

Consultation Response

Private Rented Sector (PRS) Minimum Energy Efficiency Standard (MEES)

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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Property and Land Law reform sub-committee welcomes the opportunity to consider and respond to the Scottish Government consultation: Private Rented Sector (PRS) Minimum Energy Efficiency Standard (MEES).¹ The sub-committee has the following comments to put forward for consideration.

Questions

1. Do you agree that the PRS MEES should be EPC HRR band C?

- Yes
- No
- Don't Know

Please provide further information here:

We have no comments.

¹ [Private Rented Sector \(PRS\) Minimum Energy Efficiency Standard \(MEES\) - Scottish Government consultations - Citizen Space](#)

2. Do you agree that only new reformed EPCs should be used as a basis for the proposed MEES?

- Yes
- No
- Don't Know

Please provide further information here:

We would highlight the potential for confusion if there are other means of achieving the proposed MEES.

We would note that current EPCs and the proposed new EPCs are not comparable so the rating produced by them is also not comparable. We would further suggest that EPC information for different properties should be directly comparable (so calculated and assessed on the same basis) in order to ensure that the information gathered is useful.

The legislation will need to be clear about its extent and application with the potential for transitional provisions to avoid 'gaps'. Consideration should be given to ensuring that landlords (and tenants) are aware of their obligations, the potential penalties and practical steps to ensure compliance.

3. Do you agree that the backstop date for all PRS homes to comply with MEES should be 2033?

- Yes
- No
- Don't Know

Please provide further information here:

We would note from the consultation document that the Scottish Government is aware of the risk of reducing the number of homes within the private rented sector if landlords cannot cover the costs of compliance with MEES from rental income and as such is considering further changes to the proposed system of rent controls, currently contained within the Housing (Scotland) Bill.

Furthermore, we would welcome clarity on the evidential basis for the deadline of 2033.

4. Do you agree that the MEES should apply to properties being let to new tenants from 2028?

- Yes
- No

• Don't Know

Please provide further information here:

We have no comments.

5. Do you agree that, regardless of changes to the repairing standard, that crofters, small landholders and agricultural holdings should be excluded from PRS MEES?

• Yes

- No
- Don't Know

Please provide further information here:

We agree with this provision owing to the existing statutory frameworks around the aforementioned tenancies in place regarding repairs and obligations.

6. Do you agree that the regulations should exclude short-term holiday lets from the PRS MEES?

- Yes

• No

- Don't Know

Please provide further information here:

Our focus is on law rather than policy. However, in the case of exempting short-term lets from the PRS MEES, we have concerns regarding the proposals.

We would highlight the practical difficulties of excluding short-term holiday lets from the PRS MEES, such as in the example of a tenement flat complex, where

some properties may be residential whilst others may be short-term holiday lets. Properties often move between the PRS to short-term lets and back. Exempting short-term let properties may see properties be moved out of the PRS, or remain in short-term letting, due to the additional financial benefit for property owners. The additional regulation around rent controls for the private rental sector proposed by the Housing (Scotland) Bill compound that concern. We would highlight that the risk of this may be particularly acute within rural communities, given the higher density of older properties that will require energy efficiency improvements.

Furthermore, we would highlight that if a social landlord or local authority bought a short-term let property for the purposes of converting it to residential property for let then they would have to comply with the MEES. Furthermore, in the case of flat complexes, the energy efficiency of the short-term let will have an impact on the adjoining properties.

We would also highlight that excluding short-term rental properties from the PRS MEES may not align with the Scottish Government's ambitions to achieve net zero by 2045.

We would highlight therefore that it appears iniquitous and disproportionate that businesses in the short-term let market will be exempt from MEES, and financially incentivise landlords to designate their properties as short-term lets, removing further properties from the PRS market.

7. Do you agree with the proposed exemptions covering consent, the fabric requirements of the home and temporary exemptions?

