

Minimum Energy Efficiency Standards

Minimum EPC standards required for lettings in England and Wales from 2018

On the 26th March 2015, the Energy Efficiency (Private Rented Sector) (England and Wales) Regulations passed into law. These regulations are better known as the minimum energy efficiency standards (MEES).

The final regulations are very similar to those consulted upon in summer 2014. This article relates to non-domestic buildings, although the regulations also cover domestic properties.

Requirements and scope

- The minimum energy efficiency standard will be set at an 'E' EPC rating.
- The regulations will be enforced upon the granting of a new lease (as well as lease renewals) from 1 April 2018.
- From 1 April 2023, the regulations will apply to all privately rented property in scope of the regulations, including where a lease is already in place and a property is occupied by a tenant.
- The regulations will exclude from this definition any property which is let on a tenancy which is granted for a term of 6 months or less and any property let on a tenancy for 99 years or more.
- All non-domestic property types are in scope of the regulations, except for those specifically excluded from existing Energy Performance Certificate (EPC) obligations, as set out in the EPC regulations, such as Listed buildings.
- The regulations will be applied to sublets.

- Landlords will be given an extension of six months from the date of the grant of the tenancy before they are required to comply with the regulations.
- Where a non-compliant property occupied by a tenant is sold, the new landlord will have six months to improve the property, or seek to demonstrate an exemption applies.

Exemptions

Landlords will be exempt from meeting the minimum standard if they can demonstrate one of the following:

- The identified improvement measures are not cost-effective, either within a seven year payback, or under the Green Deal's Golden Rule.
- Despite reasonable efforts, the landlord cannot obtain necessary consents to install the required energy efficiency improvements, including from tenants, lenders and superior landlords.
- A relevant suitably qualified expert provides written advice that the measures will reduce a property's value by 5% or more, or that wall insulation required to improve the property will damage the property.

Where a landlord considers an exemption applies allowing them to let their property below an 'E' EPC rating, the landlord will need to log this on a centralised register - the "Private Rented Sector (PRS) Exemptions Register". Exemptions last for five years.

Enforcement and penalties

- Local authorities will enforce the provisions via Trading Standards Officers.
- Where a local authority suspects that a landlord with a property in scope of the regulations is not compliant, or has not sufficiently proved an exemption, the local authority can serve a compliance notice on the landlord requesting further information it considers necessary to confirm compliance. If this is not provided, or is provided and is not sufficient to prove compliance, the local authority may proceed to issuing a penalty notice.
- The penalty regime for non-compliance with the regulations will reflect the degree of infringement, and length of non-compliance. In some cases the infringement will be made public to encourage compliance. Penalties may be cumulative. The penalty regime will be as follows:

Infringement	Penalty	
Providing false or misleading information to the PRS Exemptions Register: Failing to comply with a compliance notice from a local authority	£5,000 Publication of non-compliance	
Renting out a non-compliant property	Less than 3 months non-compliance 10% of rateable value, but with a minimum penalty of £5,000 and a maximum penalty of £50,000 Publication of non-compliance	3 months or more of non-compliance 20% of rateable value, but with a minimum penalty of £10,000 and a maximum penalty of £150,000 Publication of non-compliance

Appeals

- Upon receiving a penalty notice from a local authority, a landlord may request a review of the local authority's decision to serve the notice. Landlords may appeal to the First-tier Tribunal.
- Landlords may appeal a penalty imposed for non-compliance with the regulations on the basis that the penalty notice was issued in error, that the penalty does not comply with the regulations, or that it was inappropriate in the circumstances for the penalty notice to have been served.



Trajectory

- The Government will not set a longer term trajectory. They believe it is important to learn from experience in implementing these regulations. As such, there is a provision for regular review of the regulations, starting in 2020.
- The Department of Energy and Climate Change (DECC) will continue to work with the Department for Communities and Local Government (DCLG) to ensure that the PRS regulations and the EPC regime work together to best effect.

How Bilfinger GVA can help

We engaged with DECC during the consultation process and are well positioned to advise clients who have concerns about the impact of the regulations on their properties. We can provide clients with further detail on the regulations, as well as the expertise required to ensure their portfolios are future proofed against the coming regulations and well placed to face the increasing scrutiny of energy efficiency within the property market. The first step is to analyse the risk exposure within a portfolio and identify those buildings that require mitigation actions. Lease events, physical aspects of the building, details of existing EPCs and the fine points of the regulations will all help define a mitigation strategy. Where required, EPC improvement plans can then be produced for specific buildings. Please do contact us if you would like to discuss the regulations and their impact on your properties.



For further information please contact:

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