



Association for the
Conservation of
Energy



The Warm Arm of the Law

TACKLING FUEL POVERTY IN THE
PRIVATE RENTED SECTOR

POLICY REPORT



INFORMING POSITIVE CHANGE

Warm Arm of the Law

Tackling fuel poverty in the private rented sector

A report by the Association for the Conservation of Energy (ACE) and CAG Consultants

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ACE represents organisations and individuals with an interest in energy efficiency in the UK. It aims to encourage a positive awareness of the need for and benefits of energy conservation, to help establish sensible and consistent national policy and programmes.

ACE and the Association for Decentralised Energy (ADE) are to merge, creating a unified voice for decentralised energy solutions across the industrial, commercial, public and domestic sectors. The merged association will be known as the Association for Decentralised Energy. Further information about the merger is available [here](#).

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LEGAL DISCLAIMER: Please note that the review of First Tier Tribunal (FTT) cases detailed in section 3 of this report was undertaken by the research team who are not legal experts. The information does not in any way constitute legal advice.

Executive Summary

This report presents the findings from research into how minimum standards can improve energy efficiency in the private rented sector (PRS).

- New Minimum Energy Efficiency Standards (MEES) came into force on 1st April 2018. These introduced a requirement for any properties rented out in the PRS to have a minimum EPC (EPC) rating of E. The regulations came into force for new lets and renewals of tenancies in April 2018 and will apply to all existing tenancies from April 2020. It will be unlawful to rent a property which breaches the requirement for a minimum E rating, unless there is an applicable exemption.
- In addition, the Housing Health and Safety Rating System (HHSRS), which has been in place since 2004, is a risk based evaluation tool to identify hazards within homes, including Excess Cold. The operating guidance states that, "*The dwelling should be provided with adequate thermal insulation and a suitable and effective means of space heating so that the dwelling space can be economically maintained at reasonable temperatures*".

The aim of this project is to support the effective and proactive enforcement of minimum standards using both HHSRS and MEES in the PRS.

The project involved desk research, interviews with stakeholders and local authority practitioners and the development of a series of case studies. There are two outputs; this policy report and a separate [toolkit](#) aimed at local authority practitioners.

Fuel poverty in the PRS

The PRS has grown by over 40% in the last ten years and now comprises 20.5% of the housing market in England, compared to just 10% in 1999¹, with Wales seeing a similar increase². Figures for urban areas are higher. It is widely accepted that this tenure will continue to expand.

Fuel poverty continues to be a major problem in England and Wales and is particularly acute in the PRS, with an estimated 21.3% of PRS households are thought to be in fuel poverty in England³, and 36% in

¹ English Housing Survey 2016-17, Headline Report: www.gov.uk/government/statistics/english-housing-survey-2016-to-2017-headline-report

² Shelter Cymru, Fit to Rent: <https://sheltercymru.org.uk/wp-content/uploads/2015/02/Fit-to-rent-Todays-Private-Rented-Sector-in-Wales.pdf>

³ Fuel poverty figures for 2015, published by BEIS June 2017, Low income/high cost definition: www.gov.uk/government/uploads/system/uploads/attachment_data/file/623108/Fuel_Poverty_Statistics_Report_2017.pdf

Wales⁴. Compared with other tenures, the PRS in England has the largest proportion of energy inefficient F and G rated properties; 45.7% of PRS households living in such properties are in fuel poverty⁵.

Research has highlighted that cold related illness from privately rented properties costs the NHS £35 million per year⁶, while best practice approaches have shown that by improving housing standards, savings to the NHS and to wider society can be delivered. This includes Thurrock Council's 'Well Homes' project which has been estimated to have saved the NHS over £2 million and contributed £6 million of savings to wider society⁷.

Increasing the energy efficiency of PRS properties is key to reducing fuel poverty and limiting the impact of cold related illnesses on the NHS. However, achieving this in the PRS has been historically challenging; there is little incentive for landlords to invest in the energy efficiency of their properties given that it is their tenants who will benefit from reduced energy bills. It has long been recognised that minimum standards are key to achieving improvements in this sector.

HHSRS

"Excess Cold hazards come up in most, if not all, the [properties] that we look at".

(Local authority interview)

There were mixed views from stakeholders about how useful HHSRS is in terms of improving energy efficiency and reducing fuel poverty in the PRS. Many stakeholders reported that Excess Cold is the most common hazard that comes up in their inspection activities.

Some stakeholders considered that HHSRS is a useful and versatile tool, good at dealing with major problems and which, in extreme circumstances where there is imminent risk, can be used to prohibit the use of all or part of a dwelling. There are also no financial contribution limits to HHSRS, as the principle objective of HHSRS is to mitigate risk and maximise safety of tenants (although some councils are cautious in prescribing expensive measures for fear of losing any resulting First Tier Tribunal (FTT) appeal cases). Councils also have the power to undertake the works by default and charge the landlord for the improvements.

⁴ Living in Wales Survey, 2008: <http://gov.wales/docs/statistics/2009/091130livingwales2008en.pdf>

⁵ English Housing Survey 2015-16, Private Rented Sector Report: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627686/Private_rented_sector_report_2015-16.pdf

⁶ BRE, 2011 : www.cieh.org/media/1380/the-health-costs-of-cold-dwellings.pdf. Please note that this study is based on BRE's HHSRS cost calculator, which has since been updated. BRE also undertook additional analysis using their Category 1 calculator, which put the cost of ill health to the NHS between £37 million and £674 million depending on actual SAP ratings and occupancy levels.

⁷ Further details on Thurrock Council's 'Well Homes' project can be found in the toolkit that accompanies this policy report: www.ukace.org/wp-content/uploads/2018/07/Ebico-Toolkit.pdf

"The data is now more than 20 years old and things have moved on considerably since it was compiled, meaning an update is long overdue."

However, stakeholders also considered that HHSRS has many weaknesses resulting in HHSRS not being implemented or enforced as effectively as it could be. Many stakeholders considered that the guidance is ambiguous around the Excess Cold hazard; in particular, it was noted that the issue of 'affordability' needs to be clearly defined in the HHSRS Operating Guidance.

Numerous stakeholders mentioned that the statistical evidence relating to energy performance and health outcomes has not been updated since the system was developed, and it was felt that HHSRS is disproportionately weighted towards immediate safety rather than any impact on longer term health effects.

MEES

There were mixed views about whether MEES is likely to be effective in improving energy efficiency and reducing fuel poverty in the PRS. Some considered the introduction of the regulations to be a positive step, with recognition that they are a world first in terms of introducing minimum standards in this sector, and the view that MEES will drive up standards in the sector. However, others felt it has limited potential due primarily to the plethora of exemptions.

"MEES sets a precedent that EPC ratings are important. This is a massive step forward that these regulations are in place."

The key strength of MEES was felt to be its simplicity and the potential for enforcement of the regulations to be less resource intensive (compared to HHSRS). Reference in the guidance to affordability for tenants was also felt to be positive. The future trajectory of the regulations – with PRS properties required to be a minimum EPC band C by 2030 – was considered a major strength as this long-term target should help to promote whole house retrofit approaches beyond EPC band E, thus eradicating fuel poverty from the property for the vast majority of tenants. This approach would also benefit landlords by minimising the number of energy efficiency interventions required over the period of MEES as the regulations are tightened.

Unsurprisingly many stakeholders were unsure how effective the regulations will be as they were only just beginning to be implemented. Some councils noted that they were unprepared for the implementation of the regulations.

"I haven't got my head around it (MEES) entirely. It's on my radar and I need to get to grips with it."
(Local authority interview)

While it is hoped that the introduction of MEES would result in improvements to the energy efficiency of PRS properties, the regulations in their current form are likely to have limited impact. Stakeholders

were frustrated with the lack of ambition in the most recent government consultation⁸ and considered that wider housing policy failures should not result in the weakening of energy performance.

There were also questions raised as to whether the regulations would be effectively implemented when so few rental properties comply with the requirement to have an EPC – a Freedom of Information (FOI) request in 2013 found that just over a quarter of PRS properties had an EPC⁹. In addition, it was felt that MEES has limited powers compared to HHSRS; unlike HHSRS, MEES does not give councils the right to enter and inspect properties or to undertake works by default.

HHSRS and MEES: a combined approach?

It was felt that there was a lack of clarity on how MEES and HHSRS could work together. There is growing evidence that local authorities accept that F and G rated properties are sub-standard and, while recognising that there is not an exact parallel between Excess Cold hazards and F and G rated properties, that action should be taken on inefficient properties.

Barriers to implementation

This research project has identified several barriers to the effective implementation of both HHSRS and MEES:

Political will: Levels of implementation vary between councils. This can be because of local political views and a lack of political will in enforcing EPC requirements, tackling fuel poverty and improving standards in the PRS.

Lack of resources: Stakeholders frequently referenced a lack of resources within local authorities in the context of ongoing budget cuts plus additional responsibilities placed on staff through expanding HMO licensing requirements and MEES, all set against an increasing number of PRS properties. HHSRS is also resource intensive to implement and there is a lack of skilled Environmental Health Officers (EHOs).

The Chartered Institute of Environmental Health (CIEH) has highlighted that local authorities have reduced spending on enforcement activity by a fifth between

“If you have all these powers but no staff to carry them out then you can’t do much. Over the years our private housing team as had to contract as we have had to look for savings year on year; our work has been scaled right back so we are just doing the statutory minimum.”

(Local authority interview)

⁸ Domestic Private Rented Sector minimum level of energy efficiency consultation, December 2017: www.gov.uk/government/consultations/domestic-private-rented-sector-minimum-level-of-energy-efficiency

⁹ Data from a FOI Further information on EPC compliance can be found in section 2.2.1.1.

2009/10 and 2015/16 and suggested that this trend will continue with further planned cuts in public expenditure¹⁰. The result is that councils are not proactively implementing HHSRS, but instead are meeting their statutory requirements by reacting to complaints. In addition, stakeholders noted that councils are seen as weak when they do not follow up the threat of enforcement with action.

Traditionally local authorities have engaged with both landlords (and tenants) through informal forums and newsletters. While less resource intensive, this approach only has a short reach; engaging those landlords that are responding to their local council. In addition, while FOI requests have sought to understand the levels of enforcement by councils, statistics on the number of inspections and enforcement notices served do not take into account the informal engagement approaches taken by some local authorities. Such activity should not be dismissed as it can be a pathway to mitigating hazards whilst under resource constraints.

Identifying the PRS: numerous stakeholders noted that local councils in England¹¹ are not aware which properties in their areas are privately rented. This could present a fundamental challenge to the implementation of MEES.

Delegation of powers under MEES: MEES guidance states that councils can choose which function to use to implement and enforce the minimum standards; either through Trading Standards or Environmental Health. There are concerns that this choice could hinder the effective implementation of MEES, particularly in two-tier areas where Trading Standards' function is held at county rather than district level. Environmental Health departments hold additional housing enforcement powers, and some stakeholders consider that giving Trading Standards responsibility for enforcement is a potential missed opportunity to enforce energy (and wider housing) standards. There was also concern that Trading Standards teams are not actively enforcing the requirement for rental properties to have EPCs and would therefore be unlikely to prioritise the enforcement of MEES.

Landlords are unaware of their responsibilities: There is a lack of awareness and understanding amongst landlords about HHSRS and MEES. Some stakeholders raised concerns about the potential for landlords to claim an exemption, citing anecdotal evidence that landlords will simply look for an exemption rather than comply with the regulations. Other stakeholders disagreed, noting that some communications to landlords state that local authorities will be notified when exemptions are made, and that they will investigate the validity of such exemptions.

¹⁰ House of Commons, Housing, Communities and Local Government Committee, Private rented sector - Fourth Report of Session 2017–19: <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/440/440.pdf>. Written evidence submitted by the CIEH: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/housing-communities-and-local-government-committee/private-rented-sector/written/74252.html>

¹¹ PRS properties in Wales are registered through Rent Smart Wales.

Landlords will also need to understand that while they may be meet or be exempt from MEES, action could still be taken against them through HHSRS¹². Some practitioners noted that they would look at taking HHSRS enforcement for any property seeking an exemption under MEES.

Tenants are unaware of their rights and can be fearful of making complaints: Stakeholders noted that tenants do not understand their rights with regards to energy efficiency (and wider property standards). It was also recognised that relying on the tenant to come forward with complaints is a flawed system, as they may fear being evicted, or having their rent put up, for doing so.

"The dynamic between tenant and landlord means that tenants are unlikely to complain."

Recommendations

This research project has identified several priority recommendations, including:

Resourcing: National (and, where relevant, regional) government needs to ensure that local government is adequately resourced to proactively implement both MEES and HHSRS and could usefully offer guidance and advice on how these services can be implemented as cost effectively as possible. This should include guidance on how charging for enforcement and the civil penalties regime can be used to effectively resource HHSRS enforcement activity on a full cost recovery basis. Local government also requires confirmation of when MEES burden funding will be allocated to them. Government could also consider funding some kind of regional or sub-regional enforcement activity that could be used by those councils lacking their own enforcement resources (this has been termed by one stakeholder as an 'EHO of last resort'). Similarly, local authorities need to ensure that their enforcement teams are well supported and adequately resourced, by fully using the powers available to them to charge for enforcement action and for non-compliance.

Some stakeholders felt that Government should promote greater, and more consistent, implementation of HHSRS across England and Wales by providing local authorities with the resources that they require. This could enable local authorities to:

- Adopt both reactive and proactive approaches.
- Focus action on properties where landlords are receiving housing benefit payments.
- Play an active role in discharging homelessness duties and ensuring households are placed in safe and warm properties.

¹² This could include for example, a landlord with an F or G rated property who has successfully sought an exemption from MEES, but their property could still contain a Category 1 Excess Cold hazard. Alternatively, a landlord with an E property who does not yet to take action under MEES could find that their property could still contain a Category 1 Excess Cold hazard.

Joined up approach: Local government needs to develop a joined-up approach to implementing HHSRS and MEES. National government could assist by issuing guidance and examples of how best to do this.

Benefits to landlords: National government should work with the energy efficiency sector to build the evidence base around the benefits to landlords of having highly efficient properties, including reduced rent arrears, reduced void periods and increased rental and asset value. These should be publicised to landlords and their representatives alongside work to raise awareness of MEES with both landlords and tenants.

Continue to restate the long-term trajectory of the MEES regulations. This will help landlords to understand their long-term requirements and can support the delivery of whole house retrofit approaches, thus minimising disruption for tenants and avoiding multiple interventions by landlords.

In addition, a number of specific recommendations were identified:

- Ensure HHSRS and MEES are implemented alongside wider powers introduced by the Housing Act 2004 and the Housing and Planning Act 2016. This includes:
 - How to use HHSRS and MEES together to maximise action on energy efficiency, using HHSRS where serious and/or additional hazards have been identified and where the vulnerability of the tenant requires immediate action be taken. For example, gaining access to the property and undertaking works by default, prohibiting the use of the property and requiring works that go above the cost cap proposed under MEES.
 - Using HHSRS where an exemption has been lodged for MEES (e.g. in relation to the cost cap) and where a Category 1 Excess Cold hazard is anticipated to exist.
 - Requiring EPC information to be collected as part of any selective and HMO licensing schemes in order to support the enforcement of HHSRS and MEES¹³.
- National, regional and local government, as well as the energy efficiency industry, should work to raise the profile of energy efficiency in the PRS. This will support action to reduce health inequalities for those households in fuel poverty, whilst supporting economic growth in the energy efficiency sector. Following the publication of the Clean Growth Strategy, bold action and a strong commitment are required from government to meet the country's carbon and fuel poverty targets. This action could be supported through the introduction of incentives and performance indicators to encourage action at the local level and should be linked to Home Energy Conservation Act (HECA) activity.
- Update the HHSRS Operating Guidance, including:
 - Update the health outcomes statistics and energy performance.

¹³ Where HMO and/or selective licensing is in operation there is an opportunity to require EPCs to be collected to support the implementation of MEES. Proactive HHSRS inspections can also be undertaken to ensure compliance with licensing conditions and can lead to the identification of previously unknown hazards.

- 'Affordability' needs to be clearly defined within the guidance, which mentions the need for a dwelling to be able to be 'economically maintained at reasonable temperatures' but does not clarify what would be considered economical.
- Provide guidance on the relationship between energy efficiency ratings, Standard Assessment Procedure (SAP), and HHSRS Excess Cold hazards, and determine whether there is a SAP proxy that can be used to support the identification of Excess Cold hazards¹⁴.

Local authorities should engage with stakeholders as follows:

- With landlords on their current and future requirements, providing both advice and access to grant funding and finance, and links to local energy efficiency programmes. This could be through a variety of methods including forums, newsletters and social media.
- With tenants, and advice services, to ensure that they understand their rights. This could be through a variety of methods including neighbourhood forums, newsletters, social media and engagement with frontline staff.
- With other local authorities and industry bodies to share learning and promote best practice approaches.
- With local energy efficiency installers to facilitate engagement with landlords.

Organisations representing landlords, including associated bodies, lettings and managing agents, along with tenant organisations and advice services, should continue to raise awareness of minimum standards.

The energy efficiency sector should embrace the regulations and continue to work with local councils and landlords to drive action forward in the tenure.

The effective implementation of energy efficiency standards in the PRS will not only improve the lives of tenants living in some of the worst properties in the country and potentially lower emissions from the sector, it will also offer significant economic and wider societal benefits to the UK. Without proactive action to raise the energy efficiency of the PRS, fuel poverty will remain a major and growing problem. The recommendations contained within this report should therefore be actioned.

¹⁴ A HHSRS assessment would still be required to confirm the presence of Excess Cold, and any additional hazards.

1 Introduction

Using funding from the Ebico Trust¹⁵, CAG Consultants and the Association for the Conservation of Energy (ACE) researched how minimum standards can improve energy efficiency in the private rented sector (PRS) and support the eradication of fuel poverty across England and Wales.

1.1 Project aim

The project aim was to support the effective and proactive implementation and enforcement of minimum standards - using both the Housing Health and Safety Rating System (HHSRS) and Minimum Energy Efficiency Standards (MEES) - in the PRS. This will lead to:

- Effective targeting of interventions to assist those in fuel poverty and potentially reduce carbon emissions.
- Reductions in inequality and the promotion of a fairer society.
- Improvements in housing quality and living conditions.

1.2 Methodology

The project was undertaken between October 2017 and July 2018. The project included:

- Desk research to gather latest information in terms of the policy and regulatory environment, and current practice.
- Interviews with representatives from 38 stakeholder organisations, to identify barriers to action, how to overcome these and best practice case studies.
- Interviews with a broadly representative sample of local authorities to identify current practice, barriers to enforcement and what they would need to overcome these barriers, and best practice case studies.
- A stakeholder workshop to obtain feedback on key findings and test and validate policy recommendations.
- Further research to develop a local government [toolkit](#).

A list of stakeholders who contributed to this project, including the project steering group, can be found in Appendix 1. However, all quotes used to illustrate findings have been anonymised.

1.3 Outputs and outcomes

This policy focussed report looks at the opportunity to increase energy efficiency and reduce fuel poverty in the PRS, highlighting current practice, where there are barriers and what is needed to overcome these. The audience for this report is policy makers, and industry and local government

¹⁵ <https://ebico.org.uk/trust/>

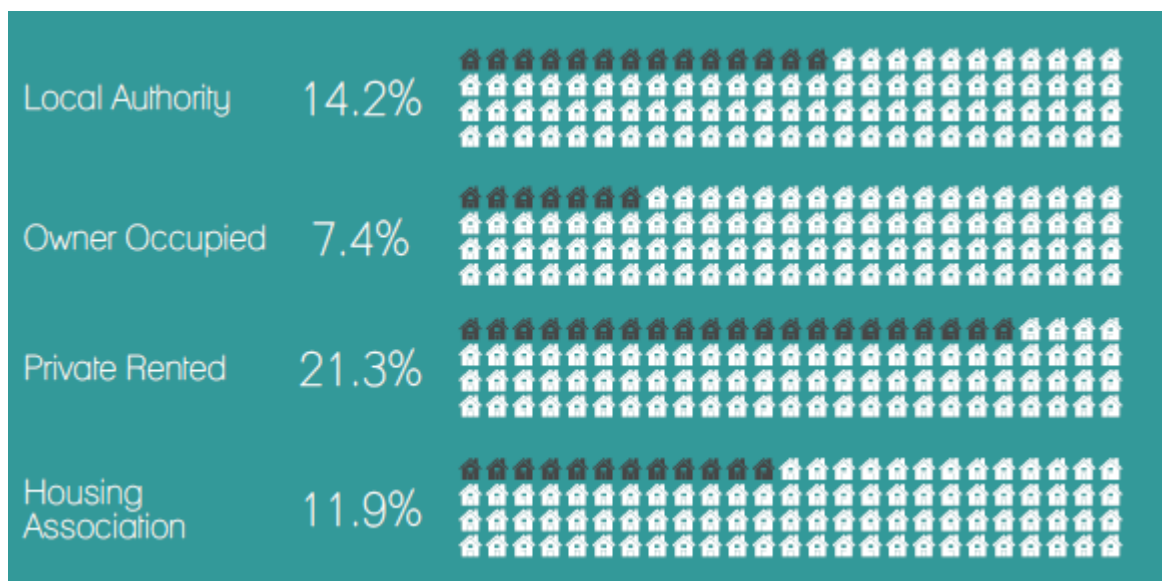
stakeholders. It is intended to drive forward policy in this area, looking at how both HHSRS and MEES can be strengthened and how local government can properly resource enforcement action.

There is also a support 'toolkit' for local authorities to help them to increase energy efficiency and reduce fuel poverty in the PRS through proactive and effective engagement with landlords and enforcement of HHSRS and MEES. The toolkit includes case studies from local authorities that demonstrate how this can be done.

1.4 Fuel poverty in the PRS

Fuel poverty continues to be a major problem in England and Wales. In England, it is estimated that 11% of all households are in fuel poverty¹⁶ (using the low income/high cost definition), while in Wales an estimated 23% of households are struggling to afford to stay warm¹⁷ (using the 10% definition).

As outlined in figure 1, statistics for England show that the that levels of fuel poverty are highest in the PRS, with 21.3% of households in fuel poverty (compared with the owner occupier sector which has 7.4%), with a fuel poverty gap¹⁸ of £410¹⁹. The most recent statistics for Wales show that around 36% of private rental tenants are in fuel poverty²⁰.



¹⁶ Fuel poverty figures for 2015, published by BEIS June 2017, Low income/high cost definition: www.gov.uk/government/uploads/system/uploads/attachment_data/file/623108/Fuel_Poverty_Statistics_Report_2017.pdf

¹⁷ Figures are projected for 2016, published by the Welsh Government 2016, 10% definition: www.nea.org.uk/the-challenge/fuel-poverty-statistics/

¹⁸ The fuel poverty gap measures the depth of fuel poverty. It is defined as the difference between a household's 'modelled' (average) energy bill and what the bill would need to be for them to no longer be in fuel poverty.

¹⁹ Fuel poverty figures for 2015, published by BEIS June 2017, Low income/high cost definition: www.gov.uk/government/uploads/system/uploads/attachment_data/file/623108/Fuel_Poverty_Statistics_Report_2017.pdf

²⁰ Living in Wales Survey, 2008: <http://gov.wales/docs/statistics/2009/091130livingwales2008en.pdf>.



Figure 1: Fuel Poverty in the PRS and the fuel poverty gap.

Compared with other housing tenures, the PRS has the largest proportion of energy inefficient F and G rated properties at 6.3%, compared to around 5.2% of the owner occupied sector and 0.7% of social housing²¹. A staggering 45.7% of households living in such properties are in fuel poverty.

Work undertaken by the Building Research Establishment (BRE) for the Chartered Institute of Environmental Health (CIEH) in 2011²² highlights that cold related illnesses from privately rented F and G properties cost the NHS £35 million per year. BRE also undertook additional analysis using their Category 1 calculator, which put the cost of ill health to the NHS at between £37 million and £674 million depending on actual SAP ratings and occupancy levels.

Increasing the energy efficiency of these properties is key to reducing this problem. However, achieving this in the PRS has historically been challenging; there is little incentive for landlords to invest in the energy efficiency of their properties given that it is their tenants who will benefit from reduced energy bills. It has long been recognised that minimum standards are key to achieving improvements in this sector.

Figure 2 highlights that the PRS has grown by over 40% in the last 10 years and now comprises 20.5% of the housing market in England²³, compared to just 10% in 1999. Figures for urban areas are higher; London has the highest proportion of private renters in the UK at 28%²⁴ (with anecdotal reports of some

²¹ English Housing Survey 2015-16, Private Rented Sector Report:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627686/Private_rented_sector_report_2015-16.pdf

²² BRE, 2011 : www.cieh.org/media/1380/the-health-costs-of-cold-dwellings.pdf. Please note that this study is based on BRE's HHSRS cost calculator, which has since been updated. (The PRS sector has grown and the English Housing Survey's (EHS) latest statistics have shown that there has been a reduction in some hazards).

²³ English Housing Survey 2016-17 Headline Report: www.gov.uk/government/statistics/english-housing-survey-2016-to-2017-headline-report

²⁴ ACE, 2016, Local Story - Energy Efficiency in London: How energy efficiency benefits residents and businesses in London: www.ukace.org/2016/07/energy-efficiency-in-london/

wards already having more than 50% PRS housing) and this figure is expected to reach 40% by 2040²⁵. Other urban areas, such as Greater Manchester, are expecting to see significant growth within the tenure²⁶ and it is widely accepted that it will continue to expand across England^{27,28}.

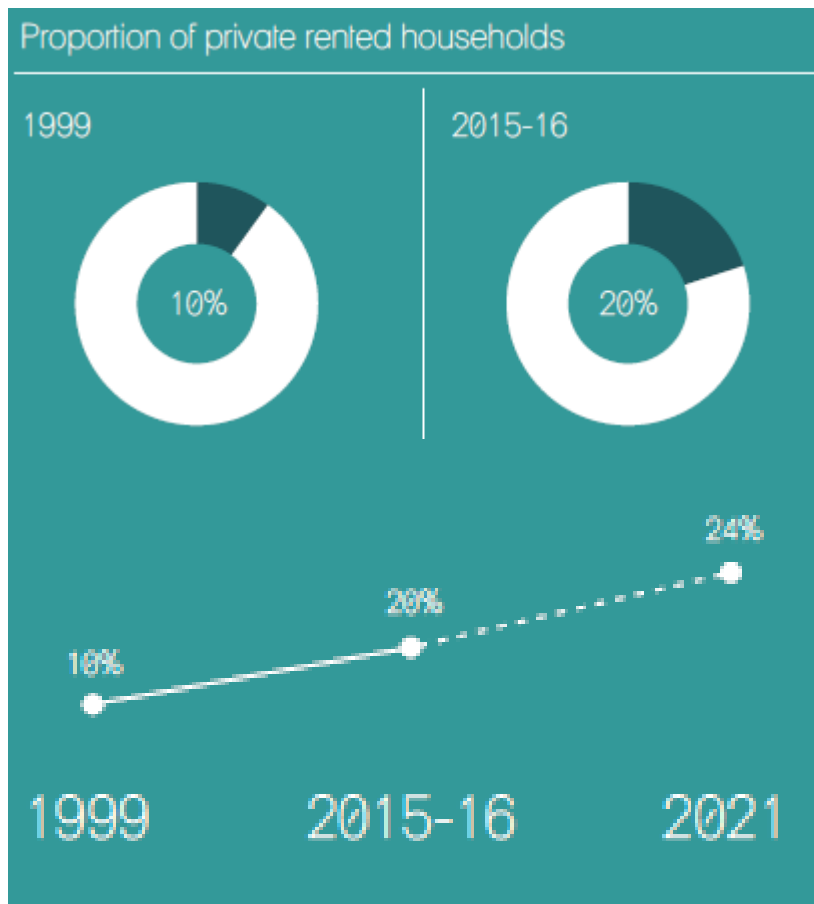


Figure 2: The growth of the PRS in England.

Wales is seeing a similar increase in its PRS which grew 42% between 2001-2011²⁹ and is estimated to comprise 20% of households by 2020³⁰.

²⁵ Greater London Authority (GLA), London Housing Strategy – Draft for public consultation, September 2017: www.london.gov.uk/sites/default/files/2017_london_draft_housing_strategy.pdf

²⁶ Mapping the private rented sector for young professionals and mid incomes families in Greater Manchester: www.neweconomymanchester.com/media/1438/private_rented_sector_in_greater_manchester_april_2015_-_v5-1.pdf

²⁷ PWC: www.pwc.co.uk/assets/pdf/ukey-section3-housing-market-july-2015.pdf.

²⁸ Knight Frank: <https://kfcontent.blob.core.windows.net/research/707/documents/en/the-uk-tenant-survey-2017-4743.pdf>

²⁹ Shelter Cymru, Fit to Rent: <https://sheltercymru.org.uk/wp-content/uploads/2015/02/Fit-to-rent-Todays-Private-Rented-Sector-in-Wales.pdf>

³⁰ The shape of Wales to come: Wales' economy, environment and society in 2020: www.bevanfoundation.org/publications/shape-wales-2020/

1.5 Previous research

Research conducted in 2008³¹ and 2011³² found that the HHSRS gives local authorities the power to enforce minimum housing standards related to Excess Cold, thus tackling fuel poverty and also potentially reducing carbon emissions at very little cost to the tax payer (since the property owner would be required to fund the measures required to achieve the minimum standards). However, the research found that HHSRS was not being used nearly as widely or effectively as it could be and, therefore, there was great potential for HHSRS to be used more proactively to support the eradication of fuel poverty.

1.6 Structure of this report

[Section 1](#) provides an overview of the research project, including the methodology followed and the projects aims and objectives, and also sets the scene in terms of the prevalence of fuel poverty in the PRS and current energy performance standards in the PRS across England and Wales.

There are a number of key policies and regulations linked to energy efficiency in the domestic PRS. An overview of these can be found in [section 2](#). This section also considers the barriers to achieving effective implementation of HHSRS and MEES and highlights regulations governing EPCs, since they underpin MEES.

A review of First Tier Tribunal (FTT Excess Cold appeal cases is highlighted within [section 3](#). A number of themes are highlighted, including affordability, temperature requirements, informal approaches and evidence that could be collated by local authorities to present at appeals.

The research team sought to gain an understanding of what is currently happening to increase energy efficiency in the PRS through both HHSRS and MEES, and our findings can be found in [section 4](#).

[Section 5](#) details the perceived barriers to encouraging action on energy efficiency, raising awareness and enforcing HHSRS and MESS, engaging with the energy efficiency sector and wider PRS issues raised by stakeholders.

This research project has identified a number of recommendations around improving the implementation and enforcement of HHSRS and MEES, for government (national, regional and local),

³¹ Energy Efficiency Partnership for Homes (EEPH), Impetus Consulting Ltd, 2008, Tackling fuel poverty using the Housing Health and Safety Rating System (HHSRS): [http://eeepb.org.uk/KB/Fuel_Poverty/HHSRS_taskgroup/2008_\(April\)_EEPH_HHSRS_Report_-_Final.pdf](http://eeepb.org.uk/KB/Fuel_Poverty/HHSRS_taskgroup/2008_(April)_EEPH_HHSRS_Report_-_Final.pdf)

³² National Energy Action (NEA), Impetus Consulting Ltd and Blooming Green, 2011, HHSRS: Your power to warm homes in the private rented sector National Energy Action (NEA), Impetus Consulting Ltd and Blooming Green, 2011, HHSRS: Your power to warm homes in the private rented sector.

Toolkit: www.eagacharitabletrust.org/app/uploads/2016/03/HHSRStoolkit2014update.pdf

Policy report: www.eagacharitabletrust.org/app/uploads/2016/03/hhsrspolicyreportaug2011.pdf

landlords and their representatives, tenant advice services and the energy efficiency sector. These are detailed in [section 6](#).

2 Policy context: minimum standards

While focused primarily on HHSRS and MEES, this report also briefly outlines additional powers and regulations that can be implemented alongside HHSRS and MEES, including HMO and Selective Licensing and the Housing and Planning Act 2016. The regulations governing EPCs is also discussed, as EPCs underpin MEES.

This section of the report was developed through a desk-based literature review, stakeholder interviews with industry and local government stakeholders and a facilitated workshop. It provides an overview of key policies and regulations linked to energy efficiency in the domestic PRS and considers the barriers to achieving effective implementation of HHSRS and MEES.

2.1 The Housing Act 2004

2.1.1 The Housing Health and Safety Rating System (HHSRS)

HHSRS is a risk assessment tool used in domestic properties. It was introduced as part of the Housing Act 2004³³, coming into force in 2006 in England and Wales.

