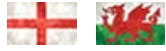


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Minimum Energy Efficiency Standards

CONTEXT

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 introduce measures to improve the energy efficiency of private rented property under the Energy Act 2011.

Part Two of these Regulations allow the tenant of a private rented property to request permission from their landlord to make energy efficiency improvements in the property they rent.

See our fact sheet *Tenant's Energy Efficiency Improvements* for more information.

Part Three of the Regulations outline that private sector landlords must not grant a new tenancy of a property (including an extension or renewal), nor continue to let the property (on an existing tenancy) after 1 April 2020, where the Energy Performance Certificate (EPC) is below the minimum level of energy efficiency for private rented properties of band E.

THE CHANGES

The Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2019 make changes to Part Three of the 2015 Regulations.

New Landlord funding element

Since 1 April 2019, landlords of domestic properties with an EPC rating below E must carry out up to £3,500 (inc. VAT) worth of works improving their energy efficiency if they cannot obtain third-party funding to meet the costs.

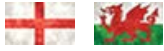
The £3,500 cap is an upper ceiling, not a target or a spend requirement and landlords may spend more if they wish. If a landlord can improve their property to E (or higher) for less than £3,500 then they will have met their obligation.

NB: If a landlord is unable to improve their property to EPC band E for £3,500, they should install all measures which can be installed up to £3,500, then register an exemption on the PRS Exemption Register.

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Removal of the no cost to the landlord exemption and validity of existing exemptions

The 'no cost to the landlord' provision, which permitted landlords to register an exemption (valid for five years) on the PRS Exemptions Register where they were unable to make improvements to their EPC F or G rated properties at no cost to themselves, ceased to be available on 1 April 2019.

NB: The validity of all existing exemptions registered (beginning with 1 October 2017 and ending with 31 March 2019) on the basis that the landlord could not get any funding for energy efficiency improvements will end for individual properties on 31 March 2020, instead of after five years. Landlords who had registered such exemptions prior to 1 April 2019 will now be required to make improvements (up to the value of £3,500) to ensure their properties achieve EPC E by 1 April 2020.

Removal of Cost Exemption

Since 1 April 2019, where a sitting tenant withholds consent to a Green Deal Finance Plan, landlords can no longer claim an exemption on a 'consent withheld' basis. The landlord must seek alternative means of financing the required improvements, up to and including making a financial contribution themselves.

WHAT IS AN ENERGY PERFORMANCE CERTIFICATE (EPC)?

- An EPC gives a property an energy efficiency rating from A (most efficient) to G (least efficient) and is valid for 10 years.
- They are needed whenever a property is built, sold or rented.
- It contains information about a property's energy use and typical energy costs as well as recommendations about how to reduce energy use and save money.

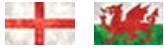
NB: Since October 2015, where a landlord hasn't provided an assured shorthold tenant with an EPC, they won't be able to evict them using a Section 21 Notice.

ELIGIBILITY

The Regulations apply to all privately rented properties that are legally required to have an EPC and where rooms are let on one of the qualifying tenancy types in England and Wales. The rules came into force on **1 April 2018**. The Regulations do not affect sales of properties.

NB: The qualifying tenancy types are an assured tenancy (including an assured shorthold tenancy) defined in the Housing Act 1988; a regulated tenancy defined in the Rent Act 1977; a domestic agricultural tenancy as set out in the Energy Efficiency (Domestic Private Rented Property) Order 2015 under section 24 of the Housing Act 1988, section 3(6) of the Rent (Agriculture) Act 1976 and section 4(6) of the Rent (Agriculture) Act 1976.

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Where an owner or occupier of a building which is not legally required to have an EPC has got one voluntarily the landlord will not be required to comply with the minimum standard Regulations and no exemption will be necessary.

Listed Buildings and EPC Compliance

Listed buildings, and buildings within a conservation area, will not be required to meet the minimum energy efficiency standards if they are not required to have an EPC. If an individual listed building is required to have an EPC (and if it is let on a qualifying tenancy type) then it will be covered by the Regulations.

NB: If the building owner is in any doubt about the requirement to have an EPC or whether works to improve the energy efficiency of the property would unacceptably alter the character or appearance of a building, they should get advice from their local authority's Conservation Officer.

Houses in Multiple Occupation (HMO)

If a House in Multiple Occupation (HMO) is legally required to have an EPC, and if it is let on one of the qualifying tenancy types, then it will be required to comply with the minimum level of energy efficiency. However, individual rooms within HMOs are not required to have their own EPC, so a property which is an HMO will only have an EPC if one is required for the property as a whole.

WHAT DOES THIS MEAN?

Since 1 April 2018 it is unlawful for landlords to grant new tenancies of properties that have an energy efficiency rating of F and G on its EPC, unless an exemption applies, or the landlord has made all the relevant energy efficiency improvements.

Under the rules relevant energy efficiency improvements which a landlord may choose to install to reach an EPC rating of E (either a single measure, or a combination of measures) are any energy efficiency improvements recommended for the property through a relevant Recommendation Report (contained within an EPC), a Green Deal advice report or a report prepared by a qualified surveyor.

NB: A list of the energy efficiency measures which may be recommended for a property on an EPC or as part of a Green Deal Advice Report are set out in our *Tenant's Energy Efficiency Improvements* fact sheet.

