



## **SPECIAL HOUSING AND REGENERATION SCRUTINY COMMITTEE – 9TH JUNE 2022**

**SUBJECT: ENFORCEMENT AND COMPLIANCE OF THE MINIMUM ENERGY EFFICIENCY STANDARDS IN PRIVATE RENTED DOMESTIC PROPERTIES (MEES) PROCEDURE.**

**REPORT BY: CORPORATE DIRECTOR FOR SOCIAL SERVICES AND HOUSING**

### **1. PURPOSE OF REPORT**

- 1.1 For Members of the Housing & Regeneration Scrutiny Committee to consider and take a view on the adoption of the enforcement approach and protocol set out in Appendix 1 to satisfy the requirements under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, as amended, regarding rented domestic properties, prior to its presentation to Cabinet on 13<sup>th</sup> July 2022.

### **2. SUMMARY**

- 2.1 The Energy Efficiency (Private Rented Property) (England and Wales) Regulation 2015 sets out the legal obligation for landlords to provide energy performance certificates of E or above to existing, new and prospective tenants in most rented homes unless they are exempt such as listed buildings or officially protected. The Regulations impose a minimum energy efficiency standard to help reduce fuel poverty and carbon emissions.
- 2.2 An Energy Performance Certificates (EPCs) provide a rating for the energy performance of a home ranging from A to G, with A being the most efficient. The rating is based on factors such as age, layout, heating, lighting, and insulation. A landlord could be liable to a penalty notice if a property is privately rented which either does not have a current EPC or the EPC is rated energy bands F or G.
- 2.3 The Council has been awarded £60,000 following a successful application for funding to a compliance and enforcement competition organised by UK Government Business, Enterprise, and Industrial Strategy Department.
- 2.4 Work has been ongoing since October 2021 to identify private rented properties with no EPC or with an EPC of F and G. A promotional campaign is underway to reach as many landlords and tenants as possible with advice and information. A large proportion of landlords have already engaged and/or taken the required action without the need to take enforcement action.

- 2.5 There are also several third-party companies that offer financial support for private sector landlords to help improve the energy efficiency of their rented property such as LA ECO Flex, Nest Wales, and Rent Smart Wales Warm Homes funding.
- 2.6 The regulation also has a financial cap that only requires landlords to spend a maximum of £3,500 to improve the property. If, after the landlords spends £3,500 on the property, a rating of E or above has not been achieved; the landlord can provide the evidence to BEIS and register an exemption on their register.
- 2.7 Enforcement action is always a last resort. However, where the landlord fails to engage and ensure compliance informally, officers authorised under the MEES regulations must have the authority to serve Penalty Notices to ensure compliance.

### **3. RECOMMENDATIONS**

- 3.1 Members are requested to consider and give a view on the following recommendation which will be presented to Cabinet on the 13<sup>th</sup> July 2022:-
- 3.2 Members recommend to Cabinet to agree and adopt the Enforcement Protocol in Appendix 1 as the Council's approach to dealing with identified non-compliances, including the use of Compliance Notices and Penalty Notices where appropriate.
- 3.3 The Enforcement & Compliance of the Minimum Energy Efficiency Standards in Private Rented Domestic Properties (MEES) procedure will be periodically reviewed and updated in line with Welsh Government Legislation to reflect the maximum values of penalty permitted and the minimum Energy Performance Rating required under the regulation.

### **4. REASONS FOR THE RECOMMENDATIONS**

- 4.1 Adopting the Enforcement Protocol will improve the energy efficiency of private rented sector housing whilst ensuring landlords comply with their legal obligation under the MEES regulation.
- 4.2 The authority has also committed to reducing fuel poverty by making homes more energy efficient within the Corporate Plan Wellbeing Objectives. Ensuring compliance with the MEES regulation will have a direct impact on achieving objective 3, addressing the availability, condition, and sustainability of homes throughout the county borough and providing advice, assistance or support to help improve people's well-being.
- 4.3 The MEES regulation will help:
  - i. Tackle the determinants of poor health and wellbeing by improving housing conditions in the private sector.
  - ii. Help reduce fuel poverty by making homes more energy-efficient and providing people with advice on how best to heat their homes.
- 4.4 The Office of National Statistics published information based on data up to March 2021 that the cost of renting a G rated property in Wales is £2,613 compared with £1,200 for a E rated property. This means that a tenant living in a substandard property could be paying £1,413 extra in energy bills due to the landlord's unwillingness to meet his legal obligation.