HHSRS replaced the Housing Fitness Standard, which had been in place since 1985, and has a flexible enforcement framework enabling authorities to take action against a range of housing conditions, from very severe to more minor hazards.

When a property is assessed under HHSRS, it is given a score that indicates the number and degree of hazards present. This score puts the property into a band, ranging from A (scores of 5,000 or more), which is the most dangerous and life threatening, down to J (scores of nine or less), the least.

Part 1 of the Act imposes a duty on local authorities to take appropriate action in relation to hazards falling in bands A – C, that is hazards with scores of 1,000 or over, otherwise known as Category 1 hazards. Although not under a duty to do so, they are also able to act in relation to other hazards, those in bands D – J, scoring 999 or less, known as Category 2 hazards.

Overall there are 29 hazards assessed under HHSRS. These are arranged in four main groups reflecting the basic health requirements. Those hazards that directly relate to fuel poverty fall in the category of 'physiological requirements', namely Damp and Mould Growth (hazard 1) and Excess Cold (hazard 2). Of these two hazards, the system rates Excess Cold as far a more significant threat to health and safety than Damp and Mould Growth.

³³ Housing Act 2004 (part 1): www.legislation.gov.uk/ukpga/2004/34/contents

Each hazard has its own Vulnerable Group. This is defined as the “range of people for whom the risk arising from a hazard is greater than for any other age group in the population. Where there is no vulnerable group for a specific hazard, the population is taken as a whole. Vulnerability to particular hazards is restricted to age groups. It does not extend to vulnerability for other reasons”. For Excess Cold the Vulnerable group is defined as those aged 65 and over; for Damp and Mould Growth it is for those aged 14 and under.

2.1.1.1 Excess Cold

In explaining Excess Cold, the official Operating Guidance³⁴ for HHSRS states that “The dwelling should be provided with adequate thermal insulation and a suitable and effective means of space heating so that the dwelling space can be economically maintained at reasonable temperatures”.

“Excess Cold hazards come up in most, if not all, the [properties] that we look at”

As detailed in figure 3, the English Housing Survey (EHS)³⁵ estimates ‘that “5% of private rented homes had a risk of Excess Cold, a higher proportion than both owner occupied (3%) and social rented homes (1%)”. Excess Cold is one of the most common Category 1 hazards, second only to trips and falls.

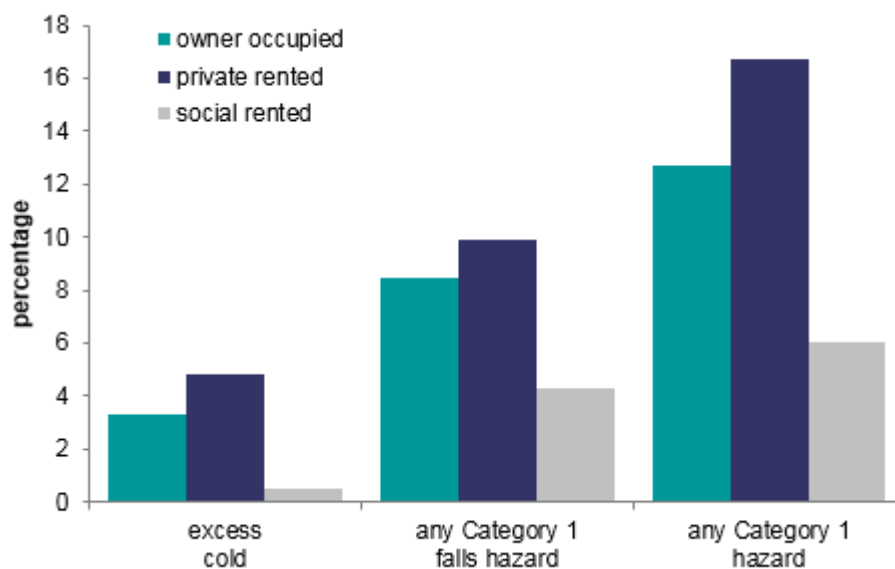


Figure 3: Category 1 hazards by tenure, English Housing Survey (EHS) 2015.

The English Housing Survey PRS report highlights that “it is not surprising that a higher proportion of private rented dwellings (17%) had at least one Category 1 hazard compared with owner occupied (13%) and social sector homes (6%). There are likely to be several reasons for this including the different

³⁴ Housing Health and Safety Rating System Operating Guidance: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/15810/142631.pdf

³⁵ English Housing Survey 2015 – 2016: Private Rented Sector: www.gov.uk/government/uploads/system/uploads/attachment_data/file/627686/Private_rented_sector_report_2015-16.pdf

distributions in the age and type of dwellings in each sector; for example, older homes which are more prevalent in the private rented sector, tend to be less well insulated. The private rented sector also has the highest proportion of converted flats which tend to suffer from poorer dwelling design and lower energy efficiency."

As highlighted in figure 4, the HHSRS Operating Guidance³⁶ shows that the average pre-1945 dwelling in England and Wales would be considered to have a Category 1 hazard (average HHSRS score greater than 1000) associated with Excess Cold.

Excess Cold							
Average likelihood and health outcomes for all persons aged 65 and over, 1997-1999							
Dwelling type & age		Average likelihood 1 in	Spread of health outcomes				Average HHSRS scores
			Class I %	Class II %	Class III %	Class IV %	
Non-HOMS	Pre 1920	330	34.0	6.0	18.0	42.0	1,066 (C)
	1920-45	340	34.0	6.0	18.0	42.0	1,035 (C)
	1946-79	400	34.0	6.0	18.0	42.0	880 (D)
	Post 1979	530	34.0	6.0	18.0	42.0	664 (D)
HMOs	Pre 1920	340	34.0	6.0	18.0	42.0	1,035 (C)
	1920-45	290	34.0	6.0	18.0	42.0	1,213 (C)
	1946-79	370	34.0	6.0	18.0	42.0	951 (D)
	Post 1979	350	34.0	6.0	18.0	42.0	1,005 (C)
All Dwellings		380	34	6	18	42	926 (D)

Figure 4: HHSRS Operating Guidance Excess Cold

However, it is important to note that the energy efficiency of homes in the UK has increased since the guidance was published. This issue is further explored in section 2.1.1.7.3.

2.1.1.2 Damp and Mould Growth

As noted above, Excess Cold is rated as a far a more significant threat to health and safety than Damp and Mould Growth. Figure 5 below from the Operating Guidance³⁷ shows that this hazard is likely to score much lower in comparison to Excess Cold for typical dwellings and is therefore a far smaller contributor to the overall hazard rating.

³⁶ Housing Health and Safety Rating System Operating Guidance:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/15810/142631.pdf

³⁷ Housing Health and Safety Rating System Operating Guidance:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/15810/142631.pdf

Damp and Mould Growth							
Average likelihood and health outcomes for all persons aged 14 years or under, 1997-1999							
Dwelling type & age		Average likelihood 1 in	Spread of health outcomes				Average HHSRS scores
			Class I %	Class II %	Class III %	Class IV %	
Non-HOMS	Pre 1920	446	0.0	1.0	10.0	89.0	11 (I)
	1920-45	400	0.0	1.0	10.0	89.0	12 (I)
	1946-79	446	0.0	1.0	10.0	89.0	11 (I)
	Post 1979	725	0.0	1.0	10.0	89.0	7 (J)
HMOs	Pre 1920	430	0.0	1.0	10.0	89.0	11 (I)
	1920-45	219	0.0	1.0	10.0	89.0	22 (H)
	1946-79	967	0.0	1.0	10.0	89.0	5 (J)
	Post 1979	644	0.0	1.0	10.0	89.0	8 (J)
All Dwellings		464	0.0	1.0	10.0	89.0	11 (I)

Figure 5: HHSRS Operating Guidance Damp and Mould Growth

However, the presence of damp and mould growth can be an indicator that an Excess Cold hazard is present, since low energy performance properties provide ideal conditions for damp and mould growth to thrive.

The HHSRS Operating Guidance states that dwellings should be 'warm, dry and well-ventilated. Indoor relative humidity should be between 40% and 60%, except for short periods of fluctuation. This range is the optimum to limit the growth of house dust mite populations and mould. It is also the recognised comfort zone'.

2.1.1.3 Other hazards linked to fuel poverty

Other HHSRS hazards could also indicate that a householder may be in fuel poverty, including:

- Excess heat: likely to be linked to inadequate insulation.
- Carbon monoxide: linked to poor heating systems.
- Fires: linked to fuel burning appliances (particularly portable heaters).
- Falls: linked to portable appliances or cold-induced mobility impairments.
- Uncombusted fuel gas from faulty appliances.
- Electrical hazards associated with faulty appliance wiring (including electric heaters).

Stakeholders interviewed as part of this research considered that HHSRS is a complicated system for landlords, letting agents and tenants to understand, and that it is open to varied interpretation between and within local authorities.

2.1.1.4 Local authority duties

Local authorities must keep the housing conditions in their area under review with a view to identifying any action that may be needed around HHSRS.

They have a duty to arrange for an inspection of any premises to determine whether there is a Category 1 or 2 hazard wherever there are good grounds for believing a hazard may exist. For example, this could be as a result of:

- An overall assessment of the area (including a Neighbourhood Renewal Assessment);
- A request by an individual, such as a tenant or the owner of an adjoining property;
- A complaint by another agency such as the Citizens Advice Bureau;
- A request for assistance by the owner or tenant to deal with various aspects of home repair, adaptation, or improvement; or
- A written complaint about a home's condition is received from a Justice of the Peace or a Parish Councillor.

2.1.1.4.1 Inspections

Inspections should be carried by an Environmental Health Officer (EHO). Local authorities are expected to ensure that their officers (and any other surveyors contracted by them) are familiar with HHSRS, the regulations and guidance. It is for local authorities themselves to ensure that their officers and agents have the skills to perform their functions efficiently on behalf of the authority.

The CIEH developed guidance on Excess Cold hazards in England³⁸. The aim of the guidance is to assist private sector housing enforcement officers to identify and deal with Excess Cold hazards. The document reviews the legislative basis and assessment of Excess Cold hazards (including the use of SAP) and suggests an enforcement approach, highlighting a range of measures that councils could reasonably require in enforcing improvements. Please note that this guidance is currently being updated.

The HHSRS Enforcement Guidance³⁹ states that while there is not an express duty on local authorities to inspect properties where they think there might be a hazard, sections 3 and 4 of the Housing Act 2004⁴⁰, when taken together, imply that an authority should have good reason not to investigate further. If, following an inspection, an officer finds a serious Category 1 hazard the local authority is under a duty to take action. If the hazards fall under Category 2, the local authority can take action if they think is necessary.

Government guidance states that authorities will need to prioritise inspections and, in doing so, may have regard to their wider housing strategies and the individual circumstances of the case before them. For example, local authorities may feel that priority should be given to complaints or referrals from sources such as social services child protection teams, the police and the fire and rescue authority. Many local councils that we interviewed have a triage system for assessing and prioritising cases.

³⁸ CIEH guidance on enforcement of excess cold hazards in England (2011): www.cieh.org/policy/publications_A_Z/CIEH-guidance-on-enforcement-of-excess-cold-hazards-in-england.html.

³⁹ Housing Health and Safety Rating System Enforcement Guidance: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/7853/safetyratingsystem.pdf

⁴⁰ Housing Act 2004: <http://www.legislation.gov.uk/ukpga/2004/34/contents>

2.1.1.4.2 Enforcement

The Act gives local authorities powers to intervene where they consider housing conditions to be unacceptable, on the basis of the impact of the hazard(s) on the health or safety of the most vulnerable potential occupant. Before taking formal enforcement action, local authorities should follow the principles of the Enforcement Concordat⁴¹, which provides a basis for fair, practical and consistent enforcement. It is based on the principle that anyone likely to be subject to formal enforcement action should receive clear explanations of what they need to do to comply and have an opportunity to resolve difficulties before formal action is taken.

A local authority has a duty to take the most appropriate action in relation to any hazards. This can include serving:

- A Hazard Awareness Notice;
- An Improvement Notice;
- A Prohibition Order (which closes all or part of a dwelling); or
- A Demolition Order.

Local authorities are advised to try to deal with problems informally at first before moving onto formal enforcement action.

HHSRS applies to all residential premises, including those in owner-occupation⁴², although local authorities are unable to enforce action against their own housing.

Local authorities have discretion to take emergency enforcement action against hazards which present an imminent risk of serious harm to occupiers. In this situation, an authority may enter the premises at any time to take emergency remedial measure. The action will consist of whatever remedial measure the authority considers necessary to remove an imminent risk of serious harm. This can include undertaking works by default.

The Act enables local authorities to make a reasonable charge as a means of recovering certain expenses incurred in serving an enforcement notice. Landlords, owners and managing agents can face fines of up to £5,000 for failing to comply with a statutory notice.

⁴¹ The first major instrument that the Government introduced to tackle weaknesses in the UK regulatory enforcement regime was the Enforcement Concordat, which the Cabinet Office published in 1998. This document is now unavailable online.

⁴² The Operating Guidance states that early consultation on the HHSRS enforcement regime showed that a majority of authorities considered the regime should be tenure neutral. There is a risk of challenge if an authority takes action in tenanted property where it would not take similar action in owner-occupied property in similar circumstances. When HHSRS was introduced, the government considered that it would be unlikely that authorities would make a point of targeting home-owners. The HHSRS Operating Guidance states, 'If a local authority becomes aware of the poor condition of a property, it can investigate and, if the situation is serious enough, take action against the owner-occupier. The local authority will, however, take account of the owner-occupier's views and the fact that they have more control over their living conditions than tenants who rent.'

2.1.1.5 Landlord responsibilities

Landlords are required to maintain their properties in a safe and healthy state, free from hazards that may affect the occupier's health and/or safety, and are required to comply with the terms of enforcement notices from local councils. They are also responsible for the costs of taking action required as a result of an enforcement notice. There is no cost cap associated with the landlords meeting these requirements. Landlords have the right to appeal any enforcement notice through the FTT⁴³.

Stakeholders considered that HHSRS can be effective in requiring more traditional energy efficiency measures, such as heating, cavity wall and loft insulation, but not as effective where more expensive measures such as solid wall insulation is necessary as landlords may choose to appeal the case to the T. Local authorities take a cautious approach and do not risk using resources to robustly defend cases that may easily be quashed on appeal by FTT panels.

2.1.1.6 Links between HHSRS enforcement and fuel poverty

It is important to note that the Enforcement Guidance does stress that local authorities *"should bear in mind that any action taken under the HHSRS must be in relation to a hazard. It will not be in relation, directly, to alleviating fuel poverty or improving energy efficiency, though this may be the outcome"*.

However, the HHSRS Operating Guidance⁴⁴ highlights that *"local authorities should consider an HHSRS inspection where the property is to be considered for improvements under any strategies to deal with fuel poverty, to improve energy efficiency or to increase the proportion of vulnerable people living in decent homes"*. This includes cases where landlords refuse to accept grant funding for energy efficiency improvements. Local authorities *"should treat such information from a scheme manager or energy supplier as an indication that an inspection may be necessary to establish whether anything needs to be done to protect the occupant from excess cold, or damp and mould affecting the property"*. While such referrals were made into local enforcement teams in previous energy efficiency schemes, such as Warm Front, this mechanism is not present within energy supplier obligations, such as the Energy Company Obligation (ECO). There are no requirements on obligated energy suppliers to monitor and refer such cases since Ofgem only requires data on actual installations of measures, not where they have been refused. (While not mandated nationally, stakeholders did note examples of referrals being made by local energy efficiency schemes into enforcement teams).

2.1.1.7 Is HHSRS a useful tool for improving energy efficiency and reducing fuel poverty in the PRS?

There were mixed views from the project's stakeholders about how useful HHSRS is in terms of improving energy efficiency and/or reducing fuel poverty in the PRS.

⁴³ Previously known as the Residential Property Tribunal Service (RPTS).

⁴⁴ Housing Health and Safety Rating System Enforcement Guidance:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/7853/safetyratingsystem.pdf

Some practitioners considered that HHSRS is a useful and versatile tool that can improve energy efficiency and reduce fuel poverty.

"Excess Cold hazards come up in most, if not all, the [properties] that we look at"

It was noted that energy inefficiency isn't the same as Excess Cold, "though there is a lot of similarity", and addressing Excess Cold hazards can bring benefits in terms of improvements to energy efficiency.

In addition, others considered that HHSRS had potential, but that action to eradicate fuel poverty and improve the energy performance of properties is not taken forward as there is a disconnect between the hazard rating and EPCs, and unclear guidance around energy affordability.

2.1.1.7.1 Strengths

It was felt that HHSRS is good at dealing with major problems across a range of hazards within a property, including Excess Cold, fire, gas and electrical safety and overcrowding, and is useful in prioritising the worst properties.

"With HHSRS, you have fair amount of scope in terms of what you can take into account in excess cold category, e.g. draughts, ill-fitting windows and doors, damp, roof problems, insulation, heating etc."

Some practitioners consider it to be better than the old Housing Fitness standard, which some felt did not address heating adequately. Specifically, HHSRS was felt to offer considerable scope in terms of what can be taken into account when identifying and mitigating Excess Cold hazards.

Similarly, it was felt to offer a wide array of powers to address a Category 1 Excess

Cold hazard and enable councils to serve an Improvement Notice to address a range of physical improvements to the property.

"If a Cat 1 hazard exists in a property we can upgrade or replace flat roofs, external doors, windows, upgrade or replace heating systems."

In extreme circumstances, where there is imminent risk, it can also be used to prohibit use of part or all of a dwelling, and in some cases the demolition of buildings or extensions.

Some interviewees reflected on the fact that there were no financial contribution limits for landlords as the principal objective of HHSRS is to mitigate risk and maximise safety of tenants. Another strength identified by stakeholders was the power to undertake works by default, and then charge the landlord to undertake works.

2.1.1.7.2 Weaknesses

Stakeholders identified a number of fundamental limits to the effectiveness of HHSRS in tackling fuel poverty, including its treatment of affordability.

"[Where the occupier simply can't afford to heat their decent home], HHSRS doesn't help in these situations."

Many stakeholders consider that the guidance is ambiguous around the Excess Cold hazard. In particular, stakeholders noted that the issue of 'affordability' needs to be clearly defined in the guidance. While there have been FTT cases relating to affordability, and it was considered that some progress made on this issue since the Kassim vs. Liverpool case (see section 3.2.1), any update to the HHSRS Operating Guidance (see below) would be an opportunity to raise the profile of energy efficiency amongst EHOs.

It was recognised that in some cases, a property may be free from Category 1 or 2 hazards (with decent heating and insulation) and yet the tenant still can't afford to heat their home. Whilst there used to be support that councils could signpost these households to, there is very little to offer now, particularly in England. Stakeholders noted their frustration with such cases.

It was also felt that HHSRS is disproportionately weighted towards immediate safety rather than on any impact on longer term health effects.

Another principal concern raised by a range of stakeholders is that, while powerful, HHSRS is not being enforced as effectively as it could be. There were numerous reasons stated as to why this was the case, including: the complexity of the regulations; a lack of resources and political will; the fact that guidance is now out of date; a focus on some hazards rather than others; an apparent weighting towards the interests of landlords, and the difficulty for tenants in raising issues with local authorities.

"Landlords really struggle to understand what they are required to do to meet the standards. The system is very complex for non-specialists."

The complexity of the legislation was referenced by many stakeholders, both in terms of the local authorities enforcing HHSRS and landlords who need to comply with and understand it. The fact that HHSRS is not a standard was seen as a major issue with the view expressed that it is easier to appeal against HHSRS than it will be for MEES⁴⁵.

It was reported that landlords will often go for the cheapest option to see if it fixes the problem, which can lead to problems being drawn out for longer than they need to be, especially where the local authority doesn't follow up the threat of enforcement with action. This was said to be particularly an issue with single property 'accidental' landlords who have gone into this sector without knowing the requirements. Yet there was also a distinction between 'good landlords', who will seek and take on board advice, and the 'bad landlords' simply don't care or do not engage with a council.

⁴⁵ Some stakeholders saw MEES as a contrast to HHSRS in this respect. With its link to EPCs, MEES was seen to provide a simple, easy to understand standard.

The CIEH report 'HHSRS – 11 years on'⁴⁶ highlights that Excess Cold is not directly linked to EPC ratings, yet in practice, a Standard Assessment Procedure (SAP) score (from which EPC are derived) 'has sometimes been used as a proxy for a category 1 hazard'⁴⁷. However, there is no mention of SAP in the Operating Guidance. Proxies, while useful to housing providers in meeting wider heating standards, have caused confusion.

HHSRS was felt to be a highly subjective process, which ultimately has limitations.

A common theme in the responses was that, with limited resources, it can be impossible to get through all the cases.

Linked to this, it was recognised that HHSRS inspections are visual, and that this can be insufficient in some cases. It can be difficult undertake an invasive inspection and it can be difficult to gauge heat loss from the property. Yet, to serve notice, the officer must be confident in their assessment, and this reportedly leads to a bias toward more visual problems (e.g. heating rather than insulation).

It is essential that proper procedures are followed and assessments are conducted correctly. For those cases that are brought to appeal, it is essential that they are well evidenced. But a lack of specialist expertise in most local authorities (e.g. undertaking SAP assessments) means that some local authorities to buy in expertise, which is time consuming to organise and costly.

Stakeholders frequently referenced a lack of resources within local authorities due to austerity measures taken by national government. This was linked to a range of issues:

"The assessment is subjective and can take a long time to complete, especially if you are rating several dwellings in a HMO."

"We have a lot of cases, but we have limited time and resources. It's resource intensive."

"It can be difficult if you have got flat roofs or sloping ceilings where it's hard to determine if there is insulation. We can't do destructive examinations where we can't see what's going on. But to serve a notice, you need to be confident. You have to prove stuff beyond reasonable doubt. It's easier to enforce the more visual stuff."

⁴⁶ The Chartered Institute of Environmental Health (CIEH), HHSRS – 11 years on: www.cieh.org/uploadedFiles/Core/Media/CIEH_media_releases/2017/Items/CIEH%20-%20Housing%20Health%20and%20Safety%20Rating%20Sytem%20-%20New%20Report.pdf

⁴⁷ The Department for Food and Rural Affairs (DEFRA) originally introduced a Standard Assessment Procedure (SAP) proxy within the Decent Homes Standard and the Welsh Housing Quality Standard as an indicator of thermal comfort. It specified a SAP rating of less than 35 (using 2001 SAP methodology) as a proxy for the likely presence of a Category 1 hazard from Excess Cold.

- Housing competes with a wide range of issues, including air quality and food safety within Environmental Health departments.
- Competency of EHOs, with stakeholders noting an influx of less experienced EHO's and shortages of qualified staff.
- Supporting landlords and tenants through both advice and grant funding is increasingly difficult.

"Most landlords will work with the local authority to rectify hazards, but we worry that an awkward landlord will appeal. So we have to go over and above with our evidence to be prepared for this."

"If you have all these powers but no staff to carry them out then you can't do much. Over the years, our private housing team has had to contract as we have had to look for savings year on year; our work has been scaled right back so we are just doing statutory minimum."

It was felt that lack of resources has led local authorities to simply reacting to complaints, rather than being proactive: many local authority stakeholders that we spoke to said they feel they should be more proactive in how they implement HHSRS, but they simply don't have sufficient resources. Even when reacting to contact about an issue, the response may be to direct the householder back to their landlord or letting agent to try to resolve the issues.

"Some local authorities are doing some great stuff and very proactive in this area, but there are many not using HHSRS to tackle poor quality housing because of austerity. Environmental Health teams have been cut back and so there is less capacity"

As a result of resourcing issues, but also political will, levels of implementation varies between councils.

"What's interesting is that much is made of enforcement statistics about improvement notices etc, but we found that many choose to take more informal routes. So not taking enforcement action is not necessarily a sign that they are doing nothing. It can be a way of addressing the resource constraints. Some of the best LAs use a well considered mix of formal and informal routes e.g. education, events, neighbourhood meetings and landlord forums."

Data on the levels of local authority enforcement activity can be misleading. While FOI requests have sought to understand the level of enforcement, statistics on the number of inspections and enforcement notices served cannot take into account the informal engagement approaches taken by some local authorities. Such activity should not be dismissed.

Stakeholders noted that the statistical evidence contained within the Operating Guidance⁴⁸ has not been updated since the system was developed more than 16 years ago. This includes both health and energy performance data associated with Excess Cold, and the health data associated with Damp and Mould Growth. The CIEH report 'HHSRS – 11 years on' highlights that evidence on the effects of damp and mould on health that was used in developing the HHSRS has tended to underestimate risks to health, and, since 1999, further evidence has been published on the harmful effects of damp and mould on the mental health of the residents due to the presence of mould. This, and any new research, should be highlighted and incorporated into the HHSRS operating guidance to ensure that this hazard is given an appropriate rating during an inspection.

"The data is now more than 20 years old and things have moved on considerably since the data was compiled, meaning an update is long overdue."

An update to the guidance is therefore long overdue but, according to a number of stakeholders, there are no immediate plans within the Ministry of Housing, Communities & Local Government (MHCLG) to do this.

It was also felt that some councils focused on particular hazards. This focus may follow on from high profile events and/or be linked to resources provided by national Government. For example, in the case of fire safety, this could be linked with the Lakanal and Grenfell tragedies, and where funding is provided to work with other agencies, such as the Fire Service and home fire safety visits. Excess Cold presents a significant risk and needs to be given the same profile. See section 5.1.1 for further information on comparative statistics between deaths from fires and cold housing.

"There is a Grenfell a day in terms of deaths from Excess Cold in winter months".

Concerns were also raised about the FTT in terms of Excess Cold cases. It was felt by some that Tribunal panels do not always recognise the need for improving energy efficiency in that:

- Excess Cold is not given as much prominence as other hazards.
- That it was challenging to persuade landlords and Tribunals that action should be taken to improve inadequate and expensive heating when an existing heating system is still working (e.g. on peak fixed electric storage heaters) and there is inconsistency with decisions on this issue.

Some felt disappointment that the FTT does not set precedents, and the example frequently referenced was that of Kassim vs. Liverpool. It was suggested that if the decision had been considered a precedent

⁴⁸ Housing Health and Safety Rating System Operating Guidance:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/15810/142631.pdf

then it would have enabled more action on Excess Cold across England and Wales. This was thought to be particularly true for less experienced EHOs, who rely on FTT rulings to determine action. This is explored further in section 3.

"The legislation should be there to protect the health and safety of the occupier, but it seems to be weighted in terms of protecting the landlord."

The system is considered to be weighted towards landlords with landlords being able to appeal against decisions (while the dwelling still presents a threat to the occupants). It was noted by one stakeholder that in France, while they have a different set of standards, as soon as the local council serves notice, the landlord

cannot claim any rent and the tenancy period is paused. It was considered that this goes some way towards protecting the tenant. The landlord is responsible for providing alternative accommodation for the tenant (including paying the rent on the additional property) whilst any major works takes place. Stakeholders noted that tenants do not understand their rights with regards to energy efficiency (and wider property standards). It was noted that some authorities and third sector organisations (e.g. Shelter, Citizens Advice) were undertaking some great work to engage with tenants on this issue, but that more work still needs to be done.

"The dynamic between tenant and landlord means that tenants are unlikely to complain."

It was also recognised that relying on the tenant to come forward with complaints is a flawed system, as they may fear being evicted, or having their rent put up, for doing so.

Whilst there are protections for tenants, these are limited, and in areas where there is a limited supply of rental properties many tenants simply may not want to take the risk of jeopardising their tenancy.

"There is a perception that if a tenant makes trouble with one letting agency that might make it difficult for them to find a place in future."

The experience of Liverpool City Council was noted by one stakeholder: officers were *"proactively looking for poor properties – and they found shed loads – but few problems were being reported"*.

2.1.1.7.3 How could it be improved?

Stakeholders suggested a range of potential improvements to HHSRS, focusing mainly around the guidance and resourcing.

Most stakeholders called for the guidance to be updated, including energy performance and health statistics. There were suggestions by some stakeholders that EHOs should not solely rely on the guidance and the statistics contained within, and that they should develop a local evidence base and rely on their own professional judgement. However, there were concerns that with resources stretched and less experienced EHOs, that this may prove difficult.

Linked to the call for updated guidance was a request for more worked examples including:

- A broader range of examples;
- On border line cases (not just extreme cases); and
- For a diverse portfolio of properties.

"Junior EHOs want more examples because the worked examples don't always fit to what they are seeing in practice. Having a broader range of worked examples would help."

There were specific calls for local data to be made available where possible. It was recognised that smaller councils in particular don't have the capacity to develop and hold localised data on hazard ratings. There were also calls for local government to be given free access to BRE's Excess Cold Calculator.

"We need meaningful and possibly local data to support the action we are taking."

It was also suggested that it would be helpful if the guidance could be more specific as to what measures can be required to mitigate an Excess Cold hazard, particularly as the enforcing officers are often not energy experts and can lack confidence in terms of deciding what they can or cannot require. This would help to avoid challenges by landlords. For example, it was suggested that the guidance should specify that central heating should be the default requirement in all cases.

"They are EHOs, not trained heating engineers - need confidence to know what to do."

It was also suggested that firmer guidance should be produced on what measures are unacceptable. For example, that on peak electric heating should not be prescribed by councils or installed by landlords to mitigate a Category 1 Excess Cold hazard. It was felt that many local authorities have made significant progress on acceptable measures, but that there are many more that have not. While it is important to give officers discretion to the measures they prescribe, clear guidance would be useful.

Some stakeholders felt that government should promote greater, and more consistent, implementation of HHSRS across England and Wales by providing local authorities with the resources that they require to effectively implement HHSRS. This could enable local authorities to:

- Adopt both reactive and proactive approaches.
- Focus action on properties where landlords are receiving housing benefit payments.
- Play an active role in discharging homelessness duties and ensuring households are placed in safe and warm properties.

It was felt that the training courses that were in place in the first year of HHSRS implementation are still needed, but with a recognition that having to pay for these courses can be a barrier for cash-strapped councils

Training and resources should also be provided to councils, including technical advice on energy efficiency, and the provision of a dedicated and qualified energy assessor resource within enforcement teams (who could support FTT appeal cases).

It was also suggested that Government could usefully get more councils together to share best practice approaches.

Previous research called for local councils charge for enforcement action in order to effectively resource teams. A number of stakeholders also considered that the civil penalties regime introduced under the Housing and Planning Act (see section 2.3.2 and Appendix 2) could help resolve local government resourcing problems. One stakeholder suggested that there could be an opportunity for an 'EHO of last resort' model where additional resources (private, public or third sector) could be brought into an area to specifically target properties. The fines from any enforcement action could be used to resource this model.

A number of other suggestions were made:

- That there should be some scope to carry out more intrusive inspection work as part of HHSRS assessments in order for officers to gain a thorough understanding of the building.
- That local authorities implement powers under HHSRS alongside wider powers introduced within the Housing Act 2004, including licensing, the Housing and Planning Act 2016 and the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (MEES).
- That there should be training for Tribunal panel members on energy efficiency and fuel poverty.

2.1.2 Licensing⁴⁹

The Housing Act 2004 gave powers to local authorities concerning licensing of certain properties in the PRS.

2.1.2.1 Houses in Multiple Occupation Licensing

Part 2 of the Housing Act 2004⁵⁰ introduced licensing requirements for Houses in Multiple Occupation (HMOs) across England. It is an offence to operate a licensable HMO without a licence.

HMOs can represent some of the poorest performing properties in terms of energy efficiency in the PRS and are disproportionately occupied by vulnerable groups⁵¹.

2.1.2.2 Selective licensing

Part 3 of the Housing Act 2004⁵² gave powers to local authorities to designate areas, or the whole of the area within their district, as subject to selective licensing in respect of privately rented accommodation. The designation of an area for selective licensing then requires PRS landlords to obtain a licence to let their properties.

⁴⁹ Further information on Licensing can be found in Appendix 2.

⁵⁰ Housing Act 2004 (Part 2): www.legislation.gov.uk/ukpga/2004/34/part/2

⁵¹ Future Climate and National Energy Action, Fuel Poverty and Houses in Multiple Occupation: Practitioners views, March 2016: www.nea.org.uk/research/research-database/fuel-poverty-houses-multiple-occupation-practitioners-views/

⁵² Housing Act 2004 (Part 3): www.legislation.gov.uk/ukpga/2004/34/part/3

2.1.2.3 Licensing and HHSRS

While there is no direct requirement for HHSRS inspections as part of HMO or selective licensing, the local authority needs to be satisfied that there are no Category 1 hazards (including Excess Cold) within a property within 5 years of receiving a license application.

