

businesscompanion

trading standards law explained

Energy efficiency of rented property: non-domestic

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This guidance is for England and Wales

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 are intended to improve the standard of energy efficiency in both the domestic and non-domestic private rented sector in England and Wales.

The Regulations target properties that are currently rated F or G on their Energy Performance Certificates (EPCs), implementing measures to raise their rating to a minimum of E. This will reduce the emissions produced by heating and powering these buildings, which currently accounts for 12% of UK emissions.

This guidance covers the requirements for non-domestic property (those that are not dwellings).

What is the minimum level of energy efficiency?

The Regulations prohibit the letting of substandard (lower than band E) non-domestic property, under a phased approach:

- since 1 April 2018, landlords of non-domestic private rented properties (including public sector landlords) may not grant a tenancy to new or existing tenants if their property has an EPC rating of band F or G (shown on a valid EPC for the property)
- from 1 April 2023, landlords must not continue letting a non-domestic property that is already let if that property has an EPC rating of band F or G

Which properties are covered?

The Regulations only apply to those properties that are legally required to have an EPC. Since 2008, the majority of non-domestic properties have been required to have an EPC. There are exceptions if the property is:

- listed or officially protected and the minimum energy performance requirements would unacceptably alter it
- a temporary building that is only going to be used for two years or less
- used as a place of worship or for other religious activities
- an industrial site, workshop or non-residential agricultural building that doesn't use much energy
- a detached building with a total floor space of less than 50 m²
- due to be demolished by the seller or landlord and they have all the relevant planning and conservation consents

See the ['Energy Performance Certificates'](#) guide for more details.

Both private, local authority and other public body landlords are covered, as well as a tenant who sublets a property falling within the scope of the Regulations. The Regulations do not apply to properties let on a tenancy of less than six months or more than 99 years.

The Regulations contain similar requirements for domestic properties, although commencement dates are different. Where a property is of mixed use, in that it contains both residential and commercial units (such as a shop with a flat / flats above), and these are let separately, the relevant provisions for domestic property will apply to the flats, and the non-domestic requirements to the shop. If the property is let as a whole then the landlord will need to examine the tenancy to determine whether it is a residential or commercial lease.

What if the property is currently a F or G rating?

If the EPC for the property currently shows a rating of F or G, then the landlord must make improvements to bring the property up to an E rating before the relevant date.

If the tenant has a right to renew under the Landlord and Tenants Act 1954, the Regulations do not interfere with these rights, therefore neither the tenant nor the landlord can use the non-compliance as a justification for refusing to renew, or terminating the lease early.

To improve the energy efficiency of a building there are a number of possible improvements that may have been recommended by the energy assessor compiling the EPC, or can be obtained through a surveyor or other energy efficiency advisor. This may include improvements or extensions to heating and ventilation systems, insulation, glazing, etc.

How much will it cost?

The Regulations are intended to have zero cost implications for landlords; they only require that energy efficiency improvements that meet the 'seven-year payback' test must be made. The seven-year payback test means that the expected value of the savings on energy bills that the improvement is expected to achieve over seven years is greater than the cost of repaying it.

The value of savings must be calculated using the approved methodology, which is the methodology for calculating EPCs, and using relevant energy prices. Although the Regulations do not specify who should

make the calculation, the Department for Business, Energy and Industrial Strategy (BEIS) guidance (see '**Further information**' below) refers to "a competent non-domestic energy assessor, such as a level four accredited non-domestic energy assessor (NDEA)". Landlords can [find an assessor](#) via the GOV.UK website.

If, having completed the calculation, the value of savings on energy bills is less than the cost of the improvement then it will not meet the payback test, and therefore the improvement will not be a relevant improvement for the purposes of the legislation and it will not be required to be installed.

If, however, the value of savings is more than or equal to the cost of the improvement then the landlord will have to make the improvements before the property can be let (unless exemptions apply).