## **5. THE REPORT**

### **Background Information**

- 5.1 Section 34 (2) of the regulations imposes a statutory duty on Local Authorities to enforce compliance with Part 3 of the regulations which impose the minimum energy efficiency requirements. A link to the regulations and statutory guidance is included in Appendix 1.
- 5.2 Since 1<sup>st</sup> April 2020, for all tenancies in private rented properties (new and existing), the property must meet minimum energy efficiency standard (MEES) of E in its Energy Performance Certificates (EPCs) unless there is a valid registered exemption, or the property does not require an EPC.
- 5.3 Long term, the UK Government has an aspiration to raise the minimum EPC requirements for domestic properties to a rating of C. Legislation introducing this change is now under consultation, with a proposed implementation by 2030.
- 5.4 The procedure attached as Appendix 1 has been developed in accordance with a compliance and enforcement toolkit provided by BEIS to Local Authorities who were successful in their bid applications. Working with partners like Rent Smart Wales (RSW), officers will act on properties with an F and G rating, encouraging landlords to make the necessary improvements, signposting to funding opportunities, but also take enforcement action against any landlords who are unwilling to implement the changes to improve their properties.
- 5.5 There are third party funding opportunities being offered to landlords and tenants to help with improving the energy efficiency of the properties and reduce the energy bills. This includes the LA ECO flex which the authority offers.
- 5.6 Other third-party funding streams such as Nest Wales and Rent Smart Wales warm fund. RSW offer partly funding for first-time gas central heating in properties with EPC bands F and G. RSW has written to landlords of affected properties to promote this offer of funding towards energy efficiency improvements. Advice and information have also been included within RSW newsletters and their website.
- 5.7 Over the last 6 months landlords of all known F and G properties have been contacted with information on their obligation under the MEES regulation and the potential grant funding available. There has also been a designated MEES officer giving information and advice to any landlord or tenant requesting support.
- 5.8 Officers are also regularly scrutinising the Register of Exemptions to ensure that any exemption recorded by a landlord is valid and meets the level of evidence required by BEIS.
- 5.9 The Regulations empower authorised officers to serve a Compliance Notice on a non-compliant landlord, giving at least one month to provide the required energy performance documentation relating to the rented property. Failure to provide the information makes the person liable to pay a penalty notice.
- 5.10 A detailed breakdown of the offences and associated penalties is detailed within the Enforcement Procedure in Appendix 1. The maximum fine permitted per property is £5,000.
- 5.11 The regulations also enable officers to issue a Publication Notice for publishing details of the breaches of the regulations on the BEIS Private Rented Sector Exemptions register. The details such as the name of the organisation receiving the financial penalty,

information on the breach of these Regulations in respect of which the penalty notice has been issued, the address of the property in relation to which the breach has occurred and the amount of any financial penalty imposed.

- 5.12 It is important to note that the penalty notices are civil penalties and there are no provisions to take a prosecution forward should the landlord continue to breach the regulation.
- 5.13 Therefore, the penalty notice will be the only form of punishment for non-compliance with the MEES regulation. The level of the penalty must be set at a high enough level that encourages compliance.
- 5.14 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 enforcement procedure to support the enforcement approach, including the recommended penalty limit, is included in Appendix 1.

## **Conclusion**

- 5.15 The adoption of the MEES Enforcement Procedure will improve the standard of Private Rented Sector Housing within Caerphilly CBC, will help reduce fuel poverty for many private sector tenants and households struggling with high energy bills. Improving properties and improving the energy efficiency of these properties will also have a positive impact on the environment and reduce carbon emissions produced by the substandard and inefficient properties.

## **6. ASSUMPTIONS**

- 6.1 There are no assumptions made in this report.