- Yes
- No
- Don't Know

[Please provide further information here:](#)

The recognition of the need for flexibility to accommodate the individual circumstances of individual properties and individual tenancies will be important in practice. There are numerous technical and legal factors which could be relevant to a landlord's ability to make energy efficiency improvements, and we consider that the regulations must leave room for these to be taken into account.

We would further highlight that automatic exemption because the current tenant refuses consent may result in landlords pressuring tenants to refuse consent, which would absolve the landlord from making any improvements.

8. Do you agree that HEETSA should be available as an option to evidence potential negative impacts on the fabric of a property and to support an exemption?

- Yes
- No
- Don't Know

Please provide further information here:

We would suggest that consideration should be given towards the creation of some form of standard, independent, assessment as the basis of evidence for why measures are unsuitable.

We would further question what processes will be in place to deal with disputes that arise in relation to whether the measures are or are not suitable.

We would welcome clarity on whether disagreements and disputes will be dealt with by the Housing and Property Chamber of the First-tier Tribunal for Scotland.

9. Do you agree that the cost cap level should be £10,000?

- Yes
- No
- Don't Know

Please provide further information here:

We would welcome further clarity in relation to the cost cap and the evidential base for it. We would also highlight that a fixed cap applicable to all property types risks being inflexible, owing to the range of rental incomes and property types.

We would suggest consideration should be given towards having the cap be a percentage of the current value of the property, as a more flexible approach.

We would again welcome clarity on whether matters relating to disputes and disagreements concerning cost cap matters would be referred to the Housing and Property Chamber of the First-tier Tribunal for Scotland.

10. Do you agree with the proposed 12 month lead in time period for works to contribute to the total cost cap?

- Yes
- No
- Don't Know

Please provide further information here:

We would note that the drafting of the specifics concerning the cost cap will be crucial and we refer to our answer to question 9 regarding clarity on the cost cap.

11. Do you agree that that all actual costs, and the cost of an EPC, should count towards the cost cap?

- Yes
- No
- Don't Know

Please provide further information here:

Please see our answer to question 10. We would specifically highlight the importance of what is included or excluded in the cost cap, such as the cost of floor removal to install new pipes, or indirect costs such as occupiers having to vacate the property whilst improvement works are undertaken.

12. Do you agree that landlords should receive Scottish Government support to make the required changes?

- Yes
- No
- Don't Know

Please provide further information here:

We have no comments.

13. Do you agree that this should be in the form of a loan?

- Yes
- No
- Don't Know

Please provide further information here:

We have no comments.

14. Do you agree that local authorities should be responsible for monitoring and compliance of these regulations? If no, please provide details of an alternative with your reason(s) as to how this would support the delivery of these regulations.

- Yes
- No
- Don't Know

Please provide further information here:

We consider it appropriate that local authorities are responsible for the monitoring and compliance of regulations, with the understanding that such responsibility will require proper resourcing. We would further note the potential general economic impact of the regulations on the private rented sector.

We would again reiterate our question regarding whether disputes would be dealt with by the Housing and Property Chamber of the First-tier Tribunal for Scotland.

Furthermore, in the event that local authorities are responsible for disputes, we would note the importance ensuring that local authorities are properly resourced and equipped to handle disputes.

15. Do you agree with the proposed level of financial penalties to support compliance with the regulations? If no, please provide detail on suggested amendments that should be made, outlining how the changes would increase the impact of penalties to achieving compliance with the Regulations.

- Yes
- No
- Don't Know

Please provide further information here:

We have no specific comments on the level of penalties. We would stress that all penalties issued to support compliance must be reasonable and proportionate.

16. Do you agree that the Scottish Government should seek to amend the Energy Act 2011 to increase in maximum financial penalties that could be imposed up to £30,000 in future, should this be deemed necessary?

- Yes
- No
- Don't Know

Please provide further information here:

We have no specific comments on the level of penalties and refer to our answer to question 15.

17. In what way could these regulations have a specific or different impact, positive or negative, on a particular group of people? This could be based on protected characteristics, such as age or disability, or geography, such as island communities.

Please provide further views or information here:

We refer to our answer to question 6.



For further information, please contact:

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