
DRAFT STATUTORY INSTRUMENTS

2015 No.

**The Energy Efficiency (Private Rented Property)
(England and Wales) Regulations 2015**

PART 2

Tenants' energy efficiency improvements

CHAPTER 2

Request for consent to the making of relevant energy
efficiency improvements to domestic PR property

Request for consent to relevant energy efficiency improvements

8.—(1) A tenant may serve a notice on the landlord (a “tenant’s request”) requesting the landlord’s consent to the making of one or more relevant energy efficiency improvements to the domestic PR property.

(2) A tenant’s request must—

- (a) specify the relevant energy efficiency improvements for which the landlord’s consent is sought,
- (b) where it is made by a tenant falling within regulation 7(a)(ii), include written confirmation that any tenant of the property from whom third party consent is required has consented to those relevant energy efficiency improvements being made,
- (c) where the tenant’s request specifies a relevant energy efficiency improvement which has been recommended in—
 - (i) a recommendation report,
 - (ii) a green deal report, or
 - (iii) a report prepared by a surveyor,be accompanied by a copy of the report,
- (d) be accompanied by—
 - (i) evidence of any funding secured by the tenant for making the relevant energy efficiency improvements,
 - (ii) where any relevant energy efficiency improvement is to be provided free of charge pursuant to an obligation imposed by an order made under section 33BC or 33BD of the Gas Act 1986(1) or section 41A or 41B of the Electricity Act 1989(2), evidence to that effect,

(1) 1986 c.44. Section 33BC was substituted by section 99 of the Utilities Act 2000, and amended by section 15 of, and paragraphs 1 and 2 of the Schedule to, the Climate Change and Sustainable Energy Act 2006 (c.19), by paragraph 1 of Schedule 8 to the Climate Change Act 2008 (c.27), by section 66 of the Act, and by S.I. 2014/631. Section 33BD was inserted by section 68 of the Act.

- (iii) where the tenant proposes to wholly or partly fund the making of any relevant energy efficiency improvement, written confirmation of that,
- (e) where the making of any relevant energy efficiency improvement is not to be funded through a green deal plan, be accompanied by a copy of a quotation for the cost of making the relevant energy efficiency improvement from a green deal installer, or installer who meets relevant installer standards,
- (f) where the making of any relevant energy efficiency improvement is to be funded wholly or partly through a green deal plan—
 - (i) identify the green deal installer, or installer who meets relevant installer standards, who the tenant proposes will make the relevant energy efficiency improvement,
 - (ii) request that the landlord gives any confirmation which must be obtained from the landlord by virtue of regulation 36 of the Framework Regulations, and
 - (iii) be accompanied by any confirmation which must be obtained from a person other than the landlord by virtue of regulation 36 of the Framework Regulations, and
- (g) specify what works, if any, the tenant will undertake to make good the domestic PR property after the relevant energy efficiency improvements are made, and confirm that such works (if any) will be carried out at the tenant's expense.
- (3) Where a landlord lets two or more domestic PR properties in the same building—
 - (a) the tenants of two or more of those properties may together serve a tenant's request on their landlord in relation to the properties let to them, and
 - (b) any reference in these Regulations to a tenant's request includes a reference to such a tenant's request.

Circumstances in which a request for consent to relevant energy efficiency improvements may not be made

9.—(1) A tenant falling within regulation 7(a)(i) is not a tenant for the purposes of regulation 8(1)

- (a) after that tenant has served notice ending the tenancy,
- (b) within three months before the expiry of a fixed term tenancy, where that tenant has notified the landlord that that tenant intends to vacate the domestic PR property on the expiry of the term,
- (c) where—
 - (i) the landlord has served a notice ending the tenancy, including a notice seeking possession served under section 8 or section 21 of the Housing Act 1988(3), or a notice to quit, and
 - (ii) possession proceedings may be brought in reliance on the notice,
- (d) where the landlord has commenced proceedings against that tenant for possession of the domestic PR property, or for a breach of the tenancy agreement, and—

(2) 1989 c.29. Section 41A was substituted by section 70 of the Utilities Act 2000, and amended by section 16 of, and paragraphs 4 and 5 of the Schedule to, the Climate Change and Sustainable Energy Act 2006, by paragraph 3 of Schedule 8 to the Climate Change Act 2008, by section 67 of, and paragraph 4 of Schedule 1 to, the Act, and by S.I. 2014/631. Section 41B was inserted by section 69 the Act.

