Isle of Wight Council, Housing Renewal Section

Guidance for landlords and tenants in regard to energy efficiency requirements

SUMMARY. The Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015 establish a minimum level of energy efficiency for privately rented property in England and Wales. This means that, from April 2018, landlords of privately rented domestic and non-domestic property in England or Wales must ensure that their properties reach at least an Energy Performance Certificate (EPC) rating of E before granting a new tenancy to new or existing tenants. These requirements will then apply to all private rented properties in England and Wales – even where there has been no change in tenancy arrangements – from 1 April 2020 for domestic properties, and from 1 April 2023 for non-domestic properties.

The current domestic regulations are based on a principle of 'no cost to the landlord', this means that landlords of F or G rated homes will only be required to make improvements to these properties where they can do so entirely using third party finance from one or more sources. However, the Government are in the process of passing legislation to require a maximum contribution of £3500 (including VAT) towards necessary improvements before an exemption can be requested in that regard. (this is expected by April 2019).

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

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

Landlords of domestic property for which an EPC is not a legal requirement are not bound by the prohibition on letting sub-standard property. Please see section 1.1.4 in chapter one for further details on EPC requirements and exemptions.

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

a) from the 1st April 2018, landlords of relevant domestic private rented properties may not grant a tenancy to new or existing tenants if their property has an EPC rating of band F or G (as shown on a valid Energy Performance Certificate for the property);

b) from the 1st April 2020, landlords must not continue letting a relevant domestic property which is already let if that property has an EPC rating of band F or G (as shown on a valid Energy Performance Certificate for the property).

Where a landlord wishes to continue letting property which is currently sub-standard, they will need to ensure that energy efficiency improvements are made which raise the EPC rating to a minimum of E.

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

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

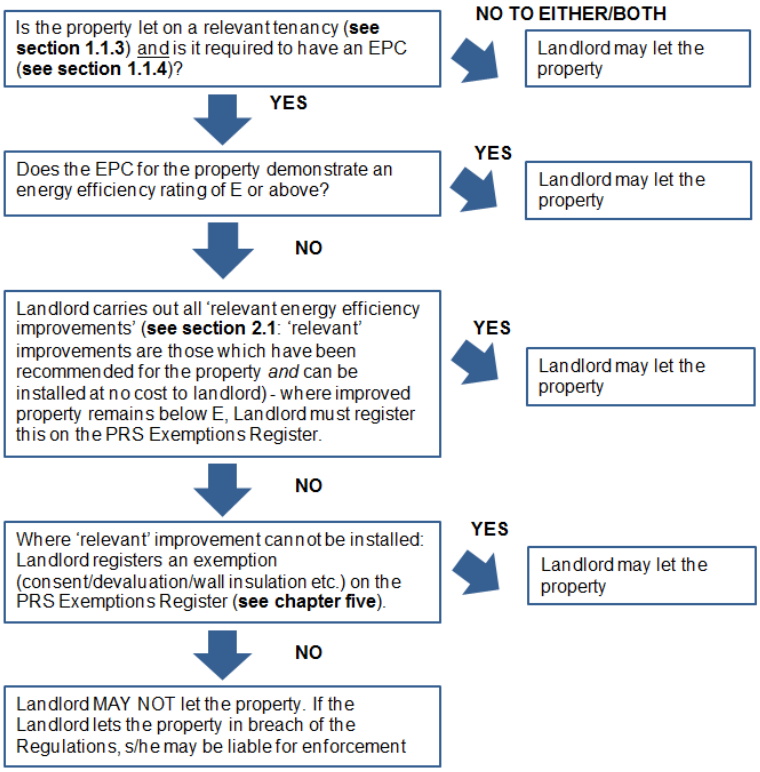
The Regulations cross refer to other existing regulations, including the Energy Performance of Buildings (Certificates and Inspections)(England and Wales) Regulations 2007, the Building Regulations 2010 and the Energy Performance of Buildings (England and Wales) Regulations 2012.

Enforcement of the Minimum Level of Energy Efficiency. Local authorities (either Trading Standards or Environmental Health/PRS Housing services) will enforce compliance with the domestic minimum level of energy efficiency. They may check whether a property meets the minimum level of energy efficiency, and may issue a compliance notice requesting information where it appears to them that a property has been let in breach of the Regulations (or an invalid exemption has been registered in respect of it).

Where a local authority is satisfied that a property has been let in breach of the Regulations it may serve a notice on the landlord imposing financial penalties. The authority may also publish details of the breach on the national PRS Exemptions Register.

The landlord may ask the Local authority to review the penalty notice and, if the penalty is upheld on review, the landlord may then appeal the penalty notice to the First-tier Tribunal.

A local authority may also serve a penalty notice for the lodging of false information on the Exemptions Register.



