

Energy Efficient Scotland

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

Consultation on Draft Regulations and associated Draft Guidance

June 2019



Scottish Government
Riaghaltas na h-Alba
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The Energy Efficiency (Private Rented Property) (Scotland) Regulations 2019

Background

Over its 20 year lifetime Energy Efficient Scotland will make 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. Energy Efficient Scotland brings together a programme of work to improve the energy efficiency of Scotland's buildings and to decarbonise their heat supply.

Over its lifespan, we estimate that investment of around £10-12 billion of public and private funding will be required. This will help create a substantial Scottish market and supply chain for energy efficiency services and technologies. We estimate that for every £100 million spent on energy efficiency improvements in 2018 approximately 1,200 full-time equivalent jobs were supported across the Scottish economy.

Our Route Map to an Energy Efficient Scotland published in May 2018, set out a pathway to realising this vision and the actions we will take over the next 20 years which includes proposals to introduce a framework of standards, which will be phased in gradually over the lifetime of the programme, helping to make it the norm to invest in energy efficiency. For Scotland's homes, this phased approach will allow property owners to plan in advance for upgrades, give certainty to the Scottish supply chain so that they can invest in and grow their businesses, and allow Scotland to reap the economic benefits of the programme.

Introduction

In 2017 we consulted on proposals to improve the energy efficiency and condition standards of privately rented housing in Scotland¹. This consultation explored:

- the need for setting minimum energy efficiency standards in private rented housing;
- set out the proposed scope of minimum standards;
- looked at how the standard would work at the point of rental, and at a date by which time all properties would need to meet the standard;
- set out proposals for raising the minimum standard over time;
- explored what would be needed in a new assessment to support the introduction of standards;
- and sought views on the impact of these proposals.

Informed by this consultation, the Energy Efficient Scotland Route Map confirmed our intention to bring forward regulations based on Energy Performance Certificates, requiring landlords of privately rented homes to meet minimum EPC standards from April 2020. Initially minimum energy efficiency standards will be introduced under Section 55 of the Energy Act 2011, and will require landlords of privately rented

¹ <https://www2.gov.scot/Resource/0051/00516474.pdf>

homes to ensure their properties achieve EPC Band E from 1 April 2020 at a change of tenancy, and then EPC Band D from 1 April 2022 at a change of tenancy.

In May 2018² we asked further questions to develop our thinking on the private rented sector and the draft regulations and guidance presented here have been informed by that. This consultation develops the approach informed by that and sets out the draft regulations and draft guidance which will then be laid in Parliament after the Summer recess subject to securing a suitable Parliamentary timeslot.

Why are we consulting?

Whilst there is no formal requirement to consult on this final stage in the process, through this consultation we are seeking to raise awareness of the standards proposed and the means by which they will be introduced in advance of formal parliamentary consideration of the regulations to follow later this year. We are also seeking views on the nature of the guidance to support the Regulations and ensure that users are confident that sufficient information is available to them to begin implementation of the standards required.

Energy Efficiency (Private Rented Property) (Scotland) Regulations 2019

The Energy Efficiency (Private Rented Property) (Scotland) Regulations 2019 (Annex A) make provision for the introduction and enforcement of minimum standards of energy efficiency within the Private Rented sector.

The Draft Regulations are designed to tackle the least energy-efficient properties in Scotland, those with an EPC rating of F or G on their Energy Performance Certificate (EPC). At present there are 23,000 PRS properties below EPC 'E' (9% of total PRS properties) with 83,000 below EPC 'D' (24% of total PRS properties). The Draft Regulations establish a minimum standard of EPC band E for domestic private rented property, affecting new tenancies from 1 April 2020 and **all** tenancies from 31 March 2022. Similarly, from 1 April 2022 the landlord must not let the property unless the EPC is minimum of D. By 31 March 2025 **all** PRS properties will need to have an EPC rating of at least a D.

The Draft Regulations require that these standards must be met at the prescribed dates or have a valid exemption at the start of the tenancy.

The Draft Regulations propose the use of Energy Performance Certificates as the measure for this standard and sets out the process of identification of the relevant required improvements to reach that standard (Part 2).

The Draft Regulations allow for exemptions and set out the details of this at para 11-13 (Part 3) and relate to consent, cost and other temporary exemptions which may occur in certain circumstances.

² https://consult.gov.scot/better-homes-division/energy-efficient-scotland/user_uploads/188061_sct0118873760-1_energy-p8.pdf

Local authorities will enforce the regulations (Chapter 4) and as part of this will hold an exemptions register (Schedule 2). Powers to gather information to support the work being undertaken by Local authorities may be done through the serving of a Compliance notice (para 17).

The Draft Regulations allow for the serving of a penalty notice (Chapter 5) which imposes a financial penalty, a publication penalty or both. Such penalty notices can be the subject of an appeals process (Chapter 6).

Energy Efficiency (Private Rented Property) (Scotland) Guidance

To support the implementation of Regulations, we are seeking views on draft guidance (Annex B) which is intended to assist the reader to understand the requirements of the Regulations.

The guidance provides advice and supplementary information to both landlords, as those seeking to implement the regulations as they affect their properties, and local authorities, as the key bodies implementing and enforcing the regulations.

Key topics addressed within the guidance include:

- how the Regulations apply to domestic properties including those properties which are within the scope of the Regulations;
- the standards which are required;
- the costs of attaining the standard, including cost caps for the works;
- exemptions to the standards;
- the role of local authorities in monitoring and recording exemptions, and compliance; and
- enforcement, penalties and appeals.

Questions

Exemptions

In the 2017 consultation we sought views on situations where it is appropriate for a lower standard to be acceptable for the private rented sector. The draft regulations set out proposed exemptions (Regulations 11-13) which are expanded in detail in the guidance at chapter 4.

Question 1

Do you think that the proposed approach to exemptions both within the Regulations (Regulations 11-13) and amplified in the Guidance (Chapter 4) provides you with sufficient clarity on meeting the standard or seeking an exemption to that standard?

Please set out the reasons for your response.

