice will:

- explain which of the provisions of the Regulations the enforcement authority believes the landlord has breached;
- give details of the breach;
- tell the landlord whether they must take any action to remedy the breach and, if so, the date within which this action must be taken (the date must be at least a month after the penalty notice is issued);

- explain whether a financial penalty is imposed and if so, how much and, where applicable, how it has been calculated;
- explain whether a publication penalty has been imposed
- where a financial penalty is imposed, tell the landlord the date by which payment must be made, the name and address of the person to whom it must be paid and the method of payment (the date must be at least a month after the penalty notice is issued)
- explain the review and appeals processes, including the name and address of the person to whom a review request must be sent, and the date by which the request must be sent and
- explain that if the landlord does not pay any financial penalty within the specified period, the enforcement authority may bring court proceedings to recover the money from the landlord.

A further penalty notice may be issued if the action required in the penalty notice is not taken in the time specified.

When the Authority issues a penalty notice which carries a right of appeal, it will inform the landlord about that right of appeal. Typical wording might be:

“You have a right of appeal against this decision to the General Regulatory Chamber (GRC) of the First Tier Tribunal. If you wish to appeal you should do so within 28 days of the date of this letter by writing to (Leicester address).

You can obtain an appeal form from that address or from the tribunal website at (website address).”

### **Review of Penalty Notice**

The Authority may review its decision to serve a penalty notice.

Where a request is made to the Authority in writing, and within the timescale indicated on the penalty notice it will consider everything the landlord has said in the request and decide whether or not to withdraw the penalty notice.

The Authority may decide to:

- waive or reduce the penalty,
- allow the landlord additional time to pay, or
- Modify the publication penalty

The Authority will withdraw the penalty notice if:

- they are satisfied that the landlord has not committed the breach set out in the penalty notice;

- although they still believe the landlord committed the breach, they are satisfied that the landlord took all reasonable steps, and exercised all due diligence to avoid committing the breach; or
- they decide that because of the circumstances of the landlord's case, it was not appropriate for the penalty notice to be served.

The Authority will inform the landlord of their decision in writing at the earliest opportunity.

### **Recovery of financial penalty**

If a landlord does not pay a financial penalty imposed on them, the enforcement authority may take the landlord to court to recover the money. It will not do this during the period for review stipulated on the notice, while reviewing their decision, or during the period in which the landlord could appeal to the First-tier Tribunal or while there is an ongoing tribunal appeal.

### **Appeals to the First-tier Tribunal (General Regulatory Chamber)**

Where a landlord asks the enforcement authority to review a decision to serve a penalty notice and, on review, they decide to uphold the penalty notice, the landlord may then appeal to the First-tier Tribunal against that decision if they think that:

- 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 or
- it was inappropriate to serve a penalty notice on them in the particular circumstances.

If a landlord does appeal, the penalty notice will not have effect while the appeal is ongoing.

The First-tier Tribunal may decide to quash, confirm or modify the penalty notice. If the penalty notice is quashed, the enforcement authority must reimburse the landlord for any financial penalty already paid under the notice.

### **General Approach**

Addressing health and safety issues in housing is a key function of all local authorities. As such the use, and enforcement, of the Minimum Energy Efficiency Standards (MEES) will be considered in conjunction with other legislative tools open to the Authority under its Housing Improvement Policy.

In particular there is crossover between MEES and The Housing Health and Safety Rating System (HHSRS) which is a tool for identifying those hazards to health and safety which pose an unacceptable risk to occupiers.

Properties with poor energy efficiency are likely to have defects contributing to the hazards of Excess Cold and / or damp and mould.

The preferred method of approach is action that will reduce the risk to the occupants, deter non-compliance and encourage others to make relevant improvements. This could be considered a “Prevent and Penalise” approach and may include:

Following the compliance and enforcement flow chart (page 17):

- Service of a Compliance notice
- Service of a Penalty notice (Financial and/or Publishing Penalty)
- Publicising enforcement activities other than in the PRS Exemptions Register via media.
- Where a property is believed to require an EPC but there is no entry on the public EPC register then we will refer the matter to Trading Standards for further investigation and enforcement where appropriate.

In addition:

The property may be inspected in accordance with Part I of the Housing Act 2004. This will be in accordance with Plymouth City Council’s Housing Improvement Policy 2018 (or subsequent iterations) and may lead to:

- Service of a Notice under Part I of the Housing Act 2004. This may incur a charge for service of the notice. A notice would likely require improvements to the property. The notice may require works in excess of the £3,500 limitation under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, as amended.
- The Notice under Part I of the Housing Act 2004 may require works to reduce hazards identified that would not fall under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, as amended
- Where there is failure to comply with a Notice served under Part I of the Housing Act there will be consideration for work in default, and a prosecution (unlimited fine) / or civil penalty (up to £30,000).
- The inspection may also identify hazards or breaches of legislation other than those relating to MEES. This may result in:
  - Service of notices requiring works under relevant legislation
  - Other actions in line with Plymouth City Council’s Housing Improvement Policy 2018 (or subsequent iterations),



- Referrals to other enforcement authorities, e.g. HSE, Police etc.

