

EXPLANATORY MEMORANDUM TO
THE ENERGY EFFICIENCY (PRIVATE RENTED PROPERTY) (ENGLAND AND WALES) (AMENDMENT) REGULATIONS 2018

2018 No. XXXX

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These Regulations amend existing legislation in order to require landlords of certain domestic private rented properties in England and Wales to not only oversee investment in energy efficiency improvements to these properties but, where necessary, to self-fund such improvements subject to an upper spending cap on the overall amount to be spent on the improvements. The requirement will apply before such properties are let on a new tenancy, or before a tenancy is renewed or continued according to a timeframe set out in legislation.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 This entire instrument applies to England and Wales only.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

- 5.1 The Minister of State for Energy and Clean Growth has made the following statement regarding Human Rights:

“In my view the provisions of *The Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2018* are compatible with the Convention rights.”

6. Legislative Context

- 6.1 These Regulations amend *The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015* (the “2015 Regulations”).

- 6.2 The 2015 Regulations prescribe a minimum level of energy efficiency, defined with reference to the Energy Performance Certificate¹ (“EPC”), for all domestic (and non-domestic) private rented properties. Subject to specified exemptions, they stipulate that a landlord of a domestic property which falls below an EPC rating of E (the ‘minimum level of energy efficiency’²) may not grant a new tenancy or renew an existing tenancy on a private rented property after 1st April 2018 or continue to let such a domestic private rented property after 1st April 2020 where its energy performance falls below the minimum level of energy efficiency³. Properties which fall below the minimum level of energy efficiency are classed as ‘substandard’.
- 6.3 Where energy efficiency improvement works are identified on a property EPC, the 2015 Regulations direct that improvements be made where they can be funded ‘at no cost to the landlord’⁴.
- 6.4 The tenancies in scope of the domestic parts of the 2015 Regulations are defined in the *Energy Act 2011*, section 42 (1) (a) and the *Energy Efficiency (Domestic Private Rented Property) Order 2015* (“the 2015 Order”).

7. Policy background

What is being done and why?

- 7.1 The objectives of these amendment Regulations are to: (i) ensure that the 2015 Regulations work effectively to help deliver the benefits originally intended by Parliament in relation to the domestic private rented sector; (ii) help in the reduction of energy consumption by making certain domestic private rented homes more energy efficient and thereby reduce tenants’ energy bills and make the energy system more resilient; (iii) help alleviate fuel poverty and aid in meeting statutory fuel poverty targets; (iv) improve tenants’ health outcomes as a product of more energy efficient homes; (v) contribute to carbon reduction targets in the domestic private rented sector in furtherance of Climate Change Act 2008 commitments and (vi) support economic growth and jobs in the green construction industry.
- 7.2 Private rented properties in England and Wales are among the least energy efficient in the domestic housing stock, accounting for a quarter of all homes with an F or G energy efficiency rating despite the sector making up only a fifth of the housing stock. There are around 290,000 substandard private rented sector homes across England and Wales, representing around 6% of this market. The tenants of these properties face significantly higher energy costs than typical households and approximately 45% are in fuel poverty, posing further risk to the health of the household. In addition, the energy inefficiency of such homes contributes to residential greenhouse emissions, which make up 23% of all emissions in the UK. The 2015 Regulations and the 2015 Order were therefore enacted to require landlords of substandard domestic properties to make energy efficiency improvements.

¹ Established pursuant to *The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007*, which implemented in England and Wales Articles 7, 9 and 10 of the *Energy Performance of Buildings Directive*.

² Regulation 22(b)

³ Regulation 23

⁴ Regulation 6 of the 2015 Regulations refers.

- 7.3 In satisfaction of the ‘no cost to the landlord’ provision, it was anticipated that ‘Pay As You Save funding’, as provided by Green Deal finance whether entirely or in combination with Energy Company Obligation funding, would be the main route for funding a majority of the required improvements, with other third-party funding options, such as local authority grants also available to assist. With the ending of public investment in the Green Deal, however, and notwithstanding the scheme’s continuance and the emergence of private finance providers, activity on the ‘Pay As You Save’ funding market remains low. Consequently, the rate of improvement remains low⁵ and approximately 1,900 ‘no funding’ exemptions have been registered on the PRS Exemptions Register to date. The amendment Regulations therefore introduce a number of policy amendments to ensure that the objectives outlined above may still be achieved in the absence of widely available ‘Pay As You Save’ finance.
- 7.4 The key change is the removal of the ‘no cost to the landlord’ provision and the introduction of a requirement that landlords of domestic properties in scope of the 2015 Regulations and the 2015 Order make energy efficiency improvements to those properties, even where they cannot obtain third-party funding. Where landlord funding is involved (either wholly or in part), the amendment Regulations introduce a maximum spend requirement (‘spending cap’) of £3,500.
- 7.5 To meet their amended obligation, landlords will be required to improve their substandard properties to EPC band E, using any third-party funding arrangement available to them or spending up to £3,500 on energy efficiency measures. Where third-party funding is unavailable to fully cover the costs of improving the property to EPC E, and where there are no identified measures which can be installed for £3,500 or less, the landlord will be able to register a ‘high cost’ exemption on the PRS Exemptions Register. No spending cap will apply where third-party funding is available to fully cover the costs of identified improvements.
- 7.6 In the interests of avoiding complexity and to achieve a fair balance between driving cost-effective energy efficiency improvements and not placing an undue administrative burden on landlords, the spending cap will be inclusive of both VAT and any third-party funding, including Green Deal finance and local authority grants, that landlords are able to secure for relevant energy efficiency improvements.
- 7.7 In addition to the above, the amendment Regulations will introduce these further amendments:

Recognition of Previous Investment: Where previous energy efficiency improvements have been made to substandard domestic rented property, the landlord may subtract the costs incurred for these improvements from the spending cap to determine the value of any additional improvements required to be made. However, only those costs incurred on or after 1 October 2017 will be permitted for this treatment. This is to give due recognition to more recent energy efficiency investments made without giving scope for more historic improvements being used to avoid the upgrading of substandard domestic private rented properties to the minimum level of energy efficiency.

Removal of Consent Exemption: The exemption available in instances where Green Deal finance is available, but the tenant has not consented to a Green Deal finance

⁵ Over the period 2013 to July 2018 4% of all installations were delivered through the Green Deal: [Household Energy Efficiency Headline Release 20 September 2018](#)

charge being added to their energy bill, will no longer be available. Landlords in this position will be required to consider alternative funding options instead of merely registering an exemption. This will serve to avoid reliance solely on Green Deal and avert any impact on the effectiveness of the Regulations where such funds are not available to the particular landlord.

Curtailment of ‘No Third-Party Finance’ Exemption: Under the 2015 Regulations, ‘no third-party finance’ exemptions registered on the PRS Exemptions Register run for a period of five years. Under the amendment Regulations, where a measure, or package of measures, had been recommended for a property, but the landlord has registered an exemption on the basis that s/he was unable to install the measure(s) because it would have been at their cost due to a lack of third-party finance, and the exemption was registered on or after 1 October 2017, the validity of the exemption will now expire on 1 April 2020 instead of running for the full five years. While the change in the period of validity of the exemption is necessary to support the operational efficacy of the 2015 Regulations, the new termination date serves to provide landlords, who have registered such an exemption under the 2015 Regulations, with certainty that they have a reasonable time to comply with the amended requirements.

‘High Cost’ Exemption: Where an EPC F or G rated domestic private rented property cannot be improved to EPC E for £3,500 or less and the landlord seeks to register a ‘high cost’ exemption, the landlord will now be required to submit quotes from three different installers each evidencing that the cost of the requisite energy efficiency measure for the particular property is greater than the spending cap. This has been introduced to deter false registrations from being made (whether wittingly or unwittingly) or being made without a full investigation of the market costs of the relevant improvement.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 None.

10. Consultation outcome

10.1 On 19 December 2017 the Department for Business, Energy and Industrial Strategy published a consultation across England and Wales on proposals to amend the minimum standard regulations with respect to domestic properties to remove the ‘no cost to the landlord’ provision. The consultation proposals were published on the Gov.uk website. During the consultation period, the Department conducted a series of stakeholder workshops and held one-on-one meetings with a range of stakeholders and interested parties. The consultation closed on 13 March 2018 and the Department received 198 responses from a variety of organisations and individuals.

10.2 The majority of responses were supportive of the government’s key proposal to introduce a capped landlord contribution element. However, there was some disagreement over the proposed level of the cap with views, on this and other proposals, being wide ranging, with some providing depth of thought to specific consultation questions, while others were more strategic on the overarching issues. A

summary of responses received was published on 26 July 2018 and is available on the Gov.uk website. The relevant policy changes are noted in section 7 of this Explanatory Memorandum above and the government's consultation response available on the Gov.uk website.

11. Guidance

- 11.1 After these Regulations are laid, an updated version of the non-statutory guidance for landlords and other interested parties will be made available on the Gov.uk website.

12. Impact

- 12.1 The impact on business (being private landlords) is mainly the costs associated with the installation of energy efficiency measures in terms of the monetary outlay for the installation itself. There will also be ancillary costs for both landlords and tenants (for example, time spent on familiarisation with the requirements, or preparing a property for improvements).
- 12.2 The impact on the public sector (local authorities) is estimated to be minimal on the basis that their obligations in respect of enforcement activities remain unchanged.
- 12.3 It is anticipated that the impact on tenants living in improved properties will be lower energy costs, with improved thermal comfort in their homes serving to reduce health risks associated with fuel poverty and vulnerability to cold homes. From a landlord's perspective improving the energy efficiency of a property can lead to reduced maintenance costs, increased tenant satisfaction and shorter periods where a property is without tenants. Moreover, recent hedonic studies indicate that properties with higher energy efficiency ratings are worth more than similar properties with lower energy efficiency ratings.
- 12.4 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The 2015 Regulations contain a duty on the Secretary of State to review the operation of the Regulations at intervals of no more than five years. The approach to monitoring of these amending Regulations will be the same, and the effects of the amendments will be incorporated into that review work.

15. Contact

- 15.1 Stephen Ryman at the Department of Business, Energy and Industrial Strategy can be contacted with queries regarding the statutory instrument via email: Stephen.Ryman@beis.gov.uk, or telephone: 0300 068 6191.
- 15.2 Sam Balch at the Department of Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister of State for Energy and Clean Growth at the Department of Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.