Doing the work

There is currently a range of support to help private landlords and tenants to improve the energy efficiency of their properties and reduce their fuel bills. In terms of financial support from the Scottish Government this includes:

- **Home Energy Scotland (HES)**³ makes interest free loans of up to £15,000 available to private sector households to support installation of energy efficiency measures. Loans are available to owner occupiers, with private landlords also eligible to borrow to fund measures in a maximum of 3 properties. Up to 25% cashback has been available on loans for most energy efficiency measures. In May 2017, the loan was combined with renewables for a more cost-effective and streamlined process for householders wanting to install both energy efficiency and renewable measures. Further information is available by calling Home Energy Scotland on 0808 808 2282.
- **Resource Efficient Scotland SME (Small and Medium Enterprises) Loans**⁴ Scheme provides interest free loans of £1,000 to £100,000 to Scottish businesses that fall within the European Commission definition of SME (including private sector landlords) to finance the installation of energy, resource and water efficiency measures. Further information on RES SME loans is available by calling 0808 808 2268.
- **Home Energy Efficiency Programme for Scotland (HEEPS) Area Based Schemes (ABS)**⁵ gives interest free loans to support householders pay their contributions towards the cost of grant funded insulation measures delivered through the Scottish Government's Home Energy Efficiency Scotland (HEEPS) Programme. Local authorities select priority areas for delivering programmes and can supply further information if needed.
- **The HEEPS Equity Loans Pilot**⁶ is currently available to homeowners or private rented sector landlords in eight local authority areas (Perth and Kinross, Stirling, Dundee, Glasgow City, Inverclyde, Renfrewshire, Argyll and Bute or the Western Isles), we will look to expand availability to other local

³ <https://www.energysavingtrust.org.uk/scotland/home-energy-scotland>

⁴ <https://www.resourceefficientscotland.com/SMELoan>

⁵ <https://www.energysavingtrust.org.uk/scotland/grants-loans/heeps>

⁶ <https://www.energysavingtrust.org.uk/scotland/grants-loans/heeps/heeps-equity-loan-scheme>

authority areas going forward. HEEPS Equity Loans enable householders to make energy improvements and repairs to their properties. Funding is borrowed against the asset value of the property and there are no ongoing repayments. The householder pays back what they've borrowed when they sell the property or when the last applicant for the loan is deceased.

- **Warmer Homes Scotland (WHS)**⁷ provides interest free loans to support eligible householders with their contributions towards the cost of grant funded energy efficiency measures being delivered through the Home Energy Efficiency Programmes WHS programme. The maximum amount for WHS loans has been increased from £5000 to £10,000 to help support new renewable measures which have been added to the scheme. It is targeted at the most vulnerable households and helps install energy efficiency and renewable energy measures. Further information on Warmer Homes Scotland is available by calling Home Energy Scotland on 0808 808 2282.
- As well as funded support, private sector landlords and tenants can get **free and impartial advice**⁸ from Home Energy Scotland (HES) on energy saving, renewable energy and access to funding, including access to schemes provided by the UK Government. HES can direct people to loans and grants, as appropriate, and more information can be found online or by calling 0808 808 2282. The Resource Efficient Scotland (RES) programme, funded by the Scottish Government, offers free, specialist advice and support to businesses to implement energy, resource and water efficiency measures that will reduce carbon emissions and translate to cost savings.

As we introduce these regulations we propose to introduce new tailored financial support based on loans for the Private Rented Sector. (Regulation 8 and section 3 of guidance). We are keen to understand how such an incentive might help improve the energy efficiency of properties in the private sector.

Question 2

What are your views on the existing mixed nature of support (financial and advice) available to landlords and tenants? Include any additions or changes you think would assist.

Question 3

How would the changes you suggest influence the speed with which you would expect improvements to occur?

Cost Cap

Regulation 12 proposes an exemption based on the cost of the recommended measures - a cost cap. The regulations would not apply if the cost of making the relevant energy efficiency improvement to the property to increase the EPC rating exceeds:

⁷ <https://www.energysavingtrust.org.uk/scotland/grants-loans/heels/heels-warmer-homes-scotland-scheme>

⁸ <https://www.energysavingtrust.org.uk/scotland/home-energy-scotland>

- (a) EPC Band E: £5,000 in respect of the period from 1st April 2020 to 31st March 2022; and
- (b) EPC Band D: a further £5,000 in respect of the period after 31st March 2022.

We do, however, understand that landlords may seek to implement improvements earlier or on a rolling basis. Where this is the case landlords will wish to have these measures, and their costs, taken into account once the regulations come in to force.

Question 4

We propose that 6 months in advance of the Regulations coming into force local authorities should take account of expenditure outlay on measures which are intended to meet the standards set. Do you agree that this is a reasonable lead in time period? If not, what alternative lead in time would you propose? What information would you expect to provide to local authorities to seek an exemption based on the cost cap proposed?

Enforcement and fines

The standard will apply to privately rented properties covered by the repairing standard. This standard will be enforced by Local authorities. Primary legislation provides us with the parameters of any civil fines which may be applicable in the event of non-compliance and it will be at the discretion of the local authority to set the level of fine within these parameters, and carry out the enforcement work. Within these parameters, we propose (Regulation 20 and section 5.3 of the Guidance) a breakdown of:

- a financial penalty not exceeding £2,000 and the publication penalty where the breach is less than 3 months;
- a financial penalty not exceeding £4,000 and the publication penalty where the breach exceeds 3 months;
- where a landlord provides false or misleading information in connection with the compliance notice set out in regulation 17(2) a financial penalty not exceeding £1,000 and the publication penalty
- where the landlord fails to comply with the compliance notice in breach of regulation 20(4) the penalties are a financial penalty not exceeding £2,000 and the publication penalty

The limitations of the maximum financial penalty are set out in the Energy Act 2011 and must be no more than £5,000. However, the Regulations can break down this total to best fit with our intentions to achieve compliance and improvement under the Regulations.

Question 5

What are your views on the proposed penalties, in terms of the impact they will have on achieving compliance with the Regulations and ensuring the completion of carry out improvement works across the Private Rented Sector.

Impact Assessments

An [Equality Impact Assessment](#), [Child Rights and Wellbeing Impact Assessment](#), [Fairer Scotland Assessment](#) and [Island Proofing Assessment](#) are available on the Scottish Government website.

A Partial [Business and Regulatory Impact Assessment](#) has previously been published. You should refer to the Partial BRIA at this time.

A Final BRIA will be published to support the laying of the Regulations in Parliament

It has been determined that the following impact assessments need not be progressed for the topic of this consultation:

Strategic Environmental Assessment

Privacy Impact Assessment

Responding to this consultation

We are inviting responses to this consultation by **13 September 2019**. Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You can view and respond to this [consultation](#) online.

You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 13 September 2019. If you are unable to respond online, please complete the Respondent Information Form (see 'Handling your Response' below) to:

Energy Efficient Scotland
Programme Management Office
Better Homes
Scottish Government
2H North
Victoria Quay
Edinburgh EH6 6QQ

It would be helpful to have your response by email or using the electronic response form. The electronic response form can be accessed at the following website address: <https://consult.scotland.gov.uk>. You can also email your response to EnergyEfficientScotland@gov.scot

Handling your response

If you respond using Citizen Space <https://consult.gov.scot/better-homes-division/private-rented-property/> you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

EES Consultation
EES Programme Management Office
Better Homes
Scottish Government
2H North
Victoria Quay
Edinburgh EH6 6QQ



RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:

<https://beta.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
 Organisation

Group/Org Type (please tick one)

Local Authority	<input type="checkbox"/>	Commercial Organisation	<input type="checkbox"/>
Professional Body	<input type="checkbox"/>	Voluntary Organisation	<input type="checkbox"/>
Contractor/Developer	<input type="checkbox"/>	Housing Provider / RSL	<input type="checkbox"/>
Designer/Consultant	<input type="checkbox"/>	NDPB/Agency	<input type="checkbox"/>
Academic Body	<input type="checkbox"/>	Advisory Body/Committee	<input type="checkbox"/>
Industry Association/ Manufacturer	<input type="checkbox"/>	Other (Please Specify)	<input type="checkbox"/>

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No

Consultation questions

Consultation questions are noted here for reference. Please provide your input to the consultation via [Citizenspace](#). If unable to access the online consultation, you can use the separate Respondent Information Form (RIF), published alongside this consultation paper and the questions below.