## **7. SUMMARY OF INTEGRATED IMPACT ASSESSMENT**

- 7.1 The Integrated Impact Assessment (IIA) concluded that the proposal will have a positive impact on all private sector tenants living in substandard properties. Enforcing the MEES regulation will help drive the standard of (the) private rented sector housing up to ensure an Energy Enforcement Rating of E or above.
- 7.2 The regulation is based on the property, not the occupiers or the landlord. Therefore, the IIA concluded that there will be no negative impact on the protected characteristics.
- 7.3 The IIA also highlighted the financial benefit for tenants experiencing fuel poverty and struggling due to high energy bills. The MEES regulation's prime objective is to address private rented properties that are difficult and expensive to run. Improving the energy rating of a property from a G or F to E or above will have a positive impact and the tenants should see financial benefit in lower energy bills. This should help tenants that financially struggling.
- 7.4 The Office of National Statistics published information based on information up to March 2021, the cost of renting a G rated property in Wales is £2,613 compared with £1,200 for a E rated property. This means that a tenant living in a substandard property could be paying £1,413 extra in energy bills due to the landlord's unwillingness to meet his legal obligation.

- 7.5 Landlords will have a duty to comply with the MEES regulation. The landlord will be given every help and support to meet the requirement informally before resulting in the authority taking Enforcement action and serving a Penalty Notice.
- 7.6 The IIA also identified how enforcing the MEES regulation will help achieve the authority corporate Well-being objectives including:
- i. Tackle the determinants of poor health and wellbeing by improving housing conditions in the private sector.
  - ii. Help reduce fuel poverty by making homes more energy-efficient and providing people with advice on how best to heat their homes.
- 7.7 The IIA confirmed that the proposal will have a positive impact on the Welsh language as the Principal Housing Officer is fluent in Welsh giving an opportunity for a person to use Welsh in obtaining advice and information if required. All material will also be available in both languages.

#### 7.8 **Link to Integrated Impact Assessment**

### **8. FINANCIAL IMPLICATIONS**

- 8.1 The Private Sector Housing Team was successful in obtaining £60,000 to promote and encourage compliance with the MEES regulation dealing with domestic properties. This funding has been used to engage with the landlords and set up the team should enforcement become an option. No additional funding implication will be needed for the Private Sector Housing to continue with the work of implementing the proposed Enforcement Procedure.
- 8.2 The Penalty Notices have the potential of generating some funding to the authority. However, the aim of the notice is to ensure compliance and not to be used as an income generator.

### **9. PERSONNEL IMPLICATIONS**

- 9.1 There are no personnel implications arising from this report.

### **10. CONSULTATIONS**

- 10.1 There are no consultation responses that have not been reflected in this report

### **11. STATUTORY POWER**

- 11.1 The Energy Efficiency (Private Rented Property) (England and Wales) Regulation 2015
- 11.2 The Energy Performance of Building (certificate and Inspections) (England and Wales) Regulations 2007

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Fiona Wilkins	- Housing Service Manager
Rob Tranter	- Head of Legal Services & Monitoring Officer
Stephen Harris	- Head of Financial Services & S151 Officer
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Lesley Allan	- Principal Group Accountant – Housing
Kerry Denman	- Housing Solutions Manager
Anwen Cullinane	- Senior Policy Officer
Jacqui Morgan	- Trading Standards, Licensing & Registrars Manager .

Appendix 1 - Enforcement & Compliance of the Minimum Energy Efficiency Standards in Private Rented Domestic Properties (MEES) procedure.

## Appendix 1:

Caerphilly County Borough Council

Enforcement & Compliance of the Minimum Energy Efficiency Standards in Private Rented Domestic Properties (MEES) procedure.

### Purpose:

The purpose of this document is to set out a framework for Caerphilly County Borough Council to enforce the Minimum Energy Efficiency Standards regulations in Private Rented Domestic Properties (MEES) requirements which prohibit sub-standard properties from being let.

The Domestic Minimum Energy Efficiency Standard (MEES) Regulations set a minimum energy efficiency level for domestic private rented properties.

The Regulations apply to all domestic private rented properties that are:

- let on specific types of tenancy agreement
- legally required to have an Energy Performance Certificate (EPC)

Since 1 April 2020, landlords can no longer let or continue to let properties covered by the MEES Regulations if they have an EPC rating below E, unless they have a valid exemption in place.