Stakeholders considered that councils with a primary focus on HMOs spend less time on proactive HHSRS enforcement and that this will be exacerbated with the recent extension to the scope of HMO licensing (that impacts an additional 160,000 properties).

As detailed in the 'HHSRS: Your power to warm homes in the private rented sector' toolkit⁵³, the London Borough of Newham designated the Little Ilford Neighbourhood Improvement Zone (NIZ) as a selective licensing area. This was the first selective licensing scheme in London and the South-East and believed to be the first scheme to directly target energy inefficient properties.

Stakeholders noted that some local licensing and accreditation schemes require landlords to provide copies of EPCs, which can support the enforcement of HHSRS and MEES.

Where HMO and/or selective licensing is in operation there is an opportunity to require EPCs to be collected to support the implementation of MEES. Proactive HHSRS inspections can also be undertaken to ensure compliance with licensing conditions and can lead to the identification of previously unknown hazards.

2.2 The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (the MEES regulations)⁵⁴ aim to improve the energy performance of the worst properties – those with and F or G rated EPCs - in both the domestic and non-domestic privately rented sectors. The regulations have accompanying guidance that references the benefit of affordability for tenants⁵⁵.

The MEES regulations provide that, from the 1 April 2016, tenants have a right to request consent for energy efficiency measures that may not be unreasonably refused by the landlord.

⁵³ National Energy Action (NEA), Impetus Consulting Ltd and Blooming Green, 2011, HHSRS: Your power to warm homes in the private rented sector National Energy Action (NEA), Impetus Consulting Ltd and Blooming Green, 2011, HHSRS: Your power to warm homes in the private rented sector. Toolkit:

www.eagacharitytrust.org/app/uploads/2016/03/HHSRStoolkit2014update.pdf

⁵⁴ Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015:

www.legislation.gov.uk/ukdsi/2015/9780111128350/contents These regulations originate from the Energy Act 2011.

⁵⁵ The Private Rented Property minimum standard – landlord and local authority guidance documents:

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

The regulations for homes also establish a minimum standard for properties, affecting new tenancies from 1 April 2018, and for all tenancies from the 1 April 2020. As outlined in figure 6, there are an estimated 280,000 F and G rated domestic properties impacted by these regulations⁵⁶.

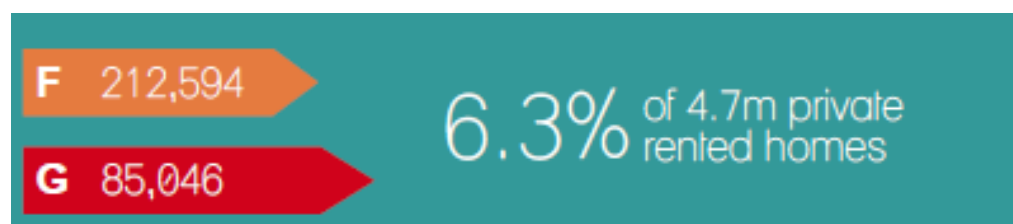


Figure 6: Properties impacted by MEES

The minimum standard applies to any domestic privately rented property which is legally required to have an EPC and which is let on certain tenancy types⁵⁷. Where these two conditions are met the landlord must ensure that the standard is met (or exceeded). Where the property remains substandard, the landlord is required to register an exemption on the PRS exemptions register or face a penalty⁵⁸.

2.2.1 EPC requirements

The Energy Performance of Buildings (England and Wales) Regulations 2012⁵⁹ require buildings to have an EPC following construction, or when they are sold or rented.

Where an EPC is legally required for a property, then not having one could result in non-compliance penalties⁶⁰. However, there are exemptions to the regulations, including where:

- A building that is officially protected as part of a designated environment or because of its special architectural or historic merit and compliance with certain minimum energy efficiency requirements would unacceptably alter their character or appearance (e.g. a listed building).
- A building is an HMO that has not been subject to a sale in the previous ten years or has not been let as a single rental in the past ten years.

⁵⁶ English Housing Survey 2015-16 Headline Report: www.gov.uk/government/statistics/english-housing-survey-2015-to-2016-headline-report

⁵⁷ Data from the recent MEES consultation Impact Assessment (IA) suggests that around 10% of PRS properties will be exempt from the regulations under these circumstances. Amending the private rented sector energy efficiency regulations, consultation stage impact assessment (2017): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/669214/PRS_Consultation_stage_IA.pdf

⁵⁸ PRS Exemptions Register: <https://prsregister.beis.gov.uk/NdsBeisUi/used-service-before>

⁵⁹ Further information on the Energy Performance of Buildings Regulations can be found in Appendix 2.

⁶⁰ A property owner and/or landlord may be fined between £200 and £500 if they do not make an EPC available to any prospective buyer or tenant.

2.2.1.1 EPC enforcement

Qualitative research conducted as part of this project has found some local government Trading Standards teams are not actively enforcing the requirement for rental properties to have EPCs. We have serious concerns that this inaction will diminish the effectiveness of the MEES regulations.

We believe that there are two reasons behind the lack of enforcement: a lack of resources and the fact that these regulations have not been given sufficient priority within national, regional and local Trading Standards bodies (since they are competing with a range of other issues such as consumer protection crime and unsafe consumer goods) and a lack of political will amongst elected members to intervene in the PRS.

Data on compliance of EPCs was sought by climate campaign group 10:10 via a FOI request⁶¹ in 2013. The figures provided highlight that only 26% of private domestic rentals were complying with the regulations. It is important to note that the response also highlighted that *"the figures were not quality assured in the normal manner of Government statistics. We are, therefore, unable to confirm the accuracy of the data or if the figures are statistically sound."* There are no more recent official estimates. A MHCLG response to a question raised by Caroline Lucas MP⁶² (which asked about assessment of trends in the level of compliance) noted that *"the Government does not hold data about the number of buildings in the private rented sector for which an EPC should have been made available but has not been"*.

2.2.2 Tenancy types

The Regulations apply to domestic PRS properties in England and Wales, including:

- Properties let under an assured tenancy (including assured shorthold tenancies) defined by the Housing Act 1998.
- A tenancy which is a regulated tenancy for the purposes of the Rent Act 1977.
- A domestic agricultural tenancy as follows:
 - On a tenancy which is an assured agricultural occupancy
 - On a protected tenancy
 - On a statutory tenancy under that Act.

⁶¹ www.1010global.org/sites/default/files/uploads/ckfinder/files/130816%20-%20Final%20response%20letter%20to%20D%20Timms.pdf

⁶² 2nd November 2017: www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-11-02/111244/. There was no further update to this question at the time of this report being published.

2.2.3 Exemptions

There are certain circumstances where a property is exempt from meeting the minimum standard⁶³. Landlords must register an exemption if this is the case for their property. Guidance on exemptions and exemption register evidence requirements has been published by BEIS⁶⁴.

There are a range of exemptions:

- Where there is a cost to the landlord of improving the energy efficiency of the property.
- Where landlords have already undertaken improvements to the property, but it remains below an E EPC rating.
- Where wall insulation, including both cavity and solid wall insulation, cannot be installed.
- Where the landlord is unable to gain consent from a third party, including local authority planning consent, or consent from mortgage lenders, tenants and superior landlords.
- Where the installation of measures would reduce the market value of the property by more than 5%.
- Where a person has suddenly become a landlord.

Exemptions are valid for 5 years (except in the case of where a person has suddenly become a landlord in which the exemption period is 6 months).

2.2.4 Local authority duties

BEIS published guidance on the domestic MEES regulations for local authorities (and landlords)⁶⁵. This guidance includes a 'Compliance and Enforcement Flow Chart' as replicated in figure 7.

The MEES guidance states that local authorities are enforcement authorities and that *"a representative or authorised officer of the Local Authority may carry out the enforcement activities including using the information held on the national PRS Exemptions Register or produced in response to a compliance notice to monitor compliance, and issue compliance and penalty notices where applicable"*.

Enforcement authorities can choose whether enforcement is carried out through Trading Standards or Environmental Health, depending on the particular needs of the area.

Local enforcement authorities can check for different forms of non-compliance with the Regulations including:

- Where the property is sub-standard and an exemption has not been registered.

⁶³ PRS Exemptions Register: <https://prsregister.beis.gov.uk/NdsBeisUi/used-service-before>

⁶⁴ Guidance on PRS exemptions and Exemptions Register requirements: www.gov.uk/government/publications/private-rented-sector-minimum-energy-efficiency-standard-exemptions/guidance-on-prs-exemptions-and-exemptions-register-evidence-requirements

⁶⁵ The Private Rented Property minimum standard – landlord and local authority guidance documents: www.gov.uk/government/publications/the-private-rented-property-minimum-standard-landlord-guidance-documents

- Where a landlord has registered false or misleading information on the PRS Exemptions Register.
- Where a landlord has failed to comply with a compliance notice.

As with HHSRS, it is recommended that the enforcement authority works with landlords to attempt to resolve any dispute informally at first before enforcement action is taken. Landlords have the right to appeal an enforcement activity through the FTT.

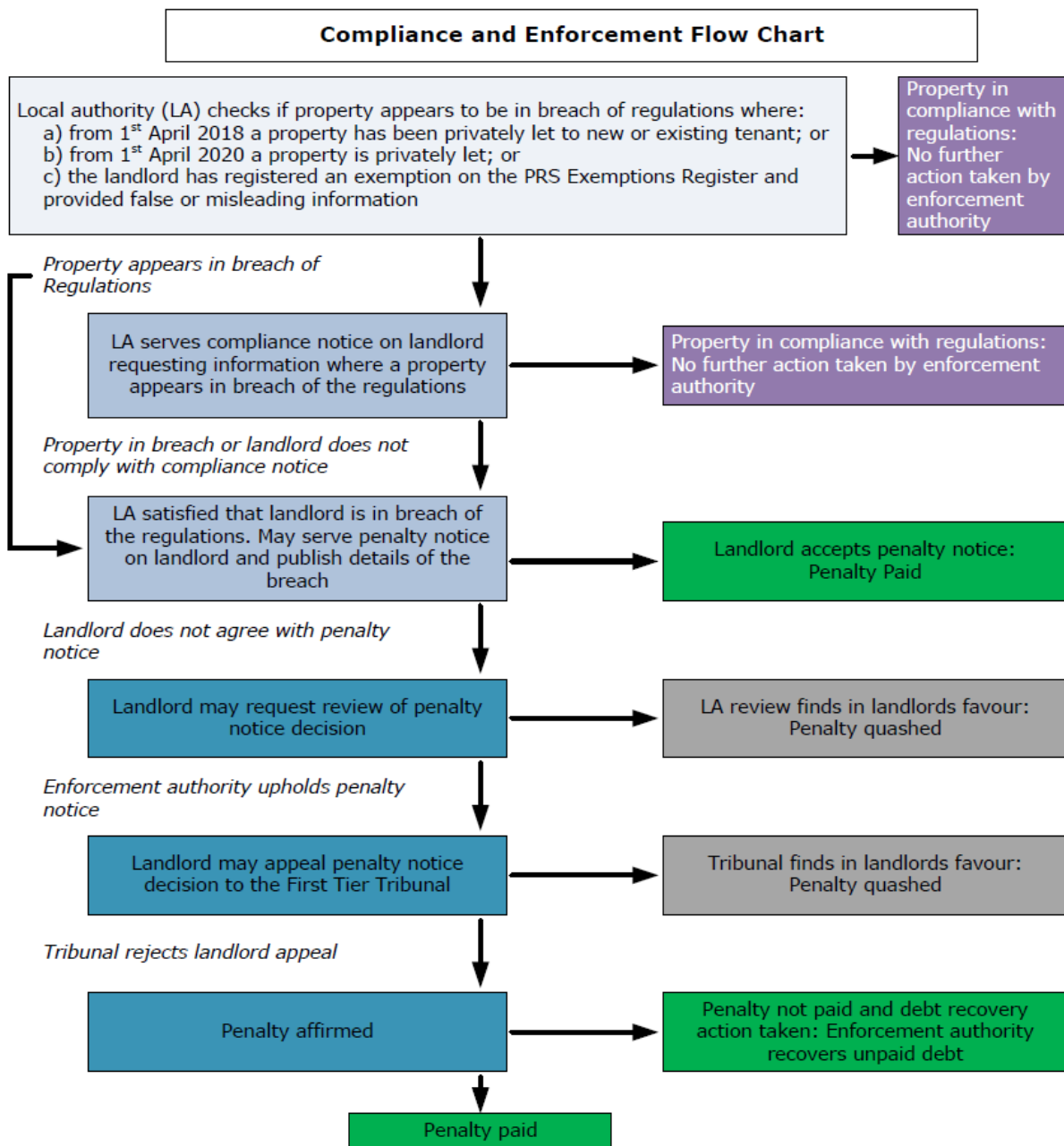


Figure 7: Compliance and Enforcement Flow Chart.

2.2.4.1 Compliance notices

When an enforcement authority believes that a landlord may have been in breach of the regulations, they can serve a compliance notice. This requires landlords to provide information which can help the local authority to decide whether that landlord has in fact breached the prohibition, including:

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

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

The compliance notice must be in writing and sent to the landlord in hard copy or sent electronically.

Failure to provide any 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.

2.2.4.2 Financial penalties

Where a 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, as detailed in table 1 are as follows:

Table 1: Financial MEES penalties.

Infringement	Penalty (under 3 months)	Penalty (over 3 months)
Renting out a non-compliant property	Up to £2,000 AND/OR Publication penalty	Up to £4,000 AND/OR Publication penalty
Providing false or misleading information on the PRS Exemptions Register	Up to £1,000 AND/OR Publication penalty	
Failing to comply with a compliance notice	Up to £2,000 AND/OR Publication penalty	

Local authorities can impose financial penalties up to a maximum amount of £5,000 per property, and per breach of the Regulation. Where landlords have been previously fined but continue to rent out a substandard property in breach of the regulations on a new tenancy, the local authority may again levy a financial penalty up to £5,000.

2.2.4.3 *Publication penalties*

Where a local authority decides to impose a publication penalty, details of the regulation breach can be published on a publicly accessible part of the PRS Exemptions Register. The local authority can decide how long to leave the information on the Register, but it will be available for view by the public for at least 12 months.

The local authority may decide how much information about the breach to publish, and could include:

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

2.2.5 Landlord responsibilities

BEIS has published guidance on the domestic MEES regulations for landlords (and local authorities)⁶⁶. Landlords are recommended to follow the Minimum Standards Regulations Compliance Decision Process within this MEES guidance. This has been replicated in figure 8 below.

Landlords are advised to obtain a post installation EPC following the installation of any measures, as this will be the easiest way for a landlord to demonstrate that they have complied with the Regulations. Where an exemption applies, the landlord is required to register the exemption on the PRS exemptions register.

⁶⁶ The Private Rented Property minimum standard – landlord and local authority guidance documents:
www.gov.uk/government/publications/the-private-rented-property-minimum-standard-landlord-guidance-documents

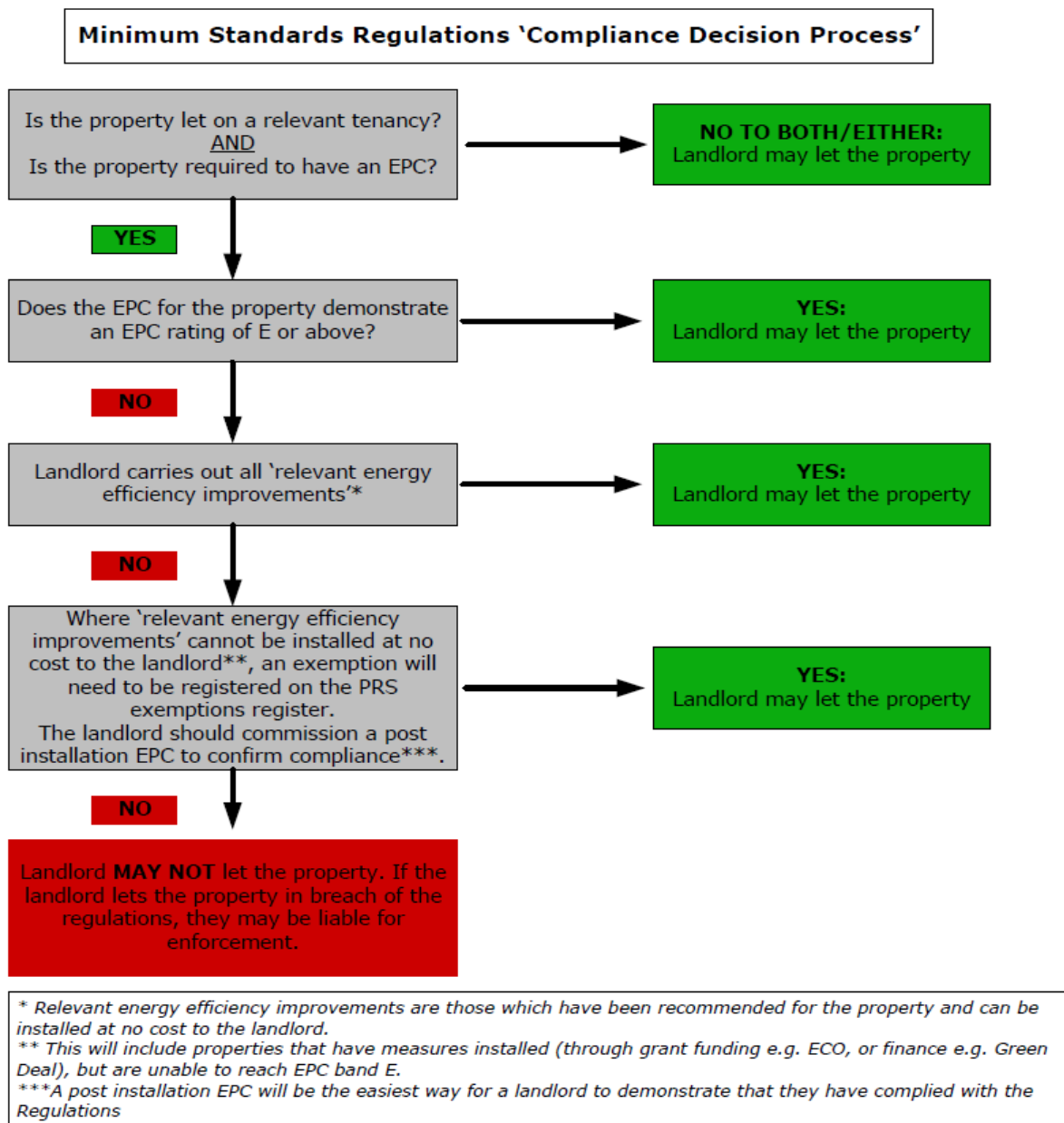


Figure 8: Minimum Standards Regulations Compliance Decision Process.

The launch of the Each Home Counts Information Hub⁶⁷ is expected in Summer 2018 and will include a section dedicated to supporting landlords to comply with MEES. It will take landlords through a journey, asking them a series of questions as to whether they are required to comply with the regulations and providing information on what landlords can do to their properties using data from their EPC.

⁶⁷ In October 2015 Dr Peter Bonfield was commissioned to chair an Independent Review of Consumer Advice, Protection, Standards and Enforcement for UK home energy efficiency and renewable energy measures. The findings and recommendations of the review were published in December 2016 in a report entitled Each Home Counts. The Information Hub will provide information to consumers and industry. Further information can be found here: www.eachhomecounts.com.

2.2.6 Potential changes to the regulations⁶⁸

The Government committed within the Clean Growth Strategy⁶⁹ to make the MEES regulations more effective and to look at the long-term trajectory for energy performance standards across the PRS.

2.2.6.1 Consultation 2017

A recent BEIS consultation⁷⁰ sought to amend the domestic MEES regulations to introduce a capped landlord financial contribution element, while protecting landlords against excessive cost burdens. The government is expected to publish their response to the consultation in summer 2018.

2.2.6.1.1 Introduction of a cost cap

The government's preferred option for making the MEES regulations for homes more effective was to introduce a 'cost cap' of £2,500 per property.

A number of stakeholders considered that the cost cap should be set at £5,000 in order to maximise the number of properties that receive energy efficiency measures. Stakeholders felt that the £2,500 cap may be insufficient particularly in cases where significant works are necessary, e.g. where new gas central heating is required. Some stakeholders who responded to the BEIS consultation also suggested that £5,000 is not unreasonable since responsible landlords should have contingency funds for void periods, rent arrears, refurbishment, maintenance and repairs. It is thought that the average contingency fund that landlords hold per property is around £5,000. The average cost to improving F and G rated properties outlined within the consultation is £1,700, so contingency funds should cover this.

Stakeholders questioned whether the numbers presented in the consultation for the Government's preferred option could be considered 'meaningful' since the government's preferred option would leave 70% of properties languishing in Bands F and G.

Stakeholders had recommended that Government should consider taking steps to financially support landlords in order to maximise the effectiveness of the regulations. Suggestions include:

- Designating energy efficiency measures as repairs, rather than improvements.
- Reducing VAT on the purchase and installation of energy efficiency products.
- Re-introducing the Landlord Energy Saving Allowance (LESA).
- Supporting landlords in rural locations, who have historically made less progress in improving their properties through previous and current energy efficiency programmes.

⁶⁸ The project team reviewed consultation responses as part of the desk-based literature review and supplemented this with information from stakeholder interviews.

⁶⁹ HM Government, The Clean Growth Strategy, Leading the way to a low carbon future, October 2017: www.gov.uk/government/uploads/system/uploads/attachment_data/file/651232/BEIS_The_Clean_Growth_online.pdf

⁷⁰ Domestic Private Rented Sector minimum level of energy efficiency consultation, December 2017: www.gov.uk/government/consultations/domestic-private-rented-sector-minimum-level-of-energy-efficiency

2.2.6.1.2 Third party funding and finance

The government also consulted on whether the cost cap threshold should be inclusive of any funding obtained through a 'no cost' finance plan, energy supplier obligation funding or energy efficiency grant funding from a local authority or other third parties. Stakeholders responding to the consultation were both for and against this proposal for a variety of reasons, including additionality (where grant funding cannot be used when measures are a legal requirement), the sporadic availability of grant funding⁷¹ and potential issues around the use of Green Deal finance in fuel poor households⁷².

Some stakeholders had called for landlords to invest in their properties up to the cost cap limit, and then any additional finance and funding could support energy efficiency improvements beyond the legal requirement. This would help promote whole house retrofit approaches beyond EPC band E, which could in turn fuel poverty proof a property. This would also benefit landlords by minimising the number of energy efficiency interventions required as the MEES regulations move up EPC bands.

2.2.6.1.3 VAT

Some stakeholders responding to the consultation considered that the cost cap for improving sub-standard domestic private rented properties should be set exclusive of VAT. By excluding VAT from the cost cap, the amount of money spent on energy efficiency improvements can be maximised.

2.2.6.1.4 Impact on landlords

The consultation also sought evidence on the impact of the proposals in terms of the financial burden on landlords and any impact it could have to the PRS market in terms of increases in rent or removal of properties from the sector.

A range of stakeholders highlighted economic research conducted by Citizens Advice⁷³ which sought to assess the likely impact of the MEES standards in the PRS. The research looked at the impact on rents specifically and concluded that *"in all cases a minimum standard would bring a substantial net benefit to tenants"*. The research questioned whether landlords would be able to pass the cost of the required interventions through to tenants by increasing rents. Even if they were to the research predicted that any potential rent increases will be outweighed by the benefits to tenants from reduced energy costs.

⁷¹ Stakeholders responding to the consultation questioned whether grant funding should be included within the cost cap threshold due to the varying availability of grants, which could create a post-code lottery. Historically, the extent to which any funding has been available has varied considerably between different geographical areas, and delivery has been particularly poor in rural areas.

⁷² The use of Green Deal by landlords to meet MEES is a contentious issue. Many stakeholders responding to the consultation expressed concerns that tenants would be paying to meet minimum standards, not the landlord, and properties inhabited by fuel poor households would be unlikely to see financial savings as much of the benefit from improving energy efficiency will be taken as improved comfort.

⁷³ A report for Citizens Advice by Frontier Economics, The impact of minimum energy efficiency standards in the private rented sector, July 2017:

www.citizensadvice.org.uk/Global/CitizensAdvice/Energy/Frontier%20Economics%20for%20Citizens%20Advice%20-%20The%20Impact%20of%20Minimum%20Energy%20Efficiency%20Standards%20in%20the%20Private%20Rented%20Sector.pdf

The report also considered whether MEES would reduce supply in the PRS. The evidence suggests that the impact of MEES on the supply of homes in the PRS is likely to be low due to:

- *"The inelastic nature of supply in this sector.*
- *The cost imposition is relatively minor for most dwellings compared to the overall dwelling value.*
- *Any modest increase in rental prices would to some degree offset any impact arising from increased costs to landlords.*
- *Policy options such as cost capping or phasing could further address any supply concerns".*

2.2.6.2 Consultation 2018

BEIS is expected to publish another consultation on MEES in late 2018 which will focus on the future trajectory of the regulations, in line with the Clean Growth Strategy ambition to get as many private rented homes as possible to EPC band C by 2030.

While BEIS has noted its intention to consult on the trajectory of MEES later in the year, stakeholders recommended that details of the overarching trajectory (EPC band C by 2030) should be included in guidance to landlords and local authorities as soon as possible. This will reaffirm government's commitments set out in the Clean Growth Strategy. There are many benefits to this approach. For example, some local authorities have aspirational targets to reach EPC band D and C as part of accreditation schemes, and it would be helpful if they could point to a clear Government driver for such improvement.

Restating the long-term target for MEES should also promote whole house retrofit approaches beyond EPC band E, which could fuel poverty proof a property, supporting both fuel poverty and low carbon agendas. This approach would also benefit landlords by minimising the number of energy efficiency interventions required over the period of MEES as the regulations move up the EPC bands.

2.2.7 Is MEES likely to be an effective tool for improving energy efficiency in the PRS?

As with HHSRS, there were mixed views about whether MEES is likely to be effective in terms of improving energy efficiency and reducing fuel poverty in the PRS.

Some considered the introduction of the regulations as a positive step and a world first:

"MEES sets a precedent that EPC ratings are important. This is a massive step forward that these regulations are in place."

"We shouldn't lose sight of the fact that this is world leading... ...even Scotland is not ahead of us on this; it's an ambitious regulatory requirement. So that's a good thing. Personally, I like the linkage to the EPC banding. We want to be embedding the language of EPC banding into people's consciousness as a trajectory to improving people's homes".

Some interviewees were hopeful that MEES would help drive up standards in the PRS.

"It sets a minimum standard that landlords can be held accountable against and hopefully [it will] reduce fuel poverty for vulnerable tenants."

More reserved views were expressed however. Some stakeholders felt it had limited potential due to exemptions, whilst others felt that it would take time to be effective.

Stakeholders' views on the perceived strengths and weaknesses of the regulations are explored in the next two sections.

2.2.7.1 Strengths

The key strength of MEES was felt to be its simplicity. It is considered easy for landlords to understand what is required of them.

Some interviewees also compared the relatively lighter resource intensity of MEES with that of HHSRS in terms that it was easy to spot non-compliance, and that it was about engaging with landlords where properties do not meet the minimum standard, and therefore less resource intensive.

The visibility of the PRS exemptions register was seen as a key factor in local authorities effectively implementing the regulations. Local authorities will be able to review which properties have an exemption and which don't.

Unlike HHSRS, MEES sets a standard that landlords can be held against. However, stakeholders noted that landlords will need to be supported to meet the standards, not least in being made aware of the regulations. Awareness of the regulations is thought to be increasing. One interviewee reported getting enquiries from letting agents and landlords.

The future trajectory of the regulations – PRS properties will be required to meet EPC band C by 2030 – is considered a strength of the regulations. This long-term target should help to promote whole house retrofit approaches beyond EPC band E, which could fuel poverty proof a property, supporting both fuel poverty and low carbon agendas. This approach would also benefit landlords by minimising the number of energy efficiency interventions required over the period of MEES as the regulations move up the EPC bands.

"Landlords of E rated properties should not sit on their laurels".

2.2.7.2 Weaknesses

Unsurprisingly many stakeholders were unsure the effectiveness to the regulations as they were only just beginning to be implemented. However, a number of potential issues are already emerging, including around the capacity of local authorities to robustly enforce the regulations and the extent to which the regulations fairly balance the interests of landlords and tenants.

Some stakeholders felt that the regulations are not ambitious enough and, while useful, MEES would not fully support the eradicate of fuel poverty within the fuel poverty strategy milestones.

"The threat of MEES had more teeth than the actual legislation and guidance, which is hugely disappointing for me."

It was also felt it has taken government too long to get to implementation of MEES. While there was engagement with landlords on the standards in 2011 and again following the launch of the Green Deal, one stakeholder felt that the "positive momentum has now passed" and that "we have dragged our feet with stark consequences".

2.2.7.2.1 Local authorities

"I haven't got my head around it entirely. It's on my radar and I need to get to grips with it."

A key issue raised was the lack of awareness or understanding of MEES amongst councils. Indeed, some of the councils that engaged with the research team had little knowledge of it.

Lack of resources was again raised as a key issue by stakeholders.

"MEES effectiveness will be dependent on local authorities enforcing the regulations, which is an additional layer of responsibility when they are already massively over stretched."

While MEES was considered less resource intensive than HHSRS, BEIS have yet to confirm the burden funding that local authorities will be provided with to fund activity in this area. The funding for authorities will only be calculated following pilots by BEIS, however these are not due to be completed for some time.

One stakeholder suggested that there could be an opportunity for an 'EHO of last resort' model where additional resources (private, public or third sector) could be brought into an area to specifically target inefficient F and G rated properties, or other poor housing conditions prevalent within that area. The fines from any enforcement action could be used to resource this model.

There were numerous stakeholders that noted that local councils are not aware which properties in their area are privately rented, which could present a fundamental challenge to implementation of MEES. Some stakeholders had called for the introduction of landlord registration to tackle this issue.

It was highlighted that while activity on this issue has stalled in England due to political issues, activity is moving forward in the devolved administrations with

"That would make a huge difference. We would then know where the problems are."

the introduction of Rent Smart Wales⁷⁴, mandatory registration in Northern Ireland and plans are under consideration in Scotland.

However, it was also noted that a landlord database may not solve the issue entirely as *"it is relatively easy to build a database of good landlords, but not the rogue landlords."*

One stakeholder expressed surprise that the government has not provided more support to local authorities to access and use EPC data to identify and target F and G rated properties.

"Small, rural local authorities like mine don't find out about these things very easily. It's a lot to ask of us".

Another noted that grant funding comes and goes, isn't well-publicised and is not aimed at local authorities.

"Local politicians want nothing to do with MEES"

Some stakeholders expressed concern about a lack of local political support.

Others felt that there was a danger that enforcement of housing-related regulation could become increasingly confusing and that preparing for implementation of the legislation will take a lot of time.

"It's taking a lot of time for local authorities when you already have lots of regulations - HHSRS/Housing Act, MEES, Housing and Planning Bill, Fire Safety, Carbon Monoxide etc etc. It's becoming a bit piecemeal."

Many stakeholders considered that it is unclear who will enforce the regulations as there is a lack of clarity about whether this should be Environmental Health or Trading Standards. It was felt that this ambiguity could hinder the effective implementation of MEES (particularly in two-tier areas where Trading Standards' functions are held at county rather than district level) and that opportunities to enforce on wider housing issues would be missed. It was also recognised that Trading Standards departments are already stretched and are in many cases not actively enforcing other requirements to have an EPC. Either way it was felt that whoever implements the regulations there will be a lack of enforcement.

MEES provides limited powers. Unlike HHSRS, it does not give local authorities the power to enter and inspect properties or to undertake works by default (and charge the landlord for this activity). Stakeholders also saw the implementation of MEES, whilst useful in the fight to eradicate fuel poverty

⁷⁴ www.rentsmart.gov.wales/en/. The scheme, which was initially voluntary and could be attained through attendance of CPD courses, is now mandatory and requires the payment of fees and landlords who do not hold a license are unable to serve Section 21 notices.

and reduce emissions, was a missed opportunity to tackle wider housing issues such as fire, gas and electrical safety, overcrowding, fire and trips and falls.

It was therefore felt there was a lack of clarity about how MEES and HHSRS could work together, and that landlords don't understand that with an E rated property they could be compliant on MEES, but action could still be undertaken through HHSRS. A few practitioners who we spoke to suggested they would look at HHSRS enforcement for any property seeking an exemption under MEES.

"If there is a problem at a property relating to Excess Cold, we could argue to use HHSRS instead of MEES as it's Excess Cold not SAP. Some guidance or examples of how they would work together would be fantastic."

2.2.7.2.2 Landlords

Some stakeholders are concerned that there is a lack of awareness or understanding amongst landlords, while others considered that the regulations will simply be ignored by many landlords.

