



# Energy Act 2011

## 2011 CHAPTER 16

### PART 1

#### ENERGY EFFICIENCY

VALID FROM 26/03/2015

### CHAPTER 2

#### PRIVATE RENTED SECTOR: ENGLAND AND WALES

##### *Introductory*

#### **42 Meaning of “domestic PR property” and “non-domestic PR property”: England and Wales**

(1) For the purposes of this Chapter—

- (a) a property is a “domestic private rented property” if, subject to subsection (2), it is let—
  - (i) under a tenancy which is an assured tenancy for the purposes of the Housing Act 1988,
  - (ii) under a tenancy which is a regulated tenancy for the purposes of the Rent Act 1977, or
  - (iii) under a tenancy which is specified for the purposes of this subsection in an order made by the Secretary of State;
- (b) a property is a “non-domestic private rented property” if it—
  - (i) is situated in England and Wales,
  - (ii) is let under a tenancy, and
  - (iii) is not a dwelling.

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- (2) But a property is not a domestic private rented property if—
- (a) it is low cost rental accommodation within the meaning of section 69 of the Housing and Regeneration Act 2008 and the landlord is a private registered provider of social housing,
  - (b) it is low cost home ownership accommodation within the meaning of section 70 of that Act, or
  - (c) the landlord is a body registered as a social landlord under Chapter 1 of Part 1 of the Housing Act 1996.
- (3) In subsection (1)(b) “dwelling” has the meaning given by the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (S.I. 2007/991) (“the Energy Performance Regulations”).
- (4) A domestic private rented property is referred to in this Chapter as a “domestic PR property”.
- (5) A non-domestic private rented property is referred to in this Chapter as a “non-domestic PR property”.

*Domestic energy efficiency regulations*

**43 Domestic energy efficiency regulations**

- (1) The Secretary of State must make regulations for the purpose of securing that a landlord of a domestic PR property—
- (a) which is of such description of domestic PR property as is provided for by the regulations,
  - (b) in relation to which there is an energy performance certificate, and
  - (c) which falls below such level of energy efficiency (as demonstrated by the energy performance certificate) as is provided for by the regulations,
- may not let the property until the landlord has complied with the obligation mentioned in subsection (2).
- (2) The obligation is to make to the property such relevant energy efficiency improvements as are provided for by the regulations.
- (3) Regulations under this section are referred to in this Chapter as “domestic energy efficiency regulations”.
- (4) For the purposes of domestic energy efficiency regulations—
- “energy performance certificate” has the meaning given by the Energy Performance Regulations;
- “landlord” and “let the property” have the meaning given by the regulations (and “let the property” may be defined to include “continue to let the property”);
- “relevant energy efficiency improvements” means improvements which—
- (a) are of such description as the regulations provide, and
  - (b) can be—
    - (i) wholly paid for pursuant to a green deal plan as provided for by Chapter 1 of this Part,

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- (ii) provided free of charge pursuant to an obligation imposed by an order made under section 33BC or 33BD of the Gas Act 1986 or section 41A or 41B of the Electricity Act 1989,
  - (iii) wholly financed pursuant to a combination of such a plan and such an obligation, or
  - (iv) financed by such other description of financial arrangement as the regulations provide.
- (5) The Secretary of State may by order amend the definition of “energy performance certificate” in subsection (4).
- (6) The first domestic energy efficiency regulations must come into force no later than 1 April 2018.

#### **44 Further provision about domestic energy efficiency regulations**

- (1) Domestic energy efficiency regulations may, in particular, include provision about—
- (a) the period within which improvements required by the regulations must be started or completed;
  - (b) exemptions from any requirement imposed by or under the regulations;
  - (c) evidence relating to any requirement imposed by or under the regulations.
- (2) Provision falling within subsection (1)(b) includes, in particular, provision about exemptions—
- (a) relating to any necessary permissions or consents;
  - (b) relating to the likely negative impact on the value of a property of complying with a requirement imposed by or under the regulations.
- (3) Provision falling within subsection (1)(c) includes, in particular, provision about evidence for the purpose of demonstrating—
- (a) an exemption from a requirement imposed by or under the regulations;
  - (b) that a property is not one in relation to which the regulations have effect;
  - (c) that the improvements required by or under the regulations are not relevant energy efficiency improvements within the meaning given by the regulations.