Caerphilly County Borough Council recognises the importance of improving the energy performance of the private sector housing with the borough and has committed to reducing fuel poverty by publicising their statement of intent under the LA ECO flex.

### Background:

The Energy Performance Certificate provides information about a property's energy use, typical energy costs, and recommendations about how to reduce energy use and save money. It rates a property's energy efficiency from A - most efficient to G - least efficient. Landlords are required to have an EPC and provide a copy of it to occupants at the start of a tenancy unless the property is exempt from the requirements.

The MEES regulations acknowledge that properties that have an energy performance rating of F and G are extremely difficult and expensive to run and the tenant is likely to be in fuel poverty. Therefore, the regulations require all Landlords of private sector housing that meet the definition above to improve the energy efficiency of their properties to E or above.

However, the regulation also acknowledges that some of these properties are very difficult to improve and there are some situations where improving the property will not be possible. Therefore, there are several exemptions available for landlords to address this concern as seen in the table below (Taken from BEIS Guidance)

High cost - The prohibition on letting property below an EPC rating of E does not apply if the cost of making even the cheapest recommended improvement would exceed £3,500 (inc. VAT)
All improvements made - 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. Applies to domestic and nondomestic property
Wall insulation - There is a special provision for circumstances in which cavity wall insulation, external wall insulation systems, and internal wall insulation systems should not be installed

Consent - Information on when and where consent is required will be contained within relevant documentation, for example in the landlord's lease or mortgage conditions
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Devaluation - An exemption from meeting the minimum standard will apply where the landlord has obtained a report from an independent surveyor who is on the Royal Institution of Chartered Surveyors (RICS) register of valuers advising that the installation of specific energy efficiency measures would reduce Page 41 the market value of the property, or the building it forms part of, by more than five percent.
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New landlord - from 1 April 2020, when the minimum standard applies to all privately rented properties that are occupied by tenants, a temporary exemption of 6 months will apply from the date from which a person became a Landlord in the following situation: A person becomes the landlord on purchasing an interest in a property and, on the date of the purchase, it was let on an existing tenancy.
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The landlord must register any exemption with BEIS and provide sufficient evidence to confirm they meet the criteria under the specific exemption.

All landlords letting their properties with an EPC rating of F and G without a registered valid exemption will be committing an offence under the Requirements.

### **Identifying Private Rented Properties Breaching the Requirements:**

The legal requirement for landlords and agents to register their private rented properties with Rent Smart Wales (RSW) makes identifying breaches in the MEES requirement much easier.

RSW has confirmed that they will be able to provide the Caerphilly Council with details of all F and G rented properties registered with them. Up to September 2021, they have provided details of 114 properties that appear to be in breach of the MEES. An agreement has been made with RSW that they will provide an updated list every quarter to continue to identify any new breaches.

RSW has also provided a list of properties registered with RSW that have no EPC. This list is less reliable and requires cleansing and further investigation. It is impossible to determine how many of these properties are substandard without first obtaining an EPC. The Energy Performance of Buildings (England and Wales) Regulation 2012 gives the local weights and measures team authority to serve a Penalty Notice for landlords not meeting the basic requirement of obtaining a valid EPC. The maximum fine for not having a valid EPC is £200.

Social media campaigns and tenant engagement are also ongoing to inform tenants of the requirement, give advice and invite any that are concerned to contact the Private Sector Housing Team to discuss their options.

### **Enforcement and Engagements**

Enforcement is always a last resort and work is ongoing to engage with landlords and agents to support and give advice on how they can meet their obligation under the MEES regulations. This includes sending an advice leaflet and an informal letter requesting contact and offering support to every landlord identified as a potentially breaches.

Information on any third-party funding available is also promoted. Information is sent to the landlord and tenant of any potential financial support available to help with compliance. However, should the landlord fail to respond to our informal effort, enforcement action is pivotal to ensure compliance.

