

# **The Energy Efficiency (Private Rented Property) (Scotland) Regulations 2019**

## **Energy Efficient Scotland**

### **Guidance to accompany Regulations**

**June 2019**



**Scottish Government**  
Riaghaltas na h-Alba  
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# 1 Introduction

## 1.1 The Guidance

1.1.1 This document provides guidance to landlords of domestic private rented property, local authorities, and others with an interest in the minimum level of energy efficiency required to let domestic private property, known as the private rented sector (PRS) under the *Energy Efficiency (Private Rented Property) (Scotland) Regulations 2019*.

1.1.2 The Energy Efficiency (Private Rented Property) (Scotland) Regulations 2019 are referred to in this guidance as “the Regulations”.

1.1.3 The Regulations set out the minimum level of energy efficiency for properties in the PRS and use Energy Performance Certificates (EPC) as the method to measure this standard. They are designed to tackle the least energy-efficient properties in Scotland, those with an rating of F or G on their EPC, and form part of a framework of standards which will be phased in gradually over time to tackle the energy efficiency of all buildings in Scotland. This framework forms part of Energy Efficient Scotland, a Scottish Government Programme intended to make all our buildings warmer, greener and more efficient, supporting efforts towards eradicating fuel poverty, reducing greenhouse gas emissions, as well as contributing to sustainable economic growth<sup>1</sup>.

## 1.2 Benefits of Energy Efficiency

1.2.1 EPC F and G rated properties are the most energy inefficient properties in our housing stock. They impose unnecessary energy costs on tenants and the wider economy and can lead to poor health outcomes, with a resulting resource pressure on health services. These properties also contribute to avoidable greenhouse gas emissions.

1.2.2 Increasing the energy efficiency of our private rental stock can help:

- manage the energy costs of tenants, including some of the most vulnerable to the cold;
- improve the condition of properties and help reduce maintenance costs;
- improve health outcomes associated with cold and damp homes;
- lower demand for energy thereby smoothing seasonal peaks in energy demand; and as result;
- increase our energy security; and
- reduce greenhouse gas emission.

## 1.3 The Minimum Standards for the Private Rented Sector

1.3.1 Minimum standards for energy efficiency in the PRS will now apply from the start of a tenancy. Tenants will, as a result, be living in more efficient homes from the start of their tenancy.

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<sup>1</sup> <https://www.gov.scot/publications/energy-efficient-scotland-route-map/>

1.3.2 From 1 April 2020 landlords of PRS properties may not grant a new tenancy for a property rated EPC F or G (unless an exemption applies). The landlord must improve the rating to minimum of EPC E (or register an exemption if one applies) before letting.

1.3.3 By 31 March 2022, the minimum level of energy efficiency will apply to all domestic private rented properties, even if there has been no change in tenancy. From that date, landlords may not continue to let properties with an EPC rating of F or G, even to an existing tenant (unless an exemption applies). Landlords are encouraged to take action as soon as possible, bearing in mind that there is an additional target of EPC D, which will apply in a similar way, and may wish to ensure their properties meet or exceed EPC D by 31 March 2025, or indeed meet or exceed EPC C.

1.3.4 From 1 April 2022 the landlord must not let the property unless the EPC is a minimum of D. By 31 March 2025 all PRS properties will need to have an EPC of D.

DATE	EPC STANDARD	PROPERTIES IN SCOPE
<b>From 1 April 2020</b>	<b>EPC E</b>	<b>Change in tenancy</b>
<b>By 31 March 2022</b>	<b>EPC E</b>	<b>All tenancies</b>
<b>From 1 April 2022</b>	<b>EPC D</b>	<b>Change in tenancy</b>
<b>By 31 March 2025</b>	<b>EPC D</b>	<b>All tenancies</b>

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

1.4.1 Local authorities will enforce the minimum standard, including recording and monitoring exemptions, and where necessary, serve a penalty notice on landlords that do not comply with the standard.

## What are Energy Performance Certificates?

Energy Performance Certificates (EPCs) provide information on how energy efficient your building is, and how it could be improved. Buildings are rated on a scale from **A-G**, with **A** being the most efficient. Information is also provided on measures which could be made to improve the energy efficiency and an indication of the cost for each improvement. An EPC must be produced when a new building has been constructed; and when a building is to be sold or rented to a new tenant<sup>2</sup>. An EPC must also be obtained and displayed in a building over 250 m<sup>2</sup> in area, which is occupied by a public authority and frequently visited by the public.

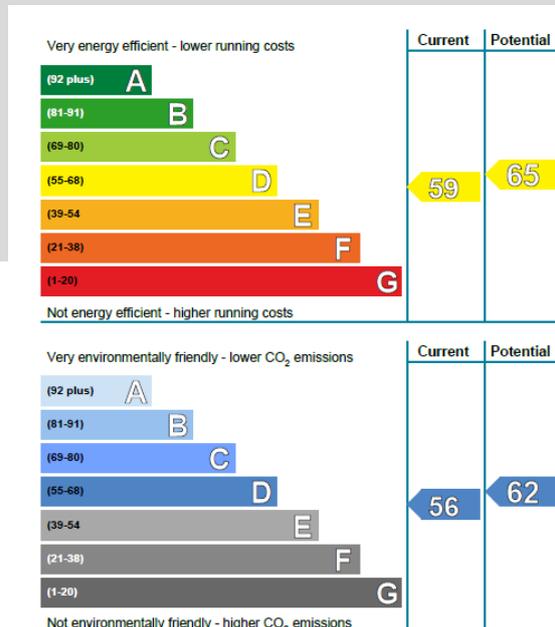
EPCs are valid for 10 years.<sup>3</sup> They are based on information such as the size and layout of a building, how it has been constructed and the way it is insulated, heated, ventilated, and lighted. Since people use buildings in different ways, the calculation is based on standardised assumptions of occupancy and use.