#### **45 Sanctions for the purposes of domestic energy efficiency regulations**

- (1) Domestic energy efficiency regulations may include provision for the purpose of securing compliance with requirements imposed on landlords by or under the regulations.
- (2) Provision falling within subsection (1) includes, in particular, provision—
- (a) for a local authority to enforce any requirement imposed by or under the regulations;
  - (b) about the sanctions for non-compliance with a requirement imposed by or under the regulations;
  - (c) about the sanctions for the provision of false information in connection with such a requirement;
- including, in cases falling within paragraph (b) or (c), the imposition of a civil penalty by a local authority.

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- (3) The amount of any civil penalty provided for by domestic energy efficiency regulations must not exceed £5,000.
- (4) Where domestic energy efficiency regulations make provision for the imposition of a civil penalty, the regulations must also include provision for a right of appeal to a court or tribunal against the imposition of the penalty.
- (5) Provision falling within subsection (4) includes, in particular, provision—
  - (a) as to the jurisdiction of the court or tribunal to which an appeal may be made;
  - (b) as to the grounds on which an appeal may be made;
  - (c) as to the procedure for making an appeal (including any fee which may be payable);
  - (d) suspending the imposition of the penalty, pending determination of the appeal;
  - (e) as to the powers of the court or tribunal to which an appeal is made;
  - (f) as to how any sum payable in pursuance of a decision of the court or tribunal is to be recoverable.
- (6) The provision referred to in subsection (5)(e) includes provision conferring on the court or tribunal to which an appeal is made power—
  - (a) to confirm the penalty;
  - (b) to withdraw the penalty;
  - (c) to vary the amount of the penalty;
  - (d) to award costs.
- (7) If the Secretary of State considers it appropriate for the purpose of, or in consequence of, any provision falling within subsection (5) (a), (c), (e) or (f), domestic energy efficiency regulations may revoke or amend any subordinate legislation in so far as the subordinate legislation extends to England and Wales.
- (8) In this section “subordinate legislation” has the meaning given in section 21(1) of the Interpretation Act 1978 and includes an instrument made under a Measure or Act of the National Assembly for Wales.

*Tenants' energy efficiency improvements regulations*

**46 Tenants' energy efficiency improvements regulations**

- (1) The Secretary of State must make regulations for the purpose of securing that a landlord of a domestic PR property which is of such description of domestic PR property as is provided for by the regulations does not unreasonably refuse a request mentioned in subsection (2).
- (2) The request is one by the tenant of the property to consent to the making of such relevant energy efficiency improvements as are identified in the request.
- (3) Regulations under this section are referred to in this Chapter as “tenants' energy efficiency improvements regulations”.
- (4) For the purposes of tenants' energy efficiency improvements regulations—
  - “landlord” and “tenant” have the meaning given by the regulations;
  - “relevant energy efficiency improvements” means improvements which—

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- (a) are of such description as the regulations provide, and
  - (b) can be—
    - (i) wholly paid for pursuant to a green deal plan as provided for by Chapter 1 of this Part,
    - (ii) provided free of charge pursuant to an obligation imposed by an order made under section 33BC or 33BD of the Gas Act 1986 or section 41A or 41B of the Electricity Act 1989,
    - (iii) wholly financed pursuant to a combination of such a plan and such an obligation, or
    - (iv) financed by such other description of financial arrangement as the regulations provide.
- (5) The first tenants' energy efficiency improvements regulations must come into force no later than 1 April 2016.

#### **47 Further provision about tenants' energy efficiency improvements regulations**

- (1) Tenants' energy efficiency improvements regulations may, in particular, include provision about—
- (a) the form, content and service of a request under the regulations;
  - (b) the form, content and service of any response by the landlord to a request (including the period within which any response must be given);
  - (c) exemptions from any requirement imposed by or under the regulations;
  - (d) evidence relating to any requirement imposed by or under the regulations.
- (2) Provision falling within subsection (1)(c) includes, in particular, provision about exemptions—
- (a) relating to any necessary permissions or consents;
  - (b) relating to the likely negative impact on the value of a property of consenting to the request.
- (3) Provision falling within subsection (1)(d) includes, in particular, provision about evidence for the purpose of demonstrating—
- (a) an exemption from a requirement imposed by or under the regulations;
  - (b) that a property is not one in relation to which the regulations have effect;
  - (c) that the improvements for which consent has been requested are not relevant energy efficiency improvements within the meaning given by the regulations.