### **Compliance Notices**

Where there is evidence suggesting that the landlord may still be in breach of the MEES regulation despite two attempts of informal engagement; the case will be escalated to enforcement. The initial stage will be serving a compliance notice requesting information to



confirm if a breach has occurred. A compliance notice can be served up to 12 months after a suspected breach occurred.

A compliance notice may request information on:

- Copy of the current EPC
- the EPC that was valid for the time when the property was let
- the tenancy agreement used for letting the property
- information on energy efficiency improvements made
- any Energy Advice Report in relation to the property
- any other relevant document

## **Penalties**

Action can be taken if it is established that a property is (or has been) let in breach of the Regulations, they may serve a financial penalty up to 18 months after the breach and/or publish details of the breach for at least 12 months.

The maximum penalties amount applies per property and per breach of the Regulations. They are:

- up to £2,000 and/or publication penalty for renting out a non-compliant property for less than 3 months.
- up to £4,000 and/or publication penalty for renting out a non-compliant property for 3 months or more.
- up to £1,000 and/or publication for providing false or misleading information on the PRS Exemptions Register.
- up to £2,000 and/or publication for failure to comply with a compliance notice.

The maximum amount you can be fined per property is £5,000 in total.

Caerphilly County Borough Council believes that breaching this regulation has a significant impact on tenants struggling in fuel poverty.

The Office of National Statistics published information based on data up to March 2021, that the cost of renting a G rated property in Wales is £2,613 compared with £1,200 for an E rated property. This means that a tenant living in a substandard property could be paying £1,413 extra in energy bills due to the landlord's unwillingness to meet his legal obligation.

Furthermore, the private sector housing will make at least two attempts to engage informally with the landlord to help and support compliance before considering enforcement action.

Therefore, non-compliant landlords in breach of the Regulations must bear the full cost of the enforcement of the regulations, minimising the cost to the council taxpayer for providing this service.

To ensure that the £5000 is not breached a maximum penalty notice of £1,000 will be served for landlords that provide false or misleading information on the PRS Exemptions Register or for failing to comply with a compliance notice. This will allow the penalty maximum to be imposed for renting out a non-compliant properties with penalty reduction criteria being considered for mitigating factors set out below: -

<p>Landlord provides evidence of meeting the requirement under the regulation before the penalty payment is due.</p> <p>This will include:</p> <p>Providing evidence of a valid exemption registered against the property.</p> <p>Providing a copy of a valid EPC certificate meeting the MEES regulations.</p>	<p>75% discount</p>
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### **Publication Penalty (Regulation 39)**

A publication penalty means that the enforcement authority may publish some details of the landlord's breach on a publicly accessible part of the PRS Exemptions Register. The enforcement authority can decide how long to register the information for, but it will be available to view by the public for at least 12 months. The information that the enforcement authority may publish is:

- The Landlord's name (except where the landlord is an individual).
- Details of the breach.
- The address of the property in relation to which the breach occurred.
- The amount of any financial penalty imposed.

The Council will routinely place the information on the register at the appropriate time, for a minimum of 12 months.

### **Reviews, waiving and modification of penalties (Regulation 42)**

Where a landlord serves a notice on the Local Authority requesting a review of its decision to serve a penalty notice, authorised senior officers within Private Sector Housing will review the application in accordance with Regulation 42

### **Right of Review and Right of Appeal (Regulation 43 & 44)**

A Landlord that does not agree with a penalty notice, can ask the authority to review its decision. They can withdraw the penalty notice if:

- new evidence shows a breach has not occurred
- a breach has occurred, but evidence shows the landlord took all reasonable steps to avoid the breach
- they decide that because of the circumstances of the case, it was not appropriate to issue a penalty

If a local authority decides to uphold a penalty notice, a landlord may appeal to the First-tier Tribunal if they think that:

- the penalty notice was based on an error of fact or an error of law

- the penalty notice does not comply with a requirement imposed by the Regulations
- it was inappropriate to serve a penalty notice on the landlord in those particular circumstances.

### **Recovery of Financial Penalty (Regulation 45)**

The amount of an unpaid financial penalty will be recovered as a debt owed to the Council. This means that the Council will enter into legal proceedings to recover outstanding penalties.