Please note that it is important that, in answering each question, you also provide the reasons for your response. This is essential in understanding your view and greatly assists in developing an overall picture of the issues that relate to the proposals.

Question 1

Do you think that the proposed approach to exemptions both within the Regulations (Regulations 11-13) and amplified in the Guidance (Chapter 4) provides you with sufficient clarity on meeting the standard or seeking an exemption to that standard?

Please set out the reasons for your response.

Question 2

What are your views on the existing mixed nature of support (financial and advice) available to landlords and tenants? Include any additions or changes you think would assist.

Question 3

How would the changes you suggest influence the speed with which you would expect improvements to occur?

Question 4

We propose that 6 months in advance of the Regulations coming in to force local authorities should take account of expenditure outlay on measures which are intended to meet the standards set. Do you agree that this is a reasonable lead in time period? If not, what alternative lead in time would you propose? What information would you expect to provide to local authorities to seek an exemption based on the cost cap proposed.

Question 5

What are your views on the proposed penalties, in terms of the impact they will have on achieving compliance with the Regulations and ensuring the completion of carry out improvement works across the Private Rented Sector.

Annex A – The Energy Efficiency (Private Rented Property) (Scotland) Regulations 2019

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Draft Regulations laid before the Scottish Parliament under section 64(3) of the Energy Act 2011 for approval by resolution of the Scottish Parliament

SCOTTISH STATUTORY INSTRUMENTS

2019 No.

ENERGY CONSERVATION

The Energy Efficiency (Domestic Private Rented Property) (Scotland) Regulations 2019

Made - - - - - *2019*

Coming into force - - - - - *1st April 2020*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 55 of the Energy Act 2011⁽⁹⁾ and all other powers enabling them to do so.

In accordance with section 64(3) of that Act, a draft of this instrument has been laid before, and approved by resolution of the Scottish Parliament.

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Energy Efficiency (Domestic Private Rented Property) (Scotland) Regulations 2019 and come into force on 1 April 2020.

General interpretation

2.—(1) In these Regulations—

“the Act” means the Energy Act 2011,

“building” means a roofed construction having walls, for which energy is used to condition the indoor climate,

“building unit” means a section, floor or apartment within a building which is designed or altered to be used separately,

“compliance notice” means a notice which complies with regulation 17,

“domestic PR property” has the meaning given in regulation 4,

“energy efficiency improvement”, in relation to a property, means a measure listed in Schedule 1 [for improving efficiency in the use of energy in the property],

⁽⁹⁾ 2011 c.16.

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“energy performance indicator” has the meaning given in regulation 2(1) of the EPB Regulations,

“enforcement authority” has the meaning given in regulation 14(1),

“the EPB Regulations” means the Energy Performance of Buildings (Scotland) Regulations 2008⁽¹⁰⁾,

“green deal report” means a report produced pursuant to a qualifying assessment,

“independent”, in relation to a person, means—

- (a) where a landlord or a superior landlord is an individual, a person who is not a spouse or civil partner of that landlord or that superior landlord (as the case may be), or
- (b) where a landlord or a superior landlord is not an individual, a person who is not, and has not been in the last 12 months—
 - (i) a director, partner, shareholder or employee of, or other person exercising management control over, that landlord or that superior landlord, or
 - (ii) a spouse or civil partner of a person falling within paragraph (i),

“L”, for the purposes of Parts 4 to 6, means a person who is a landlord, or a former landlord,

“landlord” has the meaning given in regulation 5,

“listed building” means a listed building within the meaning of section 1(4) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997^(c),

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994⁽¹¹⁾,

“minimum level of energy efficiency” has the meaning given in regulation 6(b),

“penalty notice” means a notice which complies with regulation 18,

“property” means a building or a building unit,

“PRS Exemptions Register” means the register established and maintained in accordance with regulation 16(1),

“publication penalty” has the meaning given in regulation 19(1),

“qualifying assessment” has the meaning given in section 3(9) of the Act,

“recommendation report” has the meaning given in regulation 6A of the EPB Regulations;

“relevant energy efficiency improvements” has the meaning given in regulation 8,

“relevant person” means an independent architect, chartered engineer, chartered building surveyor or chartered architectural technologist,

“responsible person” means—

- (c) where the landlord is an individual, that person,
- (d) where the landlord is a company within the meaning given in section 1 of the Companies Act 2006⁽¹²⁾, a director within the meaning of section 250 of that Act, or
- (e) in any other case, a person exercising management control in relation to the landlord;

“sub-standard” has the meaning given in regulation 6(a),

“superior landlord” has the meaning given in regulation 5,

“surveyor” means a surveyor who is on the Royal Institution of Chartered Surveyors’ register of valuers⁽¹³⁾,

“tenant” has the meaning given in regulation 5,

“third party consent” means consent, permission or approval which is required before an energy efficiency improvement can be made, including in particular—

⁽¹⁰⁾ S.I. 2008/309, amended by

⁽¹¹⁾ 1997 c.29

⁽¹²⁾ 2006 c.46.

⁽¹³⁾ The Royal Institution of Chartered Surveyors’ register of valuers can be accessed via their website: www.rics.org/uk/join/member-accreditations/valuer-registration-scheme-vrs1/.

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- (f) where the property is one of two or more properties comprised in a building, the consent of an owner, a tenant or other occupier of any other property in the building,
- (g) the consent of any person who has a holds a heritable security over the landlord's, or a superior landlord's, interest in the property,
- (h) the consent of the owner of the domestic PR property or of any superior landlord,
- (i) planning permission required under the Town and Country Planning (Scotland) Act 1997(14) or any approval or consent required by virtue of such planning permission, and
- (j) consent required as a result of the property being a listed building,

“valid”, in relation to an energy performance certificate, has the meaning given in regulation 6(c).

(2) Where two or more persons together are the tenant, the landlord, former landlord or the superior landlord, then any reference to the tenant, the landlord, the former landlord or the superior landlord (as the case may be), except—

- (a) in the definitions of “independent” and “responsible person” in paragraph (1), and
- (b) in paragraph 1(i)(ii) of the Schedule,

is a reference to all the persons who are the tenant, the landlord, the former landlord or the superior landlord (as the case may be).

(3) Nothing in these Regulations affects any duty to carry out works to a property (including works to repair or to improve) imposed on a tenant, a landlord, or a superior landlord, by the terms of a tenancy agreement or by any other enactment.