Some stakeholders considered that both the current guidance and the recent consultation were weighted towards landlords rather than being based on any attempt to minimise the number of households living in substandard conditions. Numerous stakeholders referenced the extensive exemptions that are available to landlords, most notably the no cost to the landlord' principle, and exemptions for HMOs and listed buildings.

"Rather than seeking guidance on what measures can be installed to upgrade the property, guidance is being sought on how to apply for an exemption."

However, this claim was strongly rebutted by one stakeholder who noted that landlord organisations are advising landlords that exemptions are the last resort and should only be used where a property may have structural issues or is located in a conservation area. It was noted that communications to landlords are saying that local authorities will be notified when exemptions are made; they will investigate the validity of such cases, and that even if properties are exempt through MEES they may not be exempt from HHSRS.

The 'no financial burden' clause within the current guidance is seen as a key weakness, and the level of the cost cap within the recent consultation is not viewed as a substantial improvement. The regulations were written when the government- backed Green Deal was in operation and the grant funding landscape was very different. It was felt by some that that the proposed £2,500 cap will be insufficient, particularly in cases where significant works are necessary. These proposals are seen by some as having undermined the effectiveness of MEES with the view expressed that private landlords should invest in their properties up to a reasonable level.

"As they stand, because there is a clause about no extra cost, then at the moment [the regulations] have no teeth so won't be effective."

"If there is a big bang of exemptions, who will check them?"

It was felt that exemptions will create a lot of uncertainty and increase the enforcement burden on local authorities. Self-exemptions were seen as problematic. It was felt that there was a lack of clarity

about how the exemptions register will work and how the register will be monitored and used in enforcement.

Others thought that the fines associated with MEES are limited in comparison to the £30,000 civil penalty regime under the Housing and Planning Act 2016.

Stakeholders had varying views on the impact of contributions on landlords. While the potential £5,000 landlord contribution may be appropriate for properties in the South East, South West and London, they questioned the fairness of high contributions in former industrial areas in the North East and North West.

"Does anyone actually know the impact of MEES and HHSRS with low value properties? Is a £5,000 landlord contribution too high when a property could be purchased for £30,000?"

Concerns were also raised for those landlords who have sitting tenants and are unable to raise rents to recoup the investment costs.

On the other hand, one stakeholder highlighted the potential benefits to landlords:

"There is a view that landlords stand to benefit from energy efficiency improvements they make in terms of their attractiveness to new tenants or where they use the property for their own family. There are benefits to landlords – they recognise that."

Linked to these varying opinions on the burden imposed by landlord contributions, there were differing views on the necessity for – and value of – grant support. Some stakeholders thought that landlords expect grants or other incentives to invest in their properties, partly linked to historical grant offers. Some felt that landlords were unlikely to do much without some kind of grant funding – and that these should come from national government.

Some felt that grants to landlords would be viewed negatively: we *"do not want to be seen to be helping the wrong people"*, while others are PRS tenure-blind and simply wish to support fuel poor households.

"In the 1980s and 1990s we gave out grants to landlords. But this was stopped. There isn't enough funding and there has been an ethos change. Landlords are running a business. We don't give grants to shopkeepers and others. Why is it any different?"

Others highlighted that while grants may be available in some geographic areas, landlords would be unlikely to be able to access them without local authority support and signposting, and that most local authority officers are too stretched to provide this kind of support.

2.2.7.2.3 Tenants

There is also a lack of awareness or understanding amongst tenants.

It was suggested that many tenants do not ask to see an EPC, they do not understand their rights with regards to energy efficiency (and wider property standards), and that they have concerns about approaching councils due to fears of retaliatory eviction.

"Many tenants have little security of tenancy. Local authorities are under-resourced. Who is going to tell the landlords to meet the standards? The system assumes that tenants will ask and that local authorities will check. Neither is likely to happen."

However, it was noted that some authorities and third sector organisations, such as Shelter and Citizens Advice, were undertaking some great work to engage with tenants.

2.2.7.2.4 Other

Stakeholders commented that while some councils have accessed EPC data to target the PRS, there are a number of issues with using this data that could limit the effectiveness of its use, including:

- The lack of compliance with EPC regulations, with many PRS properties not having an EPC.
- The quality of EPCs in general, with many assessors applying assumptions as to the measures installed in properties and varying EPC data in similar properties.
- The accuracy of 'transaction type' to identify PRS properties.
- That landlords of off gas grid properties suffer a disadvantage due to RdSAP taking into account energy costs, which are higher for oil and LPG.

"You can get an EPC for less the £50. To produce it properly should cost much more than that. Can they be relied upon? Landlords can abuse this system".

In addition, being linked to SAP means that this standard is not linked to the condition of the property, e.g. it may have a high SAP rating but broken glazing and boiler.

2.2.7.3 How could it be improved?

When asked how MEES could be improved, interviewees commonly suggested reducing the potential for exemptions and increasing the cost cap to £5,000 (particularly where central heating is required).

Another suggestion was making clear the long-term trajectory for minimum standards in this (and other) sectors. This will support local authorities that have set longer-term aspirations, and also help landlords plan their investment decisions.

Resources was another area highlighted as requiring attention.

"Going above and beyond EPC E should be promoted. (This council) has an aspirational target for landlords to meet EPC band C, but since it's not in any national legislation then it's not got teeth."

"These things sound good on paper. We have the tools, the legislation, the new standard, but not the means to implement the system. What a waste of time!"

It was suggested that better enforcement of EPCs is required. Several stakeholders noted minimal action by councils to enforce EPCs. Furthermore, in two-tier areas, EPCs are the responsibility of Trading Standards at county level and it was felt that this could further complicate the enforcement of MEES.

Other suggested improvements were about supporting councils to understand where the privately rented properties are located. This included adding MEES enforcement to the list of functions that local authorities can use Tenancy Deposit Scheme (TDS) information for. Without this, local authorities will be unable to use the TDS data to match landlord details with available EPC data to target F and G rated properties.

A further suggestion was the production of guidance about how to link MEES with HHSRS. A combined approach – using the strengths of both HHSRS and MEES – was suggested by stakeholders. While there is not a parallel between Excess Cold and F and G rated properties, it was considered that many F and G rated properties will have Category 1 Excess Cold hazards. The idea of using MEES when this is sufficient, but HHSRS when reaching E does not remove the Excess Cold hazard could be an effective use of resources.

2.3 Other legislation of relevance⁷⁵

2.3.1 Deregulation Act 2015

The Deregulation Act sought to protect PRS tenants from being evicted for making a complaint about poor housing conditions, make the eviction process clearer for both tenants and landlords and help both understand their rights and responsibilities.

Landlords are not able to serve a valid section 21 eviction notice until they have given their tenant an EPC, a gas safety certificate and a copy of the government's 'How to rent guide'⁷⁶. Where a local authority has served an Improvement Notice or carried out emergency remedial action, a landlord cannot serve a section 21 eviction notice for six months from the date of the Notice.

2.3.2 Housing and Planning Act 2016

Part 2 of the Housing and Planning Act 2016⁷⁷ includes a package of measures to help local authorities tackle rogue landlords and letting agents in the PRS. This includes:

- Allowing local authorities to apply civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences.
- Allowing local authorities to apply for banning orders to prevent landlords and letting agents from continuing to operate where they have committed certain housing offences.
- Creating a national database of rogue landlords and letting agents⁷⁸.
- Allowing tenants or local authorities to apply for a Rent Repayment Order (RRO) where a landlord has committed certain offences. If successful, the tenant may be repaid up to a maximum of 12 months' rent.

MHLCG has confirmed that councils will be able to retain the income from civil penalties to enable further enforcement activities to be taken forward.

2.3.3 Homes (Human Habitation) Bill

This Private Member's Bill from Karen Buck MP seeks to ensure that homes are 'fit for human habitation' from the start of any tenancy, and to remain so throughout. It would apply to all areas of a building 'in which the landlord has an interest', including communal areas. The legislation drafted in the Bill will complement existing local authority enforcement powers under HHSRS, which will avoid creating two parallel standards.

⁷⁵ Further information on this legislation can be found in Appendix 2.

⁷⁶ How to rent: www.gov.uk/government/publications/how-to-rent

⁷⁷ www.legislation.gov.uk/ukpga/2016/22/part/2/enacted

⁷⁸ www.gov.uk/government/publications/database-of-rogue-landlords-and-property-agents-under-the-housing-and-planning-act-2016. The GLA's database can also be found here: www.london.gov.uk/rogue-landlord-checker

2.3.4 Private Landlords (Registration) Bill

This Private Member's Bill from Phil Wilson MP seeks to ensure that all private landlords are registered before renting out a property. Landlords would be required to register, pay a fee and comply with a code of compliance. The administration of the scheme would be by local authorities, and revenue would be raised through a registration fee with tough fines being imposed for failure to comply with a code of compliance. The Bill's second reading is expected in October 2018.

3 Review of First Tier Tribunal (FTT) Excess Cold appeal cases

Landlords have the right to appeal any enforcement notice through the FTT⁷⁹, which was previously known as the Residential Property Tribunal Service (RPTS). In the context of this research, the FTT preside over appeal cases relating to HHSRS, but its role will be extended to preside over any appeals relating to MEES.

This section of the report provides an overview of Excess Cold FTT appeal cases, and summarises key learnings grouped by theme (including affordability, temperature requirements and informal approaches).

It should be noted that each Tribunal case is considered separately and while Tribunals will frequently refer to other cases in the context of explaining their decision, the findings of the lower Tribunal do not set a precedent. Previous rulings cases are sometimes referenced during appeal hearings where relevant.

Judges and other panel members come from a variety of backgrounds, including solicitors, barristers and lawyers, environmental health experts, surveyors and lay members who have experience of working with both landlords and tenants.

Local authorities take a cautious approach to defending cases, which could undermine the effectiveness of implementing HHSRS (and potentially MEES in the future). Stakeholders considered FTT appeals as challenging and resource intensive and local authorities will not risk using scarce resources to robustly defend cases that may easily be quashed on appeal by the Tribunal.

3.1 Previous research into Excess Cold appeal cases

A toolkit produced in 2011⁸⁰ included reviews of 33 cases that related, at least in part, to Excess Cold. These cases occurred between the introduction of HHSRS and December 2010.

Some of the Tribunal's decisions were considered by the reviewers to be 'curious' and would not have necessarily constituted good practice.

⁷⁹ The Tribunal publishes details of appeals on its website. For decisions made before March 2018: www.residential-property.judiciary.gov.uk/search/decision_search.jsp. For decisions after March 2018: www.gov.uk/residential-property-tribunal-decisions?keywords=&tribunal_decision_category%5B%5D=housing-act-2004-and-housing-and-planning-act-2016&tribunal_decision_date%5Bfrom%5D=01%2F04%2F2018&tribunal_decision_date%5Bto%5D=23%2F06%2F18

⁸⁰ National Energy Action (NEA), Impetus Consulting Ltd and Blooming Green, 2011, HHSRS: Your power to warm homes in the private rented sector. Toolkit: www.eagacharitabletrust.org/app/uploads/2016/03/HHSRStoolkit2014update.pdf. An overview of the cases can be found within chapter 4 of the toolkit, with more detailed information in Appendix 4 of the toolkit.

3.2 Research in this project into Excess Cold appeal cases

This project reviewed 37 cases that related, at least in part, to Excess Cold that were heard between January 2011 and December 2017. An overview of the cases can be found below, with more detailed information (including links to the full cases) in Appendix 3.

A number of these appeals refer to Kassim vs. Liverpool CC, a case reviewed as part of the previous research. This case was also frequently referenced by stakeholders during interviews as it explores the issue of affordability for tenants. This case, which progressed after the previous research was published, was heard by the Upper Tier Tribunal (UTT) and was then remitted for reconsideration to the FTT. Section 3.2.1.1 provides further information on this case.

Unlike in the previous project, the project team for this research consider that many decisions that were reviewed had taken a common sense approach in reaching their decision. However, this is highly subjective as only a relatively small number of cases were reviewed as part of the project.

3.2.1 Affordability

There has been a great deal of debate between practitioners about energy affordability. Stakeholders consider that the issue of energy affordability is unclear within the HHSRS guidance, and as a result there have been different rulings made by the FTT.

During Ali vs LB Waltham Forest, the council highlighted that Excess Cold conditions in the property had made the property expensive and difficult to heat. While the case does feature Excess Cold, the Tribunal's ruling ultimately focussed on the inadequacies of an extension when making their ruling. It is positive that the Tribunal did not rebut the council's conclusion around the Excess Cold hazard and the impact it had on the tenant to heat their home.

There appears to be a general consensus by stakeholders that gas heating should be prescribed rather than electric heating, on the basis of affordability to the tenant. There is also consensus that fixed off peak electric heating should be prescribed over fixed on peak electric heating, and that portable free standing heaters should not be used to heat homes due to the high running costs to tenants and other risks such as trip hazards (e.g. due to trailing cables).

For example, in Elufowoju vs LB Islington the Improvement Notice required the installation of fixed electric heating system that should be "*designed so that 90% of the annual heat requirement is available at the off peak rate*".

Tribunal panels in the following appeal cases considered that portable free standing heaters were unacceptable both in terms of running costs and efficiency:

- Davison vs LB Camden
- Gorensandu vs City of Westminster
- Alsaad vs LB Islington
- Margarson vs Southend on Sea BC

- Mutch vs Rugby BC

3.2.1.1 *Kassim vs Liverpool City Council*

This case began in 2010. The landlord had installed electric panel heaters contrary to the advice given by Liverpool City Council. The Improvement Notice that the council had served sought to have the electric heating replaced so it was more affordable for the tenant to heat the property.

The landlord appealed to the Residential Property Tribunal Service (RPTS), which subsequently found in the landlord's favour. The Tribunal considered that the heating system provided by the landlord was satisfactory despite the fact that it was expensive for the tenant to heat the property, compared to other heating systems. The Tribunal concluded that the running cost of the heating system was not a matter that the council's Environmental Health Officers should consider when requesting heating systems to be installed in privately rented properties.

The Tribunal expressed its conclusions as follows. *"The Tribunal considered the Guidance and concluded that, whilst it is a laudable objective, nowhere is there any requirement in paragraphs 2.19 to 2.23 of the Guidance headed 'Preventative Measures and the Ideal', that any space heating system should be affordable. There is a requirement that it is efficient"*.

The Tribunal had noted evidence by a representative for the landlord who stated that heating by electricity if considered to be 100% efficient as all of the electricity is converted to heat. The Tribunal accepted that that heating by electricity *"as being an efficient means of space heating, and whether it is affordable will depend on circumstances, some of which are unconnected with its efficiency or the condition of the property, not least, for example, the occupant's financial circumstances and the cost of electricity compared to other forms of energy"*.

The issue was raised in Parliament in May of 2011. A question was put to Andrew Stunell (previously Parliamentary Under-Secretary for the Department for Communities and Local Government) regarding whether, in the light of the Tribunal decision, the government planned to review the HHSRS Operational and Enforcement Guidance. Andrew Stunell's response pointed to the relevance of the cost of operating a heating system in terms of HHSRS assessments, specifically referencing p. 27 of the Operating Guidance which states that *"The dwelling should be provided with adequate thermal insulation and a suitable and effective means of space heating so that the space can be economically maintained at reasonable temperatures."*

The local authority therefore appealed to the Upper Tribunal (Lands Chamber) (UTLC) in 2012. The Upper Tribunal is a superior court of record, giving it equivalent status to the High Court. This means that it can set precedents.

As part of the appeal case⁸¹, the council presented evidence that for a two-bedroom house supplying the heating via electric panel heaters (like those installed by the landlord on a standard tariff) would cost on average £1,826 per year. They also supplied evidence that with modern fan assisted storage radiators on an Economy 7 tariff the cost to the tenant would be £896 per year, and with a modern gas central heating system the tenant would pay £623. Data was sourced from Sutherland Tables⁸² on comparative heating costs.

The UTLC concluded that the original Tribunal *"were wrong to conclude that the question of affordability (embracing the costs of heating and the means of the occupier) is an immaterial consideration in the context of the assessment of a hazard and in relation to enforcement action."*

However, the UTLC also concluded *"that the costs of running a heating system are thus capable of being relevant"*, but only in the ways they identified:

- *"In the context of the assessment the question has to be addressed by reference to the vulnerable group, those over 65. Any proclivity to be deterred from using the heating system for reasons of expense must be considered in relation to the group. The Guidance says that vulnerability due to factors other than age cannot be taken into account"*.
- *"In the context of any ensuing enforcement action, regard can be had to the means of the actual and potential occupiers of the premises if it is considered that this would affect their proclivity to use the heating system"*.

The UTLC also noted that *"an occupier could be deterred from using a heating system by the cost of running it, just as he might be deterred from using it effectively by the difficulties of operating it"*.

The UTLC subsequently ordered the case to be remitted to the Tribunal for reconsideration. The case was then heard by the FTT in 2015 where the panel confirmed the Improvement Notice.

During this hearing the council provided evidence from BRE's Excess Cold Calculator (XCC)⁸³ to demonstrate the likely running costs of the current and other heating systems. Energy consumption was modelled for a number of heating regime scenarios which reflected the likely heating requirements for a tenant in the vulnerable group. The Tribunal accepted that the XCC reports were the best available evidence of likely comparable heating and energy costs for the premises. The council's evidence suggested that occupiers aged 65 or over would be likely to use the current heating system less than either a storage heater or a gas-fired central heating system during periods of cold weather.

⁸¹ <http://landschamber.decisions.tribunals.gov.uk/judgmentfiles/j869/HA-3-2011.pdf>

⁸² Sutherland Tables provide comparative costs for space heating and hot water for the most common fuels across a range of standard house types throughout the UK and Ireland. Further information: www.sutherlandtables.co.uk/.

⁸³ BRE Excess Cold Calculator: <https://bregroup.com/services/advisory/housing-stock/excess-cold-calculator-xcc/>. Environmental Health Practitioners and Technical Officers in the assessment of Excess Cold in dwellings. Users enter information about a dwelling and its occupants and the calculator provides estimated running costs and information on the adequacy of the heating system.

The council also provided two detailed HHSRS assessments – one carried out before the Improvement Notice had been issued and the second carried out in December 2014 following some works to insulation – which showed the existence of a Category 1 Excess Cold within the property.

The council noted that *“Heating of this type is not suitable or accepted as a main source of heating, other than in well insulated properties”* and was *“only usually provided and accepted as a secondary means of heating”*.

Comparative EPC ratings from other properties in the same street was also presented and highlighted that the property’s indicative SAP rating of 43 was considerably lower than the average rating of 68.

While the landlord argued for the Improvement Notice to be quashed and that the property would not be let in the future, the Tribunal considered that his assertions lacked credibility and the Improvement Notice was confirmed.

Liverpool City Council has had to commit significant resources throughout the appeal process for this case, including the provision of evidence detailing heating costs for a range of heating systems, to ensure that the Tribunal could see the validity of their case. We would question whether all local authorities could commit to providing the same level of resources in future cases. It is therefore essential that government considers, and provides guidance, on what these rulings mean in practice. While it is essential that councils continue to provide evidence relating to individual properties, a clear ruling would result in more councils successfully winning appeal cases.

In addition, the intent of the HHSRS regulations is to assume occupation by the vulnerable group (those over 65). Operating Guidance paragraph 2.25 states that *“for the HHSRS assessment, it is the dwelling characteristics, energy efficiency and the effectiveness of the heating system that are considered, assuming occupation by the vulnerable age group”*. Yet the UTLC in this case concluded that while *“the costs of running a heating system are thus capable of being relevant”* it was only in the ways that they had identified. *“In the context of the assessment the question has to be addressed by reference to the vulnerable group, those over 65. Any proclivity to be deterred from using the heating system for reasons of expense must be considered in relation to the group. The Guidance says that vulnerability due to factors other than age cannot be taken into account”*.

We therefore consider that further clarity is required on the definition of the vulnerable group within Excess Cold hazard and that affordability should be given greater significance in the guidance, given growing evidence on the health impacts of living in a cold home for those outside the vulnerable group and the prevalence of fuel poverty across all households.

3.2.2 Temperature

Paragraph 2.05 of the HHSRS Operating Guidance states that *“a healthy indoor temperature is around 21°C, although cold is not generally perceived until the temperature drops below 18°C. A small risk of adverse health effects begins once the temperature falls below 19°C. Serious health risks occur below 16°C”*

with a substantially increased risk of respiratory and cardiovascular conditions. Below 10°C the risk of hypothermia becomes appreciable, especially for the elderly."

The following cases involved councils serving Improvement Notices that required that the heating system should be able to maintain an internal temperature of 21°C in the living room, 22°C in the bathroom and 18°C in other habitable rooms when the external temperature is -1°C. The Tribunal did not disagree with the councils' approach in the following cases:

- [Elufowoju vs LB Islington](#)
- [Gorensandu vs City of Westminster](#)
- [Blackwood vs Nottingham CC](#)

In [Abundant Life Housing et al. vs Southend on Sea BC](#) it was acknowledged that work had been undertaken by the landlord to keep the property warm (temperatures not defined) but 'neither the council or Tribunal knew whether the heating system has sufficient capacity to keep the property warm in winter'.

In addition, in [Platt vs Braintree DC](#) the panel noted that they did not feel cold during their inspection. While evidence of ambient air temperature on the day of the inspection was highlighted, this statement could be considered subjective. In addition, during this case the Chair also noted that *"the temperatures set out in the remedial action did not come from the official HHSRS guidance but from guidance provided by the Chartered Institute of Environmental Health which has not statutory or other status save for being an indication of good practice according to that institute"* and that the heating system available suggested that temperatures in the official guidance would appear to be achievable.

We therefore consider that further clarity is required on healthy indoor temperatures to avoid confusion during Tribunal hearings.

3.2.3 Which measures can be specified?

The Operating Guidance states that energy efficiency depends on the thermal insulation of the structure, fuel type and size and design of the heating system.

It was reported that HHSRS can be effective in requiring the more traditional energy efficiency measures, such as heating, cavity wall and loft insulation, but not so effective where more expensive measures such as solid wall insulation is necessary, as landlords may choose to appeal the case to the FTT. Housing enforcement local authorities take a cautious approach and do not risk using their resources to robustly defend cases that may easily be quashed on appeal by tribunal judges.

3.2.3.1 Heating systems

As noted above, the HHSRS Operating Guidance states (paragraph 2.20) that *"heating should be controllable by the occupants, and safely and properly installed and maintained. It should be appropriate to the design, layout and construction, such that the whole of the dwelling can be adequately and efficiently heated."*

It also states (Box 9, p. 27) that “*The dwelling should be provided with adequate thermal insulation and a suitable and effective means of space heating so that the dwelling space can be economically maintained at reasonable temperatures*”.

3.2.3.2 Fixed versus portable heating

As noted above, the Tribunal panels for Davison vs the London Borough of Camden, Gorensandu vs City of Westminster, Alsaad vs LB Islington, Margarson vs Southend on Sea BC and Mutch vs Rugby BC considered that free standing, portable heaters were unacceptable both in terms of running costs and efficiency.

3.2.3.3 Electric versus gas heating

Linked to section 3.2.1, some stakeholders have concerns that installing some forms of electric heating, such as on peak systems, can result in high energy bills for tenants.

Whilst the previous research noted several cases where Tribunals had decided against a requirement for landlords to install gas central heating over electric heating, there were only two cases within this review where this issue was considered. The property situation in both cases mean that the results were inconclusive however:

- In Combella vs Nottingham CC the council required the landlord to provide a full gas heating system or to insulate external walls and provide electric heaters (recognising that when installing electric heating, insulation should be maximised in order to reduce energy costs). However, the Tribunal determined that the present heating system (a large boiler serving four properties in the block) was more than adequate and did not require the installation of an individual boiler.
- In Gorensandu vs City of Westminster the council initially sought the installation of gas central heating but agreed that this could be changed to the installation of a full electric heating system using off peak storage heaters, since there was no gas supply to the building.

As noted above, there appears to be a general consensus by stakeholders that gas heating should be prescribed rather electric heating on the basis of affordability to the tenant. However, councils are still requiring the installation of electric heating within Improvement Notices. It is important that off peak heating systems are prescribed over fixed on peak electric heating.

3.2.3.4 Glazing

In Davison vs LB Camden the Improvement Notice required secondary glazing with trickle vents to mitigate both Excess Cold and Damp and Mould Growth hazards.

In Platt vs Braintree DC the Tribunal noted that the lack of modern glazing described by the council was simply not understood by the panel. The Tribunal had questioned “*what is modern glazing?*” Further clarity on glazing requirements would be useful for practitioners.

3.2.3.5 Insulation

Loft insulation is very rarely contentious. In Cotton vs Nottingham CC, the council called for the level of loft insulation within the property to be increased.

Solid wall insulation is more controversial however, given its higher cost. Surprisingly in Davison vs LB Camden the Tribunal agreed with the Improvement Notice that required Internal Wall Insulation (IWI) to external walls (in addition to the installation of a fixed electric heating system). The panel concluded that the cost of IWI was not prohibitive.

3.2.4 How to assess for hazards

Under Operating Guidance paragraph 2.26, *"the assessment should take account of the adequacy of the heating, insulation and ventilation. This may involve assessing the dwelling energy rating (using SAP) and any other factors which might affect the indoor temperature, such as dampness, or disrepair to the structure or to the space or water heating system."*

Previous research suggested that there was some confusion over whether Reduced Data SAP (RDSAP, as used for EPCs) would be adequate to show the presence of an Excess Cold hazard.

In two cases - Lidher vs LB Hounslow and Hussain vs LB Enfield - it was suggested that EPCs could be used as part of the energy assessment of the property and for recommended measures to be installed to mitigate the Excess Cold hazard present and to meet the standards set out within the Building Regulations. Yet in Margarson vs Southend on Sea BC the Tribunal concluded that EPCs were of limited value because HHSRS does not require the best possible standard of efficiency.

In Platt vs Braintree DC the Tribunal ruled that there had been a lack of evidence (not defined) submitted by the council in the assessment of the thermal efficiency of the property. The Tribunal did not define a suitable assessment procedure that could be used however.

The Livesey & Livesey vs LB Croydon appeal case saw the landlords question whether the Improvement Notice had been misdirected as the property was uninhabited. The Tribunal disagreed and considered that the council had power to assess an unoccupied property and where it found a Category 1 hazard it is under a duty to act.

3.2.5 Assessing for actual risk

In one case - Cotton vs Nottingham CC - the Tribunal downgraded the Excess Cold Category 1 hazard to a Category 2 hazard as it disagreed with the council's assessment of the hazard as it had used a national average (rather than local averages) when the property was considered to have adequate heating and insulation.

In Thompson & Thompson vs. South Kesteven DC it was noted by the council that that it was difficult to avoid a Category 1 hazard due to the age of the property, and even with new heating, double glazing to the rear, it may not be acceptable without improvements to the insulation of the property.

3.2.6 Building Regulations

In Cotton vs Nottingham CC it was argued that the level of loft insulation was not consistent with current Building Regulations. Yet the insulation in situ was thought to have been installed under an energy supplier obligation, and therefore likely to have met Building Regulations at the time of installation.

In several cases, including Lidher vs LB Hounslow, the Tribunal ruled that measures be installed to achieve the thermal insulation values required by the Building Regulations.

3.2.7 Procedural issues

Several appeals were upheld, or notices varied, on procedural grounds including:

- In Thompson & Thompson vs. South Kesteven DC the council agreed with the Tribunal that there had been errors made, including relying on unsubstantiated statements.
- In Cotton vs Nottingham CC the Tribunal downgraded the Excess Cold Category 1 hazard to a Category 2, as it disagreed with the council's assessment of the hazard since it had used the national average (rather than local averages) (even though the property had central heating, cavity wall and loft insulation, double glazing and a good supply of radiators).
- In Tolui vs LB Waltham Forest the Tribunal determined that the council had failed to provide sufficient evidence of a Category 1 hazard. Central heating had already been installed as part of the ongoing works. A previous EHO inspection had scored the property as having a Category 2 Excess Cold hazard and that this was before the central heating had been installed. It therefore concluded that even with a Category 2 Excess Cold hazard present, a Hazard Awareness Notice would have been more appropriate.
- In Margarson vs Southend on Sea BC the Tribunal concluded that evidence from the council was inadequate and incomplete. The Tribunal also concluded that it had been assumed by the council officer that HHSRS is a way of improving property to the best standard - which is not.
- In Platt vs Braintree DC the Tribunal concluded that the council's assessment was poor and that *"it is up to a local authority to provide the evidence, not the Tribunal"*. They also concluded *"that proper procedures and the law might have been ignored"*.

3.2.8 Age of occupant

In Triplerose Limited vs RB Kensington and Chelsea a child was referred to as being in the vulnerable group for Excess Cold, whilst in Ali vs LB Waltham Forest the council stated that the hazard identified in relation to Excess Cold and Damp and Mould Growth was of respiratory illness in particular to someone under the age of 14 years old.

In other cases, a tenant's age was noted, but not specifically in relation to the vulnerable groups for Excess Cold or Damp and Mould Growth.

3.2.9 Informal approaches

Based on the issues raised by the cases discussed above, a key recommendation from this research is that local authorities should always try to deal with problems informally at first, before moving on to

formal enforcement action (unless a landlord has a history of non-compliance). This is evident in cases such as Odukoya-Adekite vs LB Newham and Miah vs LB Tower Hamlets.

While informal approaches can be effective, in some cases they will not be. In Hadjimina vs LB Southwark it was noted that the council had adopted an informal approach in working with the landlord and it had served 3 informal schedules of works (standard council policy) before moving to enforcement. The Tribunal noted *"if anything, the evidence would seem to indicate that the [council] may have been too indulgent in its dealings with the [landlord]. Whilst it is unclear precisely when the [council] formed the view that category 1 hazards existed at the property, it clearly had concerns as far back as December 2012 [the case was heard in May 2015]. In the circumstances and given its statutory obligation to take enforcement action in relation to (in particular) Category 1 hazards, it is of some concern that the [council] spent quite so long negotiating with the [landlord] on the basis of informal schedules of works. It may be appropriate for the [council] to review its procedures in the light of this case."*

The Tribunal for Triplerose Limited vs RB Kensington and Chelsea considered that the council had been 'indulgent' in allowing the landlord so much time to provide a timetable for the works.

Timescales for enforcement action should therefore be defined from the onset to encourage compliance, otherwise a vulnerable tenant could be living with a Category 1 hazard for a prolonged period of time.

3.3 Views about the FTT and the appeals process

Many stakeholders that we interviewed felt that that Tribunals can be challenging and, inevitably, the Tribunal's decision will not always go the local authority's way.

Numerous stakeholders considered the preparation and attendance at appeals were resource intensive. Whilst some cases that were reviewed only involved the attendance of a local authority officer, e.g. Environmental Health, some cases involved the attendance of legal counsel as well as technical expertise such as an energy assessor (both in-house and external). Many case notes referred to evidence bundles that ran into hundreds of pages.

More specifically in relation to Excess Cold, stakeholders considered that the Tribunal doesn't always recognise the need for improving energy efficiency and that there have been inconsistencies with the decisions handed down. However, the research team consider that many decisions that were reviewed had taken a common sense approach in reaching their decisions. This is highly subjective as only a relatively small number of cases were reviewed as part of the project.

"Tribunal decisions are inconsistent, so it's difficult to know their latest thinking. This leads to a lack of confidence for us in terms of what counts as affordable warmth - what can we enforce?"

"There is no consistency with decisions - another local authority will have success (with requiring the replacement of electric heating with gas central heating) and yet we fail."

Stakeholders stated that a key challenge was in persuading both landlords and Tribunals that action should be taken to improve inadequate heating, even when an existing heating system is still in working order. It was suggested that landlords are likely to challenge such cases due to the cost burden placed on them, and that Tribunals will find in the landlord's favour.

"It's about making the case come alive."

It was suggested that local government should have open access to BRE's Excess Cold Calculator to enable them to successfully build a thorough evidence base for Tribunal appeals.

Stakeholders would like to see more active engagement in FTT appeals by local authorities, supported by the development of a strong evidence base.

"HHSRS is an evidence based system after all."

Stakeholders were questioned about the evidence that was prepared for appeal cases. They considered that a thorough 'evidence bundle' should include:

- Comparative heating costs for gas and electric systems (including on and off-peak tariffs) for the property. This could include modelling (EPC and SAP tools) or real-life examples of similar properties.
- Comparative installation costs for gas and electric heating systems for the property.
- Standard Assessment Procedure (SAP) or Reduced Data Sap (RdSAP) ratings and / or EPC, including comparative EPC ratings from other properties in the same street.
- Evidence from the Building Research Establishment's (BRE) Excess Cold Calculator.
- Evidence from the Fuel Poverty Assessment Tool⁸⁴.
- Evidence from Sutherland Tables.
- Evidence as to whether the heating system has sufficient capacity to maintain temperatures set out in the HHSRS Operating Guidance.