#### **48 Sanctions for the purposes of tenants' energy efficiency improvements regulations**

- (1) Tenants' energy efficiency improvements regulations may include provision for the purpose of securing compliance with requirements imposed on landlords by or under the regulations.
- (2) Provision falling within subsection (1) includes, in particular, provision for a tenant to apply to a court or tribunal for a ruling that a landlord has not complied with a requirement imposed by or under the regulations.
- (3) Where the regulations make provision for a tenant to make an application such as is mentioned in subsection (2), the provision may, in particular, include provision—

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- (a) as to the jurisdiction of the court or tribunal to which an application may be made;
  - (b) as to the grounds on which an application may be made;
  - (c) as to the procedure for making an application (including any fee which may be payable);
  - (d) as to the powers of the court or tribunal to which an application is made (including as to costs which may be awarded);
  - (e) as to how any sum payable in pursuance of a decision of the court or tribunal is to be recoverable.
- (4) Where the regulations make provision for a tenant to make an application such as is mentioned in subsection (2), the regulations must also include provision for a right of appeal by the tenant or landlord against any decision of a court or tribunal on an application.
- (5) Provision falling within subsection (4) includes, in particular, provision—
- (a) as to the jurisdiction of the court or tribunal to which an appeal may be made;
  - (b) as to the grounds on which an appeal may be made;
  - (c) as to the procedure for making an appeal (including any fee which may be payable);
  - (d) suspending the effect of the decision being appealed against, pending determination of the appeal;
  - (e) as to the powers of the court or tribunal to which an appeal is made;
  - (f) as to how any sum payable in pursuance of a decision of the court or tribunal is to be recoverable.
- (6) The provision referred to in subsection (5)(e) includes provision conferring on the court or tribunal to which an appeal is made power—
- (a) to confirm the decision;
  - (b) to quash the decision;
  - (c) to make a different decision;
  - (d) to remit the decision or any matter relating to the decision to the person who made it;
  - (e) to award costs.
- (7) If the Secretary of State considers it appropriate for the purpose of, or in consequence of, any provision falling within—
- (a) subsection (3)(a), (c), (d) or (e), or
  - (b) subsection (5)(a), (c), (e) or (f),
- tenants' energy efficiency improvements regulations may revoke or amend any subordinate legislation in so far as the subordinate legislation extends to England and Wales.
- (8) In this section “subordinate legislation” has the meaning given in section 21(1) of the Interpretation Act 1978 and includes an instrument made under a Measure or Act of the National Assembly for Wales.

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### *Non-domestic energy efficiency regulations*

#### **49 Non-domestic energy efficiency regulations**

- (1) The Secretary of State must make regulations for the purpose of securing that a landlord of a non-domestic PR property—
  - (a) which is of such description of non-domestic PR property as is provided for by the regulations,
  - (b) in relation to which there is an energy performance certificate, and
  - (c) which falls below such level of energy efficiency (as demonstrated by the energy performance certificate) as is provided for by the regulations,may not let the property until the landlord has complied with the obligation mentioned in subsection (2).
- (2) The obligation is to make to the property such relevant energy efficiency improvements as are provided for by the regulations.
- (3) Regulations under this section are referred to in this Chapter as “non-domestic energy efficiency regulations”.
- (4) For the purposes of non-domestic energy efficiency regulations—

“energy performance certificate” has the meaning given by the Energy Performance Regulations;

“landlord” and “let the property” have the meaning given by the regulations (and “let the property” may be defined to include “continue to let the property”);

“relevant energy efficiency improvements” means improvements which—

  - (a) are of such description as the regulations provide, and
  - (b) can be—
    - (i) wholly paid for pursuant to a green deal plan as provided for by Chapter 1 of this Part, or
    - (ii) financed by such other description of financial arrangement as the regulations provide.
- (5) The Secretary of State may by order amend the definition of “energy performance certificate” in subsection (4).
- (6) The first non-domestic energy efficiency regulations must come into force no later than 1 April 2018.