This means that where a property is let on a relevant tenancy type but is not legally required to have an EPC, or if it is required to have an EPC but is not let on a relevant tenancy, that property will not be required to comply with the requirements of the Regulations.

Licence vs Tenancy. Please note, licences are not the same as tenancies, and a licence is not considered to be a tenancy for the purposes of the Regulations. A tenancy grants exclusive

possession of the property, while a licence is merely permission for a licensee to do something on the property.

For the purposes of the domestic minimum standard provisions the relevant tenancy types are13:

• An assured tenancy (including an assured shorthold tenancy) defined in theHousing Act 1988;

• A regulated tenancy defined in the Rent Act 1977;

• A domestic agricultural tenancy as set out in the Energy Efficiency (Domestic Private Rented Property) Order 201514 as follows:

▪ A tenancy which is an assured agricultural occupancy for the purposes of section 24 of the Housing Act 1988;

▪ A tenancy which is a protected occupancy for the purposes of section 3(6) of the Rent (Agriculture) Act 1976;

▪ A statutory tenancy for the purposes of section 4(6) of the Rent (Agriculture) Act 1976.

Social Housing Exclusion The minimum standards do not apply in the social housing sector, therefore, even if a property is let on one of the tenancy types listed above, it will be excluded from the minimum standard provisions if it is any of the following16:

• Low cost rental accommodation defined by section 69 of the Housing and Regeneration Act 2008 and the landlord is a private registered provider of social housing; or

• Low cost home ownership accommodation within the meaning of section 70 of the Housing and Regeneration Act 2008.

A property will also be excluded if the landlord is a body registered as a social landlord under Chapter 1 of Part 1 of the Housing Act 1996.

EPCs. The Regulations only apply to those domestic properties which are legally required to have an **Energy Performance Certificate (EPC)**. This means properties required to have an EPC by any of the following:

• The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 200717,

• The Building Regulations 2010,

• The Energy Performance of Buildings (England and Wales) Regulations 2012.

Broadly speaking, since 2008 an owner or landlord has, on sale, letting or construction of a property been required to make an EPC available to the prospective buyer or tenant (although in the case of construction projects, typically the person carrying out the work will supply the EPC). In addition to the above, a new EPC is likely to be necessary if a building is modified to have more or fewer parts than it originally had and the modification includes the provision or extension of fixed services for heating, hot water, air conditioning or mechanical ventilation (i.e. services that condition the indoor climate for the benefits of the occupants). While some of the improvements which may be made to a property in order to comply with the Regulations may count as modification for the purposes of the EPC requirements, the majority will not.

Please note that there is no obligation to obtain an EPC on a letting of an individual non self-contained unit within a property, such as a bedsit or a room in a house in multiple occupation **(HMO)**. However the property in which the unit is situated may already have its own EPC covering that property as a whole; this could be because the property had been bought within the past ten years, or because it had previously been rented out on a whole-property basis. If a property as a whole has a valid EPC and that EPC shows an energy efficiency rating of F or G, then the owner/landlord will not, from April 2018, be able to issue new tenancies for non-self-contained units within the property until steps are taken to comply with the Regulations.

EPC not required. An EPC is not required where the landlord (or the seller, if relevant) can demonstrate that the building is any of the following:

• a building that is officially protected27 as part of a designated environment or because of their special architectural or historic merit where compliance with certain minimum energy efficiency requirements would unacceptably alter their character or appearance,

• a building used as places of worship and for religious activities,

a temporary building with a planned time of use of two years or less,

• Industrial sites, workshops, non-residential agricultural buildings with low energy demand and non-residential agricultural buildings which are in use by a sector covered by a national sectorial agreement on energy performance,

• stand-alone buildings with a total useful floor area of less than 50m² (i.e. buildings entirely detached from any other building).

• HMO's (Houses in Multiple Occupation, for example these can be bedsits, hostels, shared houses etc) which have not been subject to a sale in the previous ten years, or which have not been let as a single rental in the past ten years.

Prohibition on letting sub-standard domestic property (Regulation 23). Further detail

The domestic minimum standard will be introduced in a phased manner, with triggers for new tenancies entered into from **1 April 2018 onwards**, and a backstop date for all tenancies from 1 April 2020. This means that, from 1 April 2018 landlords must not let any sub-standard domestic property to **new tenants**, or renew or extend an existing tenancy agreement with **existing tenants**, unless either:

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

Then, from **1 April 2020**, 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:

a. all relevant energy efficiency improvements have been made (or that there are none that can be made), the EPC remains below E, and the exception has been registered on the Exemptions Register; or

b. no improvements have been made but a valid exemption applies and has been registered on the Exemptions Register.