## What do domestic EPCs show?

Domestic EPCs display an Energy Efficiency Rating (EER) and an Environmental Impact Rating (EIR). The EER is rated in terms of energy costs, while the EIR is rated in terms of carbon emissions.

Domestic EPCs also have numerical ratings, with a higher number suggesting greater energy efficiency.

On an EPC the numbered arrows show the current rating based on the existing energy performance of the property and the potential rating if the suggested improvements are implemented.



<sup>2</sup> Stand-alone non-domestic buildings below 50m<sup>2</sup>, temporary buildings with planned use of no more than two years, non-domestic buildings whose function implies low energy demand and buildings sold for demolition are currently all exempt.

<sup>3</sup> <https://www.gov.scot/policies/building-standards/energy-performance/>

## 2 How the Regulations Apply to the Private Rented Sector

### 2.1 Properties covered by the Regulations

2.1.1 Properties in the PRS, where there is an EPC, and the tenancy is covered by the repairing standard as defined in the Housing (Scotland) Act 2006 section 12<sup>4</sup>, are covered by these Regulations.

2.1.2 A domestic private rented property is considered to be 'sub-standard' in terms of the Regulation where the valid EPC expresses the energy performance indicator of the property as being below the minimum level of energy efficiency'. (Regulations 6(a)).

2.1.3 Regulation 6 (b) sets out that the minimum level of energy efficiency means:

- a) a property meets an EPC rating of E, where there has been a change of tenancy, from 1 April 2020 (the date of commencement of the regulations);
- b) a property meets an EPC rating of E by 31 March 2022;
- c) a property meets an EPC rating of D , where there has been a change in tenancy from 1 April 2022;
- d) a property meets an EPC rating of D by 31 March 2025.

2.1.4 Regulation 7 prevents a landlord from letting or continuing to let a property that does not meet minimum standards unless an exemption applies. (See Section 4 below).

### 2.2 Energy Performance Certificate (EPC) ratings

2.2.1 As noted above, alongside tenancy type considerations, the Regulations only apply to those private rented properties where there is an EPC. Building owners are legally required to provide an EPC on construction, sale or rental of a building to a new tenant.

2.2.2 EPCs include a Recommendations Report which gives more detailed information on the energy efficiency of the building, how to improve it and the possible costs. Landlords can use the EPC Recommendations Report to find out what type of work they can do to improve the energy efficiency of their property to meet minimum energy efficiency standards. Home Energy Scotland (HES) can give advice on improvements and finance<sup>5</sup>.

2.2.3 Further advice on Energy Performance certificates can be found at <https://www.gov.scot/publications/energy-performance-certificates-introduction/>

### 2.3 When do the minimum level of energy efficiency provisions apply?

2.3.1 Minimum standards for energy efficiency in the PRS are being introduced in a phased manner, initially with triggers for **new** tenancies entered

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<sup>4</sup> <http://www.legislation.gov.uk/asp/2006/1/section/12>

<sup>5</sup> <https://www.energysavingtrust.org.uk/scotland/home-energy-scotland>

into from 1<sup>st</sup> April 2020 onwards, and a “backstop” date of 31<sup>st</sup> March 2022 for **all** remaining tenancies.

DATE	EPC STANDARD	PROPERTIES IN SCOPE
<b>From 1 April 2020</b>	<b>EPC E</b>	<b>Change in tenancy</b>
<b>By 31 March 2022</b>	<b>EPC E</b>	<b>All tenancies</b>
<b>From 1 April 2022</b>	<b>EPC D</b>	<b>Change in tenancy</b>
<b>By 31 March 2025</b>	<b>EPC D</b>	<b>All tenancies</b>

2.3.2 From **1<sup>st</sup> April 2020**, where a landlord intends to let a domestic private rented property on a **new tenancy** (or after 31<sup>st</sup> March 2022 continue to let such a property) they need to check whether their property is covered by the minimum level of energy efficiency provisions, and, if so, ensure that the **EPC rating is at E** or above. If the EPC rating is below E, the landlord must either take appropriate steps to improve the rating to meet the minimum standard, as set out in the EPC Recommendations Report, or register an exemption, if one applies (see chapter 4 below).

2.3.3 The next phase of minimum standards for energy efficiency in the PRS comes into effect on **31<sup>st</sup> March 2022** when **all tenancies** are covered by the Regulations. At this point all PRS properties should have reached EPC standard E, and a landlord must not let any EPC F or G rated domestic property to new tenants, or renew or extend an existing tenancy agreement with existing tenants, unless either:

- the landlord has made all the relevant energy efficiency improvements that can be made (or there are none that can be made) and the property’s energy performance indicator is still below an EPC E, and this has been registered as an exemption on the PRS Exemptions Register; or
- no improvements have been made but a valid exemption applies which has been registered on the PRS Exemptions Register.