### **Failure to Comply**

The MEES regulation has no provision to prosecuting the landlord following non-compliance with the Penalty Notices. Therefore, should the landlord fail to comply with the provisions under the MEES regulations and the maximum financial penalty of £5,000 is reached; The case will be referred to the District Housing Environmental Health Officer to investigate potential hazards under the Housing Act 2004. RSW will also be notified with a request to consider grounds to revoke the landlord's license or to undertake an agent audit if applicable.

### **Government Guidance**

The following Guidance has been considered in producing this procedure:

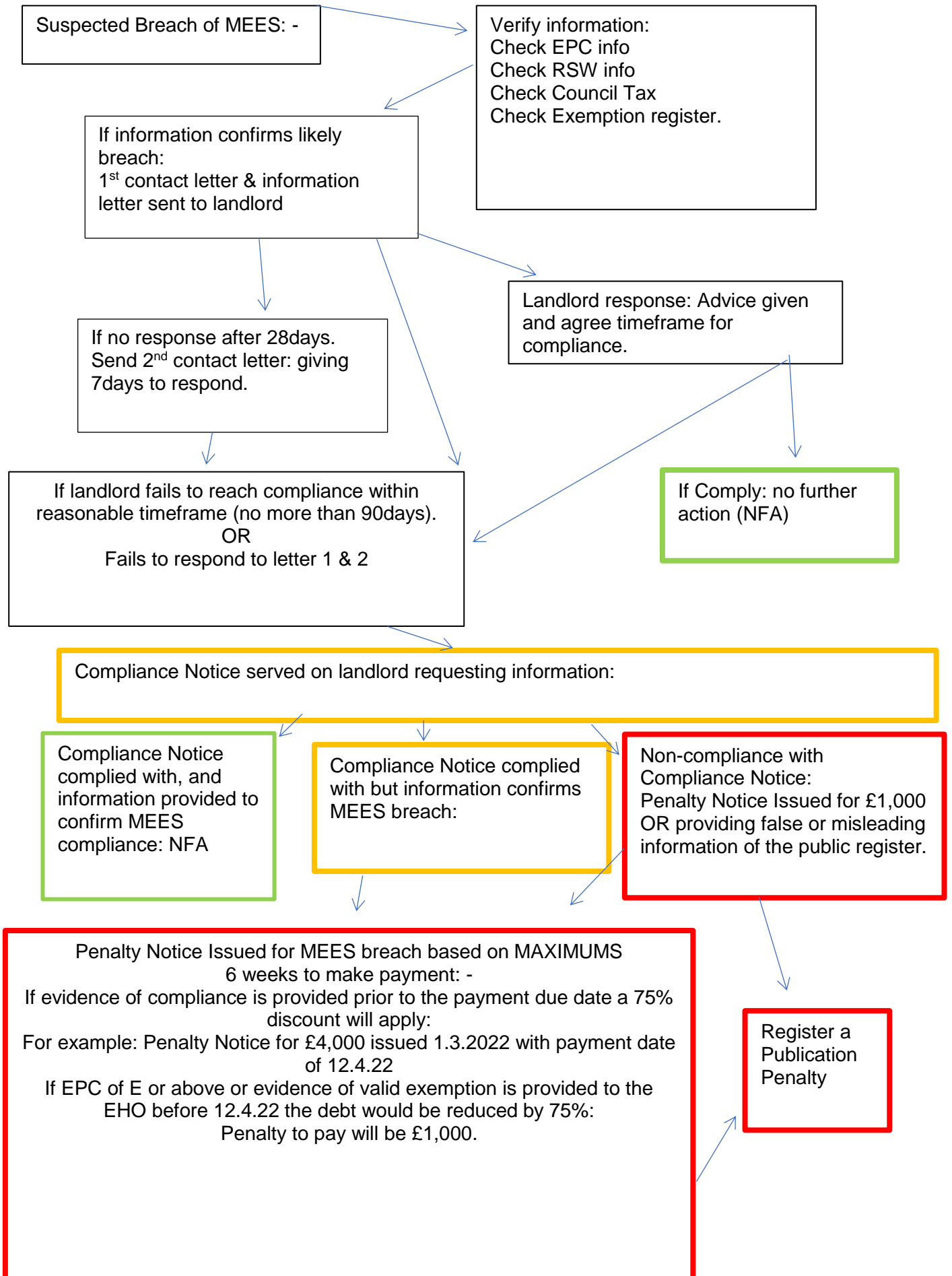
The Department for Business Energy and Industrial Strategy have produced guidance for domestic properties published in 2017 and updated in 2020;