Obtaining landlord consent. In situations where a tenant is looking to improve the energy efficiency of a property in preparation for renting that property to a sub-tenant (or for any other reason), the tenant may be required to obtain landlord consent before making the improvements. The tenant should request consent from their landlord in the way specified in their tenancy agreement. If the landlord consents, then the work will be able to proceed, subject to any conditions which the landlord may have placed on the tenant.

However, if the landlord withholds consent (or fails to respond to the request), then the tenant may have recourse to the Tenants' Energy Efficiency Improvements provisions (part two of the Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015). Under these provisions tenants can request consent from their landlord to install energy efficiency improvements in the property they rent, and the landlord may not unreasonably refuse consent. These rights took effect from April 2016, and are subject to the tenant securing suitable funding for the requested improvements.

T**he Housing Health and Safety Rating System (HHSRS)** While not directly related to the minimum level of energy efficiency, landlords will wish to be aware of the Housing Health and Safety Rating System (HHSRS). HHSRS is a method of assessing housing conditions (both rented and owner occupied) established by the Housing Act 2004. It employs a risk assessment approach to enable risks from hazards to health and safety in dwellings to be minimised. Hazards include those relating to dampness and excess heat/cold.

The intention of the Housing Act 2004 is to ensure that owners maintain their properties in a safe and 'healthy' state (i.e. free from hazards that may affect the occupier's health and/or safety). If a local authority discovers category 1 of hazards in a home, it has a duty to take the most appropriate action. It may also take action for less serious category 2 hazards where this is considered the most satisfactory course of action. The HHSRS does not deal with a property being inefficient from an energy point of view; rather, action can be taken if there is excess cold or damp at the property, for example, but these two hazards can overlap in a situation where a property needs improvement from an energy efficiency perspective.

The Isle of Wight Council will aim to deal with problems informally at first, but if this is unsuccessful we may serve an formal enforcement notice on a landlord requiring them to carry out improvements to the property; for example, by installing central heating and/or insulation to improve cold properties. Where an HHSRS notice is served, the landlord will have to meet the cost of the required work.

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

PAYING FOR IMPROVEMENTS; A Landlord is only required to make improvements to an F or G rated property to meet the minimum standard if they can do so at no cost to themselves. No cost funding can come from a range of sources, primarily (but not limited to):

• Green Deal Finance,

• Local Authorities home energy efficiency grants,

• ECO help to heat funding,

However, please note that the Government is bringing legislation forward to requiring landlords to spend up to £3,500 (including VAT) before they can claim an exemption from undertaking further improvements that raise the energy efficiency.

For general advice on energy efficiency funding, landlords should visit the government endorsed Simple Energy Advice service at: https://www.simpleenergyadvice.org.uk/

Exclusions and exemptions from meeting the minimum standard which are permitted by the Regulations.

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

Equally, if tenant consent is required and could not be obtained, and an exemption registered. A change of tenancy revokes the exemption and consent must be sought for the improvements again in order to undertake the improvements, or obtain evidence suitable for another exemption.

-Where all the 'relevant energy efficiency improvements' for the property have been made (or there are none that can be made) and the property remains sub-standard (Regulation 25)

-Where a recommended measure is not a "relevant energy efficiency improvement" because the cost of purchasing and installing it cannot be wholly financed at no cost to the landlord (Regulation 25(1)(b))

-Relevant energy efficiency improvements - wall insulation (Regulation 24(2))

-Third party consent exemption (Regulation 31 and Regulation 36(2))

-Property devaluation exemption (Regulation 32 and Regulation 36 (2))

-Temporary exemption due to recently becoming a landlord (Regulation 33 & Regulation 36 (2))

ENFORCEMENT. When the enforcement authority may decide to serve a compliance notice (Regulation 37)

From 1 April 2018, where the enforcement authority believes that a landlord may be in breach of the prohibition on letting a sub-standard property (as described in section 1.2.1), or a landlord has been in breach of the prohibition at any time in the past 12 months, the enforcement authority may serve a compliance notice that requests information from that landlord which will help them to decide whether that landlord has in fact breached the prohibition.

A compliance notice served by an enforcement authority may request either the original or copies of the following information:

• the EPC that was valid for the time when the property was let;

• any other EPC for the property in the landlord's possession;

• the current tenancy agreement used for letting the property;

• any Green Deal Advice Report in relation to the property;

• any other relevant document that the enforcement authority requires in order to carry out its compliance and enforcement functions.

The compliance notice may also require the landlord to register copies of the requested information on the PRS Exemptions Register.

The landlord must comply with the compliance notice by sending the requested information to the enforcement authority and allow copies of any original documents to be taken. Failure to provide documents or information requested by a compliance notice, or failure to register information on the PRS Exemptions Register as required by a compliance notice, may result in a penalty notice being served.

Where the Local Authority decides to impose a financial penalty, they have the discretion to decide on the amount of the penalty, up to maximum limits set by the Regulations. The maximum penalties are as follows:

(a) Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than 3 months, the Local Authority may impose a financial penalty of up to £2,000 and may impose the publication penalty.