Service of documents

3.—(1) Any notice served under these Regulations must be in writing and may be given by post.

(2) Any such notice may be given—

- (a) in the case of a body corporate, to the secretary or clerk of that body,
- (b) in the case of a partnership, to any partner or to a person having control or management of the partnership business.

PART 2

Minimum level of energy efficiency

Domestic PR property

4. For the purposes of these Regulations, “domestic PR property” means a property which is a Scottish domestic PR property other than a property which is a temporary building with a planned time of use of two years or less.

Landlord and tenant

5. For the purposes of these Regulations—

“former landlord”, in relation to a domestic PR property, means a person who used to let the property on a tenancy which falls within section 54(1)(a) of the Act but no longer does so,

“tenant” means a person to whom a domestic PR property is let on a tenancy which falls within section 54(1)(a) of the Act,

“landlord” means a person who lets, or proposes to let a domestic PR property on a tenancy which falls within section 54(1)(a) of the Act,

“superior landlord” means any person who lets a domestic PR property other than the landlord.

(14) 1990 c.8.

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Sub-standard property

6. For the purposes of these Regulations—

- (a) a domestic PR property is “sub-standard” where the valid energy performance certificate for the property expresses the energy performance indicator of the property as being below the minimum level of energy efficiency,

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- (b) “minimum level of energy efficiency”, means—
 - (i) in respect of the period from the date of commencement of these Regulations until 31st March 2022, an energy performance indicator of band E,
 - (ii) in respect of the period from and after 1st April 2022, an energy performance indicator of band D,
- (c) an energy performance certificate for a property is “valid” where—
 - (i) it was entered on the register required to be maintained by regulation 10(1) of the EPB Regulations no more than 10 years before the date on which it is relied on for the purposes of these Regulations, and
 - (ii) no other energy performance certificate for the property has since been entered on that register.

Prohibition on letting of sub-standard property

7.—(1) A landlord of a sub-standard domestic PR property must not let the property unless regulation 9, or one or more of the exemptions in Part 3, applies.

(2) For the purposes of paragraph (1), “let the property” means—

- (a) grant a new tenancy which falls within section 54(1)(a) of the Act, or let the property on such a tenancy as a result of an extension or renewal of an existing tenancy, or
- (b) continue to let the property on such a tenancy.

Relevant energy efficiency improvements

8.—(1) Subject to paragraph (2), for the purposes of paragraph (a) in the definition of “relevant energy efficiency improvements” in section 55(4) of the Act, a relevant energy efficiency improvement in relation to a domestic PR property is an improvement which is both—

- (a) an energy efficiency improvement, and
- (b) identified as a recommended improvement for that property in—
 - (i) a green deal report,
 - (ii) an energy performance certificate and its related recommendation report, or
 - (iii) a report prepared by a surveyor.

(2) An energy efficiency improvement is not a relevant energy efficiency improvement where the landlord has obtained a written opinion from—

- (a) a relevant person, or
- (b) an independent installer of the energy efficiency improvement in question who meets the relevant installer standards,

advising that it is not an appropriate improvement, due to its potential negative impact on the fabric or structure of the domestic PR property, or the building of which it forms part, and the landlord has registered that opinion on the PRS Exemptions Register.

(3) For the purposes of paragraph (b)(iv) in the definition of “relevant energy efficiency improvements” in section 55(4) of the Act, 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 the Scottish Ministers.

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Relevant energy efficiency improvements undertaken

- 9.—(1) Subject to paragraph (2), this regulation applies where—
- (a) the landlord of a sub-standard domestic PR property has made all the relevant energy efficiency improvements for the property, or
 - (b) there are no relevant energy efficiency improvements that can be made to the property.
- (2) This regulation applies for a period of five years starting with the date on which the landlord registers information in accordance with regulation 16(5).

Sub-standard property let in breach of these Regulations

10. In any case where a landlord lets, or continues to let, a domestic PR property in breach of regulation 7, that breach does not affect the validity or enforceability of any provision of the tenancy.

PART 3

Exemptions

Consent exemption

- 11.—(1) Subject to paragraph (2), regulation 7 does not apply if the landlord has been unable to make relevant energy efficiency improvements to the property to increase the energy performance indicator for the property so that the property meets or exceeds the minimum level of energy efficiency as a result of—
- (a) the current tenant refusing consent to any relevant energy efficiency improvement being made, or the landlord having been unable to obtain that consent despite reasonable efforts having been made by the landlord to obtain that consent,
 - (b) within the preceding five years period, third party consent having been—
 - (i) refused, or
 - (ii) granted subject to a condition with which the landlord cannot reasonably comply, or
 - (c) third party consent having not been granted despite reasonable efforts having been made by the landlord to obtain that consent within the preceding five years period.
- (2) A landlord may rely on the exemption in paragraph (1) only where the landlord has registered information in accordance with regulation 16(5).

Cost cap exemption

- 12.—(1) Subject to paragraph (3), regulation 7 does not apply if the cost of making relevant energy efficiency improvements to the property to increase the energy performance indicator for the property so that the property meets or exceeds the minimum level of energy efficiency—
- (a) in respect of the period from 1st April 2020 to 31st March 2022 exceeds £5,000.
 - (b) in respect of the period after 31st March 2022, exceeds £5,000.
- (2) A landlord may rely on the exemption in paragraph (1) only where the landlord has registered information in accordance with regulation 16(5).

Temporary exemption in certain circumstances

- 13.—(1) Subject to paragraph (5), regulation 7 does not apply to a landlord until six months after whichever is the later of—
- (a) the date on which the landlord becomes, or continues to be, the landlord of that property by virtue of any of the circumstances set out in paragraph (2), or
 - (b) the date on which an order falling within paragraph (2)(c) is made.
- (2) The circumstances referred to in paragraph (1) are—

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- (a) the grant of a lease pursuant to a contractual obligation,
 - (b) the deemed creation of a new lease by operation of law,
 - (c) the grant of a lease by order of the court.
- (3) Subject to paragraph (5), regulation 7(2)(b) do not apply to a person until six months from the date on which the person becomes the landlord by virtue of the circumstances set out in paragraph (4).
- (4) The circumstances referred to in paragraph (3) are—
- (a) the landlord became the landlord of the domestic PR property, on purchasing an interest in that property, and
 - (b) on the date of the purchase, the property was let on an existing tenancy.
- (5) A landlord may rely on a temporary exemption in paragraph (1) or paragraph (3) only where the landlord has registered information in accordance with regulation 16(5).

Exemption for continuation or renewal of tenancy to existing tenant between 1 April 2022 and 31 March 2025

13A.—(1) Regulation 7 does not apply during the period beginning on 1 April 2022 and ending on 31 March 2025 to prohibit the letting of a property during that period to a person who is an existing tenant of that property.

(2) For the purposes of this regulation a person is an existing tenant of a property if that person is the tenant of the property on 31 March 2022 and has continued to be tenant of the property since that date on the same tenancy or an extension or renewal of that tenancy.

