

## FACT SHEET



NOVEMBER 2017

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### MORE INFO

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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.

### THE CHANGES

Part Three of the Regulations outline that private sector landlords must not grant a new tenancy of a property (including an extension or renewal) they let after 1 April 2018 and must not 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.

### WHAT IS AN ENERGY PERFORMANCE CERTIFICATE?

- 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 come 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 a listed privately rented domestic property, or a property within a conservation area, is required to have an EPC, that property will be within scope of the minimum energy efficiency standards.

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.

**NB: 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?

From 1 April 2018 it will be 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 will be expected to install all energy efficiency improvements required to reach an EPC E, where funding is available to cover the cost. Funding (or a combination of funding) can come from a Green Deal Plan, Energy Company Obligation or similar scheme, funding from Central Government, local authority, or third party at no cost to the landlord.

**NB: Where funding is not available to fully cover the cost of making a recommended improvement then the landlord will not be required to make that improvement to the property.**

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## ARE THERE EXEMPTIONS?

If the EPC is more than 10 years' old (and, therefore, no longer valid), the regulations will not apply. As soon as a new EPC is registered, the property will fall under the Regulations. However, a landlord will be allowed to let the property if they have undertaken all relevant energy efficiency improvements for the property or there are no relevant improvements that could be made. The exemption applies for a period of five years from the date on which the exemption is registered.

**NB: 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 on Tenant's Energy Efficiency Improvements.**

**Under Part Two landlords are not required to contribute funding for any measures requested through the tenants' energy efficiency provisions and where the person making a request is a leaseholder, their request should be made to the freeholder (superior landlord) or the person to whom the ground rent is paid.**

The Regulations do not apply if the landlord has been unable, in the preceding five years, to improve the EPC rating of the property to an E rating or higher, as a result of a tenant or third party refusing to give its consent. The exemption lasts for 5 years from the date of the refusal and where lack of consent from the tenant was the issue, until the current tenancy ends.

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 Regulations give a 6 month grace period to certain landlords (see page 57 of the Landlord Guidance), by the end of which period they will either have to ensure that the property has an EPC rating of at least E, or that an exemption applies.

**NB: Landlords will only be able to rely on one of these exemptions if they have registered it in the publically accessible national PRS Exemptions Register. Landlords can register valid exemptions from 1 October 2017 and should email [prsregisteraccess@beis.gov.uk](mailto:prsregisteraccess@beis.gov.uk) or telephone 020 7215 5000.**

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

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## 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.

## PENALTIES

- Where the landlord has failed to comply with the Compliance Notice this could lead to a fine up to £2,000 and 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 three 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.**

There is a maximum level of penalty which applies to each property. This is set at £5,000.

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## 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.