2.3.4 Then from **1<sup>st</sup> April 2022**, where a landlord intends to let a domestic property on a **new tenancy** (or after 31 March 2025 continue to let such a property) they need to check whether their property is covered by the minimum level of energy efficiency provisions and, if so, ensure that the **EPC rating is at D** or above. If the EPC rating is below D, the landlord must either take appropriate steps to improve the rating to meet the minimum standard, as set out in the EPC Recommendations Report, or register an exemption, if one applies (see chapter 4 below).

2.3.5 Then, after **31<sup>st</sup> March 2025**, when **all tenancies** are covered by the Regulations, landlords must not continue to let a sub-standard domestic property, even to existing tenants (where there has been no tenancy renewal, extension or indeed new tenancy), unless:

- all relevant energy efficiency improvements have been made (or there are none that can be made), the EPC remains below D, and the situation has been registered on the PRS Exemptions Register; or
- no improvements have been made but a valid exemption applies and has been registered on the PRS Exemptions Register.

2.3.6 If the landlord continues to let a property that does not comply with minimum standards they may be subject to a civil penalty. Details of civil penalties can be found at para 5.3.

## **2.4 Subletting properties**

2.4.1 If a property is sublet, the property owner is normally responsible for ensuring the property complies with minimum standards.

## **2.5 Houses in Multiple occupation (HMOs) and shared rentals**

2.5.1 A landlord advertising a property to let in Scotland is required by law to provide an EPC for that property and must display the EPC rating in the advert. This applies to HMOs as well. Given that this is an existing legal requirement, HMOs must therefore comply with the minimum standards set out in these Regulations.

2.5.2 Also, if such a dwelling (whole building) is being let or sold as a whole (not just when individual rooms become available) an EPC is required to meet the Energy Performance Buildings Directive (EPBD) and is therefore covered by these Regulations.

2.5.3 Further guidance on the need for an EPC, including frequently asked questions about HMOs, can be found at <https://www.gov.scot/publications/energy-performance-certificates-frequently-asked-questions/> . If in doubt, legal advice should be sought.

## **2.6 Tenancies let before 4 January 2009 OR the current tenant has been in the same property for more than 10 years**

2.6.1 If, since 4 January 2009, the dwelling has not been let to a new tenant or sold as a single rental, then an EPC is not required. However, if an EPC has been generated for another reason, such as Feed-in Tariffs, such properties would have to meet the minimum energy efficiency standards set out in these Regulations. However, should a change in tenancy occur, this could trigger the need for an EPC and therefore meet the minimum energy efficiency standards set out in these Regulations. Landlords may therefore still wish to work towards the minimum energy efficiency standards, to future proof their investment.

## **2.7 Tenancies on Agricultural Holdings and Holiday Lets**

2.7.1 The Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019 (the modification regulations), makes a number of changes to the Repairing Standard. New elements in the standard will apply from 1 March 2024 to allow private landlords time to bring their properties up to the standard. Notably this includes that space heating must be by means of fixed

heating system from this date. More information, can be found at <https://www.gov.scot/publications/regulations-to-modify-repairing-standard-summary/>.

2.7.2 The modification regulations also make provision about who the Repairing Standard applies to. The regulations:

- clarify that short holiday lets are not subject to the Repairing Standard – confirming that lets of less than 31 days for the purpose of a holiday are not covered by the Repairing Standard and therefore will not be covered by the PRS minimum energy efficiency standards;
- provide that various types of tenancies on agricultural land will be required to meet the Repairing Standard, from 28 March 2027. This gives a lead in time for landlords to prepare their investment plans.

2.7.3 Landlords of these tenancies on agricultural land may still want to take action to improve the energy efficiency of their properties now, and should consider contacting Home Energy Scotland<sup>6</sup> for free and impartial advice.

### **3 Minimum Standards Improvements and Funding**

#### **3.1 Funding the works**

3.1.1 Regulation 8(3) requires that the cost of purchasing and installing the relevant energy efficiency improvements may be financed by means of a financial arrangement provided by a public authority, in this case the Scottish Government through Home Energy Scotland, towards the cost of works (not necessarily the whole cost of the work). Landlords may, however, fund energy efficiency improvements as they wish.

3.1.2 Home Energy Scotland (HES) can provide free impartial advice on energy efficiency improvements and on funding options, including what financial help might be available. HES can be contacted on Tel. 0808 808 2282 or at <https://www.energysavingtrust.org.uk/scotland/grants-loans>

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<sup>6</sup> <https://www.energysavingtrust.org.uk/scotland/home-energy-scotland>

## **4 Exemptions to the standard**

### **4.1 Relevant energy efficient improvements**

4.1.1 Regulation 8 establishes what is considered to be a relevant energy efficiency improvement.

4.1.2 A relevant energy efficiency improvement is defined as an improvement and identified as a recommended improvement for the property in:

- A Green Deal report;
- The recommendations report of the EPC certificate; or
- A report prepared by a surveyor.

4.1.3 An energy efficiency improvement is a relevant energy efficiency improvement where the cost of purchasing and installing it can be financed by means of funding provided by a grant or loan from Scottish Ministers.