PART 4

Enforcement Authorities and Compliance

Enforcement authorities

14.—(1) In these Regulations “enforcement authority” in relation to a domestic PR property means the local authority for the area in which the domestic PR property is situated.

(2) An enforcement authority must enforce compliance with the requirements of this Part in relation to properties in its area.

Authorised officers

15. Where an enforcement authority appoints an authorised officer of that enforcement authority to exercise its powers under this Part, except in this regulation any reference to an “enforcement authority” is to be read as including a reference to that authorised officer of that enforcement authority.

PRS Exemptions Register

16.—(1) A local authority, in respect of domestic PR properties in its area must establish and maintain a register (a “PRS Exemptions Register”)—

- (a) of information registered in accordance with paragraph (5) or regulation 17(2),
- (b) from which the Scottish Ministers and enforcement authorities may access information registered on it, and held on it, as necessary to enable them to carry out their functions under these Regulations.

(2) The local authority must make the information specified in paragraph (3) available for inspection free of charge.

(3) The information is the following information relating to any domestic PR property, in respect of which information has been registered in accordance with paragraph (4)—

- (a) the address of the property,

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- (b) where the landlord is not an individual, the name of the landlord,
- (c) the exemption relied on,
- (d) a copy of the valid energy performance certificate for the property,
- (e) the date on which information was registered in accordance with paragraph (2).

(4) Every enforcement authority to publish information in accordance with regulation 19.

(5) In any case where a landlord of a sub-standard domestic PR property, wishes to rely on one or more of the following regulations, the landlord must register the information set out in Schedule 2 on the PRS Exemptions Register for the area in which the property is situated—

- (a) regulation 11(1),
- (b) regulation 12(1),
- (c) regulation 13(1) or (3).

Compliance notices

17.—(1) An enforcement authority may serve a notice (a “compliance notice”) on L where L appears to it to be, or to have been at any time within the 12 months preceding the date of service of the compliance notice, in breach of regulation 7 requesting such information as it considers necessary to enable it to monitor compliance with these Regulations.

(2) A compliance notice may in particular request L to produce for inspection originals, or copies, of the following—

- (a) the energy performance certificate for the property which was valid at the time the property was let,
- (b) any other energy performance certificate for the property in L’s possession,
- (c) any current tenancy agreement under which the property is let,
- (d) any qualifying assessment in relation to the property,
- (e) any other document which the enforcement authority considers necessary to enable it to carry out its functions under this Part,

and may request L to register copies of any of them on the PRS Exemptions Register

(3) A compliance notice must specify—

- (a) the name and address of the person to whom the documents or other information required must be provided, and
- (b) the date by which they must be provided which must be no less than one month from the date on which the compliance notice is served.

(4) L must—

- (a) comply with the compliance notice, and
- (b) allow the enforcement authority to take copies of any original document produced.

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

(6) An enforcement authority may take into account any information held by it, whether or not provided to it in accordance with this regulation, in determining whether L has complied with these Regulations.

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PART 5

Penalties

Penalty notices

18.—(1) An enforcement authority may serve a notice on L (a “penalty notice”) in any case where it is satisfied that L is, or has been at any time in the 18 months preceding the date of service of the penalty notice, in breach of one or more of the following—

- (a) regulation 7,
- (b) regulation 17(4)(a),

imposing a financial penalty, a publication penalty, or both a financial penalty and a publication penalty, in accordance with this Part.

(2) A penalty notice must—

- (a) specify the provision of these Regulations which the enforcement authority believes L has breached,
- (b) give such particulars as the enforcement authority considers necessary to identify the matters constituting the breach,
- (c) specify—
 - (i) any action the enforcement authority requires L to take to remedy the breach,
 - (ii) the period within which such action must be taken,
- (d) specify—
 - (i) the amount of any financial penalty imposed and, where applicable, how it has been calculated,
 - (ii) whether the publication penalty has been imposed,
- (e) require L to pay any financial penalty within a period specified in the notice,
- (f) specify the name and address of the person to whom any financial penalty must be paid and the method by which payment may be made,
- (g) state the effect of regulations 21 to 24, and
- (h) specify—
 - (i) the name and address of the person to whom a notice requesting a review in accordance with regulation 21 may be sent (and to whom any representations relating to the review must be addressed), and
 - (ii) the period within which such a notice may be sent.

(3) Each of the periods specified under paragraph (2)(c) and (e) must not be less than 28 days, beginning on the day on which the penalty notice is served.

(4) Where L fails to take the action required by a penalty notice within the period specified in that penalty notice in accordance with paragraph (2)(c), the enforcement authority may issue a further penalty notice.

Publication penalty

19.—(1) In these Regulations, the “publication penalty” means publication on the PRS Exemptions Register of such of the following information in relation to a penalty notice as the enforcement authority decides—

- (a) where L is not an individual, L’s name,
- (b) details of the breach of these Regulations in respect of which the penalty notice has been issued,
- (c) the address of the property in relation to which the breach has occurred, and
- (d) the amount of any financial penalty imposed.

(2) The information in paragraph (1) must be published for a minimum period of 12 months, and may be published for such longer period as the enforcement authority may decide.

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- (3) A publication penalty does not take effect until—
- (a) the period specified for requesting a review under regulation 18(2)(h) has expired or, where a review has been requested, the enforcement authority has not served notice of its decision under regulation 21(2)(c), and
 - (b) the period specified for any appeal against the penalty notice has expired or, where an appeal is made, until the appeal has been determined.

Breaches in relation to domestic PR property

20.—(1) The penalties set out in this regulation apply where L is, or was, the landlord of a domestic PR property.

(2) Where L has breached regulation 7 and, at the time the penalty notice is served has, or had, been in breach for less than three months, the penalties are—

- (a) a financial penalty not exceeding £2,000, and
- (b) the publication penalty.

(3) Where L has breached regulation 7 and, at the time the penalty notice is served has, or had, been in breach for three months or more, the penalties are—

- (a) a financial penalty not exceeding £4,000, and
- (b) the publication penalty.

(4) Where L has registered false or misleading information under regulation 16(2), the penalties are—

- (a) a financial penalty not exceeding £1,000, and
- (b) the publication penalty.

(5) Where L has failed to comply with a compliance notice in breach of regulation 17(4)(a), the penalties are—

- (a) a financial penalty not exceeding £2,000, and
- (b) the publication penalty.

(6) Where an enforcement authority imposes financial penalties on L in relation to a breach of regulation 7 in respect of a domestic PR property—

- (a) under paragraph (2) or (3), and
- (b) under one or both of paragraphs (4) and (5),

the total of the financial penalties imposed on L must be no more than £5,000.

Reviews, waiving and modification of penalties

21.—(1) L may, within the period specified under regulation 18(2)(h)(ii), serve notice on the enforcement authority requesting a review of its decision to serve a penalty notice.