(3) 1988 c.50. Section 8 was amended by section 151 of the Housing Act 1996 (c.52) and by section 97(2) of the Anti-social Behaviour, Crime and Policing Act 2014 (c.12). Section 21 was amended by paragraph 103 of Schedule 11 to the Local Government and Housing Act 1989 (c.42), by sections 98 and 99 of the Housing Act 1996, by paragraph 9 of Schedule 11 to the Housing and Regeneration Act 2008 (c.17), by section 15(2) of the Anti-social Behaviour Act 2003 (c.38), and by section 164 of the Localism Act 2011.

- (i) those proceedings have not been resolved, or
 - (ii) the Court has made an order for possession of the domestic PR property,
 - (e) where that tenant has, within the preceding six months, arranged for any energy efficiency improvement to be made to the domestic PR property pursuant to a green deal plan, or
 - (f) where that tenant has, within the preceding six months, made a tenant's request in relation to the domestic PR property in respect of which one, or both, of the exemptions in Chapter 3 applied.
- (2) A tenant falling within regulation 7(a)(ii) is not a tenant for the purposes of regulation 8(1)—
- (a) after that tenant has entered into an agreement to transfer that tenant's interest in the property,
 - (b) within three months before the expiry of that tenant's leasehold interest in the property, or
 - (c) where the landlord has commenced proceedings against that tenant for forfeiture of the lease, or for a breach of the lease, and—
 - (i) those proceedings have not been resolved, or
 - (ii) the Court has made an order confirming the forfeiture and no relief from forfeiture has been granted, or
 - (d) where that tenant has, within the preceding six months, made a tenant's request in relation to the domestic PR property in respect of which one, or both, of the exemptions in Chapter 3 applied.

Landlord's duty not to unreasonably refuse a tenant's request

10.—(1) Subject to regulations 13(5)(a) and 14(3), where a landlord is served with a tenant's request, the landlord must not unreasonably refuse consent to the making of a relevant energy efficiency improvement specified in the tenant's request.

- (2) A landlord's refusal of consent is not unreasonable where—
- (a) paragraph (3) applies,
 - (b) paragraph (4) applies,
 - (c) paragraph (5) applies,
 - (d) the landlord relies, or intends to rely, on an exemption in Chapter 3.
- (3) This paragraph applies where—
- (a) another tenant submitted a tenant's request to that landlord in relation to the same domestic PR property within the six months preceding the date of service of the tenant's request, and the landlord complied with the requirements of these Regulations in relation to that other tenant's request,
 - (b) a notice has been served on the landlord or the superior landlord, and remains in force, in relation to the domestic PR property, or the building of which it forms part—
 - (i) under section 20, section 21, or section 43, of the Housing Act 2004(4), or
 - (ii) under section 265(1) to (4), of the Housing Act 1985(5), or

(4) **2004 c.34.** These are enforcement actions that may be taken by a local housing authority in relation to category 1 hazards and category 2 hazards (as defined in section 2 of that Act). Section 20 provides for the service of prohibition orders in respect of category 1 hazards, section 21 provides for the service of prohibition orders in respect of category 2 hazards, and section 43 provides for the service of emergency prohibition orders in respect of category 1 hazards.

(5) **1985 c.68.** These are demolition orders that may be made by a local housing authority in relation to category 1 hazards and category 2 hazards. Section 265 was substituted by section 46 of the Housing Act 2004.

(c) a declaration has been made in relation to the domestic PR property, or the building of which it forms part, under section 289 of the Housing Act 1985(6).

(4) This paragraph applies where the relevant energy efficiency improvement falls within any of paragraphs (d), (n) or (v) of the Schedule to the Green Deal (Qualifying Energy Improvements) Order 2012(7), and the landlord has obtained a written opinion from—

- (a) a relevant person, or
- (b) an independent installer of the relevant energy efficiency improvement in question who meets the relevant installer standards,

advising that it is not an appropriate energy efficiency improvement, due to its potential negative impact on the fabric or structure of the domestic PR property, or the building of which it forms part.