4.1.4 The landlord does not need to meet minimum standards subject to:

- The landlord making all relevant energy efficiency improvements; or
- There are no relevant energy improvements that can be made to the property.
- The landlord must register information with the local authority to support this by way of a valid exemption.

If a landlord is seeking an exemption from the standard they must obtain in writing, from a relevant person<sup>7</sup> or independent installer (who meets the relevant installer standards), advice that the measures recommended are not appropriate because of the possible negative impact on the fabric or structure of the building.

### **4.2 Consent exemption**

4.2.1 Regulation 11 states that if the landlord has not been able to make relevant energy efficiency improvements to the property to meet minimum standards of energy efficiency as a result of a refusal of third party consent, the landlord will be exempt from meeting minimum standards, and must register a valid exemption with the local authority. This exemption will apply:

- if a tenant/third party is refusing consent or access;
- if a tenant/third party has granted consent or access but subject to a condition the landlord cannot comply with;
- until the tenancy changes; or
- for a period of five years.

### **4.3 Cost cap exemption**

4.3.1 Regulation 12 provides for exemptions on the basis of the cost of making the relevant improvements. The property will be exempt provided the

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<sup>7</sup> Relevant person' means an independent architect, chartered engineer, chartered building surveyor or chartered architectural technologist

landlord gives proof of this to the local authority. The landlord will be expected to make any other relevant energy efficient improvements up to the cost cap.

4.3.2 The cost cap will apply where the costs of meeting the relevant minimum standards of energy efficiency improvements exceed:

- £5,000 to reach an EPC E from 1 April 2020 for new lets or;
- £5,000 to reach an EPC E by 31 March 2022 for all PRS properties;
- an additional £5,000 to reach an EPC D from 1 April 2022 for new lets or;
- an additional £5,000 to reach an EPC D by 31 March 2025 for all PRS properties.

4.3.3 Where a landlord incurs expenditure in efforts to reach the minimum required standard in advance of the Regulations coming in to force, but still is unable to reach that standard and relies on the cost cap to seek a valid exemption, the landlord should provide evidence of any relevant expenditure dated 6 months prior to the introduction of the Regulations. Such costs will be taken into account in the consideration of the exemption. Costs incurred prior to that date will not be taken into account.

#### **4.4 Temporary exemptions in certain circumstances**

4.4.1 Regulation 13 provides for particular circumstances where a property is exempt from minimum standards for a temporary period. This allows for circumstances where there are changes to the landlord of the property or changes to the circumstances which exist between the landlord and tenant. For example, if a landlord inherits a property with a sitting tenant, or purchases a property with a sitting tenant, they are exempt from meeting minimum standards for a period of six months, provided the exemption is registered with the local authority.

4.4.2 In the event that a landlord is seeking a valid exemption based on this Regulation, they may wish to seek legal advice to confirm their eligibility and should then register that exemption with the local authority.

#### **4.5 Exemption lengths**

4.5.1 Most exemptions will last for 5 years, unless there is a temporary abeyance, for example where there are protected species that cannot be disturbed.

#### **4.6 Examples of exemptions and proof required:**

4.6.1 **Relevant energy efficiency improvements** - If the landlord cannot carry out relevant energy efficiency improvements without causing damage to the fabric of the building, the landlord must show proof to the local authority. The proof must be a letter from a relevant person or independent installer, confirming that the proposed improvement would cause damage to the fabric of the building.

4.6.2 **Excessive cost** - The landlord must show proof to the local authority of three estimates for the work from different installers, including value added tax

(VAT) that confirm that the cheapest relevant improvement would exceed the cost cap (see section 3.1). The landlord should also confirm that they are satisfied that the measures exceed the cost cap.

**4.6.3 Tenant refusing access to carry out the work** – If the current tenant refuses consent to any relevant energy efficiency improvement being made, or if the landlord has been unable to gain the tenant's consent, despite making reasonable efforts to obtain that consent, the landlord must show proof to the local authority that they have made reasonable attempts to contact the tenant to gain access to carry out work. This should include dated copies of correspondence to the tenant to allow ongoing review against the prescribed 5 year period.

**4.6.4 Other owners in a property or communal property refusing consent to have the work carried out** – The landlord must show proof to the local authority that they have contacted the other communal owners regarding the work to be done and that they have refused or failed to respond to the requests.

**4.6.5 Protected species that cannot be disturbed** - The landlord must provide confirmation from a body such as Scottish Natural Heritage (SNH)<sup>8</sup>, or appropriately qualified person, to the local authority that a particular protected species is in place in their property. This exemption should be reviewed regularly by the local authority. If the protected species is no longer in place, the landlord should take action to carry out any relevant energy efficiency improvements.

**4.6.6 Listed buildings and conservation areas** - If the relevant improvements cannot be carried out on the property as it affects the listing or conservation status, other measures that are more appropriate to the building should be installed. The landlord can take advice from Historic Environment Scotland<sup>9</sup> on appropriate measures.

**4.6.7 Disposal** - When the landlord plans to dispose of a property through demolition the landlord must give the local authority a copy of the demolition notice or closing order registered against the property.

## **4.7 The PRS Exemptions Register**

**4.7.1** Local authorities will establish and maintain their own register of exemptions (Regulation 16) that will record the type of exemption, the proof of exemption and the date the exemption is valid until. Landlords must supply proof of their exemption to the local authority.

