
DRAFT STATUTORY INSTRUMENTS

2018 No. XXXX

ENERGY CONSERVATION, ENGLAND AND WALES

The Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2018

Made - - - - - *******

Coming into force in accordance with regulation 1

The Secretary of State, in exercise of the powers conferred by sections 43, 44, 49, 50 and 52(1) of the Energy Act 2011(a), makes the following Regulations.

In accordance with section 52(7)(b) of the Energy Act 2011, the Secretary of State has consulted with the Welsh Ministers.

In accordance with section 52(4)(b) of the Energy Act 2011, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2018, and come into force on 1st April 2019.

Amendment of the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

2. The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015(c) are amended as follows.

Amendment of regulation 24 (relevant energy efficiency improvements)

3. In regulation 24(3), in the words before sub-paragraph (a), after “cost”, insert “(including value added tax)”.

4. In regulation 24(3)(a), after “or any other person,”, omit “or”.

(a) 2011 c.16.

(b) Section 52(7) requires the Secretary of State to consult with Welsh Ministers before making domestic energy efficiency regulations under Chapter 2 of Part 1 of the Energy Act 2011 which apply in relation to domestic private rented properties situated in Wales.

(c) S.I. 2015/962, amended by S.I. 2016/660.

5. After regulation 24(3)(b), insert—

“,

- (c) is not more than the cost cap and can be partly financed by the landlord and partly by one or more of the financial arrangements in sub-paragraph (a) and paragraph (b)(i) and (ii) in the definition of “relevant energy efficiency improvements” in section 43(4) of the Act, or
- (d) is not more than the cost cap and can be wholly financed by the landlord”.

6. After regulation 24(3), insert—

“(4) In paragraph (3) and in the Schedule, “the cost cap” means £3,500 less—

- (a) the total sum (including value added tax) spent by the landlord on unregistered energy efficiency improvements made to the property in the period beginning with 1st October 2017 and ending with 31st March 2019, and
- (b) the total cost (including value added tax) of unregistered energy efficiency improvements made to the property on or after 1st April 2019.

(5) In paragraph (4), “unregistered energy efficiency improvements” means energy efficiency improvements within paragraph (1) that have not been identified, in an entry on the PRS Exemptions Register, as having been made.”

Amendment of regulation 25 (relevant energy efficiency improvements undertaken)

7. In regulation 25(1), for “paragraph (2)” substitute “paragraphs (2) and (3)”.

8. In regulation 25(2), for “This” substitute “Subject to paragraph (3), this”.

9. After regulation 25(2), insert—

“(3) Where in the period beginning with 1st October 2017 and ending with 31st March 2019 the landlord registered evidence under regulation 36(2) on which the landlord relied to demonstrate that no relevant energy efficiency improvements could be made to the property because no financing of the types mentioned in section 43(4) of the Act and regulation 24(3) was available, this regulation applies for a period starting with the date on which the landlord registered the evidence and ending with 31st March 2020.”

Amendment of regulation 31 (consent exemption)

10. In regulation 31(1), for “paragraph (2), regulations 23 and 27 do”, substitute “paragraphs (2) and (3), regulation 27 does”.

11. After regulation 31(1), insert—

“(1A) Subject to paragraphs (2) and (3), regulation 23 does not apply at any time when the landlord has, within the preceding five years, been unable to increase the energy performance indicator for the property to not less than the minimum level of energy efficiency as a result of—

- (a) the tenant refusing consent to any relevant energy efficiency improvement being made, or
- (b) despite reasonable efforts by the landlord to obtain third party consent, that consent having been—
 - (i) refused, or
 - (ii) granted subject to a condition with which the landlord cannot reasonably comply.”

12. In regulation 31(2), after “(1)”, insert “or (1A)”.

13. After regulation 31(2), insert—

“(3) Where a landlord has relied on the exemption in paragraph (1)(a) or (1A)(a) in relation to the refusal of a particular tenant to give consent or a confirmation, the landlord may no longer rely on the exemption once that tenant’s tenancy has come to an end.”

Amendment of regulation 36 (PRS Exemptions Register)

14. In regulation 36(2)(e), after “31(1)” insert “or (1A)”.

Amendment of the Schedule

15. In paragraph 1(h) of the Schedule—

- (a) after “49(4) of the Act,” insert “any evidence or”;
- (b) after “improvement for the property”, in the second place it occurs, insert “including, where applicable, the items mentioned in paragraph 1A”.

16. After paragraph 1 of the Schedule insert—

“1A. The items referred to in paragraph 1(h) are—

- (a) for each energy efficiency improvement to the property relied on in calculating the cost cap, details of the improvement and its cost;
- (b) for each energy efficiency improvement within regulation 24(1) that has not been made—
 - (i) copies of three quotations for the cost of purchasing and installing the improvement (from installers of that improvement who meet the relevant installer standards), which demonstrate that the total cost (including value added tax) would exceed the cost cap, and
 - (ii) the name of the responsible person (or, where two or more persons are the landlord, the name of the responsible person in relation to each landlord), and confirmation that the responsible person (or each of them) is satisfied that the total cost (including value added tax) would exceed the cost cap.”

17. In paragraph 2(1) of the Schedule—

- (a) in the words before sub-paragraph (a) and in sub-paragraph (e), after “31(1)” insert “or (1A)”;
- (b) in sub-paragraph (c), after “31(1)” insert “, 31(1A)”.

Date *Name*
Minister of State for Energy and Clean Growth
Department for Business, Energy and Industrial Strategy

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (S.I. 962/2015) (“the 2015 Regulations”).

The 2015 Regulations introduced measures to improve the energy efficiency of certain private rented property in England and Wales.

Part 3 of the 2015 Regulations prescribes a minimum level of energy efficiency for private rented properties, being an energy performance indicator of band E, and prohibits landlords from letting

out private rented properties which fall below that standard (“sub-standard property”). Part 3 provides that, subject to prescribed exemptions, the landlord of a sub-standard property must not: (a) grant a new tenancy of the property after 1st April 2018, or (b) continue to let the property after 1st April 2020 (in the case of domestic private rented property), or after 1st April 2023 (in the case of non-domestic private rented property).

These Regulations make changes to Part 3 of the 2015 Regulations, largely in relation to domestic properties.

Regulations 3 to 6 add to the definition of “relevant energy efficiency improvements” so that the financing of such improvements may also be achieved either partly or wholly through a landlord contribution, where the total cost of the improvements is a maximum of £3,500.

In some cases where the landlord has not previously installed improvements and has registered an exemption against doing so, regulations 7 to 9 reduce the length of time a landlord can wait before complying with the Regulations or registering a further exemption.

An ancillary change is made to the Schedule by regulations 15 and 16 to specify what evidence must be provided should a landlord claim an exemption because the cost of the improvements would exceed £3,500.

Regulations 10 and 11 remove the ability of domestic landlords to claim an exemption from the 2015 Regulations on the grounds that confirmation for a green deal plan under regulation 36 of the Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) Regulations 2012 (S.I. 2012/2079) could not be obtained from the tenant. There are consequential changes in regulations 12, 14 and 17.

Regulation 13 clarifies that where a landlord registers an exemption because the current tenant of the property does not consent to an improvement, that exemption will only remain valid for as long as that tenant remains the tenant. This applies both to domestic and non-domestic properties.

A full impact assessment of the effect that this instrument will have on the costs of business will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

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