(2) Where L gives notice in accordance with paragraph (1), the enforcement authority must—

- (a) consider any representations made by L and all other circumstances of the case,
- (b) confirm or withdraw the penalty notice, and
- (c) serve notice of its decision to L.

(3) If, on a review under paragraph (2), the enforcement authority—

- (a) ceases to be satisfied that L committed the breach specified in the penalty notice,
- (b) is satisfied that L took all reasonable steps and exercised all due diligence to avoid committing the breach specified in the penalty notice, or
- (c) decides that in the circumstances of the case it was not appropriate for a penalty notice to be served on L,

the enforcement authority must serve a further notice on L withdrawing the penalty notice.

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- (4) A notice confirming the penalty notice must state the effect of regulations 22 to 24.
- (5) On a review under paragraph (2), the enforcement authority may—
 - (a) waive a penalty,
 - (b) allow L additional time to pay any financial penalty,
 - (c) substitute a lower financial penalty where one has already been imposed, or
 - (d) modify the application of a publication penalty.

PART 6

Appeals and recovery of financial penalties

Appeals

22.—(1) If after a review the penalty charge notice is confirmed by the enforcement authority, the recipient may appeal against the penalty charge notice to the sheriff court of the sheriffdom in which the domestic PR property is situated.

- (2) An appeal against a penalty charge notice must be made within the period of 28 days beginning with the day after that on which the notice under regulation 21(2)(c) is given.
- (3) The sheriff may extend the period for appealing against the notice on cause shown.
- (4) An appeal must be on one (or more) of the following grounds—
 - (a) the issue of the penalty notice was based on an error of fact,
 - (b) the issue of the penalty notice was based on an error of law,
 - (c) the penalty notice does not comply with a requirement imposed by these Regulations, or
 - (d) in the circumstances of the case it was inappropriate for the penalty notice to be served on L.
- (5) An appeal against a penalty charge notice must be by summary application.

Effect and determination of Appeal

23.—(1) The bringing of an appeal suspends the penalty notice being appealed taking effect, pending determination or withdrawal of the appeal.

- (2) The sheriff may—
 - (a) quash the penalty notice, or
 - (b) affirm the penalty notice, whether in its original form or with such modification as the sheriff sees fit.

(3) If the penalty notice is quashed, the enforcement authority must repay any amount paid as a financial penalty in pursuance of the notice.

(4) A decision of a sheriff may be appealed against as if it were a decision constituting final judgment in civil proceedings within the meaning of the Courts Reform (Scotland) Act 2014⁽¹⁵⁾.

Recovery of financial penalty

24.—(1) The amount of an unpaid financial penalty is recoverable from L as a debt owed to the enforcement authority unless the notice has been withdrawn or quashed.

- (2) Proceedings for the recovery of the financial penalty may not be commenced—
 - (a) before the expiry of the period specified for requesting a review under regulation 18(2)(h)(ii),
 - (b) where a review has been requested under regulation 21(1), before the enforcement authority has served notice of its decision under regulation 21(2)(c), and

⁽¹⁵⁾ 2014 asp 18.

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(c) where the enforcement authority has served a notice of its decision under regulation 21(2)(c) confirming the penalty notice, before the expiry of the period within which L may appeal under regulation 22.

(3) In proceedings for the recovery of a financial penalty, a certificate which—

(a) purports to be signed by or on behalf of the person having responsibility for the financial affairs of the enforcement authority, and

(b) 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.

Name

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
Date

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SCHEDULE 1

Regulation 8(1)(a)

RELEVANT ENERGY EFFICIENCY IMPROVEMENTS

1. The improvements specified for the purpose of regulation 8(1)(a) are—

Insulation measures

- (1) loft insulation, including top-up loft insulation
- (2) flat roof insulation
- (3) room in the roof insulation
- (4) cavity wall insulation
- (5) solid wall insulation
- (6) floor insulation , both beneath suspended timber floor insulation, and insulation on top of solid floors
- (7) double glazing
- (8) secondary glazing
- (9) triple glazing
- (10) solar blinds, shutters and shading devices
- (11) insulated external doors
- (12) hot water cylinder insulation jackets

The ventilation measures

- (13) draught proofing of windows, doors and loft hatch as necessary
- (14) fit baffles / dampers to block open chimneys when not in use

The heating measures

- (15) replacement /renewal of an existing gas, oil or LPG central heating boilers with condensing boilers
- (16) new gas central heating system (where none before)
- (17) new oil or LPG central heating system (where none before)
- (18) biomass central heating system
- (19) fan-assisted electric storage heaters
- (20) high heat retention electric storage heaters (also referred to as Quantum storage heaters)
- (21) direct electric heating appliances on an off-peak tariff
- (22) electric thermal store (CPSU) wet central heating system
- (23) air source heat pumps (both air-to-water and air-to-air systems)
- (24) ground source heat pumps
- (25) replacing the secondary heating with a more efficient / appropriate appliance

The space and water heating control measures

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- (26) fitting central heating controls such as room thermostats, programmers, and thermostatic radiator valves either individually, or as a package of controls
- (27) fitting a cylinder thermostat on the hot water cylinder
- (28) switching from manual charge control to automatic charge control for electric storage heating

The renewables or low carbon technology measures

- (29) solar hot water
- (30) photovoltaic panels (PVs)

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SCHEDULE 2

Regulation 16(5)

Information to be registered on the PRS Exemptions Register

- 1.** The information referred to in regulation 16(5) to be registered where regulation 9 applies is—
 - (a) the name, address, email address and telephone number of the landlord,
 - (b) the address of the property,
 - (c) which provision or provisions of regulation 9 applies,
 - (d) a copy of the valid energy performance certificate for the property,
 - (e) details of any energy efficiency improvement identified as a recommended improvement for the property in—
 - (i) a green deal report,
 - (ii) an energy performance certificate and the related recommendation report, or
 - (iii) a report prepared by a surveyor,
 - (f) where the landlord relies on regulation 9(1)(a) details of any relevant energy efficiency improvements undertaken and the date on which they were completed,
 - (g) where the landlord has not made an energy efficiency improvement, in reliance on regulation 8(2) a copy of any written opinion described in regulation 8(2),
 - (h) where the landlord has not made an energy efficiency improvement which was identified as a recommended improvement for the property in a green deal report, a recommendation report, or a report prepared by a surveyor, on the grounds that it does not fall within the definition of “relevant energy efficiency improvements” in section 55(4) of the Act and regulation 8(3), a copy of any evidence on which the landlord relies to demonstrate that the energy efficiency improvement is not a relevant energy efficiency improvement for the property.
- 2.** The information referred to in regulation 16(5) to be registered where regulation 11(1) applies is—
 - (a) the name, address, email address and telephone number of the landlord,
 - (b) the address of the property,
 - (c) which provision of regulation 11(1) applies,
 - (d) a copy of the valid energy performance certificate for the property,
 - (e) a copy of any correspondence and documents evidencing that—
 - (i) consent was required and sought, and
 - (ii) consent was refused or granted subject to a condition with which the landlord could not reasonably comply,

(2) The information required by paragraph (1) must be registered before the landlord lets the property within the meaning of regulation 7.
- 3.** The information referred to in regulation 16(5) to be registered where regulation 12 applies is—
 - (a) the name, address, email address and telephone number of the landlord,
 - (b) the address of the property,
 - (c) for each energy efficiency improvement to the property relied on in calculating the cost cap, details of the improvement and its cost;
 - (d) for each relevant energy efficiency improvement that has not been made—
 - (i) copies of three quotations for the cost of purchasing and installing the improvement (from installers of that improvement who meet the relevant installer standards), which demonstrate that the total cost (including value added tax) would exceed the cost cap, and

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(ii) the name of the responsible person (or, where two or more persons are the landlord, the name of the responsible person in relation to each landlord),

and confirmation that the responsible person (or each of them) is satisfied that the total cost (including value added tax) would exceed the cost cap.