We will identify possible breaches of MEES legislation by various methods including:

HMO licensing – the online application process requests submission of an EPC as part of the application. This is not a mandatory requirement as it is recognised that some HMOs may not have legally required an EPC to have been created.

Reactive work – the online request for assistance asks if an EPC have been provided and allows the applicant to indicate what the EPC banding was.

Proactive work – we may undertake targeted checks. This would include geographical checks, working with partners, random checking of entries on the EPC exemptions register etc.

Where an individual has committed an offence we may look at their wider portfolio of property to determine if other offences have occurred in relation to other properties.

Supporting third parties – giving of advice and support to other agencies/parties to highlight the legislation, its requirements, how to identify potential breaches and how to make referrals into the service for investigation.

Where notices are served under legislation other than the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, (as amended), it will include relevant information on rights to appeal such notices.

## **4.0 CHANGES TO LEGISLATION / GUIDANCE**

The guidance extracts may be subject to change and the extracts above may be superseded. Individuals will be expected to check current guidance. Any changes will be considered to see if they impact upon the policy. Revisions /updates to Policy will be made as appropriate.

## **5.0 RESOURCES**

Council resources, both financial and human, are always limited. Strategy will be used to guide overall financial and staffing allocation. Even with this targeting of resources, a system of prioritisation will be needed to direct these to address the highest need and achieve the greatest benefit.

## **6.0 PUBLICITY**

The Council will always aim to publicise successful convictions and details of civil penalties to reassure compliant businesses or regulated persons that economic competition is a 'level playing field'.

To ensure that landlords, managers and other clients are aware of this policy it will be published on the Council's internet WebPages. We will also raise awareness through our partners for example via landlord associations and the Private Rented Charter Group.

## **7.0 CONSULTATION**

The contents of this proposed policy, have been subject to consultation with landlords and other stakeholders, via the Private Rented Sector Partnership Group between 12<sup>th</sup> June 2020 and 10<sup>th</sup> July 2020.

There were some clarifications on policy points required by Richard Green of Trading Standards, as they enforce whether or not an EPC has been commissioned. There were a couple of minor textual amendments suggested and these have been incorporated in the final policy.

## **8.0 IMPLEMENTATION**

Once agreed and signed by Cabinet the policy will be announced by publishing it on the Council's website, using social media, dissemination via the local landlord guilds and presentation to the Private Rented Charter Group.

The policy needs to be properly implemented to ensure that there is consistency in its application.

Decisions to take formal enforcement activity are jointly made by the case officer and Housing Improvement (Technical Lead). This enables the process of the case, and the course of action, to be reviewed.

Each closed case is subject to random auditing; this is to ensure that proper procedures have been followed.

## **9.0 FAIRNESS**

The Council's policy is to treat all those that it interacts with fairly and on an equitable basis founded on case by case circumstances, regardless of gender, sexual orientation, marital status, race, nationality (including citizenship), disabilities or religious or political affiliation.

Plymouth's agreement with the Fairness Commission states that Plymouth City Council should commit to fairness in what it does and how it does it.

In this instance the following principles apply:

- The city should give priority to those in greatest need when it allocates resources.
- Things that make the biggest difference to people's lives should get priority when deciding where resources go.
- Preventing inequalities is more effective than trying to eliminate them.
- Services should be provided 'with' people, not 'for' them.

## **10.0 REVIEW**

The Council will keep under review the effectiveness of their chosen regulatory activities in delivering the desired outcomes and make any necessary adjustments accordingly.

## **11.0 COMPLAINTS AND COMMENTS ABOUT THIS POLICY**

Comments, complaints or suggestions about the Policy or any aspect of our work are welcomed. The Council's standard comments, complaints and appeals procedure will be followed. If you would like a copy of this, please contact us on Tel 01752 398500 or go to the website [www.plymouth.gov.uk](http://www.plymouth.gov.uk).

If a complaint is about a Freedom of Information request, you can complain to the Information Commissioner, [www.ico.org.uk](http://www.ico.org.uk).

Enquiries about this policy can be made by:

Email: [communityconnections@plymouth.gov.uk](mailto:communityconnections@plymouth.gov.uk)

Tel: 01752 398500

Letter: Community Connections, Plymouth City Council, Ballard House, Plymouth, PL1 3BJ