[Guidance for landlords and Local Authorities on the minimum level of energy efficiency required to let domestic property under the Energy Efficiency \(Private Rented Property\) \(England and Wales\) Regulations 2015](#)

[They also published guidance for non-domestic landlords in 2019](#)

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

## Enforcement Flow Diagram



## The Instigation of Debt Recovery of Civil Penalty: Housing Act 2004

Where the landlord fails to pay a civil penalty, Caerphilly CBC may recover the debt in the County Court as it were payable under an order made by the County Court.

No.	Action
1	<p>If no representation has been made against the Penalty Notices have been served and no appeal has been made against the Penalty Notice</p> <p>Recovery action <b>MUST</b> commence.</p>
2	<p>Prepare an explanatory file for the Head of Housing with a brief explanation of the case (case summary) include copies of</p> <ul style="list-style-type: none"> <li>• All documentation prior to the Penalty Notice</li> <li>• The Penalty notice and accompanying letters</li> <li>• Any representations</li> <li>• Any appeal documents</li> </ul>
3	<p>On receipt of file with the signed certificate enclosed you must make a decision as to what method you are proposing to enforce the debt (arrange a meeting with legal to discuss this).</p> <p>In deciding the method, you should consider whether:</p> <ul style="list-style-type: none"> <li>• you are likely to get the Council's money and court fee from the defendant;</li> <li>• the defendant owes other people money or has other court judgments;</li> <li>• the defendant owns any goods or assets which can be taken and sold at auction;</li> <li>• the defendant is working;</li> <li>• the defendant has other earnings, such as income from investments;</li> <li>• the defendant has a bank, building society or other account;</li> <li>• the defendant owns property (a house); and</li> <li>• anyone else owes the defendant money.</li> </ul> <p>If the Council does not have any information about the defendant's finances, an order can be served to obtain information.</p> <p><b>Third-Party Debt Order</b></p> <p>A third-party debt order is made to stop the defendant taking money out of their bank/building society account. The money the Council is owed is paid from the account (unless the account is overdrawn on the day the bank/building society receives the order). If the defendant has a bank/building society account, the bank/building society will freeze the account when it receives the order from the court. The defendant will be aware of the order and may stop paying money into the account.</p>

	<p><b>Charging Order</b></p> <p>A charging order allows a charge to be put on the defendant's asset (such as their home, land or investments) and prevents the defendant from selling their assets without paying what they owe the Council. The Authority will not get the money until the defendant sells their assets, but in some circumstances the Council may be able to ask the court for an order to force them to sell their assets.</p> <p><b>Warrant of Control</b></p> <p>A warrant of control gives court enforcement agents the authority to take goods from the defendant's home or business. Enforcement agents will try to either:</p> <ul style="list-style-type: none"> <li>• collect the money owed; or</li> <li>• take goods to sell at auction.</li> </ul> <p>The Council cannot ask the County Court to issue a warrant if the amount is more than £5,000, but it can ask an enforcement agent (through the High Court) to try to collect the money the Council is owed or to remove goods. The procedure in the High Court is different from the County Court and can be complicated and more expensive.</p> <p><b>Attachment of Earnings Order</b></p> <p>An attachment of earnings order is sent to the defendant's employer. It tells the employer to take an amount from the defendant's earnings each pay day and send it to a collection office. The money is then sent to the Council. The defendant must be employed by someone before we can issue an attachment of earnings order and an order cannot be made if the defendant is unemployed or self-employed, so will not likely be applicable to landlords. Also, the court may not be able to make an order, or may only make an order to pay the debt back in small instalments; if the defendant's living expenses are greater than the amount they earn.</p>
4	<p>On completion, obtain written sign off from Head of Housing and refer the file to Legal Services to take forward to the County Court</p>