A landlord of an F or G rated property is required to make energy efficiency improvements to reach an EPC E by using either: self-funding (capped at £3,500, inc. VAT); third-party funding (uncapped); or a combination of third-party and self-funding (capped at £3,500, inc. VAT).

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Third-party funding can come from: A Green Deal Finance Plan; Energy Company Obligation or similar scheme; or funding from Central Government or local authorities home energy efficiency grants.

NB: If partial third-party funding is used alongside landlord funding, the third-party funding may be counted within the cap (e.g. if a landlord can obtain £1,000 of third-party funding, only £2,500 of self-funding will be necessary). Any investment in energy efficiency the landlord has made in relation to the property since 1 October 2017 may also be counted within the cap.

There is no requirement for a landlord to seek consent from a tenant to install energy efficiency measures where such a requirement does not already exist.

ARE THERE EXEMPTIONS?

High cost exemption

If the cost of purchasing and installing a recommended energy efficiency measure to improve a property to EPC E would cause a landlord to exceed the £3,500 cost cap, the landlord can register an exemption on the PRS Exemptions Register.

NB: The Landlord must upload copies of quotations from three different installers demonstrating that the cost cap will be exceeded.

The exemption applies for a period of five years from the date on which the exemption is registered. Once it expires the landlord must try again to improve the property's EPC rating to meet the minimum level of energy efficiency.

The landlord will not be prohibited from letting a property with an EPC rating of lower than E if, in the preceding five years, the landlord has obtained a report prepared by an independent surveyor which states that making the improvement would result in a reduction of more than 5% in the market value of the property (or the building of which the property forms part). The five-year period runs from the date of the report.

THE PRS EXEMPTIONS REGISTER

The PRS Exemptions Register is an online platform which allows landlords (or an agent acting on their behalf) to register valid exemptions from the minimum energy efficiency requirements. The Register can be accessed here: prsregister.beis.gov.uk/NdsBeisUi/used-service-before

NB: Landlords and agents who need help or advice with registering an exemption, they can email PRSRegisterSupport@BEIS.gov.uk or call: 0333 234 3422.

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Landlords must register both the exemption type and the information required to support that exemption before they can rely on it and let (or continue to let) the property. There is no fee or charge.

Registration of an exemption on the service will not generate an exemption certificate (although a confirmation email will be sent). Landlords can check on any live exemptions they have registered on the 'dashboard' page within their user account.

NB: Details of an exemption can also be viewed by members of the public on the exemption search page.

Enforcement authorities will monitor and audit to ensure that exemptions comply with the Regulations.

Where the landlord registered false or misleading information on the PRS Exemptions Register penalties are a fine not exceeding £1,000 and a Publication Penalty.

ENFORCEMENT

A local authority is the enforcement authority for properties in their area and can choose which function they wish to use to enforce the Regulations. For example, Trading Standards Officers or Environmental Health Officers.

From 1 April 2018, where the local authority considers that a landlord may be in breach of the rules or a landlord has been in breach of the rules at any time in the past 12 months, it may serve a Compliance Notice requiring the landlord to provide evidence to the enforcement authority.

NB: A Compliance Notice may request the landlord to produce the original or copies of the EPC for the property valid at the time the property was let, the tenancy agreement, any qualifying assessment in relation to the property and any other relevant document the local authority requires to carry out an investigation.

The Compliance Notice may also require the landlord to register copies of the requested information on the PRS Exemptions Register (Publications Penalty). The local authority can decide how long to leave the information on the Register, but it will be public for at least 12 months.

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PENALTIES

- Where the landlord has failed to comply with the Compliance Notice this could lead to a fine up to £2,000 and/or a Publication Penalty.
- Where a local authority is satisfied that a landlord is renting out a non-compliant property and at the time the Penalty Notice is served has been in breach for less than three months, a maximum fine of £2,000 plus the Publication Penalty is applicable.
- Where the landlord is renting out a non-compliant property and at the time the Penalty Notice is served and has or had been in breach for more than 3 months, a maximum fine of £4,000 plus the Publication Penalty is applicable.

NB: A Penalty Notice must specify any action the local authority requires the landlord to undertake in order to remedy the breach and the period within this must be done as well as the amount of any financial penalty imposed, whether a Publication Penalty has been imposed and the timescale for paying. If the landlord fails to take the action required by the Penalty Notice the local authority can issue a further notice.

Where an enforcement authority imposes a fine on a landlord in relation to a breach of the Regulations, the total amount per property is set at £5,000.

REVIEW

The landlord may request a review of the Penalty Notice by the local authority and, where a Penalty Notice is confirmed on review, they may appeal against the Penalty Notice to the First-Tier Tribunal.

NB: On a review the local authority may waive a penalty, allow the landlord additional time to pay a fine, substitute a lower fine where one has already been imposed or modify the application of a Publication Penalty.

The First-Tier Tribunal may quash the Penalty Notice or confirm the Penalty Notice in its original form or modify as it sees fit. If the Penalty Notice is quashed, the local authority must repay any amount paid in carrying out the Notice.

A landlord has 28 calendar days to submit an appeal from the date of the local authority's decision. If a landlord does not pay a financial penalty imposed on them, the local authority may take the landlord to court to recover the money.

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