**4.7.2** Scottish Government will provide a common template for local authorities to record and monitor exemptions.

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<sup>8</sup> <https://www.nature.scot/professional-advice>

<sup>9</sup> <https://www.historicenvironment.scot/advice-and-support/>

## **5 Enforcement of the Private Rented Sector Minimum Energy Efficiency Standard**

5.1.1 Part 4 of the Regulations establish local authorities as the enforcement authorities for minimum energy efficiency standards in the PRS. Each local authority is the enforcement authority for their area. A representative or authorised officer of the local authority may carry out the enforcement activities. The authorised officer may check for different forms of non-compliance with the Regulations including:

- Letting or continuing to let a property that does not comply with minimum standards;
- Failing to comply with a compliance notice; and
- Where a landlord has given false or misleading information for the PRS exemptions register.

5.1.2 Enforcement authorities can choose which function they wish to use to enforce the minimum standard regulations, for example they may decide to use landlord registration teams. However, it is at the discretion of the individual local authority as to how they wish to enforce the minimum standard, taking into account the particular needs of their area.

5.1.3 Local authorities can use existing databases such as Home Analytics and the EPC register to estimate the number of PRS properties in their area that may not meet minimum standards. This can be cross checked with the EPC register and the Register of Landlords.

5.1.4 Local authorities can also check the EPC rating of a PRS property when a landlord registers or reregisters on the landlords register. In addition, if a complaint about a landlord is made to a local authority, the local authority can check the EPC complies with minimum standards at that point, taking account of trigger points and whether the property is in scope (see 2.1.1 above).

5.1.5 Local authorities may wish to contact members of landlord forums and landlords on the landlord register in their area to help raise awareness of the forthcoming minimum standards.

### **5.2 Use of a Compliance Notice**

5.2.1 Regulation 17 provides local authorities with the ability to serve a compliance notice if they believe that a landlord may have been in breach of regulations for minimum standards for energy efficiency in the PRS, or may have been at any time in the last 12 months

5.2.2 Local authorities may use a standardised compliance notice (provided to them by Scottish Government) to assist in this process. A compliance notice must specify:

- the name and address of the person to whom the documents or other information required must be provided, and

- the date by which they must be provided, the notice must give the landlord at least one calendar month to comply.

5.2.3 Information which may be collected from landlords includes (either the originals or copies):

- Date of let;
- The current tenancy agreement;
- The EPC certificate which was valid at the time of let, and any other EPC certificate for the property in the landlord's possession;
- Any qualifying assessment in relation to the property;
- Any other relevant documents, for example, which the enforcement authority considers necessary to enable it to carry out its function under this part of the regulations.

5.2.4 A landlord must provide the information specified in the compliance notice, and allow the local authority to take copies of any original document produced.

5.2.5 A compliance notice may be varied or revoked in writing at any time by the enforcement authority that issued it.

5.2.6 The enforcement authority may withdraw or amend the compliance notice at any time in writing, for example where new information comes to light. The enforcement authority may also use the documents provided by the landlord or any other information it holds to decide whether the landlord is in breach of the Regulations.

5.2.7 Failure to provide documents or information requested by a compliance notice, may result in a penalty notice being served as set out below.

### **5.3 Financial Penalties**

5.3.1 Part 5 of the Regulations provides local authorities with the powers to impose a financial penalty in relation to breaches of the standard, and discretion to decide on the amount of the penalty, up to maximum limits set by the Regulations.

5.3.2 In addition to the financial penalty, the local authority may add a publication penalty to the financial penalty. This means that the local authority may publish details of the breach and the amount of any penalty imposed on the exemptions register.

5.3.3 The maximum penalties are as follows:

- a) Where the landlord has let a property that does not meet minimum standards, in breach of the Regulations for a period of less than 3 months, the local authority may impose a financial penalty not exceeding £2,000, plus the publication penalty;
- b) Where the landlord has let a property that does not meet minimum standards in breach of the Regulations for 3 months or more, the local authority may

impose a financial penalty not exceeding £4,000, plus the publication penalty;

- c) Where the landlord has registered false or misleading information on the PRS Exemptions Register, the local authority may impose a financial penalty not exceeding £1,000, plus the publication penalty;
- d) Where the landlord has failed to comply with the compliance notice, the local authority may impose a financial penalty not exceeding £2,000, plus the publication penalty;
- e) Where the local authority imposes financial penalties on the landlord as set out above, the total of the financial penalties must be no more than £5000.

5.3.4 It is important to note that this maximum amount of £5,000 applies per property, and per breach of the Regulation. This means that, if a landlord proceeds to let a sub-standard property on a new tenancy after having been previously fined up to £5,000 for having failed to satisfy the requirements of the Regulations, the enforcement authority may levy financial penalties up to £5,000 in relation to that new tenancy.

## **5.4 Circumstances in which a penalty notice may be served**

5.4.1 Regulation 18 (1) provides the local authority with the powers to serve a penalty notice on a landlord where it is satisfied that a landlord has breached Regulation 7 by letting a property that does not meet a minimum standard at the appropriate trigger date (paragraph 2.3.1 above) and does not have a registered exemption.