#### **50 Further provision about non-domestic energy efficiency regulations**

- (1) Non-domestic energy efficiency regulations may in particular, include provision about—
  - (a) the period within which improvements required by the regulations must be started or completed;
  - (b) exemptions from any requirement imposed by or under the regulations;
  - (c) evidence relating to any requirement imposed by or under the regulations.
- (2) Provision falling within subsection (1)(b) includes, in particular, provision about exemptions—



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- (a) relating to any necessary permissions or consents;
  - (b) relating to the likely negative impact on the value of a property of complying with a requirement imposed by or under the regulations.
- (3) Provision falling within subsection (1)(c) includes, in particular, provision about evidence for the purpose of demonstrating—
- (a) an exemption from a requirement imposed by or under the regulations;
  - (b) that a property is not one in relation to which the regulations have effect;
  - (c) that the improvements required by or under the regulations are not relevant energy efficiency improvements within the meaning given by the regulations.

## **51 Sanctions for the purposes of non-domestic energy efficiency regulations**

- (1) Non-domestic energy efficiency regulations may include provision for the purpose of securing compliance with requirements imposed on landlords by or under the regulations.
- (2) Provision falling within subsection (1) includes, in particular, provision—
- (a) for a local weights and measures authority to enforce any requirement imposed by or under the regulations;
  - (b) about the sanctions for non-compliance with a requirement imposed by or under the regulations;
  - (c) about the sanctions for the provision of false information in connection with such a requirement;
- including, in cases falling within paragraph (b) or (c), the imposition of a civil penalty by a local weights and measures authority.
- (3) Where non-domestic energy efficiency regulations make provision for a civil penalty, the regulations must also include provision for a right of appeal to a court or tribunal against the imposition of the penalty.
- (4) Provision falling within subsection (3) includes, in particular, provision—
- (a) as to the jurisdiction of the court or tribunal to which an appeal may be made;
  - (b) as to the grounds on which an appeal may be made;
  - (c) as to the procedure for making an appeal (including any fee which may be payable);
  - (d) suspending the imposition of the penalty, pending determination of the appeal;
  - (e) as to the powers of the court or tribunal to which an appeal is made;
  - (f) as to how any sum payable in pursuance of a decision of the court or tribunal is to be recoverable.
- (5) The provision referred to in subsection (4)(e) includes provision conferring on the court or tribunal to which an appeal is made power—
- (a) to confirm the penalty;
  - (b) to withdraw the penalty;
  - (c) to vary the amount of the penalty;
  - (d) to award costs.



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- (6) If the Secretary of State considers it appropriate for the purpose of, or in consequence of, any provision falling within subsection (4)(a), (c), (e) or (f), non-domestic energy efficiency regulations may revoke or amend any subordinate legislation in so far as the subordinate legislation extends to England and Wales.
- (7) In this section “subordinate legislation” has the meaning given in section 21(1) of the Interpretation Act 1978 and includes an instrument made under a Measure or Act of the National Assembly for Wales.

### *General*

## **52 Regulations and orders: Chapter 2**

- (1) Regulations and orders under this Chapter may make different provision for different cases or circumstances or for different purposes.
- (2) Regulations and orders under this Chapter are to be made by statutory instrument.
- (3) A statutory instrument containing an order under section 43(5) or 49(5) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A statutory instrument containing—
- (a) an order under section 42(1)(a)(iii), or
  - (b) regulations under this Chapter,
- may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (5) The Secretary of State must obtain the consent of the Welsh Ministers before making provision under this Chapter amending or revoking—
- (a) provision included in an instrument made under a Measure or Act of the National Assembly for Wales;
  - (b) any other subordinate legislation made by the Welsh Ministers (or the National Assembly for Wales established under the Government of Wales Act 1998).
- (6) Subsection (5) does not apply to the extent that the Secretary of State is making incidental or consequential provision.
- (7) The Secretary of State must consult the Welsh Ministers before making—
- (a) domestic energy efficiency regulations, or
  - (b) tenants' energy efficiency improvements regulations,
- which apply in relation to domestic PR properties situated in Wales.
- (8) Subsection (7) does not apply to the extent that consent has been obtained under subsection (5).

## **53 Crown application: Chapter 2**

This Chapter binds the Crown.

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