Further information and worked examples of the calculations are included in the BEIS guidance.

Are any properties exempt from the requirements?

There are certain circumstances where a landlord can seek an exemption from the requirements:

- where all relevant improvements have been made but the property remains below E rated
- where a property is below an E and there are no improvements that can be made
- cavity or internal or external wall insulation, if the landlord has obtained expert advice (ideally from an architect, chartered engineer or surveyor, but it can be an independent installer of the insulation system) in writing, which states that the measure is not appropriate as it will have a negative impact on the fabric or structure of the property (or the building if the property forms part of a larger building)
- if the landlord has obtained expert advice in writing (ideally from an architect, chartered engineer or surveyor, but can be an independent installer of the insulation system), which states that cavity / internal / external wall insulation is not appropriate as it will have a negative impact on the fabric or structure of the property (or the building if the property forms part of a larger building)
- if third-party consent is required before improvements can be installed - for example, planning consent for solar panels or external wall insulation, consent from mortgage lenders or existing tenants - the landlords must make reasonable attempts to obtain consent. The exemption will last for five years or until the end of the tenancy (if it relates to obtaining tenants' consent)
- where the landlord has obtained a report from a registered valuer (on the register of the Royal Institute of Chartered Surveyors (RICS)) that the installation of specific improvements would reduce the market value of the property or the building it forms part of by more than 5%. This exemption will last for five years

There is also an exemption when a person becomes a landlord suddenly, due to one of the circumstances below, and it would be inappropriate or unreasonable to be required to comply immediately:

- a lease has been granted due to a contractual obligation
- the tenant becomes insolvent and the landlord has been the tenant's guarantor
- the landlord has been a guarantor, or a former tenant, who has exercised the right to obtain an overriding lease of a property under section 19 of the Landlord and Tenant (Covenants) Act 1995
- a new lease has been deemed created by operation of law
- a new lease has been granted under Part 2 of the Landlord and Tenant Act 1954
- a new lease has been granted by a court order, other than under the Landlord and Tenant Act 1954

From April 2023, a landlord can also use this exemption if, when purchasing an interest in the property, it was let on an existing tenancy. This exemption lasts for six months.

How do I register an exemption?

All exemptions must be registered on the national [PRS Exemptions Register](#) (PRS meaning 'private rented sector').

Landlords can self-certify their exemptions and the register will be monitored by local authorities as an enforcement tool, and also by BEIS to monitor the impact of the legislation. There is public access to some information, including addresses of properties where exemptions have been registered, names of landlords (except where the landlord is an individual), the nature of the exemptions, as well as valid EPCs for properties.

In order to register, landlords will need to have details of the address of the property, which exemptions are to be registered and a valid EPC for the property. Depending on the exemption sought, the landlord will also need any expert advice or reports in writing that provide evidence to support the reason for the exemption.

The EPC for a property can be transferred if the property is sold; however, any registered exemptions will not be transferred and will cease to apply once the property is sold.

Further information

BEIS has produced comprehensive landlord [guidance documents for non-domestic property](#) and has also published [guidance on PRS exemptions and Exemptions Register evidence requirements](#).

Trading standards

For more information on the work of trading standards services - and the possible consequences of not abiding by the law - please see ['Trading standards: powers, enforcement and penalties'](#).

In this update

No major changes.

Last reviewed / updated: September 2022

Key legislation

[Landlord and Tenants Act 1954](#)

[Building Regulations 2010](#)

[Energy Performance of Buildings \(England and Wales\) Regulations 2012](#)

[Energy Efficiency \(Private Rented Property\) \(England and Wales\) Regulations 2015](#)

Please note

This information is intended for guidance; only the courts can give an authoritative interpretation of the

law.

The guide's 'Key legislation' links often only shows the original version of the legislation, although some amending legislation is linked to separately where it is directly related to the content of a guide. Information on changes to legislation can be found by following the above links and clicking on the 'More Resources' tab.

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