(b) Where the landlord has let a sub-standard property in breach of the regulations for 3 months or more, the Local Authority may impose a financial penalty of up to £4,000 and may impose 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 of up to £1,000 and may impose the publication penalty.

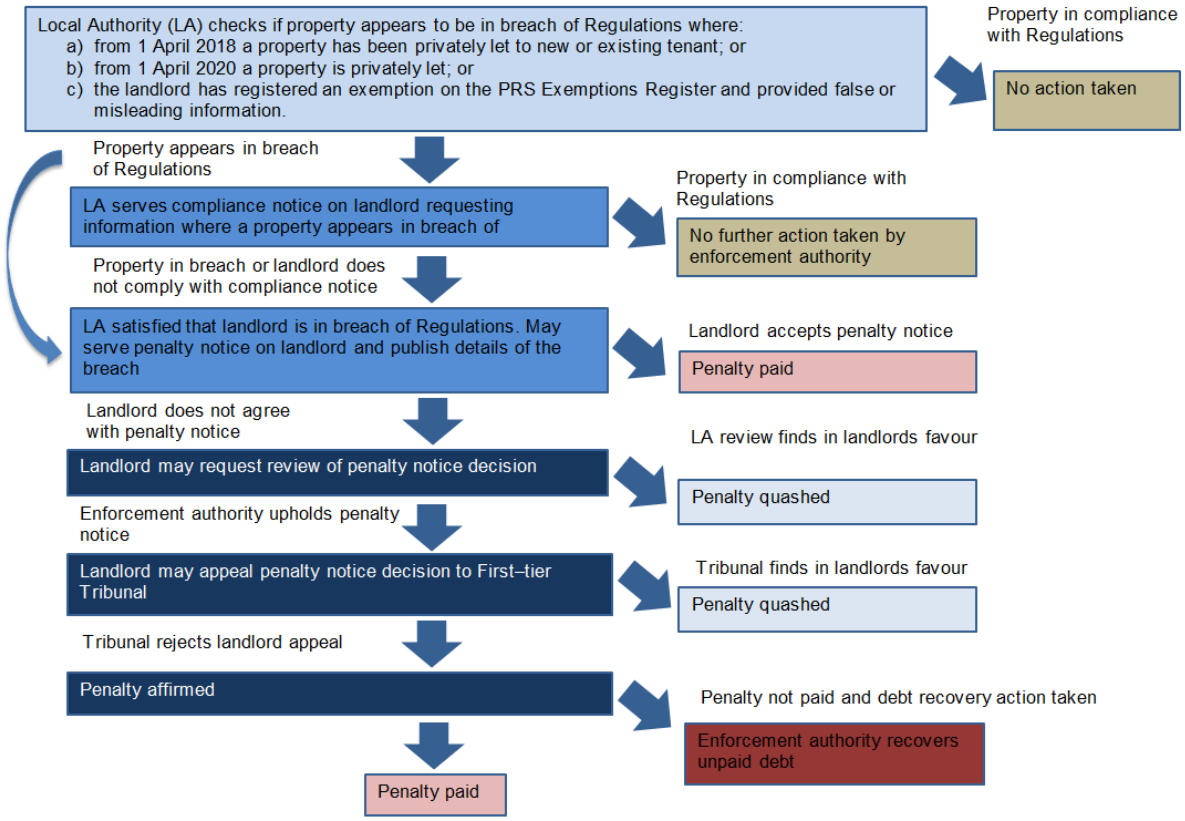
(d) Where the landlord has failed to comply with compliance notice, the Local Authority may impose a financial penalty of up to £2,000 and may impose the publication penalty.

local authority may not impose a financial penalty under both paragraphs (a) and (b) above in relation to the same breach of the Regulations. But they may impose a financial penalty under either paragraph (a) or paragraph (b), together with financial penalties under paragraphs (c) and (d), in relation to the same breach. Where penalties are imposed under more than one of these paragraphs, the total amount of the financial penalty may not be more than £5,000.

It is important to note that this maximum amount of £5,000 applies per property, and per breach of the Regulation. Given this, it means that, if after having been previously fined up to £5,000 for having failed to satisfy the requirements of the regulations, a landlord proceeds to unlawfully let a substandard property on a new tenancy; the local enforcement authority may again levy financial penalties up to £5,000 in relation to that new tenancy.

Landlords can ask a Local Authority to review a decision to serve a penalty notice, and the notice may withdraw, waive or reduce the penalty, allow the landlord additional time to pay, or modify the publication penalty.

Appeals are to the First Tier Tribunal, and recovery of penalties are to the court.



For further and more in depth information visit;

https://www.gov.uk/government/publications/the-private-rented-property-minimum-standard-landlord-guidance-documents