⁸⁴ www.nea.org.uk/fuel-poverty-assessment-tool-home/. This fuel poverty assessment tool is designed to help calculate whether a household is in fuel poverty. Based on the information you input about the household circumstances and property details, it calculates the impact of different interventions on the level of fuel poverty to help assessors understand which could be the most cost-effective measures. The development of this tool was co-funded by NEA, Joseph Rowntree Foundation, Eaga Charitable Trust and Citizens Advice.

4 Current practice

The research team sought to gain an understanding of what is currently happening in terms of action to increase energy efficiency in the PRS through both HHSRS and MEES. This section of the report was developed through a desk-based literature review, stakeholder interviews with industry and local government stakeholders and a facilitated workshop.

4.1 HHSRS

The research team asked for feedback on the following:

- Is there action to proactively raise awareness of HHSRS in the PRS – within the council, with landlords and with tenants?
- How is the council made aware of HHSRS hazards? If a Category 1 hazard is identified relating to Excess Cold or Damp/Mould, what action would happen prior to enforcement? What has been the outcome of enforcement action?
- Is there a charge for this action, and how much?
- Is other work being undertaken to promote the importance of / encourage investment in energy efficiency in the PRS?

4.1.1 Approaches to implementing HHSRS

4.1.1.1 Within councils

It was reported that many councils are now doing the bare minimum in terms of their statutory requirements with local authorities simply reacting to complaints, rather than being proactive.

"We go out and do inspections where we get complaints. It's still the tenant that needs to contact us."

Some explained they have a triage system for prioritising complaints. For example, one authority uses the following procedure:

- Low and medium priority cases will involve a letter being sent to both tenant and the landlord. The landlord then has 3 months to resolve any issues. However, in cases where the landlord has a history of non-compliance the council may go straight to enforcement.
- High priority cases, e.g. homes with no heating at all, will be allocated directly to an EHO.
 - Notice will be served and the property inspected.
 - If there is no imminent risk at the property, an informal schedule of works is given to the landlord with 14 days to respond with the proposal schedule.
 - If the work proposed is satisfactory then the council enters a period of informal working with the landlord to get works completed.
 - If the work proposed is not satisfactory the council moves to enforcement.

The sources of complaints are typically:

- Directly to the council from tenants, in which case the council would then ensure that the tenant has notified their landlord of their complaint.

- Referrals from different agencies, e.g. fire, police, community nurses, social services, midwives, councillors, Occupational Health and Citizens Advice.

"Health visitors in particular often refer in about homes with mould where there is a baby; this links to Excess Cold."

Although useful as a means of targeting limited resources, it was suggested that such an approach can still be relatively resource-intensive.

"This tiered approach still takes a lot of time and resources - it's a long process. We work on the basis that we are educating landlords."

Some councils undertake proactive work to ensure compliance with HHSRS. For example, some councils have a proactive inspection programme for areas where there are known to be problems. One council reported having a rogue landlords team as well as selective licensing, and they undertake routine investigations of all properties covered by this scheme. Another reported an area-based approach to inspections, using funding from the MHCLG Rogue Landlords Fund. Several stakeholders referred to having a multi-agency referral system in place with staff from different agencies referring any cases to the council's environmental health team where they think there may be hazards, including Excess Cold. (This could include other council departments, plus Police, Fire, Health Visitors and Community Nurses). Other councils highlighted that they access EPC data to focus on the least energy efficient properties.

Several stakeholders referenced selective licensing and accreditation schemes and the proactive enforcement approaches that could be taken. It was suggested that such schemes could support the identification of PRS properties and information collected during the licensing process, including the collection of EPCs, could support enforcement activity. The activity of Sheffield City Council, which has a selective licencing scheme that seeks to mitigate Category 1 and 2 hazards, was highlighted. It was noted that selective licensing teams are often well resourced, compared to standard Environmental Health enforcement teams.

One stakeholder noted that there is an opportunity for local government in both England and Wales to play an active role when discharging wider duties, including supporting homeless households, by ensuring that they are housed in safe and warm properties, free from hazards.

"We've found that people are still being placed in poor quality housing, particularly where external agencies are used to house people."

It was noted that local authorities in Wales can now discharge homelessness through the PRS and that there has been a drive for councils to identify properties in the PRS (linked to Rent Smart Wales). As part of this activity, local authorities are undertaking affordability checks, including energy bills.

It was acknowledged that there is significant pressure on councils to house people, but because demand is so high it is difficult to be selective. A council in London has been known to ask for EPCs when housing such households, but they were then not using this information to avoid placing households in inefficient properties. Yet another stakeholder referenced work of an NGO refusing to place homeless individuals into properties with an F or G EPC rating.

Another referenced the fact that landlords receive over £9billion in housing benefit⁸⁵ and that minimum standards, including but not limited to energy efficiency, should be met by landlords when receiving public funds.

4.1.1.2 With landlords

Several councils we spoke to have, or were about to set up, a landlords' forum and/or an annual event through which they plan to raise awareness of HHSRS (and MEES). Several also have a newsletter which is sent out to landlords on their database. Others reported including information on HHSRS on their website.

4.1.1.3 With tenants

Some councils offer advice to tenants, either informally over the phone or through the delivery of pamphlets alerting tenants to raise concerns they have about their homes.

Some councils use online communications. For example, Wigan Council has published information on its website⁸⁶ for tenants on how to report problems with their home. This includes sample letters links and a phone log checklist.

4.1.2 Approaches to taking enforcement action

Generally speaking councils seek to work with landlords informally, before taking enforcement action.

"We go down the informal route usually, if the landlord seems willing to cooperate. If the landlord has a history of non-compliance we will go straight to enforcement."

Most of those we spoke to take an informal approach initially, for example engaging with the landlord and writing with an informal schedule of works. Some councils noted that they offer grant to help cover the costs in certain cases.

An example of the approach taken would involve:

- First stage letter goes off listing the hazards and asking what the landlord's intentions are.
- If no response, then a second letter.

⁸⁵ www.theguardian.com/society/2016/aug/20/private-landlords-9bn-housing-benefit-taxpayers-national-housing-federation-report

⁸⁶ www.wigan.gov.uk/Resident/Housing/Private-Housing/Reporting-repairs-Private-renting.aspx

- Then if there is no response, an Improvement Notice (with a charge; some councils will waive charges if improvements are carried out within a set time).
- Enforcement would absolutely be the last resort.

It was suggested that a balance is needed between trying to work cooperatively with the landlord and ensuring that tenants don't have to wait a very long time for issues to be rectified. Most of those we spoke to said they will turn to enforcement if the landlord is not cooperating, is making insufficiently quick progress, in cases where the landlord has a history of non-compliance or the tenant is in immediate danger. One said that if the property does not have a gas certificate then they will move straight to enforcement as it demonstrates a lack of competence by the landlord.

However, a few interviewees said they would go straight to serving a notice unless it's something that can be rectified very quickly. These interviewees referred to the fact that councils have a duty to implement an enforcement action once a Category 1 hazard is identified.

"We stick rigidly to the law as set out in statute. If it's a cat 1 hazard, we must take the appropriate action and that means serving a notice unless it's something they can sort out in a day or two."

"We are becoming more enforcement orientated and are serving more notices as a result. Previously we were raising awareness and educating landlord. But lack of resources means we can't keep on educating and educating."

One interviewee said that lack of resources was resulting in them become more enforcement orientated.

"So far so good. Everyone has done what we have asked for. No legal action needed so far."

Those we spoke to reported that they generally get compliance from landlords following enforcement action.

"People get scared of serving notices but it is pretty straightforward. Only 2 or 3 end up at tribunal each year (out of around 700 notices)."

One interviewee said they felt many councils were wary of serving notices but that it's a straightforward process and is unlikely to end up at a Tribunal.

Some councils said they haven't had to take any enforcement action as they know their landlords and engage successfully with them so that enforcement can be avoided.

4.1.3 Charging for enforcement

There is a range of approaches to charging for enforcement action across the councils that we interviewed. There are certainly some local authorities that have never charged for enforcement as they

do not see it as worth the effort. One council reported they do not charge for hazard awareness notices but will charge for all other notices.

"For improvement notices, because we are not shy about serving them, we withdraw the charge if the notice is complied with - provides an extra incentive to comply. It gives our officers more freedom to go out and serve notices too."

Those that do charge cited figures between £270 and £700 per notice. Some said that they use a formula based on the number of hours spent on a particular case (e.g. inspections, reporting and the enforcement notice). Another referred to an hourly cost of £38/hr. Some authorities, working with neighbouring councils or with regional government, have undertaken benchmarking to ascertain whether their charges are at 'market rates', with some adjusting their charging schedules accordingly as a result of this exercise. A few say they waive the charge if the landlord confirms that they are going to do the required work.

"If a landlord is blatantly not complying we will charge. Generally, the threat of a charge has the desired result."

Another said the decision about whether to charge is made on a case-by-case basis.

"New fixed penalty powers from the Housing and Planning Act is the way forward, as long as they don't get silly with it."

It was felt that charging for enforcement under the older Housing Act powers provided limited revenue to support resourcing, but that new powers introduced by the Housing and Planning Act 2016 (see section 2.3.2 and Appendix 2), while largely untested, could provide a route to effectively resource local authority enforcement teams.

It was noted by one stakeholder that, as with the polluter pays principle, *"good landlords will act and make changes to their properties, while 'criminal' landlords will be enforced and charged significantly as a result"*. It was noted that organisations representing landlords support such 'criminal landlords' being charged.

4.1.4 Encouraging energy efficiency investment

Numerous stakeholders referred to linking with energy efficiency schemes or Home Improvement Agency (HIA) programmes operating in the local area. Examples of activity included:

- Accessing ECO funding to be able to proactively offer financial assistance to residents (including private tenants) to install loft and cavity insulation and improved heating, including making specific provision for the PRS in the ECO 'flexible eligibility' mechanism⁸⁷.

⁸⁷ Under ECO, obligated energy suppliers are able to use the 'flexible eligibility' mechanism (up to 10% of their ECO obligation) to install measures in premises that have been declared eligible by local authorities. Details of the local authority eligibility criteria are published in Statements of Intent (SOIs).

- Accessing specific government grants to install central heating.
- Signposting landlords to grants and loans available from the council, though this type of activity was considered minimal and promotion is targeted at areas with high levels of fuel poverty.
- Provision of grant funding from the council, although as highlighted previously many councils no longer offer grant funding due to budget cuts, while some interviewees had strong feelings as to whether landlords should be offered grants to meet legally required standards.
- Some councils mentioned the use of carbon offset funds to support energy efficiency works in the PRS.

Other stakeholders noted that they were awaiting the outcome of the MEES consultation (see section 2.2.6) before considering allowing landlords to take up grant funding.

Stakeholders also referred to drawing in investment from public health authorities. Stakeholders referenced 'Boiler on prescription' schemes, and Warm Homes Oldham, both of which take into account the health benefits of action on improving energy efficiency.

Another stakeholder noted that Liverpool City Council "*secured £12million from landlords through being proactive and looking at housing in a zonal way*". The council were said to be proactive in improving properties before enforcement action was taken, and that they were able to secure buy in from statutory agencies through promoting the BRE's Housing Health Cost calculator⁸⁸ (which predicts avoidable costs to health sector from Category 1 and 2 hazards).

Whilst not thought to focus specifically on energy efficiency, Bolton Council were thought to be taking control of properties from landlords (voluntarily) and undertaking refurbishments. (This programme was originally part of an empty properties scheme.)

4.2 MEES

The research team asked for feedback on the following:

- What action is being taken to prepare for the regulations coming into force in April 2018?⁸⁹
- Is there action to proactively raise awareness of MEES - amongst local authority staff, landlords, tenants, estate agents, managing agents, letting agents - in preparation for the regulations coming into force in April 2018?
- What is planned in terms of enforcing MEES in the PRS?
- Who will lead enforcement action (e.g. Trading Standards, Housing or Environmental Health)?
- What leads to enforcement action?
- Will there be a charge for this action and how much?

⁸⁸ <https://bregroup.com/services/advisory/housing-stock/housing-health-cost-calculator/>

⁸⁹ Stakeholder interviews took place between December 2017 and February 2018. This was during the period of the MEES consultation.

4.2.1 Raising awareness of MEES

4.2.1.1 Within councils

We asked stakeholders what they are planning to do to implement MEES. Most of those we spoke to said this was still to be decided.

"It appears unclear who within the local authority will enforce MEES."

Interviewees had different views about who will be responsible for enforcing MEES. Some felt that there was a lack of clarity.

"I have only just today had some feedback from legal and it's not clear who will be the enforcing authority."

Some felt that since Trading Standards have responsibility for enforcing EPCs, they would most probably be responsible for MEES. In some cases, stakeholders noted that they have a good working relationship with Trading Standards and will probably need to work more closely together going forward.

"This decision has not been made. It could be Trading Standards or Private Rented Team, but I don't think that this has been raised by senior management or councillors."

A couple of respondents said they would prefer it be Environmental Health/Housing rather than Trading Standards. It was recognised that Environmental Health and Housing teams have the track record in working with landlords. Several commented that Trading Standards lack knowledge or expertise on housing and tend to focus on a particular issue at any one time (e.g. tyre sales one month, fake jewellery the next).

"We don't really do a lot with Trading Standards. I don't think they are doing a lot relating to housing."

The research team came across one example of the environmental health department asking Trading Standards to delegate authority to them for MEES, but this was declined.

One stakeholder believed that if Trading Standards were to lead on enforcement of MEES, then there should be a requirement to work with Environmental Health and Housing Teams.

"If EPC data is available to be used to alert landlords then it would be silly not to use such a system"

When asked what would lead to enforcement action on MEES, most stated either 'unknown, unclear, or to be determined.' One council had commissioned a survey to locate properties with F and G ratings and had planned to target them on

MEES enforcement. However, the officer leading that work had left and was not replaced and no-one else had any capacity to pick this up. Another council had commissioned some work to identify F and G rated privately rented properties. This study had identified around 900 properties within the council's area and they were considering a mailshot to all of these. Another said they hold SAP ratings as a result

of their stock condition survey. However, the barrier for them is that they don't know which properties are privately rented.

Some local authorities have also carried out aerial surveys of dwellings in their areas to assess energy efficiency so that particular areas can be targeted by schemes. It was also noted that the English Housing Survey provides useful data in identifying where energy inefficient dwellings are, and these can be supplemented by some local authorities when implementing their own housing surveys to help identify issues.

"I suppose we have some data but I'm not clear how much we have yet."

The majority of those interviewed did not have any plans to identify properties that don't meet MEES. Some knew that they held some data but were not clear exactly what they held or how they could use it.

Another issue raised was that further guidance is required from the Information Commissioner's Office (ICO) to establish what data can be used legally to target PRS properties.

"A lot of our time is taken up with other issues so we are drawn toward quite extreme cases, involving vulnerable people. Doing anything widescale or general is more challenging for us."

One commented that local knowledge can be utilised to identify properties or areas that are likely to have problems. However, lack of resources may hinder anything more general in terms of targeting properties.

Most interviewees weren't sure yet whether there would be a charge for MEES enforcement and some uncertainty was identified about whether charging was permissible. Some suggested that they always change for enforcement and will do so under MEES.

4.2.1.2 With landlords

In terms of raising awareness of MEES, several interviews said nothing was happening as yet while several others said they were raising awareness through their local landlords' forum and in landlord newsletters as well as via local press.

Several councils we spoke to have, or were about to set up, a landlords' forum and/or an annual event through which they plan to raise awareness of MEES (and HHSRS). Several also have a newsletter which is sent out to landlords on their database. Others reported including information on MEES on their website.

Some councils operate an accredited landlord scheme which promotes an informal, non-enforcement route towards compliance. One example of this require properties to meet EPC band D. The local authority offers a property visit or advice to look at recommendations within the EPC.

4.2.1.3 With tenants

One interviewee said that in the early stages of MEES they had considered producing guidance for tenants on how to ask their landlords to make improvements. They decided not to as they felt it would not be easy for tenants to do this.

4.3 A possible combined approach going forwards

Stakeholders referred to authorities who were considering combined approaches with both MEES and HHSRS. It was suggested that there does seem to be growing evidence that local authorities accept that F and G rated properties are sub-standard and, while recognising that there is not an exact parallel between Excess Cold hazards and F and G rated properties, action can be taken on very inefficient properties.

"If we find F or G rated properties, we might just take action through HHSRS rather than relying on Trading Standards."

5 Barriers

5.1 Encouraging action on energy efficiency

5.1.1 Within councils

Stakeholders considered that levels of engagement with the PRS varies between councils and that levels of engagement could be influenced by local political views.

Political will is key to delivering improvements to the sector. It was considered that the changing demographics of elected members (e.g. more councillors who rent) will support action, along with more constituents raising the issue. There is also a need for an engaged individual to spearhead action and that that the narrative of fuel poverty needs to change (in that it is not just the elderly that are fuel poor).

It was considered that there are political cultures within councils that impact on delivery with Conservative controlled councils more likely to focus on a supportive relationship with PRS landlords, and Labour controlled councils more likely to be enforcement focussed.

“Local authorities are broadly aware of what they are supposed to be doing, but the extent to which they are doing anything about it comes down to resources and political will.”

“We brought in a Selective Licencing scheme and (senior management) are supportive of raising housing standards.”

Senior buy in is required to support raising standards in the PRS. One council reported achieving this through the introduction of a Selective Licencing scheme.

It was thought that Government should build the case for improving energy efficiency in the PRS for landlords.

It was suggested that there should be guidance on engaging with public health on housing standards. This should include reference to the NICE guidance about cold homes.

“We need a better understanding of the costs to society - health, economy, etc. We won't see money transferred from the health sector until this happens. Someone is going to have to release money and that will only happen when the benefits are properly recognised.”

As noted in section 2.1.1.7 stakeholders frequently referenced the lack of resources in the context of ongoing budget cuts, additional responsibilities placed on them through expanding HMO licencing requirements and MEES and an increasing PRS.

Environmental Health departments have seen significant cuts to their resources. The Chartered Institute of Housing has highlighted that local authorities had reduced spending on enforcement activity by a fifth between 2009–10 and 2015–16 and suggested that this trend will continue with further planned cuts in public expenditure⁹⁰.

Stakeholders noted stark differences between council resource levels with even the biggest urban authorities sometimes having only a few EHOs⁹¹. As a consequence, local authorities struggle to deliver services, particularly in rural districts. The delegation of powers to other authorities, or shared services, could be a solution in these cases.

While there is data available to help map the PRS sector⁹², local government do not have the resources or the skills to map the data and use it effectively to target inefficient properties.

Many local authorities do not have the resources to enforce existing housing standards. It was felt that local authorities used to have dedicated officers working with PRS landlords proactively, but that with a focus on austerity it is now more about reacting to complaints.

"We would like to be more proactive and work with landlord and tenants etc, but we can't with current staffing levels and other priorities."

Stakeholders raised the issue of skills in terms of the competency of officers (it was suggested that there has been an influx of less experienced and qualified staff), the lack of in-house EPC assessors and, as noted above, the inability to collate, map and extrapolate data to target inefficient PRS properties.

BEIS have stated that burden funding to support the implementation of the MEES regulations will be provided to councils, with the amount to be determined following pilots. There is concern that the pilots will be focused on how to implement the regulations at the lowest cost, as opposed to best practice approaches that could maximise improvements across all housing standards.

The delegation of powers under MEES was highlighted as a key barrier. The MEES guidance notes that *"Enforcement authorities can choose which function they wish to use to enforce the minimum standards regulations"*, either through Trading Standards or Environmental Health. (Trading Standards hold

⁹⁰ Written evidence submitted by the Chartered Institute of Housing [PRS 031]:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/housing-communities-and-local-government-committee/private-rented-sector/written/74252.html>

⁹¹ House of Commons, Housing, Communities and Local Government Committee, Private rented sector - Fourth Report of Session 2017–19: <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/440/440.pdf>. Written evidence submitted by ARLA Propertymark:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/housing-communities-and-local-government-committee/private-rented-sector/written/74289.html>. ARLA Propertymark highlighted that Birmingham City Council, Europe's largest local authority, only has five EHOs to cover a city of 1.1 million people.

⁹² Data includes EPC, Tenancy Deposit Scheme, council tax and benefits data.

responsibility for domestic EPC enforcement.) There are concerns that this could hinder effective implementation of minimum standards, particularly in two-tier areas, where Trading Standards' functions are held at county rather than district level. Environmental Health departments hold additional housing enforcement powers, and so some stakeholders consider that Trading Standards holding responsibility for enforcement as a potential missed opportunity to enforce wider housing standards across the PRS.

Stakeholders felt that there is a need for a coordinated approach and consistent messages where the responsibility for HHSRS and MEES is split.

"We just need to work well with Trading Standards. We have good joint working and regular meetings, but Trading Standards have resource issues and housing isn't a priority for them."

Some interviewees cited particular challenges in terms of their local stock, with properties that are expensive to get to an E rating (solid wall, off gas), or listed buildings that are likely to be exempt.

One stakeholder raised the fact that Excess Cold is not given as significant prominence as other hazards such as fire.

"Yet there's a reluctance on Excess Cold to even require off peak storage heaters. It is not seen as such a pressing problem. Fire is seen as the urgent thing no matter the cost. Yet there are 5 times as many deaths from excess cold."

As detailed in figure 9, mortality data for the UK shows that deaths linked to Excess Cold are significantly higher than those for fire. While action to tackle fire safety is essential and a focus should remain on this issue, more prominence needs to be given also to the energy efficiency of properties.

"There has been lots of work (both pre and post Grenfell) on fire safety, but overall fire hazards aren't that common."

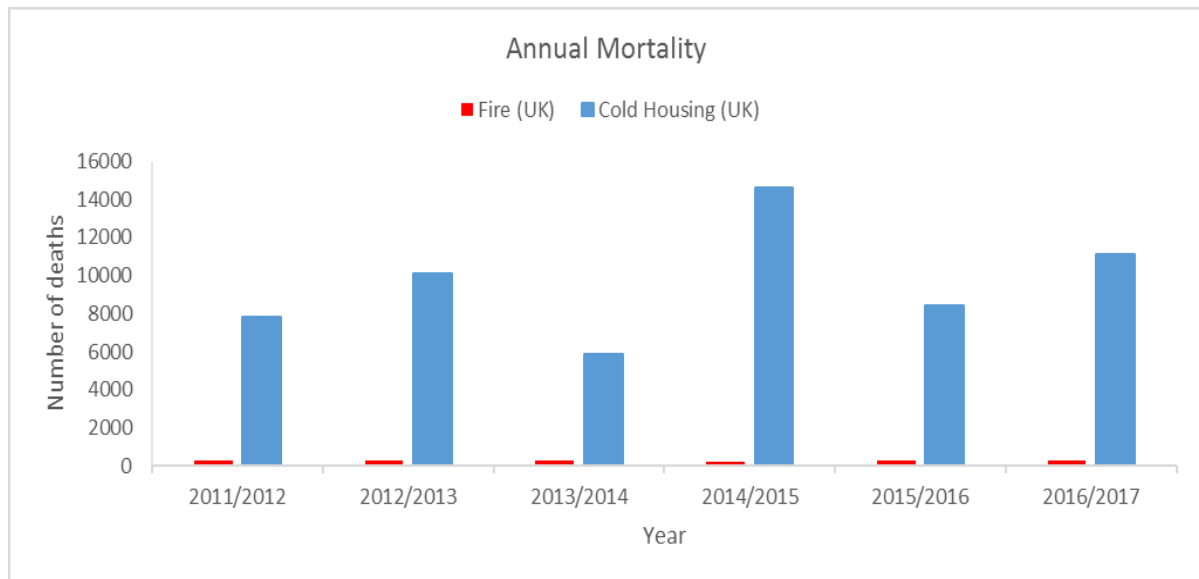


Figure 9: annual mortality from fire and cold housing in the UK across all housing tenures⁹³.

It was felt by some stakeholders that this is because the Government are picking on specific hazards that aren't actually that common, and then passing additional legislation, whereas really serious issues like Excess Cold and Falls and Trips have no clear requirements. The most common example of this was linked to fire hazards and the requirements for landlords to install smoke alarms, but it was stated that fire is only just in the top 10 hazards, whereas Excess Cold and Trips and Falls are by far the most common hazards.

The MEES guidance recommends that landlords commission a post installation EPC, which they say will be the easiest way for a landlord to demonstrate that they have complied with the Regulations. However, this is not a requirement, and so local government could waste time in enforcement on properties that are already complying with the regulations. Government should either change the regulations to specify that a post installation EPC is required or raise awareness that by having one landlords can show compliance.

⁹³ **Fire statistics.** Fatalities in dwelling fires attended by fire and rescue services in England: www.gov.uk/government/statistical-data-sets/fire-statistics-data-tables#fatalities-and-casualties; Fatalities in dwelling fires attended by fire and rescue services in Scotland: www.firescotland.gov.uk/about-us/fire-and-rescue-statistics.aspx; Fatalities in accidental dwelling fires attended by fire and rescue services in Wales: <https://stats.wales.gov.wales/Catalogue/Community-Safety-and-Social-Inclusion/Community-Safety/Fire-Incidents/Casualties/casualtiesaccidentaldwellingfires-by-quarter>; Number of accidental fire deaths in Northern Ireland and those with smoking materials as a direct cause: www.nifrs.org/smoking-materials-biggest-cause-of-accidental-fire-deaths-in-ni-over-the-past-5-years/ / www.nifrs.org/increase-in-accidental-fire-deaths-in-2015/.
Excess Cold statistics. Cold Homes and Excess Winter Deaths: www.nea.org.uk/wp-content/uploads/2018/02/E3G-NEA-Cold-homes-and-excess-winter-deaths.pdf

5.1.2 With landlords

While some local authorities engage with landlords through landlord forums and newsletters, stakeholders considered such methods only target a proportion of landlords which were frequently labelled as 'the good landlords'.

Stakeholders felt that landlords are disparate and, in many cases have limited knowledge of current and new legislation.

"One of the things with landlords is that they are such a mixed bunch. Many own 1 or 2 properties and don't really see themselves as professional landlords. Many are uninformed rather than deliberately flouting anything"

It was considered that local authorities need to take a multi-pronged approach to engaging with landlords as a result.

The cost to landlords of undertaking work was cited as another barrier.

"Landlords can just say they can't afford it and then we can get a bit stuck".

5.2 To raising awareness of HHSRS and MEES

There were contradictory views on the level of awareness of MEES and HHSRS in the PRS.

5.2.1 Within councils

"If we had the resource to do more proactive work, it would make a huge difference. Most people don't know anything about MEES".

Additional resources were, unsurprisingly, cited as something that would help overcome this barrier.

Another key barrier identified was the lack of enforcement of EPCs by local authority Trading Standards, and the lack of EPCs in HMOs. There were also concerns raised about the quality of EPCs.

5.2.2 With landlords

Several stakeholders felt that there was good awareness of HHSRS with landlords and that many are now becoming aware of the MEES.

"MEES is a method to engage with landlords and getting them to listen".

However, it was also considered that MEES obligated landlords of properties that cannot be brought up to EPC band E have not yet understood that they will still have to invest in measures up to the cost cap (once introduced, i.e. they cannot simply do nothing). This needs to be widely communicated by government to all landlords as part of the implementation of MEES.

It was suggested that smaller managing and letting agents have no interest in improving the energy efficiency of properties as there is no money in it for them. Whilst agreeing with actions to improve the

"Agents charge more just for showing a tenant an EPC".

sector, it was felt that any additional administration requirements can result in additional charges for the landlord.

It was widely acknowledged that there is confusion between HHSRS and MEES. Landlords may have removed a Category 1 Excess Cold hazard from a property, but there would be no guarantee that the property will reach EPC band E and be in compliance with MEES. Alternatively, EPC bands E and D properties can still be considered to have a Category 1 Excess Cold hazard.

There was a question raised at the stakeholder workshop about whether MEES requires measures to be undertaken in the order they are listed on the property's EPC. It was suggested that *"if for some reason the most expensive option is first, it may be grounds for an exemption and hence nothing will get done"*. This is incorrect. EPCs are structured so that EPC measures are listed in a standard format. For example, loft insulation is first, wall insulation second. Since 77% of PRS properties have un-insulated solid walls, many landlords are likely to see solid wall insulation towards the top of the list of recommendations. However, this does not mean that these properties are exempt from the regulations since *"there will almost always be multiple paths available that bring an F or G rated property up to an E rating"*⁹⁴.

5.2.3 With tenants

Many stakeholders suggested that tenants do not know about their rights and the requirements on their landlords. Tenants are also unaware to ask for EPCs when renting properties, or that EPCs provide energy cost data.

"Tenants are worried about repercussions (security of tenure, retaliatory eviction, raised rents, losing secured tenancies/ peppercorn rents) and enforcement activity. We are very careful in how we approach this."

It was noted that some tenants refuse to proceed with a HHSRS inspection whilst others don't want measures to be installed due to disruption (e.g. surveys and installation), or that they may.

There were comments that tenants can be a difficult group to reach. One stakeholder noted that successfully engaging tenants was key to effective enforcement. They described cases where referrals into enforcement teams had been made by external agencies. Tenants were not engaged and therefore missed appointments with officers and refused measures.

⁹⁴ The domestic private rented property minimum standard - Guidance for landlords and Local Authorities (2017): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/713159/Domestic_Private_Rented_Landlord_Guidance_-_June_18.pdf

5.3 Enforcing HHSRS and MEES

There needs to be guidance to local authorities and landlords highlighting that while there is common ground between HHSRS Excess Cold hazards and MEES, there are distinct differences⁹⁵. Simply because a landlord has met their obligation under MEES, it doesn't mean that they cannot be served an improvement notice under HHSRS for an Excess Cold hazard. We need to avoid creating the perception that in meeting MEES obligations, landlords cannot be prosecuted under HHSRS. Government should also work with the FTT on this issue. There are concerns that should the FTT create an 'acceptable standard' for energy performance through MEES, that practitioners will have HHSRS enforcement issues with any dwelling above bands F or G.

5.3.1 HHSRS

"It would be great to be able to proactively go out to the properties that seek MEES exemptions to inspect for a Cat 1 HHSRS hazard as they will probably have one. But we won't have the resources to do this."

Resources was an issue raised by all stakeholders. This was both in terms of the number of officers working on housing issues, including energy efficiency and the lack of experienced officers.

Out of date guidance, a lack of worked examples, plus uncertainty over what measures can be required to mitigate an Excess Cold hazard, have also contributed to a lack of enforcement by local authorities.

Tribunals were also reported by some stakeholders to be a major drain on resources. It was suggested that they have become a bigger thing than they were meant to be (for example, with panels taking longer to consider cases; legal counsel being present at all cases and officers having to spend considerable time with counsel for preparation).

5.3.2 MEES

Whilst there was some concern that councils aren't prepared for the introduction of MEES, some stakeholders felt that BEIS' proposed pilots will help to confirm what the barriers to implementing MEES are and how they could be overcome.

"There is the risk that councils aren't aware or prepared [for the regulations]. [This is] partly to do with difficulties on the no cost issue, and the political situation over the past 12 months which is unprecedented".

⁹⁵ HHSRS is a risk assessment system, while MEES is a 'standard'.

"There is no extra resource for us to implement it. And there's lots of other regulations that we are expected to implement."

Resources were again raised as an issue raised by all stakeholders. The lack of burden funding at the beginning of the regulations being implemented was considered a key barrier to successful implementation of the regulations.

Lack of enforcement of EPC requirements by Trading Standards Teams will hinder MEES. Without an EPC, MEES is not enforceable.

Some interviewees felt that there was likely to be a high potential for landlords to seek exemptions in their areas, particularly where solid wall properties and old houses converted to flats were prevalent.

In addition, the current 'no cost' requirement also makes the regulations far more administratively complex for local authorities as enforcement agents. If a landlord chooses to register an exemption from the regulations on the basis that the changes would involve cost to them, they simply have to provide a self-certified narrative explanation for why no suitable funding could be obtained to fully cover the cost of installing improvements. Stakeholders questioned how local authorities can check the validity of self-certified statements.

Numerous stakeholders identified that the cost cap needs to be increased or eliminated altogether to enable action to be taken forward.

"We should be able to insist that all properties are uprated to an E at least, irrespective of costs. There are no cost limits on HHSRS. Excess cold is a killer so energy efficiency is important."