4. The information referred to in regulation 16(5) to be registered where regulation 13(1) or (3) applies is—

- (a) the name, address, email address and telephone number of the landlord,
- (b) the address of the property,
- (c) whether paragraph (1) or (3) of regulation 13 applies,
- (d) a copy of any valid energy performance certificate for the property,
- (e) the date on which the landlord became, or continued to be, the landlord by virtue of a circumstance in regulation 13(2) or (4).

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EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations introduce measures to improve the energy efficiency of certain private rented property in Scotland.

The Regulations apply to domestic private rented property. They prescribe a minimum level of energy efficiency for such properties: that is, is an energy performance indicator (evidenced on the energy performance certificate for the property) of band E.

It provides that, subject to prescribed exceptions, a landlord of a domestic private rented property must not grant a new tenancy of the property after 1 April 2020, and must not continue to let the property after that date, where the energy performance of the property is below the minimum level;

It makes provision for the enforcement of the requirements of the Regulations by local authorities in relation to domestic private rented properties. (“enforcement authority”). Landlords seeking to rely on a prescribed exemption when letting a private rented property which falls below the minimum level of energy efficiency must register that exemption on a register maintained by the local authority for their area. Where an enforcement authority considers that a landlord may be in breach of a requirement of the Regulations, it may serve a compliance notice requiring the landlord to provide evidence to the enforcement authority. Where an enforcement authority is satisfied that a landlord is in breach, it may issue a penalty notice imposing a financial penalty, and a publication penalty (which consists of publishing the details of the breach on the register). The landlord may request a review of the penalty notice by the enforcement authority and, where a penalty notice is confirmed on review, may appeal against the imposition of the penalty notice to Sherriff court.

Annex B – Energy Efficiency (Private Rented Property) (Scotland) Guidance

This document is also available on the Scottish Government Website

<https://www.gov.scot/ISBN/9781787818644/>

ENERGY EFFICIENT SCOTLAND

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

Draft Guidance to accompany Regulations

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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 growth¹⁶.

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.

¹⁶ <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
From 1 April 2020	EPC E	Change in tenancy
By 31 March 2022	EPC E	All tenancies
From 1 April 2022	EPC D	Change in tenancy
By 31 March 2025	EPC D	All tenancies

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 tenant¹⁷. An EPC must also be obtained and displayed in a building over 250 m² in area, which is occupied by a public authority and frequently visited by the public.

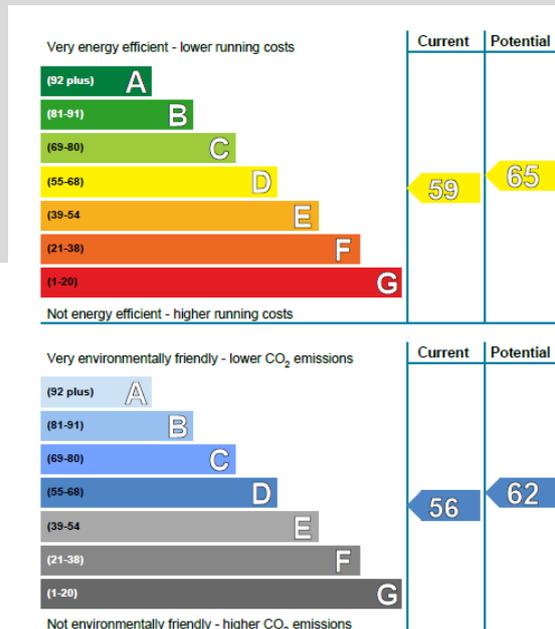
EPCs are valid for 10 years.¹⁸ They are based on information such as the size and layout of a building, how it has been constructed and the way it is insulated, heated, ventilated, and lighted. Since people use buildings in different ways, the calculation is based on standardised assumptions of occupancy 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.



¹⁷ Stand-alone non-domestic buildings below 50m², 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.

¹⁸ <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 12¹⁹, 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 finance²⁰.

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

¹⁹ <http://www.legislation.gov.uk/asp/2006/1/section/12>

²⁰ <https://www.energysavingtrust.org.uk/scotland/home-energy-scotland>

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

2.3.2 From **1st April 2020**, where a landlord intends to let a domestic private rented property on a **new tenancy** (or after 31st 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 **31st 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 **1st 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 **31st 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 Scotland²¹ 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>

²¹ <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 person²² 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

²² 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)²³, 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 Scotland²⁴ 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.