5.4.2 A local authority may also serve a penalty notice on a landlord if they do not provide the information set out in a compliance notice (Section 5.2 above)

## **5.5 What will be included in a penalty notice**

5.5.1 Regulation 18(2) sets out the requirements for the penalty notice. It must therefore:

- explain which of the provisions of the Regulations the local authority considers 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 (see below), 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 (see below).

5.5.2 If the action specified in the penalty notice is not taken in the time specified, the local authority may issue a further penalty notice. When a local authority issues a penalty notice which carries a right of appeal, they must tell the landlord about that right of appeal.

## **5.6 Reviewing a penalty notice (Regulation 21)**

5.6.1 The local authority may review a penalty notice if it becomes aware of new information. A landlord may also ask a local authority to review its decision to serve a penalty notice. The penalty notice must clarify that the landlord can ask for a review, the timeframe for this, and who the request should be sent to.

5.6.2 When a local authority receives a request to review a penalty notice, they must consider the requested information supplied and decide whether or not to withdraw the penalty notice.

## **5.7 Withdrawing the penalty notice**

5.7.1 The local authority must 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.

5.7.2 Regulation 21 provides the enforcement authority with the powers to waive or reduce the penalty, allow the landlord additional time to pay, or modify the publication penalty. The enforcement authority must inform the landlord of their decision in writing, and should do so at the earliest opportunity.

## **5.8 Appeals Procedure**

5.8.1 Regulation 22 establishes the ability of the landlord to appeal the decision of a penalty notice review to the sheriff court of the sheriffdom in which the domestic PR property is situated on the grounds that:

- The issue of the penalty notice was based on an error of fact. The issue of the penalty notice was based on an error of law;
- The penalty notice does not comply with a requirement imposed by the regulations;
- In the circumstances of the case it was not appropriate for the penalty notice to be served on the landlord.

5.8.2 While an appeal is being determined, the penalty notice is suspended, pending the determination or withdrawal of the appeal. The Sheriff may either quash the penalty notice, or affirm the penalty notice, either as it was served, or with any changes as it sees fit.

5.8.3 If the penalty notice is quashed, the local authority must repay any amount paid as a financial penalty.

## **5.9 Recovery of financial penalties**

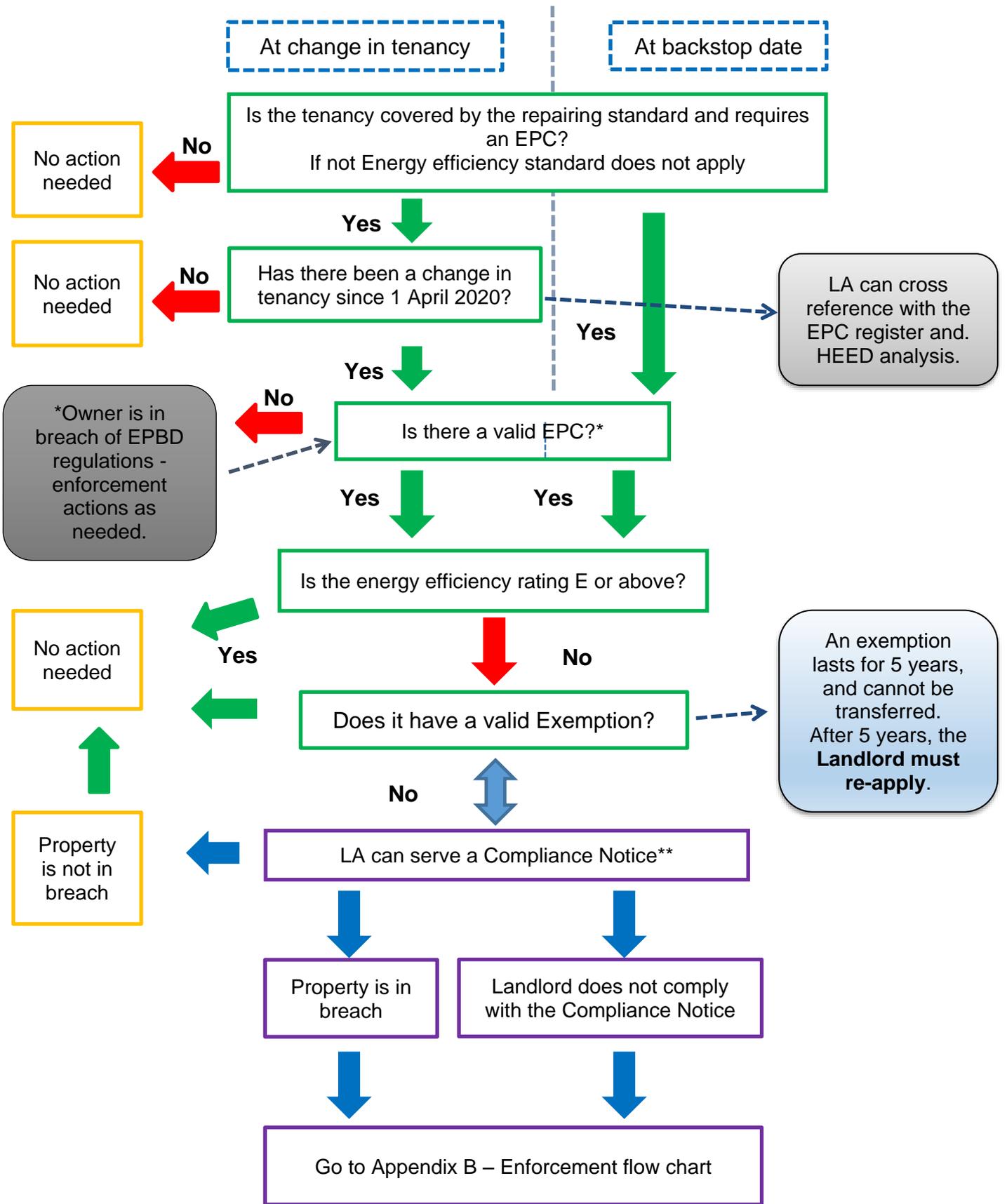
5.9.1 Regulation 24 sets out the procedure to recover the amount of an unpaid financial penalty from the landlord as a debt owed to the local authority unless the notice has been withdrawn or quashed.