Identifying private rented properties is a barrier for some. Whilst some councils noted that they had yet to consider how they were going to identify properties that don't meet MEES, others have built up reasonable knowledge of where their privately rented properties are and know how they can identify F and G properties. These councils feel that the barrier isn't identifying the properties – it's doing something after they've been identified. The current lack of clarity and certainty about how it will work was felt to be an issue (e.g. the recent consultation).

"We don't know where the PRS is"

"We have estimated that there are 1,500 F and G rated properties in our area, but there are an estimated 15,000 residents in fuel poverty. Where do we focus our efforts?"

"I don't know what EPC data we have or can get. I'm not sure about this. Is there a central depository?"

Government needs to take steps to support local authorities in implementing MEES. This should include MEES enforcement being added to the list of functions that local authorities can use Tenancy Deposit information for. This can be done by making regulations under Section 212A(7) Housing Act 2004 (inserted by Section 128(3) Housing and Planning Act 2016). Without this, local authorities will be unable to use the Tenancy Deposit information to match landlord details with available EPC data to target F and G rated properties.

The 'soft start' to MEES implementation (applying only to new tenancies from 2018) could reduce the effectiveness of enforcement activity before the April 2020 (when it will apply to all rented properties). Councils who are already actively targeting F and G rated properties in their areas could find that their time is wasted as the properties being targeted may not yet be required to meet the requirements set out by the regulations. Local councils will be unable to track the tenancy changes of individual properties. This said, the time in between now and April 2020 should be used to raise awareness of the regulations to landlords and refer properties into existing energy efficiency programmes.

5.4 Engaging with the energy efficiency sector

Questions have been asked about whether the energy efficiency sector is ready to deliver on the regulations. The general consensus from the industry is that they are ready, but that PRS landlords are not.

Stakeholders in the energy efficiency industry noted their readiness to work with landlords to fulfil regulation requirements, however it was felt that landlords will use their standard building contractors to undertake works rather than accredited energy efficiency installers. The work of Each Home Counts and the creation of the new Trustmark could help landlords to find appropriate specialist contractors.

Despite a general consensus that the industry is ready to deliver, some energy efficiency industry stakeholders noted that the decline in energy efficiency activity in housing in the last few years had led to capacity issues, a reduction in knowledge and skills available in the sector and increasing cases of rogue traders, all of which could reduce the impact of the regulations.

It was noted that installers would not develop propositions for the market unless there was some guarantee of them being taken up through enforcement of minimum standards. It is positive however that there are some organisations that have developed insulation and heating propositions for the market as part of partnerships with landlord organisations and accreditation schemes (e.g. EON and the RLA), or offerings as part of local energy efficiency schemes targeting the wider housing sector.

As previously noted, it was thought that Government should build the case for improving energy efficiency in the PRS for landlords.

"What are the economic arguments for improving the energy efficiency of homes in the PRS?"

It was also felt that there needed to be a streamlined system for the energy efficiency industry to engage with local authority enforcement teams for where landlords refused measures.

Some stakeholders had questions about void periods and ECO funding. While many measures can be installed with tenants in-situ, some cases of deep retrofit activity would be best undertaken when tenants are not in-situ, particularly during void periods. It would be useful for government to confirm whether a void property is eligible for ECO funding (or other third-party funding that is focused on tenant eligibility).

As part of this research, we asked several organisations who are delivering energy efficiency programmes in England and Wales how they engaged with the PRS. We asked:

- Whether their programme actively targeted the PRS.
- Whether they worked with tenants and landlords should they be referred into their programme.
- Whether they specifically exclude referrals from the PRS.

"Some of our referral partners (such as local authorities) are actively targeting the PRS so we get quite a few referrals of private tenants. The initial visit doesn't need a landlord's permission.

We identify opportunities to install energy efficiency measures funded through ECO, we do follow these up in all cases. However, we often find that getting permission from a landlord can be a big challenge."

"Our general approach in the PRS is that we are always open to any referrals from that sector and are keen to do more, given the usually higher levels of fuel poverty in that sector.

Much of this work has been through LA partners to identify the more amenable landlords and work with them, often integrated with the wider PRS accreditation schemes that some LAs operate to encourage private landlords to engage and raise overall standards.

In reality it has been and remains a tough market to access at any scale, as other than a few more enlightened ones, many private sector landlords have a default position to defer paying for heating (or other energy efficiency) improvements if they can. It remains to be seen how much effect the new requirements for PRS Landlords to ensure their properties meet minimum standards that are due to come in will have in the short-term at least, but we are keen to do more work in this sector wherever it is feasible to do so".

The sector believes that the key to delivering improvements in the PRS will be ensuring that local government is well-resourced to work with landlords to ensure minimum standards through both HHSRS and MEES. It was considered essential that the current minimum standards are effectively implemented so that this activity can be replicated as the energy performance standards increase over time (MEES). This will support economic growth in the energy efficiency sector and the creation of jobs.

5.5 Wider PRS issues

It was felt that there needed to be a greater understanding of 'rent-to-rent' models (also known as 'rent the rented' and 'multi-let' models). It will be difficult for local government to enforce against landlords when there are multiple layers of letting. These contractual arrangements take time and resources to understand.

The high demand for housing was cited as a barrier in some areas, with some people reportedly happy to take on substandard conditions for lower rents. This was particularly true for 'protected tenants', who will fear being evicted or having their rents raised. It was suggested by some stakeholders that selective licensing is a route for targeting such households as this system takes 'complaints' out of the process as councils are proactively targeting landlords to meet standards.

"It's partly about cultural attitudes towards tenancy, as renting is seen as a second-rate housing option. The attitude is 'we need to buy' and if they rent a house they have very few rights."

It was also felt that there is a strong lobby in favour of landlords, but not for tenants.

It was suggested that an increasing number of landlords do not know that tenants are in receipt of benefits. It is believed that this comes from fear on the part of the tenant that landlords will not rent to them, and the shift to Universal Credit is making this worse. However, this

means that landlords will not know that they may be entitled to grant support through ECO and action may not be taken to improve the energy efficiency of the property as the costs go above the proposed cost cap.

Stakeholders also wished to see the enforcement of housing standards be kept separate from other enforcement action, such as immigration because taking a combined approach makes tenants reluctant to engage.

6 Recommendations

This research project has identified a number of recommendations around improving the implementation and enforcement of HHSRS and MEES, for government (national, regional and local), landlords and their representatives, tenant advice services and the energy efficiency sector.

6.1 Key overarching recommendations

- **Resourcing:** National (and, where relevant, regional) government needs to ensure that local government is adequately resourced to proactively implement both MEES and HHSRS and could usefully offer guidance and advice on how these services can be implemented as cost effectively as possible. This should include guidance on how charging for enforcement and the civil penalties regime can be used to effectively resource HHSRS enforcement activity on a full cost recovery basis. Local government also requires confirmation of when MEES burden funding will be allocated to them. Government could also consider funding some kind of regional or sub-regional enforcement activity that could be used by those councils lacking their own enforcement resources (this has been termed by some stakeholders as an 'EHO of last resort'). Similarly, local authorities need to ensure that their enforcement teams are well supported and adequately resource, by fully using the powers available to them to charge for enforcement action and for non-compliance.
- **Joined up approach:** Local government needs to develop a joined-up approach to implementing HHSRS and MEES. National government could assist by issuing guidance and examples of how best to do this.
- **Benefits to landlords:** National government should work with the energy efficiency sector to build the evidence base around the benefits to landlords of having highly efficient properties, including reduced rent arrears, reduced void periods and increased rental and asset value. These should be publicised to landlords and their representatives alongside work to raise awareness of MEES with both landlords and tenants
- **Continue to restate the long-term trajectory of the regulations:** This will help landlords to understand their long-term requirements and can support the delivery of whole house retrofit approaches, thus minimising disruption for tenants and avoiding multiple interventions by landlords.

In addition, a number of specific recommendations were identified, as detailed in the following sections.

6.2 Government – all tiers

- **Ensure HHSRS and MEES are implemented alongside wider powers introduced by the Housing Act 2004 and the Housing and Planning Act 2016.** This includes:
 - Guidance on how to use HHSRS and MEES together to maximise action on energy efficiency, using HHSRS where serious and/or additional hazards have been identified and where the vulnerability of the tenant requires immediate action be taken. For example, gaining access to the property and undertaking works by default, prohibiting

the use of the property and requiring works that go above the cost cap proposed under MEES.

- Using HHSRS where an exemption has been lodged for MEES (e.g. in relation to the cost cap) and where a Category 1 Excess Cold hazard is anticipated to exist.
- Requiring EPCs information to be collected as part of any selective licensing and HMO licensing schemes in order to support the enforcement of HHSRS and MEES.
- **National, regional and local government, as well as the energy efficiency industry, should work to raise the profile of improving energy efficiency with landlords.** This will support action to reduce health inequalities for those households in fuel poverty, whilst supporting economic growth in the energy efficiency sector. Following the publication of the Clean Growth Strategy, bold action and a strong commitment are required from government to meet the country's carbon and fuel poverty targets. This action could be supported through the introduction of incentives and performance indicators to encourage action at the local level and should be linked to Home Energy Conservation Act (HECA) activity.

6.3 National government

- **Support local government in the identification of sub-standard properties.** This includes:
 - Enabling local government to use data, such as Council Tax and benefits data. Any guidance should include a statement from the Information Commissioner's Office (ICO) on how this data can be used and guidance on the impact of the new General Data Protection Regulations requirements.
 - Supporting local government to upskill officers to effectively use these data sets to target the PRS.
 - Adding MEES enforcement to the list of functions that local authorities can use Tenancy Deposit Scheme (TDS) information for.
- **Clarify the relationship between minimum housing standards and the use of grant funding and fiscal incentives** (e.g. where grant funding cannot be used when measures are a legal requirement):
 - Confirm that grant funding is only available before enforcement action is taken.
 - Require that grant funding bodies and energy efficiency installers to liaise with local government enforcement teams so that appropriate enforcement action can be taken in cases where landlords are offered grant funding, but they, or the tenant, refuse.
 - Promote the inclusion of the PRS within in the ECO 'flexible eligibility' mechanism criteria.
 - Consider reintroducing the Landlords Energy Saving Allowance (LESA).
- **Consider how to overcome the challenges of improving the energy efficiency of flats,** which make up a quarter of F and G rated PRS properties. This includes:
 - Leasehold properties, where terms of leases can prevent structural works, including energy efficiency, being undertaken.
 - Converted flats, which tend to suffer from poor dwelling design and lower energy efficiency, yet solutions are expensive and difficult to implement.

- Provide guidance on how local government officers can play an active role when **discharging wider duties**, including homelessness, for example by ensuring or requiring that such households are housed in safe and warm properties, free from hazards.
- Focus action on properties where tenants are receiving **housing benefit**. Minimum standards, including but not limited to energy efficiency, should be met by landlords when receiving public funds.
- Building on MHCLG's Rogue Landlords campaign, **raise awareness** of HHSRS and MEES regulations by delivering a national campaign to inform landlords of their requirements and tenants of their rights.

6.3.1 HHSRS

- **Update the Operating Guidance**, and offer training where appropriate, to ensure that there is consistent implementation of HHSRS across the country, including:
 - Update the health outcomes statistics to reflect the latest data on impacts of Excess Cold and Damp and Mould Growth on occupant health.
 - Update the energy performance statistics to reflect the latest data on housing standards.
 - Clarify the powers of EHOs in dealing with fuel poverty so the circumstances under which EHOs can take action are clearer.
 - 'Affordability' needs to be clearly defined within the guidance, which mentions but does not clarify what it means for a dwelling to be able to be 'economically maintained at reasonable temperatures'. This has led to different approaches by local government and variable outcomes at FTT appeals.
 - Provide guidance on the relationship between energy efficiency ratings, Standard Assessment Procedure (SAP), and HHSRS Excess Cold hazards, and determine whether there is a SAP proxy that can be used to support the identification of Excess Cold hazards⁹⁶.
 - Provide guidance on what measures are appropriate to require in order to mitigate an Excess Cold hazard, whilst providing an affordable heating source.
 - Provide additional worked examples for EHOs, including borderline cases.
- **Review significant FTT decisions**, in consultation with EHOs and wider industry stakeholders, to identify and update areas of the HHSRS Enforcement Guidance.
- **Provide open access to BRE's Excess Cold Calculator** to enable councils to build the evidence base to take to Tribunal appeals.

6.3.2 MEES

- Continue to **support local government in the implementation of MEES** by:

⁹⁶ A HHSRS assessment would still be required to confirm the presence of Excess Cold, and any additional hazards.

- Providing template procedure documents for local authorities to use to prepare for the enforcement of MEES.
- Providing guidance on local government delivery models where the delegation of MEES falls to Trading Standards (which can be in a separate department or organisation in the case of two tier council areas) to maximise activity to raise standards.
- **Consider the impact of exemptions and how they can be mitigated** within the current regulations (and any amendments following future consultations). This includes:
 - The cost cap.
 - The exclusion of HMOs from the regulations due to properties not requiring EPCs.
 - Listed properties that do not have an EPC due to their heritage status.
- Ensure national, regional and local Trading Standards are **enforcing the requirement to have an EPC**.
- **Consider the implications of proposals in the forthcoming call for evidence on EPCs** on the MEES regulations and how any changes to SAP and EPCs will impact on the MEES regulations.

6.3.3 Additional recommendations

- **Consider introducing a nationwide landlord licensing scheme or landlord register** to support the identification of PRS properties.
- **Promote ‘whole house’ retrofit approaches** beyond EPC band E, which could in turn fuel poverty proof a property. (This should also take into consideration the ventilation of properties).
- Consider of the implications of proposals in the **Homes (Human Habitation) Bill**, including whether HHSRS and MEES will require updating.
- **Enforcement of housing standards should be kept separate from other enforcement action** taken against tenants e.g. immigration.

6.4 Regional government

- Support local government by **creating working groups**⁹⁷, such as the London Borough Private Rented Sector Partnership and the Private Officers Housing Group (PHOG), to share best practice.
- Provide access to **regional and local information on housing conditions** and health outcomes, supporting local government to build local knowledge bases for HHSRS assessments and to support the targeting of interventions.

6.5 Local government

- Use a range of data to **identify sub-standard properties**, and the wider PRS, including:
-

⁹⁷ These groups could be geographically based or based on characteristics of an area (e.g. rural/urban).

- EPC database.
- Tenancy Deposit Scheme (TDS) data.
- Council Tax and benefits data.
- Ensure local Trading Standards are **enforcing the requirement to have an EPC**.
- **Consider whether responsibility for EPCs can be delegated from Trading Standards to Environmental Health** and Housing teams to maximise action on energy efficiency.
- Work with grant funding bodies and energy efficiency installers to **investigate cases where grant funding has been refused** by landlords or tenants.
- **Promote the inclusion of the PRS within in the ECO 'flexible eligibility' mechanism criteria.**
- Consider how both HHSRS and MEES can be applied when **discharging wider duties**, including homelessness, by ensuring that households are housed in safe and warm properties, free from hazards.
- Focus action on properties where tenants are receiving **housing benefit**, whilst taking into account tenant concerns about landlords knowing that they are in receipt of benefits, and links with eligibility based grant funding e.g. ECO.
- **Engage with stakeholders** as follows:
 - **With landlords** on their current and future requirements, providing both advice and access to grant funding and finance, and links to local energy efficiency programmes. This could be through a variety of methods including forums, newsletters and social media.
 - **With tenants**, and advice services, to ensure that they understand their rights. This could be through a variety of methods including neighbourhood forums, newsletters, social media and engagement with frontline staff.
 - **With other local authorities and industry bodies** to share learning and promote best practice approaches.
 - **With local energy efficiency installers** to facilitate engagement with landlords.
- Organisations representing local government, such as the Local Government Association (LGA), should develop **briefings to elected members** on the importance of improving energy efficiency in the PRS.

6.6 Landlords and associated bodies, lettings and managing agents

- Landlords should **consider the benefits** of improving the energy performance of properties, including potential reduced rent arrears and void periods and increased asset and rental value.
- **Engage with landlord associations, local accreditation schemes, local authorities and the energy efficiency industry** to gain advice and support to improving the energy efficiency of their property, and potentially gain access to grants and incentives.
- Organisations representing landlords, including associated bodies, lettings and managing agents, should continue to **raise awareness of minimum standards**.
- Landlords should commission a **post installation EPC** to demonstrate that they have complied with the Regulations. This will help to maximise the effectiveness of MEES enforcement.
- Lettings agents should **offer advice to prospective and existing tenants** about the cost of heating their homes.

6.7 Tenant advice services

- Tenant organisations and advice services should continue to **raise awareness** of the minimum standards and help tenants to understand their rights. This should include the provision of 'laypersons' advice for tenants about HHSRS, MEES and EPCs.
- Continue to work with local authorities to enable **referrals to be made into local enforcement teams** where necessary.

6.8 The energy efficiency sector

- **Prioritise action in the PRS**, the only tenure currently with regulatory minimum energy efficiency standards, which can support economic growth in the sector.
- **Develop market propositions** for the PRS, highlighting the benefits to landlords, including the potential reduced rent arrears and void periods and increased asset and rental value of energy efficient properties.
- Work with national, regional and local government to **engage with PRS landlords** and associated bodies.
- Work with local authorities to enable **referrals to be made into local enforcement teams** where necessary.

Appendix 1: Project contributors

The project team offer our thanks to those who participated in this research project.

Steering Group

Association of Local Energy Officers (ALEO)
Chartered Institute of Environmental Health (CIEH)
Department for Business, Energy & Industrial Strategy (BEIS)
Future Climate
Local Government Association (LGA)
Residential Landlords Association (RLA)

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Carlisle District Council
Chartered Institute of Environmental Health (CIEH)
Citizens Advice
Colchester Borough Council
Cornwall Council
Craven District Council
Department for Business, Energy & Industrial Strategy (BEIS)
East Staffordshire Borough Council
Elmbridge Borough Council
Elmhurst Energy
Energy Saving Trust
Environmental Change Institute: University of Oxford
First Tier Tribunal (FTT)
Greater London Authority (GLA)
Greater Manchester Combined Authority (GMCA)
Groundwork London
Hambleton District Council
HOPE Worldwide UK
InstaGroup
Liverpool City Council
Local Government Association (LGA)
London Borough of Camden

London Borough of Ealing
London Borough of Hammersmith and Fulham
London Borough of Lambeth
London Borough of Lewisham
London Borough of Waltham Forest
London Landlord Accreditation Scheme (LLAS)
Ministry of Housing, Communities & Local Government (MHCLG)
National Energy Action (NEA)
Norwich City Council
Nottingham City Council
Nottingham Energy Partnership (NEP)
Oxford City Council
Private Rented Sector Coalition
Rent Smart Wales
Residential Landlords Association (RLA)
Rochford District Council
Royal Borough of Kensington and Chelsea
SE2
Shelter
Shropshire District Council
Southern Gas Networks (SGN)
Sustainable Energy Association (SEA)
Sustainable Homes
Tai Pawb
Thanet District Council
The Royal Borough of Kingston upon Thames
Thurrock Council
University of Warwick
Warm Zones
Welsh Assembly Government
Winchester District Council

Appendix 2: Policy context

This appendix provides more detailed information on domestic PRS policies and regulations covered in section 2.

Houses in Multiple Occupation (HMO)

Part 2 of the Housing Act 2004⁹⁸ introduced licensing requirements for Houses in Multiple Occupation (HMO) across England. The HMO licence enforcement provisions came into force on 6 July 2006; and after this date it was an offence to operate a licensable HMO without a licence.

The aim of licensing was to raise management and amenity standards in the PRS, since such properties are often poorly managed and in poor physical condition. Licensing sought to raise the standards of such accommodation and will ensure that landlords are managing their HMOs to the required standards.

DCLG guidance⁹⁹ indicated that local authorities could undertake HHSRS inspections when they are carrying out licensing activities. While a HHSRS assessment is not part of licensing procedures, there is also a duty under HMO licensing for local authorities to be satisfied that there are no HHSRS Category 1 hazards within a property within 5 years of receiving a license application.

When the regulations were introduced large HMOs were deemed higher risk and consequently they were all required to be licensed regardless of where the HMO was located. Large HMOs were defined as:

- Comprising three or more storeys;
- Occupied by five or more people living in two or more single households; and
- Occupiers share basic amenities such as toilet, bathroom and kitchen facilities.

Some local authorities sought to implement additional licensing schemes to cover smaller HMOs to tackle poor housing conditions in their area.

Following on from a consultation, the Government announced in December 2017¹⁰⁰ that mandatory property licensing of HMOs would be extended to bring smaller HMOs into the licensing regime¹⁰¹. It is estimated that this will impact 160,000 HMOs.

⁹⁸ www.legislation.gov.uk/ukpga/2004/34/part/2

⁹⁹ DCLG, Licensing of Houses in Multiple Occupation in England - A guide for landlords and managers, 2007: www.gov.uk/government/uploads/system/uploads/attachment_data/file/15652/HMO_Lic_landlords_guide.pdf

¹⁰⁰ DCLG, Rogue landlords put on notice as government announces tough new powers, December 2017, www.gov.uk/government/news/rogue-landlords-put-on-notice-as-government-announces-tough-new-powers

¹⁰¹ The Housing Act 2004 allows the Secretary of State to prescribe the type of HMO that falls within the definition of mandatory licensing. The prescribed description has not been updated since 2006 when licensing came into force.

The new definition for HMOs required to be licensed will be:

- All HMOs with five or more occupiers living in two or more households, regardless of the number of storeys. (This effectively means that the storey requirement will be removed from the definition).
- Purpose built flats where there are up to two flats in the block and one or both of the flats are occupied by five or more persons in two or more separate households.

Previous research found that some local authorities prioritise HMO licensing where there are large numbers of HMOs in their area. This is particularly true in areas with large student populations. A frequently referenced example is that of Birmingham City Council, Europe's largest local authority, which only has five Environmental Health Officers to cover a city of 1.1 million people¹⁰². Stakeholders considered that councils that focus on HMOs, and the recent changes in the definition, will mean that less time will be spent on proactive HHSRS enforcement.

HMOs and energy efficiency

HMOs can represent some of the poorest performing properties in terms of energy efficiency in the PRS¹⁰³. As previously noted, there is no direct requirement for HHSRS inspections as part of HMO licensing, the local authority needs to be satisfied that there are no Category 1 hazards (including Excess Cold) within a property within 5 years of receiving a license application.

One stakeholder noted the potential influx of vulnerable households into HMO properties following changes to Housing Allowance rules in April 2018. Single person households (under the age of 35) will now only receive a proportion of welfare support than they could access before, and there is concern that this is causing more vulnerable, low income households into HMO properties. However, there is not any data to support this trend at the time of publishing.

Where HMO licensing is in operation there is an opportunity to require EPCs to be collected to support the implementation of HHSRS and MEES. Proactive HHSRS inspections can also be undertaken to ensure compliance with licensing conditions and can lead to the identification of previously unknown hazards.

¹⁰² ¹⁰² House of Commons, Housing, Communities and Local Government Committee, Private rented sector - Fourth Report of Session 2017–19: <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/440/440.pdf>. Written evidence submitted by ARLA Propertymark: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/housing-communities-and-local-government-committee/private-rented-sector/written/74289.html>.

¹⁰³ Future Climate and National Energy Action, Fuel Poverty and Houses in Multiple Occupation: Practitioners views, March 2016: www.nea.org.uk/research/research-database/fuel-poverty-houses-multiple-occupation-practitioners-views/

Selective licensing

Part 3 of the Housing Act 2004¹⁰⁴ gave powers to local authorities to designate areas, or the whole of the area within their district, as subject to selective licensing in respect of privately rented accommodation.

There are a number of conditions that need to be met before applying selective licensing. A selective licensing designation could be made if the area to which it relates satisfies one or both of the following conditions:

- *The area is one experiencing low housing demand (or is likely to become such an area) and the local authority is satisfied that making a designation will, when combined with other measures taken by the local authority, or by the local authority in conjunction with others, would contribute to an improvement in the social or economic conditions in the area; and*
- *The area is experiencing a significant and persistent problem caused by anti-social behaviour and that some or all private sector landlords in the area are not taking appropriate action to combat the problem that it would be appropriate for them to take; and the making of a designation, when combined with other measures taken by the local authority, or by the local authority in conjunction with others, will lead to a reduction in, or elimination of, the problem.*

The law states that any decision to implement a selective or additional licensing scheme must be consistent with the local authority's housing strategy, that the local authority is satisfied that there are no other courses of action that might provide an effective remedy, and finally that the introduction of a licensing scheme will significantly assist in dealing with the problem.

The designation of an area for selective licensing then requires PRS landlords to obtain a licence to let their properties.

While there is no direct requirement for HHSRS inspections as part of selective licensing, the local authority needs to be satisfied that there are no Category 1 hazards (including Excess Cold) within a property within 5 years of receiving a license application.

The regulations also require that any selective licensing scheme that covers more than 20% of the local housing authority's area or 20% of PRS homes could only be introduced with national government approval¹⁰⁵. Bodies such as the Greater London Authority (GLA) is calling for these powers to be transferred to a regional level¹⁰⁶.

¹⁰⁴ www.legislation.gov.uk/ukpga/2004/34/part/3

¹⁰⁵ DCLG, Selective licensing in the private rented sector - a guide for local authorities, March 2015: www.gov.uk/government/uploads/system/uploads/attachment_data/file/418551/150327_Guidance_on_selective_licensing_applications_FINAL_updated_isbn.pdf.

¹⁰⁶ London Mayor claims new housing powers: www.ehn-online.com/news/article.aspx?id=16429.

Selective licensing and energy efficiency

As detailed in the HHSRS: Your power to warm homes in the private rented sector toolkit¹⁰⁷, the London Borough of Newham designated the Little Ilford Neighbourhood Improvement Zone (NIZ) as a selective licensing area. This was the first selective licensing scheme in London and the South-East and believed to be the first scheme to address energy efficiency.

Some local schemes also require landlords to provide copies of EPCs as part of the selective licensing process, which can support the enforcement of MEES.

The Government's Committee on Fuel Poverty recommended in their annual report¹⁰⁸ that to ensure adequate enforcement of landlord's obligations, a nationwide landlord licensing scheme should be introduced to drive up standards in the PRS and support action to eradicate fuel poverty. Local authorities should also have adequate resources to monitor and take enforcement action. They also recommended the introduction of a nationwide register to support enforcement.

Where selective licensing is in operation there is an opportunity to require EPCs to be collected to support the implementation of HHSRS and MEES. Proactive HHSRS inspections can also be undertaken to ensure compliance with licensing conditions and can lead to the identification of previously unknown hazards.

Energy Performance of Buildings (England and Wales) Regulations 2012

The EU Directive on the Energy Performance of Buildings came into effect in 2007 and was transposed into UK regulations through the Energy Performance of Buildings (England and Wales) Regulations 2012. The regulation came into effect on 9 January 2013 and have subsequently been amended in 2013, 2014 and 2015. It requires buildings to have an EPC following construction or when they are to be sold or rented.

DCLG guidance¹⁰⁹ highlights that *"the principle underlying both the Directive and the regulations is to make the energy efficiency of buildings transparent, inform occupiers and users about their building's or system's current energy performance and make recommendations on how to improve energy efficiency"*.

¹⁰⁷ National Energy Action (NEA), Impetus Consulting Ltd and Blooming Green, 2011, HHSRS: Your power to warm homes in the private rented sector National Energy Action (NEA), Impetus Consulting Ltd and Blooming Green, 2011, HHSRS: Your power to warm homes in the private rented sector.

Toolkit: www.eagacharitytrust.org/app/uploads/2016/03/HHSRStoolkit2014update.pdf

¹⁰⁸ Committee on Fuel Poverty, Annual Report 2017:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/652701/CFP_report_formatted_-_final.pdf

¹⁰⁹ DCLG, Improving the energy efficiency of our buildings, Local Weights and Measures Authority guidance for the enforcement of the requirements of the Energy Performance of Buildings (England and Wales) Regulations 2012 (as amended), March 2016:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/508827/1600315_enforcement_guidance_Final.pdf

The DCLG guidance also states that:

- An EPC is valid for 10 years or until a newer EPC is produced for the same building (no matter how many times the property is sold or rented out during that period).
- Existing occupiers and tenants will not require an EPC unless they sell, assign or sublet their interest in a building.
- A building offered for sale or rent, must include the energy performance indicator for the building as shown on the EPC in any advertisements in the commercial media.

Where an EPC is legally required for a property, then not having one is illegal and could be subject to non-compliance penalties¹¹⁰.

However, guidance issued by MHCLG¹¹¹ highlights that an EPC is not required where the landlord can demonstrate that the building is any of the following:

- A building that is officially protected 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.

EPC enforcement

Qualitative research conducted as part of this project has found some local government Trading Standards teams are not actively enforcing the requirement for rental properties to have EPCs. We have serious concerns that this inaction will diminish the effectiveness of the MEES regulations.

We believe that there are two reasons behind the lack of enforcement: a lack of resources and the fact that these regulations have not been given sufficient priority within national, regional and local Trading Standards bodies (since they are competing with a range of other issues such as consumer protection crime and unsafe consumer goods) and a lack of political will amongst elected members to intervene in the PRS.

¹¹⁰ A property owner and/or landlord may fined between £200 and £500 if they do not make an EPC available to any prospective buyer or tenant.

¹¹¹ www.gov.uk/buy-sell-your-home/energy-performance-certificates

Data on compliance of EPCs was sought by climate campaign group 10:10 via a FOI request¹¹² in 2013. The response stated that while official statistics were not produced in the form requested in the FOI that *"some work was done in 2012 which compared EPC data for England and Wales held on the central EPC Register and other published data sources to provide a picture of EPBD compliance at that time"*.

The figures provided highlight that only 26% of private domestic rentals were complying with the regulations. It is important to note that the response also highlighted that *"the figures were not quality assured in the normal manner of Government statistics. We are, therefore, unable to confirm the accuracy of the data or if the figures are statistically sound."* There are no more recent official estimates. A MHCLG response to a question raised by Caroline Lucas MP¹¹³ (which asked about assessment of trends in the level of compliance) noted that *"the Government does not hold data about the number of buildings in the private rented sector for which an EPC should have been made available but has not been"*.

HMOs and EPCs

EPCs for HMOs are only issued when sold or rented out as a whole property, and so HMOs that have been rented out on a room-by-room basis over the last ten years will not have a current EPC.

Therefore, broadly speaking, HMOs will be out of the scope of the MEES regulations. BEIS MEES guidance¹¹⁴ states 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)"*.

Listed buildings and EPCs

Whether or not EPCs are required for listed buildings has been debated for some time. However, there is no specific exemptions for listed buildings in the Regulations.

The Regulations state that a listed building is exempt from providing an EPC where *"buildings officially protected as part of a designated environment or because of their special architectural or historical merit,*

¹¹² www.1010global.org/sites/default/files/uploads/ckfinder/files/130816%20-%20Final%20response%20letter%20to%20D%20Timms.pdf

¹¹³ 2nd November 2017: www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-11-02/111244/. There was no further update to this question at the time of this report being published.

¹¹⁴ BEIS, The Domestic Private Rented Property Minimum Standard, 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, October 2017:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/669587/Domestic_Private_Rented_Landlord_Guidance_-_Updated_Version.pdf

Exceptions are made where a property in which the unit is situated already has its own EPC covering the entire 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.

in so far as compliance with certain minimum energy performance requirements would unacceptably alter their character or appearance”.

Guidance from DCLG¹¹⁵ states that in order to “*comply with minimum energy performance requirements, many of the recommendations in an EPC report e.g. double glazing, new doors and windows, external wall insulation, and external boiler flues would likely result in unacceptable alterations in the majority of historic buildings. These can include buildings protected as part of a designated environment or because of their special architectural or historical merit (e.g. listed buildings¹¹⁶ or buildings within a conservation area). In these cases an EPC would not be required”.*

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

Both the regulations and the DCLG guidance require property owners to make a judgement on the impact of the recommendations contained within the EPC, seeking advice as necessary from the local authority conservation officer.

Whilst the position initially appears unambiguous, in reality it becomes a continuous feedback loop. Property owners will only know whether the recommendations of the EPC are likely to “*unacceptably alter the character or appearance of a building”* by commissioning an EPC. Recommended measures can include low intrusion improvements, such as low energy lighting, draught proofing, loft insulation, new boilers and heating controls, which can be installed without impacting the historical significance of a building or contravene planning restrictions.

Where listed properties are privately rented, they should have an EPC, and this needs to be enforced by Trading Standards and guidance to landlords¹¹⁷ should be clearer. Where minimum standards cannot be achieved because of the restrictions noted above, then an exemption to MEES should apply, not simply because the property is listed.