²³ <https://www.nature.scot/professional-advice>

²⁴ <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

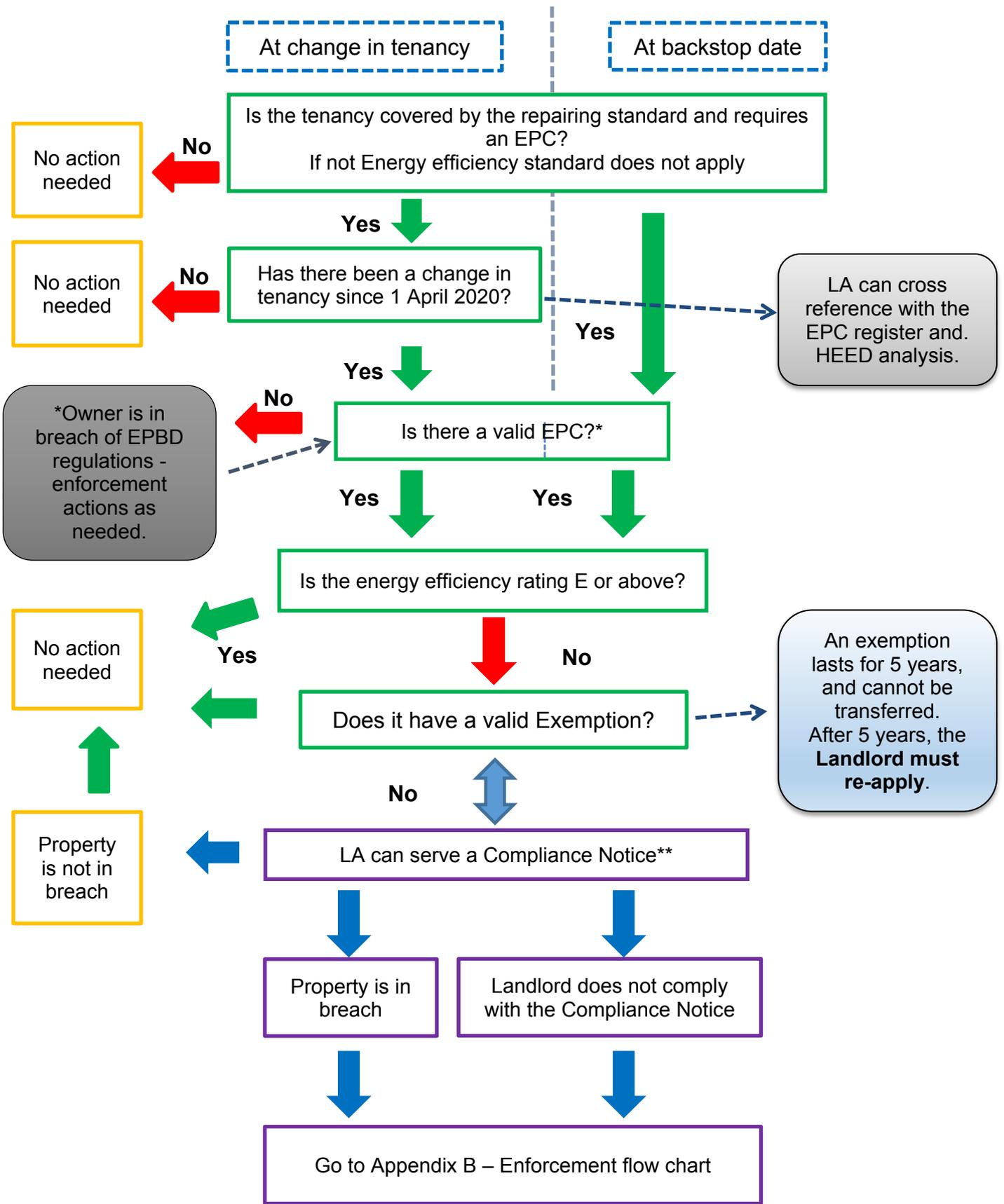
5.9.1 Regulation 24 sets out the procedure to recover the amount of an unpaid financial penalty from the landlord as a debt owed to the local authority unless the notice has been withdrawn or quashed.

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.

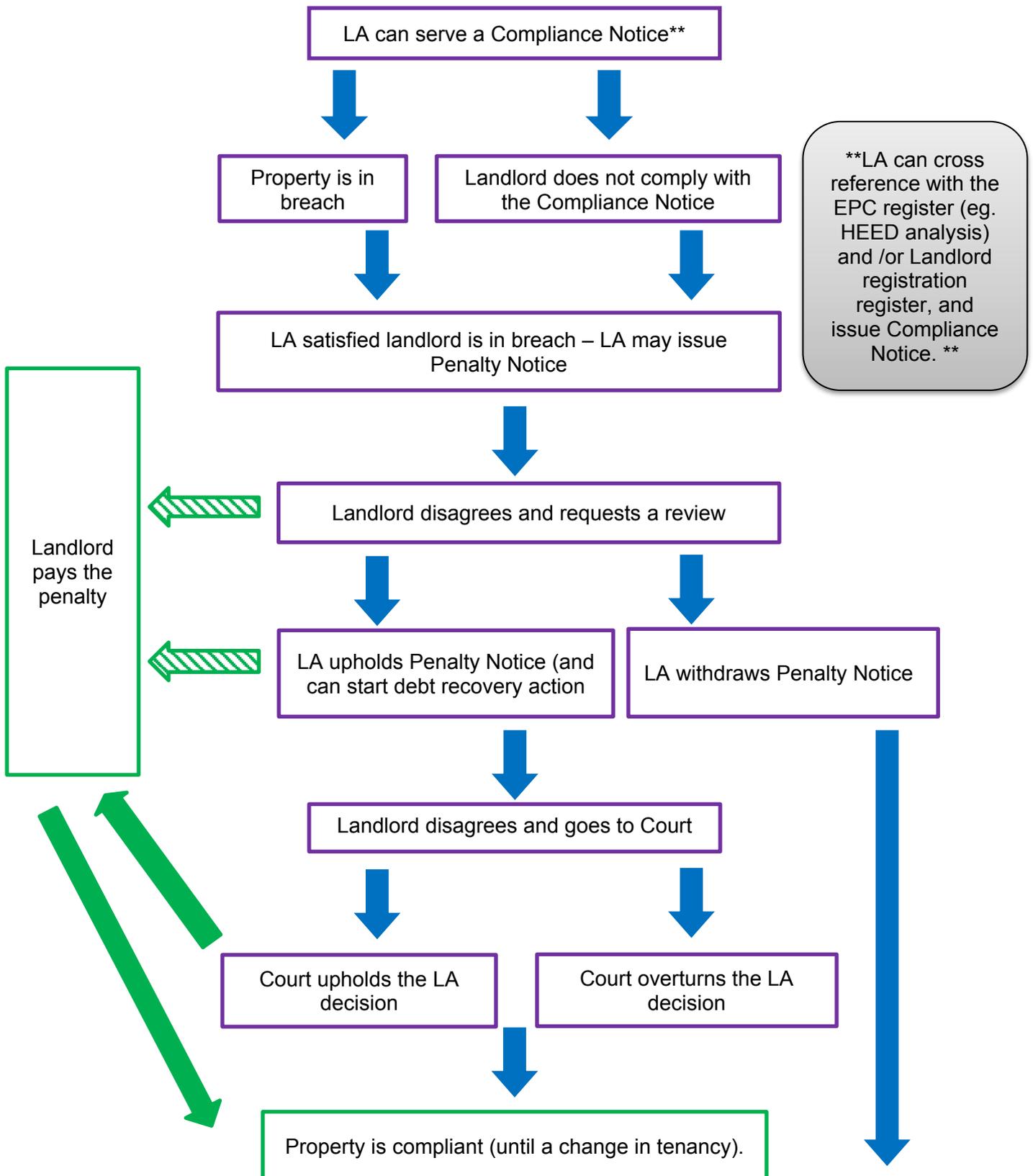
5.9.3 In proceedings for the recovery of a financial penalty, a certificate signed by, or on behalf of, the person having responsibility for the financial affairs of the local authority, and states that payment of the financial penalty was or was not received by a date specified in the certificate, is 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 show 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 Scotland²⁵.

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

²⁵ <https://www.energysavingtrust.org.uk/scotland/home-energy-scotland>

improved ratings that would be achieved from applying these measures in the order they are presented.

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

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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