(5) This paragraph applies where the tenant’s request specifies a relevant energy efficiency improvement which is the same, or substantially the same, as any energy efficiency improvement to the PR property which the landlord had proposed within the preceding six months, where—

- (a) the landlord sought that tenant’s consent to the making of those energy efficiency improvements, and that tenant refused such consent, or
- (b) that tenant refused to give any confirmation which must be obtained from that tenant by virtue of regulation 36 of the Framework Regulations in relation to a green deal plan with which the landlord proposed to fund the making of those energy efficiency improvements.

Superior landlord’s duty not to unreasonably refuse a tenant’s request

11.—(1) Subject to regulations 13(5)(a) and 14(3), where a superior landlord is served with copies of a tenant’s request and a landlord’s initial response, or a landlord’s full response, in accordance with regulation 12(5), the superior landlord must not unreasonably refuse consent to the making of a relevant energy efficiency improvement falling within regulation 12(4).

(2) A superior landlord’s refusal of consent is not unreasonable where—

- (a) paragraph (3) applies,
- (b) paragraph (4) applies,
- (c) regulation 10(5) applies,
- (d) the superior landlord relies, or intends to rely, on an exemption in Chapter 3.

(3) This paragraph applies where—

- (a) in the six months preceding the date on which the superior landlord is served with copies of the tenant’s request and the landlord’s initial response in accordance with regulation 12(5), the superior landlord was served with a copy of another tenant’s request in accordance with regulation 12(5) in relation to the same domestic PR property, and the superior landlord complied with the requirements of these Regulations in relation to that other tenant’s request,
- (b) a notice has been served on the landlord or the superior landlord, and remains in force, in relation to the domestic PR property, or the building of which it forms part—
 - (i) under section 20, section 21, or section 43, of the Housing Act 2004, or
 - (ii) under section 265(1) to (4) of the Housing Act 1985, or

(6) This is a declaration by a local housing authority that an area is a clearance area made, inter alia, as a result of the existence of category 1 or category 2 hazards. Section 289 was amended by paragraph 25 of Schedule 9, and paragraph 70 of Schedule 11 to, the Local Government and Housing Act 1989, and by section 47 of, and paragraph 19 of Schedule 15 and Schedule 16 to, the Housing Act 2004.

(7) That is, “(d) cavity wall insulation”, “(n) external wall insulation systems”, and “(v) internal wall insulation systems (for external walls)”.

(c) a declaration has been made in relation to the domestic PR property, or the building of which it forms part, under section 289 of the Housing Act 1985.

(4) This paragraph applies where the relevant energy efficiency improvement falls within any of paragraphs (d), (n) or (v) of the Schedule to the Green Deal (Qualifying Energy Improvements) Order 2012, and the landlord, or the superior landlord, has obtained a written opinion described in regulation 10(4).

(5) A superior landlord must, no later than six weeks after the date of service on the superior landlord of a copy of the landlord's initial response or, where the landlord's initial response states that the landlord intends to serve a counter proposal, no later than six weeks after the date of service of the landlord's intended counter proposal, serve a notice (a "superior landlord's response") on the landlord—

- (a) stating, in relation to each of the relevant energy efficiency improvements falling within regulation 12(4), or to each of the energy efficiency improvements in the intended counter proposal that may not be made without the consent of the superior landlord (as the case may be), whether the superior landlord consents to the making of that improvement, and
- (b) where the superior landlord does not consent to the making of such a relevant energy efficiency improvement, setting out the superior landlord's reasons and accompanied by any relevant supporting evidence.

Landlord's initial and full response to tenant's request

12.—(1) Where the landlord intends to serve a counter proposal in accordance with regulation 13, the landlord must—

- (a) no later than one month after the date of service of the tenant's request, serve a notice (a "landlord's initial response") on the tenant which complies with paragraph (6),
- (b) where the landlord intends to serve a counter proposal which specifies an energy efficiency improvement which may not be made without the consent of a superior landlord—
 - (i) no later than one month after the date of service of the tenant's request, serve copies of the tenant's request and the landlord's initial response on the superior landlord, and
 - (ii) no later than two months after the date of service of the tenant's request, serve a copy of the intended counter proposal on the superior landlord requesting the superior landlord's consent to the making of the energy efficiency improvements specified in the intended counter proposal, and
- (c) no later than four months after the date of service of the tenant's request, serve a notice ("a landlord's full response") on the tenant which complies with paragraphs (8) and (11).