¹¹⁵ DCLG, A guide to energy performance certificates for the marketing, sale and let of dwellings - Improving the energy efficiency of our buildings DCLG, December 2017:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/671018/A_guide_to_energy_performance_certificates_for_the_marketing_sale_and_let_of_dwellings.pdf

¹¹⁶ Listed buildings on the Historic England (or its Welsh equivalent) website:

<https://historicengland.org.uk/listing/what-is-designation/listed-buildings>

¹¹⁷ BEIS, The Domestic Private Rented Property Minimum Standard, 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, October 2017:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/669587/Domestic_Private_Rented_Landlord_Guidance_-_Updated_Version.pdf

EPC quality

The energy industry has continually raised concerns about the quality of EPCs and the introduction of the MEES regulations has renewed this debate since landlords will be making investment decisions on the basis of a property's energy performance rating, and the recommendations contained within the EPC. There will be a 'call for evidence' on EPCs later this year.

Other legislation of relevance

Deregulation Act 2015

The Deregulation Act sought to protect PRS tenants from being evicted for making a complaint about poor housing conditions, make the eviction process clearer for both tenants and landlords and help both understand their rights and responsibilities.

Landlords are not able to serve a tenant a valid section 21 eviction notice when the local council has served them with an Improvement Notice. Yet to get to this point, a renter must have made a written complaint to their landlord and failed to get an adequate response, and then complained to their local council. (There are provisions made in the regulations where a renter doesn't have access to an address for their landlord).

Where a local authority has served an Improvement Notice or carried out emergency remedial action a landlord cannot serve a section 21 notice for six months from the date of the Notice.

In addition, landlords won't be able to serve a valid section 21 eviction notice until they have given their tenant:

- A gas safety certificate.
- An EPC.
- A copy of the government's 'How to rent guide'¹¹⁸.

The law is being introduced in two stages:

- From 1st October 2015 the law will apply to renters starting or renewing assured shorthold tenancies.
- From 1st October 2018 the law will apply to all renters on assured shorthold tenancies.

Concerns have been raised by MPs and housing organisations such as Shelter that the new legislation is not being implemented effectively. This is thought to be due to a lack of awareness among tenants, a reduction in local government resources and that the complex nature of the law.

¹¹⁸ How to rent guide, HM Government, July 2018:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/723773/How_to_Rent_Jul18.pdf

Housing and Planning Act 2016

Part 2 of the Housing and Planning Act¹¹⁹ includes a package of measures to help local authorities tackle rogue landlords and letting agents in the PRS. This includes:

- Allowing local authorities to apply civil penalties on landlords of up to £30,000 as an alternative to prosecution for certain specified offences.
- Allowing local authorities to apply for a banning order to prevent landlords and letting agents from continuing to operate where they have committed certain housing offences.
- Creating a national database of rogue landlords and letting agents¹²⁰.
- Allowing tenants or local authorities to apply for a rent repayment order (RRO) where a landlord has committed certain offences (for example operating and breaching a banning order, ignoring an improvement notice or illegal eviction). If successful, the tenant (or the authority if the tenant was receiving universal credit) may be repaid up to a maximum of 12 months' rent.

Further information on the Housing and Planning Act, including links to guidance on RROs, management orders, and banning orders, is available from the London Property Licensing website¹²¹.

Civil penalties

A civil penalty is a financial penalty imposed by a local authority on an individual or organisation as an alternative to prosecution for certain housing offences under the Housing Act 2004 and a breach of a banning order under the Housing and Planning Act 2016.

Landlords found guilty of malpractice can be fined as much as £30,000 under the civil penalties regime. MHCLG has confirmed that councils will be able to retain the income to enable further enforcement activities to be taken forward.

MHCLG has published guidance on civil penalties¹²².

MHCLG notes that the amount of penalty is to be determined by the local authority, and in determining an appropriate level of penalty, local authorities should have regard to the MHCLG guidance which sets out the factors to take into account when deciding on the appropriate level of penalty.

The guidance suggests that local authorities should "*develop and document their own policy on determining the appropriate level of civil penalty in a particular case*" and that they "*would expect the maximum amount to be reserved for the very worst offenders*". Therefore, the amount levied through the

¹¹⁹ <http://www.legislation.gov.uk/ukpga/2016/22/part/2/enacted>

¹²⁰ www.gov.uk/government/publications/database-of-rogue-landlords-and-property-agents-under-the-housing-and-planning-act-2016. The GLA's database can also be found here: www.london.gov.uk/rogue-landlord-checker

¹²¹ www.londonpropertylicensing.co.uk/housing-and-planning-act-2016

¹²²

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697644/Civil_penalty_guidance.pdf

regime "should reflect the severity of the offence as well as taking account of the landlord's previous record of offending".

The guidance suggests that local authorities should consider the following factors to help ensure that the civil penalty is set at an appropriate level:

- a) **Severity of the offence.** *The more serious the offence, the higher the penalty should be.*
- b) **Culpability and track record of the offender.** *A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.*
- c) **The harm caused to the tenant.** *This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.*
- d) **Punishment of the offender.** *A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.*
- e) **Deter the offender from repeating the offence.** *The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.*
- f) **Deter others from committing similar offences.** *While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.*
- g) **Remove any financial benefit the offender may have obtained as a result of committing the offence.** *The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.*

The Greater London Authority (GLA) has established the London Boroughs' Private Rented Sector Partnership. The partnership aims to support London councils in:

- Sharing information about trends in criminal landlord activity across London;
- Sharing best practice approaches to enforcement; and
- Encouraging a more consistent and collaborative approach to enforcement and property licensing schemes across London, to ensure they are effective in driving up standards, but remain light touch for good landlords.

The GLA has developed a resource pack for London Boroughs on civil penalties as part of this activity, as it was felt that there was little guidance or clarity on how local authorities should make use of these

powers. The document details some of the approaches taken by London boroughs who have taken steps to implement these powers.

One approach taken by some councils is the banding scale shown in figure 10. This demonstrates how the severity of the case will determine the enforcement action taken.

Band 1 (£250-£1k)				Band 2 (£2k - £8k)				Band 3 (£10k - £18k)				Band 4 (£20k - £30k)			
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Caution															
Financial Penalty – Rent Repayment Order optional															
		Financial Penalty and Rent Repayment Order Register on Rogue Landlord Database (2 FP within 12M period)													
						Prosecution and Rent Repayment Order Banning Order Offence – register on Database									
										Consider -application to Ban Landlord					

Figure 10: Civil penalties decision making approach.

Another London Borough has created a scoring matrix which requires the enforcement officer to score the offence (using a scale of 1, 5, 10, 15 or 20) for each of the categories below to determine the level of the fine.

- Deterrence and prevention.
- Removal of financial incentive.
- Offence history.
- Harm to tenants (x2 weighting).

Another London borough has developed a matrix outlining six bands of fines, with a higher and a lower band for each of the following categories: moderate, serious, severe. The council’s enforcement policy sets out the baseline level of fine levied under each relevant offence, with a lower and a higher level depending on the landlord’s portfolio size. The baseline levels are then adjusted depending on aggravating and mitigating circumstances.

The GLA guidance also documents the outputs from a MHCLG working group which proposed a seven-step process for setting civil penalty fine levels.

“The first step involves choosing one of three bands for the offence, after which the baseline figure will be set within the band depending on culpability and harm, and aggravating or mitigating factors may then adjust the level further.

Step 1 Establish offence category (up to £10,000, £10,000-20,000, £20,000 and over)

Step 2 Culpability (negligent/reckless/deliberate)

Step 3 Harm (harm or potential harm caused: low, medium, high)

Step 4 Aggravating factors (number of properties owned/ links to other crime/ high levels of profit)

Step 5 Mitigating factors

Step 6 Provisional assessment

Step 7 Check (Is it proportionate? Will it have the appropriate effect?)”

Homes (Human Habitation) Bill

This Private Member’s Bill from Karen Buck MP revived a defeated amendment from within the Housing and Planning Act 2016¹²³.

The Bill seeks to ensure that homes are ‘fit for human habitation’ from the start of any tenancy, and to remain so throughout. Extraordinarily, this is a not a protection currently enjoyed by any renter – social or private – in England. It would apply to all areas of a building ‘in which the landlord has an interest’, including communal areas.

The legislation drafted in the Bill will complement existing local authority enforcement powers, by enabling all tenants to take action rather than relying on the local authority. It is hoped that this will empower tenants, giving them the right to take their landlord to court if they fail to take action to resolve a problem. This is particularly important for local authority tenants, who currently have no truly effective means of redress over poor conditions.

The Bill text reflects the list of 29 hazards from HHSRS, which avoids creating two parallel standards for conditions. This means that additional regulations will not be placed on private landlords (as these are standards they should already be meeting), and as a result the Bill has support from the Residential Landlord’s Association (RLA)¹²⁴ and the National Landlords Association (NLA)¹²⁵.

The Homes Bill, which has been muted as a route for increased action in the PRS, received its second reading on the 19th January 2018 and was supported by government.

¹²³ www.independent.co.uk/news/uk/politics/tories-vote-down-law-requiring-landlords-make-their-homes-fit-for-human-habitation-a6809691.html

¹²⁴ <https://news.rla.org.uk/rla-supporting-karen-bucks-bill/>

¹²⁵ <https://landlords.org.uk/news-campaigns/news/nla-welcomes-government-support-fitness-human-habitation-bill>

Appendix 3: Review of First Tier Tribunal (FTT) Excess Cold appeals

This appendix provides more detailed information on the Tribunal appeal cases reviewed and summarised in section 3. Please note that the review of cases was undertaken by the research team who are not legal experts. The information does not in any way constitute legal advice.

Mr A Davison vs the London Borough of Camden¹²⁶

<i>Re: Improvement Notice on 21 Trinity Court, 254 Gray's Inn Road, London WC1X 8JX</i>	
Date of hearing decision:	21 October 2015
Excess Cold (and other hazards):	Category 1 Excess Cold Category 2 Damp and Mould Growth (<i>'inextricably tied in with Excess Cold hazard'</i>) Category 1 Falls between levels
Property situation:	No central heating - only portable heaters. Solid walls - uninsulated. Casement windows, single glazed and draughty.
Energy efficiency notice requirements:	Installation of insulation to certain internal surfaces of walls that are external (not defined). Secondary glazing to include some form of trickle ventilation. Suitable electrical heating system to be installed to achieve a certain temperature (not defined). Landlord had agreed to install secondary glazing but disagreed with other elements of the Improvement Notice.
Energy efficiency evidence highlighted:	Landlord had data on heating costs (not defined).
Key points to note:	Landlord considered mould a 'lifestyle' issue. Tribunal found no fault with the assessment methods employed.

¹²⁶www.residential-property.judiciary.gov.uk/Files/2015/November/LON_00AG_HIN_2015_20_19_Nov_2015_16_19_38.htm

	Tribunal considered the use of free standing heaters unacceptable, both as to the cost of running and the efficiency.
Tribunal decision and outcome:	Appeal dismissed. Improvement notice confirmed.

Mrs S Okoye vs the Royal Borough of Greenwich¹²⁷

<i>Re: Improvement Notice on 32 Lewisham Road, London, SE13 7QR</i>	
Date of hearing decision:	22 August 2014
Excess Cold (and other hazards):	Category 1 Excess Cold Category 1 Electrical hazards Category 1 Uncombusted fuel gas Category 2 Entry by intruders
Property situation:	Heating system not working.
Energy efficiency notice requirements:	Heating system to be fixed and checked by a Gas Safe registered contractor, and a new certificate obtained to confirm that system is operational.
Energy efficiency evidence highlighted:	Not defined.
Key points to note:	<p>Landlord considered that a rogue tenant caused the problems.</p> <p>The Tribunal agreed with the council that the property was a HMO.</p> <p>Legal counsel from the Royal Borough of Greenwich in attendance.</p> <p>The Tribunal considered that the council went through a proper process to establish whether there were hazards present, and that they had carried out a risk calculation in a proper manner, applying relevant guidance.</p> <p>The council had considered serving a Hazard Awareness Notice but felt that the landlord would not have been compelled to fix the issues within the property. Tribunal agreed.</p>

¹²⁷ www.residential-property-judiciary.gov.uk/Files/2014/August/LON_00AZ_HIN_2014_13_26_Aug_2014_12_18_45.htm

Tribunal decision and outcome:	Appeal dismissed. Improvement notice confirmed.
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Mr Jonathan Thompson and Mrs Deborah Thompson vs South Kesteven District Council¹²⁸

<i>Re: an Improvement Notice on 55 Manthorpe Road, Grantham, Lincolnshire, NG31 8DA</i>	
Date of hearing decision:	3 March 2014
Excess Cold (and other hazards):	Category 1 Excess Cold
Property situation:	Previous gas back boiler and fire. Council EHO had noted that "boiler allegedly cuts out before reaching full power" and "radiators....are sludged". Solid walls (uninsulated). Single glazing to the rear of the property. No access to the loft (insulation levels unknown).
Energy efficiency notice requirements:	Installation of a gas central heating and hot water (fitted during the currency of these proceedings). Replacement of rear windows and doors (fitted during the currency of these proceedings).
Energy efficiency evidence highlighted:	Landlords presented an EPC for the property (rating not defined) and a gas safety records that confirmed that boiler had been in working order.
Key points to note:	<p>The council agreed that there had been errors made. This included relying on unsubstantiated statements from the tenant rather than testing the boiler.</p> <p>The council also noted to the Tribunal that it was difficult to avoid a Category 1 hazard due to the age of the property, and even with new heating, double glazing to the rear, it may not be acceptable without improvements to the insulation of the property. The landlord was unaware of this fact.</p>
Tribunal decision and outcome:	Appeal dismissed. Improvement notice stands.

¹²⁸ www.residential-property-judiciary.gov.uk/Files/2014/March/MAN_32UG_HIN_2013_25_13_Mar_2014_10_42_50.htm

Mr O Elufowoju vs the London Borough of Islington¹²⁹

<i>Re: an Improvement Notice on 61 Citizen House, Harvist Estate, 72 Hornsey Road, London, N7 7NE</i>	
Date of hearing decision:	25 th July 2013
Excess Cold (and other hazards):	Category 1 Excess Cold
Property situation:	<p>One bedroom self contained flat on the 10th floor of a 18 storey block of flats built in the 1970s.</p> <p>No effective fixed heating system. Property heated by portable electric heaters. Working off peak electric storage heaters were in situ, but the tenant refused to use them. The Economy 7 meter had been removed from the property. Lack of draught proofing.</p>
Energy efficiency notice requirements:	<p>Design and install a full electric heating system for the dwelling using off peak storage heaters. The heating system specified should be capable of maintaining internal temperatures (Living room 21C, bathroom 22C, elsewhere 18C when the external temperature is -1C). The system should also be designed so that 90% of the annual heat requirement is available at the off peak rate. Landlord agreed to installing draughtproofing but argued that it should not be a requirement of an Improvement Notice.</p>
Energy efficiency evidence highlighted:	<p>Landlord provided information on Economy 7 electricity prices (Scottish Power).</p> <p>Council submitted a table of comparative industry standard (not defined) heating costs table (not defined) that showed Economy 7 to be the most cost effective option.</p> <p>Council referred to Kassim vs. Liverpool in relation to tenants' being deterred by cost from using a heating system. Tribunal panel agreed that this 'case is authority for the proposition that cost is a relevant consideration in determining whether a hazard exists, and that the councils 'consideration of the cost of heating the property to be reasonable.'</p>
Key points to note:	Referral received from the council's 'Safe & Warm' scheme.

¹²⁹ www.residential-property-judiciary.gov.uk/Files/2013/July/LON_00AU_HIN_2013_8_25_Jul_2013_14_37_25.htm

	<p>Council had sent landlord a Hazard Awareness Notice on 12th March and then served an Improvement Notice on the 4th April.</p> <p>Legal counsel from the London Borough of Islington in attendance.</p> <p>Council had offered the landlord a grant for 100% of the cost of carrying out the works. The landlord was required to submit two itemised quotes, but did not and so the offer of funding was withdrawn.</p> <p>The landlord requested that the council to carry out all of the works listed within the Improvement Notice and to be charged for the works. The council noted that <i>"whilst it had the statutory power to carry out works and recharge the cost when the property owner failed to comply with a notice, it did not have the human resources to administer works merely for the property owners' convenience"</i>. The Tribunal noted that the landlords approach to the grant application had been perverse. Instead of remedying the deficiencies the landlord had appealed the Improvement Notice 'thereby depriving himself of qualifying for a 100% grant for all of the works despite the fact that the submission of a proper grant application would seemingly have involved much less effort than the effort he had been putting into objecting the Improvement Notice.</p> <p>Landlord ordered to pay the council £1,875 as a contribution towards expenses incurred by the council in connection with the proceedings.</p>
Tribunal decision and outcome:	<p>Appeal dismissed.</p> <p>Improvement notice varied (removal of hot water references).</p>

Mr G Cotton vs Nottingham City Council¹³⁰

<i>Re: an Improvement Notice on 39 Leverton Green, Clifton, Nottingham, NG11 8BS</i>	
Date of hearing decision:	11 th May 2017
Excess Cold (and other hazards):	<p>Category 1 Excess Cold (downgraded to Category 2 at appeal)</p> <p>Category 2 Damp and Mould Growth</p> <p>Category 2 Entry by Intruders</p> <p>Category 2 Falls on the Level</p> <p>Category 2 Fire</p>

¹³⁰ www.residential-property-judiciary.gov.uk/Files/2017/May/BIR_00FY_HIN_2017_1_24_May_2017_12_44_26.htm

Property situation:	The property had central heating, cavity wall and loft insulation, double glazing and a good supply of radiators.
Energy efficiency notice requirements:	Install room thermostat, extend heating system into the kitchen and install TRVs throughout the property. Increase loft insulation (150mm > 270mm), install draught proofing.
Energy efficiency evidence highlighted:	Not defined.
Key points to note:	<p>Tenant had originally complained of Excess Heat due to limited control over heating system.</p> <p>Council had argued that the level of loft insulation was not consistent with current Building Regulations. Yet the insulation in situ was thought to have been installed under an energy supplier obligation, and therefore likely to have met Building Regulations at the time of installation.</p> <p>The Tribunal downgraded the Excess Cold Category 1 hazard to a Category 2 hazard as it disagreed with the council's assessment of the hazard as it had used the national average and that the property had central heating, cavity wall and loft insulation, double glazing and a good supply of radiators.</p>
Tribunal decision and outcome:	<p>Appeal dismissed.</p> <p>Improvement notice varied (removal of all requirements other than issues associated with the poorly fitted front door and installation of TRVs on all radiators).</p>

Triplerose Limited vs the Royal Borough of Kensington and Chelsea¹³¹

Re: supplemental cost application following a consent order on 17 St Quintins Avenue, London, W10 6NX

Date of hearing decision:	27 th March 2017
Excess Cold (and other hazards):	Category 1 Excess Cold Category 1 Fire

¹³¹ www.residential-property-judiciary.gov.uk/Files/2017/April/LON_00AW_HIN_2016_17_04_Apr_2017_13_07_35.htm

	<p>Category 2 Falls Between Levels</p> <p>Category 2 Electrical Hazards</p> <p>Category 2 Structural Collapse and Falling Elements</p> <p>Category 2 Collison and Entrapment</p>
Property situation:	External door poorly fitted and draughty. Lack of heating (not defined).
Energy efficiency notice requirements:	Installation of gas central heating, loft insulation and replacement of glazing (cracked glass)
Energy efficiency evidence highlighted:	Not defined.
Key points to note:	<p>The landlord was advised of the hazards and the need to remove them in May 2016. An Improvement Notice was served in August 2018. By the time of the hearing the landlords had carried out the majority of the central heating and therefore the Improvement Notice was quashed (because the majority of the works had been carried out).</p> <p>The landlord did not dispute the necessity of the works outlined in the Improvement Notice but wanted reasonable arrangements for carrying out the requirements whilst sorting subsidence issues.</p> <p>The Tribunal decision upheld the council's right to levy charges associated with the serving of an Improvement Notice.</p> <p>Fee charged by the council was £441. It was stated that this is the council's policy for Improvement Notices to carry a charge to cover officer time in preparing notices. The charge is based on a standard hourly rate of £52 per hour, which was considered to be modest.</p> <p>One tenant in the block did not want the some of the works to be installed.</p> <p>The Tribunal considered that the council had been "<i>indulgent in allowing the [landlord] so much time to provide a timetable for the works</i>".</p>
Tribunal decision and outcome:	Appeal dismissed.

Mr Tolui vs the London Borough of Waltham Forest¹³²

<i>Re: an Improvement Notice on 148 Wallwood Road, London, E11 1AN</i>	
Date of hearing decision:	3 March 2017
Excess Cold (and other hazards):	Category 1 Excess Cold Category 2 x 6 (not defined)
Property situation:	Property was undergoing major structural works to solve damp and install central heating. There was a lack of central heating in the basement kitchen and WC and gaps between floors and walls in the basement living room.
Energy efficiency notice requirements:	Installation of central heating.
Energy efficiency evidence highlighted:	Not defined.
Key points to note:	<p>The landlord had initially approached the council to intervene with a protected tenant who had been in the property for over 50 years and was refusing improvement works to be undertaken. The property was undergoing major structural works to solve damp and install central heating. When the council visited property, it was initially happy with progress of works. However, after the tenant approached the council about how the works could progress with the tenant in situ, and a lack of response from the landlord an Improvement Notice was served. The landlord was away for family reasons (not disclosed). The Tribunal considered that council should have given the landlord more time, but also that the landlord should have disclosed information as to why they were away.</p> <p>The tenant was 80, but this was not specifically referenced in the assessment for the hazards, but more in the general commentary of the case.</p> <p>The Tribunal determined that the council had failed to provide sufficient evidence of a Category 1 hazard. Central heating had already been installed as part of the ongoing works. A previous EHO inspection had scored the property as having a Category 2 Excess Cold hazard and that this was before the central heating had been installed. It therefore concluded that</p>

¹³² www.residential-property-judiciary.gov.uk/Files/2017/March/LON_00BH_HIN_2016_27_08_Mar_2017_12_19_28.htm

	<p>even with a Category 2 Excess Cold hazard present, a Hazard Awareness Notice would have been more appropriate.</p> <p>It was stated that the tenant had moved out and the landlord stated that it was a consequence of the increase in rent due to the improvement works. The landlord agreed to carry out the works provided that they were completed before the property was reoccupied.</p>
Tribunal decision and outcome:	<p>Appeal granted. Improvement notice quashed.</p>

Mr T Hadjimina vs the London Borough of Southwark¹³³

<i>Re: an Improvement Notice on 19 Relf Road, London, SE15 4JS</i>	
Date of hearing decision:	19 th May 2015
Excess Cold (and other hazards):	<p>Category 1 Excess Cold</p> <p>Category 1 Falls</p> <p>Category 2 (not defined)</p>
Property situation:	8 bedroom end of terrace house. Cavity wall insulation incomplete. Extension floor and flat roof inadequately insulated. Central heating controls not accessible (other than a thermostat)
Energy efficiency notice requirements:	Not defined.
Energy efficiency evidence highlighted:	Council evidence base was considered substantial (but not defined).
Key points to note:	<p>Legal counsel from the London Borough of Southwark in attendance.</p> <p>No evidence from the landlord that the extension works complied with the Building Regulations.</p> <p>Landlord accepted that the tenants had made complaints about the cold, but that it was difficult to undertake the works with the tenants in situ. The council noted that they had raised these issues with the landlord since</p>

¹³³ www.residential-property-judiciary.gov.uk/Files/2015/May/LON_00BE_HIN_2015_5_20_May_2015_10_27_37.htm

	<p>December 2012 and suggested that the works could be carried out with the tenants in situ.</p> <p>It was noted that the council had adopted an informal approach in working with the landlord. It had served 3 informal schedules of works (standard council policy) before moving to enforcement. The Tribunal considered that "if anything, the evidence would seem to indicate that the [council] may have been too indulgent in its dealings with the [landlord]. Whilst it is unclear precisely when the [council] formed the view that category 1 hazards existed at the property, it clearly had concerns as far back as December 2012. In the circumstances and given its statutory obligation to take enforcement action in relation to (in particular) Category 1 hazards, it is of some concern that the [council] spent quite so long negotiating with the [landlord] on the basis of informal schedules of works. It may be appropriate for the [council] to review its procedures in the light of this case."</p> <p>Applications for cost applications from both the landlord and the council refused.</p>
Tribunal decision and outcome:	<p>Appeal dismissed. Improvement Notice varied (in relation to falls, not Excess Cold)</p>

Mr A Toms vs Cornwall Council¹³⁴

<i>Re: an Improvement Notice on The Queens Arms, 54 Fore Street, Constantine, Cornwall, TR11 5AB</i>	
Date of hearing decision:	10 th January 2017
Excess Cold (and other hazards):	Category 1 Excess Cold
Property situation:	Not defined.
Energy efficiency notice requirements:	Not defined.
Energy efficiency evidence highlighted:	The Tribunal concluded that little of the expert evidence it heard specifically addressed the existence of the hazard identified in the Improvement Notice, and therefore none of it was conclusive.

¹³⁴ www.residential-property-judiciary.gov.uk/Files/2017/January/CHI_00HE_HIN_2016_13_21_Jun_2017_11_33_17.htm

Key points to note:	Legal counsel from Cornwall Council in attendance. The Tribunal did not accept that the hazard of Excess Cold was correctly identified. It considered that the council had relied on British Standards (BS) (not defined) rather than the HHSRS guidance.
Tribunal decision and outcome:	Appeal granted. Improvement Notice quashed.

Mr A Alsaad vs the London Borough of Islington¹³⁵

<i>Re: a Prohibition Order and an Improvement Notice on Upper Maisonette, 52 Seven Sisters Road, London, N7 6AA</i>	
Date of hearing decision:	15 May 2013
Excess Cold (and other hazards):	Category 1 Excess Cold Category 1 Fire
Property situation:	No central heating. 'Too cold for comfort'. Tenants were using electrical convector heaters.
Energy efficiency notice requirements:	Installation of central heating (either gas or off-peak electric central heating). Draught proofing to be fitted to all windows and external doors. Investigate whether insulation in the loft room is adequate.
Energy efficiency evidence highlighted:	Not defined.
Key points to note:	Tribunal considered electrical convector heaters as an expensive and inadequate form of heating. Legal counsel from the London Borough of Islington in attendance. Fee charged by the council was £550.
Tribunal decision and outcome:	Appeal dismissed. Improvement Notice and Prohibition Order confirmed.

¹³⁵ www.residential-property-judiciary.gov.uk/Files/2013/May/LON_00AU_HIN_2012_36_20_May_2013_09_38_04.htm

Mr J Margaron vs Southend on Sea Borough Council¹³⁶

<i>Re: an Improvement Notice on 108A Ness Road, Shoeburyness, Essex, SS3 9DJ</i>	
Date of hearing decision:	22 nd July 2014
Excess Cold (and other hazards):	Category 2 Excess Cold Category 2 Damp and Mould Growth
Property situation:	No central heating. Tenants using electrical convector heaters.
Energy efficiency notice requirements:	Installation of increased heating to achieve constant temperature throughout dwelling and under occupier control.
Energy efficiency evidence highlighted:	Internal and external temperature readings and an EPC.
Key points to note:	<p>The property was inspected 3 times. It was only at the 2nd inspection that an assessment for HHSRS was made. On the 3rd visit the council highlighted that no works had been undertaken and therefore an Improvement Notice was served.</p> <p>The Tribunal inspected property and there was considerable evidence of damp, although this was considered to be caused by condensation.</p> <p>Tenants were using portable heaters, which could not be ignored. The heating may not be most efficient, but improvement notice needs reliable evidence.</p> <p>The evidence from the council was considered by the Tribunal to be inadequate and incomplete, including the evidence of measurements which was deemed unsatisfactory. The Tribunal concluded that it had been assumed by the council officer that HHSRS is a way of improving property to the best standard - which is not - and that the EPC is of limited value in these cases because HHSRS is not about reaching the best possible standard of efficiency.</p>

¹³⁶ www.residential-property-judiciary.gov.uk/Files/2014/July/CAM_00KF_HIN_2014_2_28_Jul_2014_13_44_58.htm

	The Improvement Notice was quashed. It was noted that this was because the council's evidence was inadequate, and not as the landlord had argued, that the deficiencies had been resolved.
Tribunal decision and outcome:	Appeal granted. Improvement Notice quashed.

Mrs Katia Gorensandu vs the City of Westminster¹³⁷

<i>Re: a Prohibition Order and an Improvement Notice on Flat 4, 38 Gloucester Terrace London W2 3DA</i>	
Date of hearing decision:	20 th February 2014
Excess Cold (and other hazards):	Category 1 Excess Cold
Property situation:	Studio ground floor flat in a Victorian property. Further information on the energy efficiency of the property was not defined.
Energy efficiency notice requirements:	Installation of a central heating system.
Energy efficiency evidence highlighted:	Not defined.
Key points to note:	<p>Legal counsel from the City of Westminster in attendance.</p> <p>Property was used to house homeless people.</p> <p>There was no gas in the building. Therefore, the council agreed to vary the Improvement Notice and sought the installation of a full electric heating system using off peak storage heaters, together with a dual immersion high performance hot water cylinder.</p> <p>Council considered portable heaters were not sufficient to deal with Excess Cold hazards and were an expensive and inefficient method of heating.</p> <p>The Improvement Notice required that the heating system should be capable of maintaining internal temperatures (living room 21C, bathroom 22C, elsewhere 18C when the external temperature is -1C).</p>

¹³⁷ www.residential-property-judiciary.gov.uk/Files/2014/February/LON_00BK_HIN_2013_23_21_Feb_2014_15_08_30.htm

	Fee charged by the council was £250.
Tribunal decision and outcome:	Appeal dismissed. Improvement Notice varied.

Mr M Combellack vs Nottingham City Council¹³⁸

<i>Re: a Prohibition Order and an Improvement Notice on 28A Beech Avenue, Nottingham, NG7 7LL</i>	
Date of hearing decision:	7 th June 2016
Excess Cold (and other hazards):	Category 1 Excess Cold Category 2 x 3 (not defined)
Property situation:	Terraced property converted into 4 flats.
Energy efficiency notice requirements:	To provide a full gas heating system, or to insulate external walls and provide electric heaters.
Energy efficiency evidence highlighted:	A surveyor employed by the council inspected the property.
Key points to note:	The Tribunal determined that the present heating system – a large boiler serving 4 properties in the block - was more than adequate as it was a modern gas fired system with traditional panel radiators, controllable by the tenant by the means of the room thermostat and hot water was available on demand. It was considered that it was not necessary for a separate boiler to be installed within the property.
Tribunal decision and outcome:	Appeal granted. Improvement Notice quashed.

Mr D Blackwood vs Nottingham City Council¹³⁹

<i>Re: an Improvement Notice on 95 Ransom Road, Nottingham, NG3 3LH</i>	
Date of hearing decision:	20 th August 2015

¹³⁸ www.residential-property.judiciary.gov.uk/Files/2016/June/BIR_00FY_HIN_2016_3_23_Jun_2016_16_02_11.htm

¹³⁹ www.residential-property.judiciary.gov.uk/Files/2015/August/BIR_00FY_HIN_2015_4_20_Aug_2015_12_52_25.htm

Excess Cold (and other hazards):	Category 1 Excess Cold Category 2 Damp and Mould Growth Category 2 Entry by Intruders Category 2 Fire Category 2 Electrical hazards Category 2 Food Safety Category 2 Personal Hygiene Sanitation and Drainage
Property situation:	End of terrace. Single glazed timber framed windows and doors with no draught proofing. Inadequate loft insulation and inadequate space heating for the whole of the dwelling (back boiler installed 38 years ago) that was encouraging the use of supplementary heaters.
Energy efficiency notice requirements:	Decommission current gas fired back boiler. Supply and install a new gas fired boiler to the premises to satisfy the design and installation requirements of British Standard 5449:1990 and in accordance to the Building Regulations. The system should be capable of maintaining internal temperatures (living room 21C, bathroom 22C, elsewhere 18C) when the external temperature is -1C. The programmers should be accessible to the tenants.
Energy efficiency evidence highlighted:	Not defined.
Key points to note:	Legal counsel from Nottingham City Council in attendance.
Tribunal decision and outcome:	Appeal dismissed. Improvement Notice varied (some hazards downgraded to Category 2).