5.9.2 Proceedings for the recovery of the financial penalty may not be commenced:

- before the expiry of the period specified for requesting a review under as established through the penalty notice;
- where a review of a penalty notice has been requested, and before the enforcement authority has served notice of its decision of that review; and
- where the enforcement authority has served a notice of its decision of a review confirming the penalty notice, before the expiry of the period within which the landlord may appeal to the Sheriff Court.

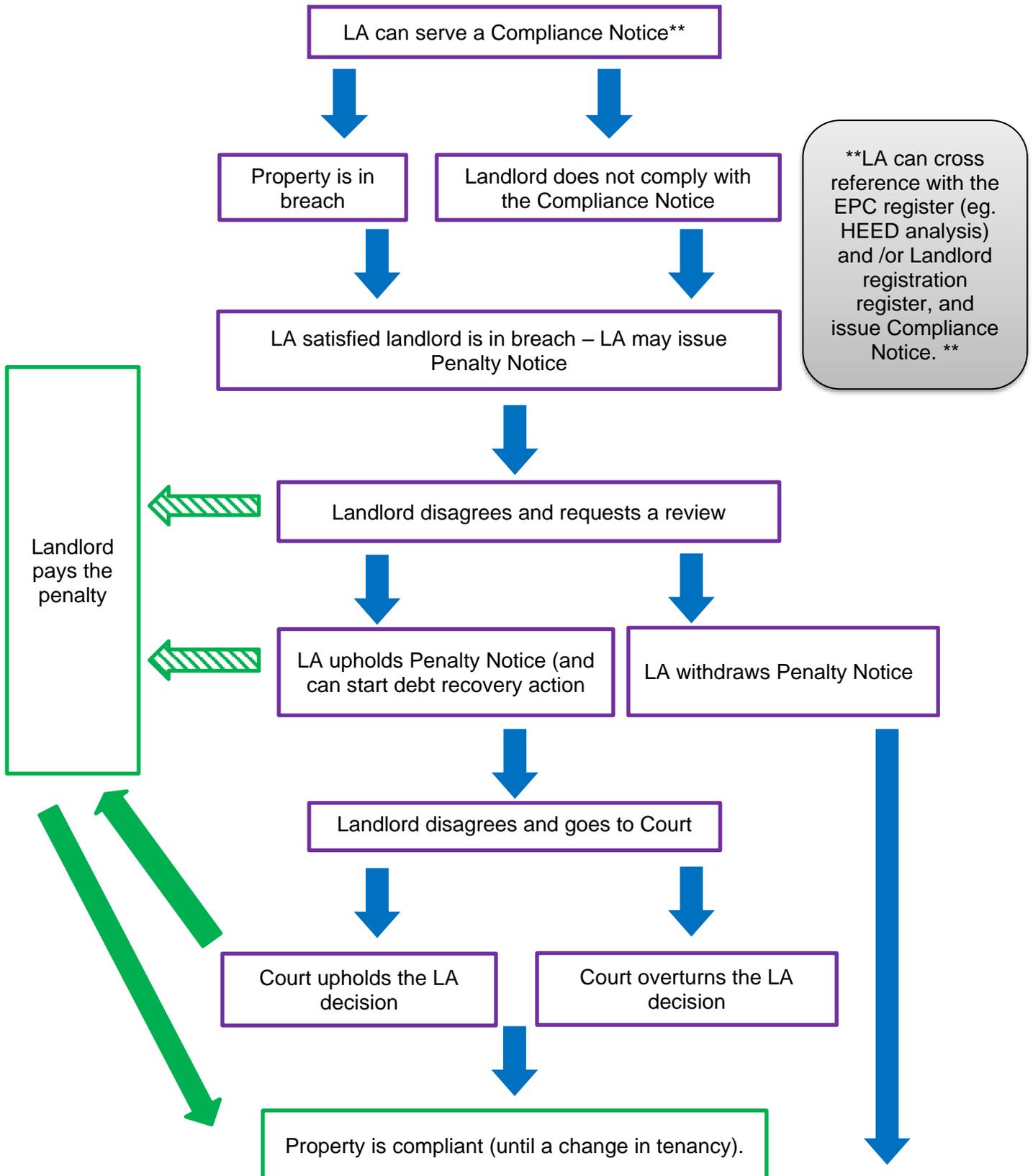
5.9.3 In proceedings for the recovery of a financial penalty, a certificate signed by, or on behalf of, the person having responsibility for the financial affairs of the local authority, and states that payment of the financial penalty was or was not received by a date specified in the certificate, is evidence of the facts stated.