(2) Where one, or both, of paragraphs (4) and (7) applies in relation to a relevant energy efficiency improvement specified in a tenant's request, the landlord must—

- (a) no later than one month after the date of service of the tenant's request, serve a landlord's initial response on the tenant which complies with paragraph (6), and
- (b) no later than three months after the date of service of the tenant's request, serve a landlord's full response on the tenant which complies with paragraphs (8) and (11).

(3) In any case not falling within paragraphs (1) and (2), the landlord must, no later than one month after the date of service of the tenant's request, serve a landlord's full response on the tenant which complies with paragraphs (8) and (11).

(4) This paragraph applies in any case where a landlord consents to one or more relevant energy efficiency improvements specified in a tenant's request which may not be made without the consent of a superior landlord.

(5) Where paragraph (4) applies, the landlord must serve on the superior landlord—

- (a) no later than one month after the date of service of the tenant's request, copies of the tenant's request and any supporting documents, and the landlord's initial response, and
 - (b) no later than three months after the date of service of the tenant's request, a copy of the landlord's full response.
- (6) The landlord's initial response must state—
- (a) whether one, or both, of paragraphs (4) and (7) applies (where relevant),
 - (b) where paragraph (4) applies, which of the relevant energy efficiency improvements specified in the tenant's request are those that fall within paragraph (4),
 - (c) where paragraph (4) applies, confirm that the superior landlord has been served with a copy of the tenant's request,
 - (d) whether the landlord intends to serve a counter proposal in accordance with regulation 13, and
 - (e) that the landlord will serve a full response.
- (7) This paragraph applies in any case where the landlord wishes to obtain evidence or advice before deciding whether to consent to one or more of the relevant energy efficiency improvements specified in the tenant's request, as a result of one or more of the following—
- (a) the tenant's request was not accompanied by a report specified in regulation 8(2)(c),
 - (b) the tenant's request specifies a relevant energy efficiency improvement which falls within any of paragraphs (d), (n) or (v) of the Schedule to the Green Deal (Qualifying Energy Improvements) Order 2012, and the landlord intends to obtain a written opinion from a relevant person or a person specified in regulation 10(4)(b) as to whether that energy efficiency improvement is an appropriate energy efficiency improvement for the domestic PR property,
 - (c) the landlord intends to rely on the exemption in regulation 16,
 - (d) the tenant's request specifies a relevant energy efficiency improvement in relation to which third party consent has not been given.
- (8) The landlord's full response must—
- (a) state in relation to each of the relevant energy efficiency improvements specified in the tenant's request—
 - (i) whether the landlord consents to the making of that relevant energy efficiency improvement, and
 - (ii) where paragraph (4) applies, whether the superior landlord has consented to the making of that relevant energy efficiency improvement,
 - (b) where the landlord consents to the making of a relevant energy efficiency improvement which is to be funded wholly or partly through a green deal plan, state whether the landlord will give any confirmation which must be obtained from the landlord by virtue of regulation 36 of the Framework Regulations, and
 - (c) be accompanied by any counter proposal made in accordance with regulation 13.
- (9) In any case where the landlord, and where relevant any superior landlord, consents to the making of all the relevant energy efficiency improvements specified in the tenant's request, the landlord may serve a notice on the tenant (with the landlord's full response or, where paragraph (4) applies no later than two weeks after the date of service of the superior landlord's response, whichever is the later)—
- (a) stating that the landlord wishes to make those relevant energy efficiency improvements,

- (b) specifying the date by which the landlord proposes to make those relevant energy efficiency improvements, which must be no later than six months from the date of service of that notice,
 - (c) seeking any confirmation which must be obtained from the tenant by virtue of regulation 36 of the Framework Regulations in relation to any green deal plan with which the landlord proposes to fund the making of the relevant energy efficiency improvements, and
 - (d) confirming that the landlord has obtained any other third party consent.
- (10) Where—
- (a) a notice under paragraph (9) is served and
 - (b) the tenant gives any confirmation referred to in paragraph (9)(c) which is required,
- the tenant may not make the relevant energy efficiency improvements specified in the tenant’s request unless the landlord fails to make them by the date specified in paragraph (9)(b).
- (11) In any case where—
- (a) the landlord does not give consent to the making of a relevant energy efficiency improvement specified in the tenant’s request, on the grounds that—
 - (i) the improvement is not a relevant energy efficiency improvement,
 - (ii) the tenant’s request has not been validly served,
 - (iii) regulation 10(3) or (4) applies,
 - (iv) one, or both, of the exemptions in Chapter 3 applies, orfor any other reason, or
 - (b) the landlord refuses to give any confirmation which must be obtained from the landlord by virtue of regulation 36 of the Framework Regulations,
- the landlord’s full response must state that the consent or the confirmation (as the case may be) is not given, set out the landlord’s reasons, and be accompanied by any relevant supporting evidence.