Abundant Life Housing & Oyedele Isaac Adeniran Odeniran vs Southend on Sea Borough Council¹⁴⁰

<i>Re: an Improvement Notice on 185 Carlton Avenue, Westcliff-on-Sea, Essex SS0 0QH</i>	
Date of hearing decision:	19 th March 2014
Excess Cold (and other hazards):	Category 1 Excess Cold Category 1 Damp and Mould Growth

¹⁴⁰ www.residential-property-judiciary.gov.uk/Files/2014/March/CAM_00KF_HIN_2013_12_25_Mar_2014_14_24_51.htm

Property situation:	Night storage heaters not working. 2 small electrical heaters were in situ. There were no thermostats or timers.
Energy efficiency notice requirements:	To either repair (and test) the night storage heaters or replace with a suitable form of heating (to be tested). In both cases the tests should ensure compliance with HHSRS.
Energy efficiency evidence highlighted:	Not defined.
Key points to note:	It was acknowledged that work had been undertaken by the landlord to keep the property warm (temperatures not defined) but "neither the council or Tribunal knew whether the heating system has sufficient capacity to keep the property warm in winter".
Tribunal decision and outcome:	Appeal dismissed. Improvement notice confirmed.

Ms May vs the London Borough of Islington¹⁴¹

<i>Re: a Prohibition Order and an Improvement Notice on 7 Warley House, Mitchison Road, London N1 3NH</i>	
Date of hearing decision:	17 th October 2014.
Excess Cold (and other hazards):	Category 1 Excess Cold Category 1 Crowding and space
Property situation:	Not defined.
Energy efficiency notice requirements:	To survey of the existing central heating system with a view to upgrading it.
Energy efficiency evidence highlighted:	Not defined.
Key points to note:	Legal counsel from the London Borough of Islington in attendance.

¹⁴¹ www.residential-property-judiciary.gov.uk/Files/2014/October/LON_00AU_HIN_2014_26_21_Oct_2014_10_53_05.htm

	Since this case was regarding a right to buy property that was being let by the landlord to the council to discharge homeless tenants, the Tribunal believed that the council should have ensured that the matter was resolved within the council. For example, the Prohibition Order restricted the landlord from using the dwelling by more than 5 persons. However, the landlord asserted that it was the council who had placed a family of 6 in the dwelling.
Tribunal decision and outcome:	Appeal granted. Improvement Notice and Prohibition Order quashed.

Mr S Livesey & Ms T Livesey vs the London Borough of Croydon¹⁴²

<i>Re: an Improvement Notice on 101 Selhurst Road, London SE25 6LH</i>	
Date of hearing decision:	5 th November 2013
Excess Cold (and other hazards):	Category 1 Excess Cold Category 1 Damp and Mould Growth Category 1 Electrical hazards Category 1 x 2 (not defined) Category 2 x7 (not defined)
Property situation:	The property is unoccupied and has been in disrepair for more than 10 years. Not further defined.
Energy efficiency notice requirements:	Not defined.
Energy efficiency evidence highlighted:	Not defined.
Key points to note:	The property is unoccupied and has been in disrepair for more than 10 years. Concerns have been raised regarding matters such as rodent infestation. The property is regularly squatted. The landlords did not challenge the hazards or the rating process. The landlords said that the Improvement Notice is misdirected as the statute requires an 'occupier'. The Tribunal disagreed and considered that the council had power to assess and unoccupied property and where it found a Category 1 hazard it is under a duty to act.

¹⁴² www.residential-property-judiciary.gov.uk/Files/2013/November/LON_00AH_HIN_2013_18_07_Nov_2013_14_50_50.htm

	The Tribunal noted that the HHSRS assessment and calculations had been rated conservatively.
Tribunal decision and outcome:	Appeal dismissed. Improvement Notice confirmed.

Mrs A Thapar vs the London Borough of Lewisham¹⁴³

<i>Re: an Improvement Notice on 108, Perry Rise, London, SE23 2QP</i>	
Date of hearing decision:	9 th June 2013
Excess Cold (and other hazards):	Category 1 Excess Cold Category 1 Falls on the level surfaces (hazard not clearly defined) Category 1 Electrical hazards Category 1 Fire Category 1 Position and operability of amenities Category 2 Damp and Mould Growth
Property situation:	Central heating in working order, but thermostat broken. Cracked window. External door inadequate.
Energy efficiency notice requirements:	Provide a new thermostatic control. Window pane to be replaced.
Energy efficiency evidence highlighted:	None defined.
Key points to note:	Presence of children referenced within the appeal case notes. Hazard assessment carried out by Northgate software. The landlord had stated that they intended to serve section 21 notices on the remaining 2 tenants and then sell the building. Therefore the Improvement Notice should be withdrawn. However, at the time of the Tribunal's inspection there were occupiers in the building and as such it was necessary to consider the hazards identified.

¹⁴³ www.residential-property-judiciary.gov.uk/Files/2015/June/LON_00AZ_HIV_2015_2_22_Jun_2015_10_51_33.htm

Tribunal decision and outcome:	Appeal dismissed. Improvement Notice varied.
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Chelmsford Cars and Commercials Ltd vs Thurrock Council¹⁴⁴

<i>Re: an Improvement Notice on 7 Hall Lane, South Ockendon, Essex RM15 6SH</i>	
Date of hearing decision:	25 th November 2016
Excess Cold (and other hazards):	Category 1 Excess Cold Category 2 Damp and Mould Growth Category 2 Falling Elements (hazard not clearly defined)
Property situation:	Not defined.
Energy efficiency notice requirements:	Replace windows (double glazed)
Energy efficiency evidence highlighted:	Not defined.
Key points to note:	The council had withdrawn an Improvement Notice after the landlord agreed to undertake work needed. However, the work was not undertaken on time and therefore a new Improvement Notice was served by the council. At the time of the hearing the Tribunal considered that works undertaken by the landlord and the tenants have reduced the risks within the property.
Tribunal decision and outcome:	Appeal dismissed. Improvement Notice varied so that Category 1 hazards listed as Category 2 hazards.

Mr G W Mutch vs Rugby Borough Council¹⁴⁵

<i>Re: an Improvement Notice on 27 Houston Road, Rugby, Warwickshire CV21 1BS</i>	
Date of hearing decision:	15 th April 2015

¹⁴⁴ www.residential-property.judiciary.gov.uk/Files/2016/November/CAM_00KG_HIN_2016_12_01_Dec_2016_09_51_04.htm

¹⁴⁵ www.residential-property.judiciary.gov.uk/Files/2015/April/BIR_44UD_HIN_2014_20_15_Apr_2015_14_19_03.htm

Excess Cold (and other hazards):	Category 1 Excess Cold Category 1 Damp and Mould Growth Category 2 Fire Category 2 Electrical hazards
Property situation:	Lack of fixed heating. No gas supply to the property. Energy efficiency considered inadequate. Fruiting bodies growing and spore dust in bedroom suggesting presence of dry rot. No mechanical ventilation.
Energy efficiency notice requirements:	Space heating to be upgraded. Overhaul or replace sash windows to rear bedroom. Insulate roof void and extended to bathroom where heat loss will contribute to condensation.
Energy efficiency evidence highlighted:	EPC records show minimum 75 mm loft insulation.
Key points to note:	<p>The landlord considered that portable electrical heaters were sufficient and drew an analogy with workplace heating (not defined). Tribunal noted that the uninsulated solid walls, mixed types of windows, inadequate insulation and expensive electrical heating meant that it was reasonable for the Improvement Notice requirements should be upheld.</p> <p>The Tribunal considered the assessment made by the and found that the scoring was properly conducted. The Tribunal concluded that it was not appropriate for the council to serve a Hazard Awareness Notice and that an Improvement Notice is upheld.</p> <p>Fee charged was by the council was £525 (£500 for the first notice, and an additional £25 for each ancillary notice).</p>
Tribunal decision and outcome:	Appeal dismissed. Improvement Notice confirmed.

Mrs A Odukoya-Adekite vs London Borough of Newham¹⁴⁶

<i>Re: an Improvement Notice, a Prohibition Notice and a Charging Notice on 56 Ridgwell Road, London E16 3LN</i>	
Date of hearing decision:	20 th September 2012
Excess Cold (and other hazards):	Category 1 Excess Cold Category 1 Crowding and space Category 2 Entry by intruders Category 2 Food Safety, Personal Hygiene and Sanitation (hazard not clearly defined)
Property situation:	A patio door did not close properly. Two radiators were defective.
Energy efficiency notice requirements:	Fix external door and radiators.
Energy efficiency evidence highlighted:	Legal counsel from the London Borough of Newham in attendance. The council proposed a Prohibition Order to address the overcrowding issues and an Improvement Notice to address the other hazards. The Tribunal examined the council's evidence and could not find fault with it. Fee charged by the council was £475.
Key points to note:	The council attempted to resolve problems informally between the date of the original inspection and the first Improvement Notice.
Tribunal decision and outcome:	Appeal dismissed.

Primetank Limited vs London Borough of Islington¹⁴⁷

<i>Re: an Improvement Notice on Studio Flat R/O 164 Fairbridge Road, London N19 3HU</i>	
Date of hearing decision:	26 th March 2016

¹⁴⁶ www.residential-property-judiciary.gov.uk/Files/2012/September/LON_00BB_HIN_2012_16_25_Sep_2012_12_02_43.htm

¹⁴⁷ www.residential-property-judiciary.gov.uk/Files/2016/March/LON_00AU_HIN_2015_26_07_Apr_2016_10_24_21.htm

Excess Cold (and other hazards):	Category 1 Excess Cold Category 1 Damp and Mould Growth Category 1 Fire Category 1 Food Safety
Property situation:	Not defined.
Energy efficiency notice requirements:	Not defined.
Energy efficiency evidence highlighted:	Not defined.
Key points to note:	Legal counsel from the London Borough of Islington in attendance. The tenant was introduced to the landlord by the council (discharging homelessness), and rent had been paid via the council (Housing Benefit). The landlord did not dispute that the work in the Improvement Notice needed to be carried out. The landlord was seeking planning permission to demolish the unit and rebuild it to modern standards. Fee charged was £1,000.
Tribunal decision and outcome:	Appeal dismissed. Improvement Notice to be quashed and replaced with a Prohibition Order until the property is demolished.

Ms J Hudson vs the City of Westminster¹⁴⁸

<i>Re: a Prohibition Order on Mezzanine Flat, 69 Warwick Avenue, London W9 2PP</i>	
Date of hearing decision:	21 st May 2017
Excess Cold (and other hazards):	Category 1 Excess Cold
Property situation:	Not defined.
Energy efficiency notice requirements:	Not defined.

¹⁴⁸ www.residential-property-judiciary.gov.uk/Files/2017/May/LON_00BK_HPO_2017_4_24_May_2017_09_29_28.htm

Energy efficiency evidence highlighted:	Not defined.
Key points to note:	<p>Legal counsel from the City of Westminster in attendance.</p> <p>Sub-tenant had made a complaint to the council in March 2016.</p> <p>Tribunal did not challenge the council's HHSRS assessment and administrative procedures.</p>
Tribunal decision and outcome:	<p>Appeal dismissed.</p> <p>Prohibition Order to remain in as overcrowding hazard cannot be removed.</p>

Mr G L Platt vs Braintree District Council¹⁴⁹

<i>Re: a Prohibition Order on Tidings Hill, Halstead, Essex CO9 1BJ</i>	
Date of hearing decision:	11 th March 2015
Excess Cold (and other hazards):	Category 1 Excess Cold
Property situation:	Timber constructed outbuilding. Lack of heating. Poor insulation. Lack of modern glazing. Dangerous wood burner. Electric portable heater being used.
Energy efficiency notice requirements:	Not defined.
Energy efficiency evidence highlighted:	<p>Ambient temperature was cool (6.6C during inspection). Met Office temperature data presented as evidence. Tribunal did not feel cold during the inspection.</p> <p>The Tribunal Chair noted that <i>"the temperatures set out in the remedial action did not come from the official HHSRS guidance but from guidance provided by the Chartered Institute of Environmental Health which has not statutory or other status save for being an indication of good practice according to that institute"</i>.</p> <p>Tribunal noted a lack of evidence: an assessment on the thermal efficiency of the property, that the heating available suggested that temperatures in</p>

¹⁴⁹ www.residential-property-judiciary.gov.uk/Files/2015/March/CAM_22UC_HPO_2015_1_16_Mar_2015_11_04_06.htm

	<p>the official guidance would appear to be achievable and questioned the term 'modern glazing'.</p> <p>Noted that occupant was 74.</p>
Key points to note:	<p>Owner occupier tenure property.</p> <p>The EHO noted in their statement that another reason for taking action was <i>"the risk to the local authority of criticism (e.g. press, coroner) for not acting if a resident were found to be either deceased or continuing to live in such conditions is also significant and to simply say that 'the resident wanted to remain in the property' would not be considered acceptable in today's society and age of accountability"</i>.</p> <p>The panel were said to be troubled by the decision made by the local authority to serve a Prohibition Order when it had considered that there was a category 1 Excess Cold hazard. The Tribunal questioned why an Improvement Notice had not been served if this was thought to be the case.</p> <p>The Tribunal concluded that the council's assessment was poor and that proper procedures and the law might have been ignored, and that <i>"it is up to a local authority to provide the evidence, not the Tribunal"</i>.</p>
Tribunal decision and outcome:	<p>Appeal granted.</p> <p>Prohibition Order quashed.</p>

Mr H S Lidher vs the London Borough of Hounslow¹⁵⁰

<i>Re: a Prohibition Order on 15a Ditton Road Southall Middlesex UB2 5RZ</i>	
Date of hearing decision:	27 th March 2017
Excess Cold (and other hazards):	<p>Category levels not defined.</p> <p>Excess Cold</p> <p>Plus: Damp and Mould Growth, Collision and Entrapment, Electrical Hazards, Flames and Hot Surfaces (hazard not clearly defined), Food Safety, Personal hygiene sanitation and drainage.</p>

¹⁵⁰ www.residential-property-judiciary.gov.uk/Files/2017/March/LON_00AT_HPO_2016_9_27_Mar_2017_09_52_20.htm

Property situation:	Not defined.
Energy efficiency notice requirements:	Not defined.
Energy efficiency evidence highlighted:	Not defined.
Key points to note:	<p>The landlord considered that the council should not have served a Prohibition Order <i>"in relation to the extent and adequacy of thermal insulation"</i>.</p> <p>The Tribunal varied the terms of the Prohibition Order as there were some aspects where the Tribunal considered <i>"the works required to address a hazard had been duplicated or wording was ambiguous"</i>. This included variations to the order around Excess Cold. The Tribunal called for a suitably qualified surveyor to assess the thermal insulation values of the property's roof and living room flank wall, and then for recommended measured be installed to achieve the thermal insulation values required by the Building Regulations.</p>
Tribunal decision and outcome:	<p>Appeal dismissed.</p> <p>Prohibition Order confirmed with variations.</p>

Mr L Mohamed vs the London Borough of Waltham Forest¹⁵¹

<i>Re: a Prohibition Order on Ground Floor Back Addition, 117 Mayville Road, London E11 4PL</i>	
Date of hearing decision:	26 th October 2016
Excess Cold (and other hazards):	<p>Category 1 Excess Cold</p> <p>Category 2: Fire</p>
Property situation:	<p>Double glazed.</p> <p>Lack of thermal insulation.</p>
Energy efficiency notice requirements:	Not defined.

¹⁵¹ www.residential-property-judiciary.gov.uk/Files/2016/October/LON_00BH_HPO_2016_5_26_Oct_2016_15_31_53.htm

Energy efficiency evidence highlighted:	Not defined.
Key points to note:	<p>The landlords witness – a buildings surveyor – concluded that the windows and doors provided an adequate level of thermal performance, but that the floor and the walls and the roof did not. They called for the retrofitting of <i>“insulation to the roof, walls and floor in order to meet with levels of thermal performance as required for a heated, habitable domestic dwelling under the current Building Regulations”</i>.</p> <p>However, the council had noted during their correspondence with the landlord that the structure of the extension is <i>“inadequate and gives rise to significant hazards”</i>. While this case was focussed on Excess Cold, there were questions raised about whether the extension to the property was structurally sound, and ultimately the Tribunal’s ruling focussed on the inadequacies of the extension when making their ruling.</p>
Tribunal decision and outcome:	<p>Appeal dismissed.</p> <p>Prohibition Order confirmed.</p>

Mrs S Ali vs the London Borough of Waltham Forest¹⁵²

<i>Re: a Prohibition Order on Ground Floor Back Addition Flat, 305 Higham Hill Road, London E17 5RG</i>	
Date of hearing decision:	13 th March 2015
Excess Cold (and other hazards):	<p>Category 1 Excess Cold</p> <p>Category 1: Damp and Mould Growth</p> <p>Category 1: Fire</p>
Property situation:	Back addition extension provides no thermal insulation (half brick construction which did not support window frames). Problems with condensation and excessive mould growth and possible rising damp, all of which linked to the property being excessively cold and making the property expensive and difficult to heat.
Energy efficiency notice requirements:	Not defined.

¹⁵² www.residential-property-judiciary.gov.uk/Files/2015/May/LON_00BH_HPO_2014_18_06_May_2015_08_41_54.htm

Energy efficiency evidence highlighted:	Not defined.
Key points to note:	<p>Legal counsel from the London Borough of Waltham Forest in attendance.</p> <p>The council had noted during their evidence that the structure of the extension is inadequate. It was considered that an Improvement Notice would require the demolition of the extension, which would then need to be rebuilt to comply with Building Control regulations. While this case does focus on Excess Cold, ultimately the Tribunal's ruling focussed on the inadequacies of the extension when making their ruling.</p> <p>The council stated that the hazard identified in relation to Excess Cold and Damp and Mould Growth was of respiratory illness in particular to someone under the age of 14 years old.</p> <p>The landlord considered that the condensation was due to the tenant never opening the windows.</p>
Tribunal decision and outcome:	<p>Appeal dismissed.</p> <p>Prohibition Order confirmed.</p>

Mr I Darwiche vs the London Borough of Barnet¹⁵³

<i>Re: a Prohibition Order on Flat 7 192 Cricklewood Broadway, London NW2 3EB</i>	
Date of hearing decision:	24 th February 2016
Excess Cold (and other hazards):	<p>Category 1 Excess Cold</p> <p>Plus: Category 1 hazards for Damp and Mould Growth, Crowding and Space, Entry by Intruders, Lighting, Noise, Domestic Hygiene, Pests and Refuse, Electrical hazards, Position and operability of amenities.</p>
Property situation:	No access to the boiler and no proper control of heating. Solid walled and lack of insulation. Floors are solid. External door is not of an external grade.
Energy efficiency notice requirements:	Not defined (but noted during the case that a combi boiler for heating and hot water had been installed).

¹⁵³ www.residential-property-judiciary.gov.uk/Files/2016/February/LON_00AC_HPO_2015_12_24_Mar_2016_15_24_34.htm

Energy efficiency evidence highlighted:	Not defined.
Key points to note:	<p>Legal counsel from the London Borough of Waltham Forest in attendance.</p> <p>Complaint originally raised concerns over Excess Heat.</p> <p>The council had given consideration to serve an Improvement Notice, but ultimately decided that even if the work proposed had been carried out it would have not made the property suitable for habitation.</p> <p>The Tribunal concluded that <i>"there were no works which it could state in the notice under schedule 2 could be undertaken which would lead it to revoke the order due to 'the location, construction and design of the existing structure'."</i></p> <p>The landlord considered that the condensation was due to the tenant not opening windows.</p> <p>Fee charged: £394.</p>
Tribunal decision and outcome:	<p>Appeal dismissed.</p> <p>Prohibition Order confirmed.</p>

Mr A P Kramer & Mr J A Cramer vs Braintree District Council¹⁵⁴

<i>Re: a Prohibition Order on Maltings House, The Endway, Steeple Bumpstead, Essex CB9 7BS</i>	
Date of hearing decision:	17 th October 2014
Excess Cold (and other hazards):	<p>Category 1 Excess Cold</p> <p>Plus: Category 1 hazards for Electrical hazards, Structural collapse and falling elements, Food safety, Personal hygiene, sanitation and drainage, and Fire.</p>
Property situation:	Due mostly to the state of the property but in part to the vast accumulation of belongings, it was seen that there was no adequate heating system.

¹⁵⁴ www.residential-property-judiciary.gov.uk/Files/2014/December/CAM_22UC_HPO_2014_5_15_Dec_2014_14_45_57.htm

Energy efficiency notice requirements:	Not defined.
Energy efficiency evidence highlighted:	Not defined.
Key points to note:	<p>Owner occupier tenure property. Occupant is aged 87.</p> <p>The applicant's family consider that the remedial works required would be very substantial and would almost inevitably involve the occupant moving out during such works. They had requested additional time to apply for detailed planning permission for the construction of a new small dwelling on the site to replace the existing dwelling with a temporary caravan on the site whilst this is done.</p> <p>The Tribunal concluded that <i>"this is one of those almost impossible situations where the [council] and the applicants' family are clear in their understanding that Mr. Kramer's living conditions are appalling by modern and civilised standards and wish to give him a better living environment. However, despite the goodwill, they know that anything they do will be in the certain knowledge that he doesn't really want it and neither Applicant wants change"</i>.</p>
Tribunal decision and outcome:	<p>Appeal dismissed.</p> <p>Prohibition Order confirmed.</p>

Mr G Walker-Eyles vs Portsmouth City Council¹⁵⁵

<i>Re: a Prohibition Order on 26 Mayhall Road, Portsmouth PO3 5AU</i>	
Date of hearing decision:	23 rd May 2017
Excess Cold (and other hazards):	Category 1 and 2 (not defined) Excess Cold, Falls associated with stairs and steps and Damp and Mould Growth
Property situation:	Loft boarded. Thought that tenant was living in the loft space. Access denied.
Energy efficiency notice requirements:	Not defined.

¹⁵⁵ www.residential-property-judiciary.gov.uk/Files/2017/May/CHI_00MR_HPO_2017_1_25_May_2017_10_20_11.htm

Energy efficiency evidence highlighted:	Not defined.
Key points to note:	Landlord was unaware that the tenant was living in the roof space. The council noted that that should it find upon further inspection that the loft has been boarded up and access denied, the Prohibition Order would be "removed".
Tribunal decision and outcome:	Appeal dismissed. Prohibition Order confirmed.

Mr S Singh vs the London Borough of Newham¹⁵⁶

<i>Re: a Prohibition Order on 132 Plashet Road, London E13 0QS</i>	
Date of hearing decision:	8 October 2012
Excess Cold (and other hazards):	Category 1: Excess Cold Category 1: Fire Category 1: Electrical hazards Category 1: Lighting Category 1: Damp and Mould Growth Category 1: Falls associated with stairs and steps Category 2: Personal hygiene, sanitation and drainage Category 2: Food safety Category 2: Structural collapse and falling elements
Property situation:	Property converted into 6 flats. Lack of adequate space and hot water heating, insulation and glazing, and draughts in some windows (predominantly single glazed).
Energy efficiency notice requirements:	Not defined. Building works had to comply with current Building Regulations.
Energy efficiency evidence highlighted:	Not defined.

¹⁵⁶ www.residential-property-judiciary.gov.uk/Files/2012/October/LON_00BB_HPO_2012_11_08_Oct_2012_10_55_34.htm

Key points to note:	<p>It was considered that there was a serious threat to the health and safety of the tenants, and the Tribunal concluded that the property <i>"is in the worst category of housing conditions to be found in the UK stock"</i>.</p> <p>Landlord claimed that tenants had refused works to improve the property. However, it was considered that the works needed to make the dwelling fit for human habitation were so extensive, that they could not be carried out with the tenant in situ.</p> <p>Landlord also claimed that he had served the council for over 15 years, with rent inspectors visiting the premises regularly, and no one had raised queries as to the condition of the property. The Tribunal concluded that <i>"good practice dictates that the council's rent inspectors should always report bad housing conditions such as these to the environmental Health Department, so that appropriate action can be taken to safeguard the health and safety of occupants"</i>.</p>
Tribunal decision and outcome:	<p>Appeal dismissed. Prohibition Order confirmed.</p>

Mrs J Hussain vs the London Borough of Enfield¹⁵⁷

<i>Re: a Prohibition Order on Rear Building, 38 Northfield Road, Enfield EN3 4BS</i>	
Date of hearing decision:	9 December 2015
Excess Cold (and other hazards):	Category 1: Excess Cold Category 1: Electrical hazards
Property situation:	<p>Property was a structure at the end of a garden, which was likely to have been intended to be a garage but since adapted to provide residential accommodation.</p> <p>Brick built structure with a flat roof. Double glazed windows. Wall mounted boiler and several wall mounted radiators.</p>
Energy efficiency notice requirements:	<i>"The insulation provided by the walls and roof should be improved to provide sufficient insulation to prevent heat loss. Any works to improve the structure will need to comply with Building Regulations"</i> .

¹⁵⁷ www.residential-property-judiciary.gov.uk/Files/2015/December/LON_00AK_HPO_2015_7_09_Dec_2015_14_30_49.htm

Energy efficiency evidence highlighted:	Not defined.
Key points to note:	<p>The council had concluded that the building was not suitable for residential purposes. This was in part because of the Category 1 Excess Cold hazard present in the property "<i>due to inadequate insulation of the external envelope of the building and the structure of the building would not prevent excessive heat loss</i>".</p> <p>In a general discussion about the remedial works required, the council representative suggested that if the landlord did want to use the building for human habitation purposes, it would be sensible to obtain an EPC rating from a specialist who would be able to recommend what further insulation may be required.</p> <p>The landlord's representative had emphasised that the property would only be used for storage in the future and assured the Tribunal that there was no intention to let the property. The Tribunal concluded that the if this was the case then it was not necessary for any works to be carried out. However, the Prohibition Order should remain in place as a means of controlling inappropriate and hazardous use of the building.</p>
Tribunal decision and outcome:	<p>Appeal dismissed.</p> <p>Prohibition Order confirmed.</p>

Mrs S Cryar vs Nottingham City Council¹⁵⁸

<i>Re: an emergency prohibition order on Flat 1, 15A Villa Road, Nottingham, NG3 4GG</i>	
Date of hearing decision:	20 March 2015
Excess Cold (and other hazards):	<p>Category 1: Excess Cold</p> <p>Category 1: Electrical hazards</p> <p>Category 1: Fire</p>
Property situation:	Ground floor flat. Gas central heating with two radiators. Windows in a poor state of repair.

¹⁵⁸ www.residential-property-judiciary.gov.uk/Files/2015/December/LON_00AK_HPO_2015_7_09_Dec_2015_14_30_49.htm

Energy efficiency notice requirements:	Installation of a new gas boiler and replacement of windows.
Energy efficiency evidence highlighted:	Not defined.
Key points to note:	<p>Mrs S Cryar is the tenant, not the landlord. The property was said to be in a poor state of repair and that the landlord had previously declined to carry out improvements, which is why the tenant made a complaint to a local charity, who then alerted the council. The council then served the emergency Prohibition Order. However, the tenant did not wish to leave the property and therefore appealed the Order. While accepting that she could not continue the tenancy of the flat, she wanted additional time to relocate.</p> <p>Tribunal confirmed that the immediate manifestations of the Excess Cold hazard had been addressed. A new central heating boiler had been installed and the property was described as warm during the Tribunal's inspection. The windows still required replacing however. Other deficiencies that had not been rectified ensured that the Tribunal confirmed the decision of the council to serve the emergency Prohibition Order.</p>
Tribunal decision and outcome:	Appeal dismissed. Emergency Prohibition Order confirmed.

Mr R Singh vs the London Borough of Hillingdon¹⁵⁹

<i>Re: a demolition order on Buildings at the rear of 179 Coldharbour Lane, Hayes, UB3 3EQ</i>	
Date of hearing decision:	24 February 2014 / 10 December 2014
Excess Cold (and other hazards):	<p>Category 1: Excess Cold (due to construction)</p> <p>Category 1: Electrical Hazards</p> <p>Category 1: Fire</p> <p>Category 2: Domestic Hygiene, Pests and Refuse</p>
Property situation:	<p>External buildings in the rear garden.</p> <p>Lack of adequate heating.</p>

¹⁵⁹ www.residential-property-judiciary.gov.uk/Files/2014/March/LON_00AS_HDO_2013_3_16_Dec_2014_15_49_13.htm

Energy efficiency notice requirements:	Demolition.
Energy efficiency evidence highlighted:	Not defined.
Key points to note:	<p>Legal counsel from the London Borough of Hillingdon in attendance.</p> <p>The Tribunal was not satisfied that the building will not be used for residential purposes and that the buildings were unsuitable for human habitation. A previous Prohibition Order (served in January 2010) had prohibited the use of the buildings due to Excess Cold hazards, yet inspections by the UK Border Agency found the buildings in use. Therefore, in order to prevent the buildings being used for residential accommodation, the council served a demolition order.</p> <p>Fee charged was £7,362.13. Case notes highlight that this fee was broken down between £3,723.13 for solicitors and £3,640.00 in departmental fees (including £1,182.00 for the cost of attending the hearing).</p>
Tribunal decision and outcome:	<p>Appeal dismissed.</p> <p>Demolition Order confirmed with variations.</p>

Mr M S Miah vs the London Borough of Tower Hamlets¹⁶⁰

<i>Re: a demolition order on 2 Clutton Street, London E14 6QN</i>	
Date of hearing decision:	7th August 2017
Excess Cold (and other hazards):	Category 1: Excess Cold
Property situation:	The property's rear extension (described as a 'lean to') had no heating, no insulation and was poorly constructed.
Energy efficiency notice requirements:	Demolition or rear extension.
Energy efficiency evidence highlighted:	Not defined.
Key points to note:	Legal counsel from the London Borough of Tower Hamlets in attendance.

¹⁶⁰ www.residential-property-judiciary.gov.uk/Files/2017/August/LON_00BG_HDO_2017_1_08_Sep_2017_14_11_23.htm

	<p>The case describes how the council sought to engage with the landlord informally before moving to enforcement.</p> <p>The Tribunal considered that the only way to protect future tenants from the Category 1 Excess Cold hazard was for the rear extension to be demolished. The Tribunal therefore concluded that the demolition order was the correct enforcement action to have been taken by the council.</p> <p>Application for fees noted, but not defined.</p>
Tribunal decision and outcome:	<p>Appeal dismissed.</p> <p>Demolition Order confirmed with variations.</p>

Mr R Verma, Mrs S Verma & Mr A Verma vs the London Borough of Hounslow¹⁶¹

<i>Re: a demolition order on Second Rear Dwelling, 33 Station Road, Hounslow TW3 2AP.</i>	
Date of hearing decision:	10 th December 2013
Excess Cold (and other hazards):	<p>Category 1: Excess Cold</p> <p>Category 1: Excess Heat</p> <p>Category 1: Fire</p> <p>Category 2: Entry by Intruders</p> <p>Category 2: Personal Hygiene, Sanitation and Drainage</p> <p>Category 2: Food Safety</p> <p>Category 2: Water Supply for Domestic Purposes</p> <p>Category 2: Domestic Hygiene, Pests and Refuse</p>
Property situation:	Timber framed external buildings in the rear garden. Built against a pre-existing boundary wall, which was not insulated.
Energy efficiency notice requirements:	Demolition.
Energy efficiency evidence highlighted:	Not defined.
Key points to note:	The Tribunal considered that the only way to protect future tenants from the Category 1 Excess Cold hazard was for the external buildings to be

¹⁶¹ www.residential-property-judiciary.gov.uk/Files/2013/December/LON_00AT_HDO_2013_2_22_Jan_2014_10_15_01.htm

	demolished. The Tribunal therefore concluded that the demolition order was the correct enforcement action to have been taken by the council.
Tribunal decision and outcome:	Appeal dismissed. Demolition Order confirmed.

Mr R Cook vs Adur District Council¹⁶²

<i>Re: a demolition order on 15 Ingleside Crescent, Lancing, West Sussex BN15 8EN</i>	
Date of hearing decision:	9 th November 2016
Excess Cold (and other hazards):	Category 1: Excess Cold (one for each outbuilding) Category 1: Fire Category 2: Numerous
Property situation:	Garage conversion and timber framed and clad outbuilding. Double glazed windows and doors.
Energy efficiency notice requirements:	Improvement Notice for the garage (not discussed during the appeal). Demolition Notice for the outbuilding.
Energy efficiency evidence highlighted:	Not defined.
Key points to note:	Presence of a baby referenced within the appeal case notes. The Tribunal considered that the only way to protect future tenants from the Category 1 Excess Cold hazard was for the outbuilding building to be demolished. The Tribunal therefore concluded that the demolition order was the correct enforcement action to have been taken by the council.
Tribunal decision and outcome:	Appeal dismissed. Demolition Order confirmed.

¹⁶² www.residential-property-judiciary.gov.uk/Files/2013/December/LON_00AT_HDO_2013_2_22_Jan_2014_10_15_01.htm