# 6 Appendix A: Compliance Flow Chart



\*\*LA can cross reference with the EPC register (eg. HEED analysis) and /or Landlord registration register, and issue Compliance Notice. \*\*

## 7 Appendix B: Enforcement flow chart



## 8 FAQs

### How do you find out when a tenancy started?

The date of let will be included in the tenancy agreement. Local authorities can use a compliance notice to ask landlords about details of the tenancy such as the date the property was let, copies of the tenancy agreement, the EPC at the point of let and any other relevant details. If a landlord does not comply with a compliance notice they may be subject to a civil penalty.

### What is an exemption?

While some properties cannot meet the minimum standards, nearly all properties can have some work done to improve their energy efficiency. If you have done all the possible relevant improvements and still do not meet minimum standards, the property may be exempt from meeting minimum standards. To be eligible for an exemption you must provide proof to the local authority. Details of exemptions and the proof required can be found in section 4.1

How are exemptions recorded?

Local authorities will record exemptions. The Scottish Government will make available a template which local authorities may wish to use to record exceptions.

How can local authorities find out how many PRS properties there are in their area and what their EPC rating is?

Local authorities can use Home Analytics to estimate the number of PRS properties that may not meet minimum standards. This can be cross checked with the EPC register and the Register of Landlords.

### What will the penalties be?

Local authorities may impose a civil penalty on a landlord if their property does not comply with minimum standards and does not have a registered exemption. Section 5.3 sets out the penalties.

### What if a landlord does not pay the penalty?

In addition to this, under landlord registration legislation, local authorities are able to take account of a landlord's failure to comply with any legislation that places a duty on the landlord. Local authorities can take this into account when considering if a landlord meets the fit and proper person test. This means that if a landlord fails to meet minimum standards or to pay a penalty they could be removed from the Landlord Register and would not be able to continue to be a landlord.

## How do I know whether I comply with the regulations?

If there is a change in tenancy you must have, from **1 April 2020**:

- a valid EPC that shows an EPC rating of at least E when you let your property or;
- a valid exemption, registered with the local authority that says why your property does not comply with minimum standards

For all properties you must have, by **31 March 2022**:

- a valid EPC that shows an EPC rating of at least E to continue to let your property or;
- a valid exemption, registered with the local authority that says why your property does not comply with minimum standards

If there is a change of tenancy, you must have from **1 April 2022**

- A valid EPC that shows an EPC rating of at least D when you let your property or;
- A valid exemption, registered with the local authority that says why your property does not comply with minimum standards

For all properties, you must have by **31 March 2025**:

- A valid EPC that shows an EPC rating of at least D to continue to let your property or;
- A valid exemption, registered with the local authority that says why your property does not comply with minimum standards.

Once the work is complete, if it complies with minimum energy efficiency standards, a further EPC will serve as proof of having met the standard.

## What do I need to do if my property does not comply with regulations?

If you know that your property does not meet minimum standards you can take action to improve the EPC rating of the property. The recommendations report on your EPC will suggest work that can be carried out to improve the energy efficiency of your property. You can seek advice in the first instance from Home Energy Scotland<sup>10</sup>.

## How will landlords, as owners, know what to do?

Landlords will already have an Energy Performance Certificate (EPC) when they let their properties to comply with current regulations. When an owner of a property gets an EPC they also receive a recommendations report, which offers further information on the building and the generic measures that can be applied to the property to improve its energy efficiency and environmental impact ratings. The report shows the improved ratings that would be achieved from applying these measures in the order they are presented.

<sup>10</sup> <https://www.energysavingtrust.org.uk/scotland/home-energy-scotland>

However, we do recognise that landlords, as owners, will want to know what they could achieve within their properties. For this reason we are seeking to broaden the expertise landlords can access by allowing certain construction professional such as chartered surveyors to provide their expert views on what potential measures could be considered.

Finally, landlords and indeed all Scottish households, can seek impartial advice on energy efficiency and find out exactly what support they are eligible for - whatever their circumstances - by calling the Scottish Government Home Energy Scotland hotline on 0808 808 2282 or go to [www.homeenergyscotland.org.uk](http://www.homeenergyscotland.org.uk).

#### **How will tenants know about minimum standards for energy efficiency?**

Adverts for PRS properties must include an EPC rating, and EPC certificates should be attached to the property. If the EPC does not meet the minimum standards tenants can check if the property has an exemption registered with the local authority. If there is no exemption registered, the local authority may consider taking action against the landlord.

Leaflets for tenants will be made available.

#### **What is the role of letting agents?**

Paragraph 31 of the Letting Agent Code of Practice states: “If you know that a client is not meeting their legal obligations as a landlord and is refusing or unreasonably delaying complying with the law, you must not act on their behalf. In these circumstances, you must inform the appropriate authorities, such as the local authority, that the landlord is failing to meet their legal obligations.”

#### **If you are seeking an exemption based on the Cost Cap**

If you are intending to carry out energy efficiency works in advance of the Regulations coming into force, but still require an exemption based on the Cost Cap, you should provide evidence of any expenditure dating from 1st October 2019 onwards in support of this. Costs incurred prior to 1st October 2019 will not be considered acceptable.



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