Counter proposal

13.—(1) A landlord’s full response may include a notice (a “counter proposal”) specifying an energy efficiency improvement, or a combination of two or more energy efficiency improvements, which differ from the relevant energy efficiency improvements specified in the tenant’s request.

(2) In any case where the consent of a superior landlord is required before any such energy efficiency improvement can be made, the counter proposal may not be served on the tenant unless the superior landlord has consented to the making of every such energy efficiency improvement specified in it.

- (3) A counter proposal must—
- (a) specify the energy efficiency improvement, or combination of energy efficiency improvements, proposed by the landlord,
 - (b) specify what works, if any, will be undertaken to make good the domestic PR property after the energy efficiency improvement, or combination of energy efficiency improvements, are made,
 - (c) confirm that all the energy efficiency improvements specified in the counter proposal would deliver the same, or substantially the same, savings on the energy bills for the domestic PR property as all the relevant energy efficiency improvements specified in the tenant’s request,

- (d) confirm that all the energy efficiency improvements specified in the counter proposal would not result in an initial, or a continuing, cost to the tenant which exceeds the cost of all the relevant energy efficiency improvements specified in the tenant's request,
 - (e) specify the date by which the landlord proposes to make all the energy efficiency improvements specified in the counter proposal, which must be no later than six months from the date of service of the counter proposal,
 - (f) seek the tenant's consent to the making of all the energy efficiency improvements specified in the counter proposal,
 - (g) where the making of any of the energy efficiency improvements is to be funded wholly or partly through a green deal plan, seek any confirmation which must be obtained from the tenant by virtue of regulation 36 of the Framework Regulations, and
 - (h) confirm that the landlord has obtained any third party consent.
- (4) The savings on the energy bills for the property referred to in paragraph (3)(c) must be calculated using the approved methodology.
- (5) Where a counter proposal is served—
- (a) the tenant's request ceases to have effect,
 - (b) the tenant must within one month of the date of service of the counter proposal serve a notice on the landlord (a "counter proposal response") which—
 - (i) states whether the tenant consents to the making of all or any of the energy efficiency improvements specified in the counter proposal, and
 - (ii) states whether the tenant gives any confirmation which must be obtained from the tenant by virtue of regulation 36 of the Framework Regulations in relation to any green deal plan with which the landlord proposes to fund the making of the energy efficiency improvements, and
 - (c) provided the tenant gives any consent and confirmation referred to in sub-paragraph (b) which is required, the landlord must make any energy efficiency improvement specified in the counter proposal by the date specified in paragraph (3)(e).

Effect of an improvement notice

14.—(1) In any case where a superior landlord served with a copy of a tenant's request under regulation 12(5) or with an intended counter proposal under regulation 12(1)(b)(ii), has also been served with an improvement notice in relation to the domestic PR property, or the building of which it forms part, the superior landlord must, as soon as reasonably practicable after the date of service of the tenant's request or the intended counter proposal (as the case may be)—

- (a) provide the landlord with a copy of the improvement notice, and
- (b) specify the works which the superior landlord intends to carry out to comply with the improvement notice, and the date by which the superior landlord proposes to carry out those works.

(2) In any case where a landlord served with a tenant's request has been served with an improvement notice, or the superior landlord has complied with paragraph (1), the landlord must as soon as reasonably practicable—

- (a) serve a copy of the improvement notice on the tenant, and
- (b) specify the works which the landlord, or the superior landlord (as the case may be), intends to carry out to comply with the improvement notice, and the date by which the landlord, or the superior landlord (as the case may be) proposes to carry out those works.

(3) Where a tenant is served with a copy of an improvement notice in accordance with paragraph (2) at any time before the landlord's full response is served, the tenant's request ceases to have effect.