

Buy-to-Let Properties

Changes since 1st April 2018

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (“the Regulations”) are designed to tackle the least energy efficient properties in England and Wales – ie those rated F or G on their Energy Performance Certificate (EPC). The Regulations establish a minimum standard for both domestic and non-domestic privately rented property, effecting new tenancies from 1 April 2018.

From 1st April 2018, the energy rating for all properties that are rented out must be E or above, and it is the Landlord’s obligation to ensure that they are. If the energy rating is F-G, they will not be able to let the property on a new tenancy or renew any existing tenancies until the energy rating has been improved. An energy rating lower than E can be accepted after 1st April 2018 for existing tenancies until the end of the remaining term, but the landlord won’t be able to renew the contract or let the property to someone else until the energy rating has been improved to at least an E rating.

This Guidance Note states the regulations as contained in “The Private Rented Property Minimum Standard – Landlord Guidance Documents - Domestic Landlord Guidance”, full details of which can be found using the following link:

<https://www.gov.uk/government/publications/the-private-rented-property-minimum-standard-landlord-guidance-documents>

Any further information that you may require when dealing with Buy to Let properties can be found using this link, and clients can also be directed to this GOV.UK website.

PROHIBITION ON LETTING SUB-STANDARD PROPERTY

The Guidance states that – “The minimum standard will apply to any domestic privately rented property which is legally required to have an EPC and which is let on certain tenancy types. Where these two conditions are met, the landlord must ensure that the standard is met or exceeded.

Landlords of domestic property for which an EPC is not a legal requirement are not bound by the prohibition on letting sub-standard property.

The minimum level of energy efficiency means that, subject to certain requirements and exemptions:

- a) from the 1st April 2018, landlords of relevant domestic private rented properties may not grant a tenancy to new or existing tenants if their property has an EPC rating of band F or G (as shown on a valid Energy Performance Certificate for the property);
- b) from the 1st April 2020, landlords must not continue letting a relevant domestic property which is already let if that property has an EPC rating of band F or G (as shown on a valid Energy Performance Certificate for the property).

Where a landlord wishes to continue letting property which is currently sub-standard, they will need to ensure that energy efficiency improvements are made which raise the EPC rating to a minimum of E.

In certain circumstances landlords may be able to claim an exemption from this prohibition on letting sub-standard property; this includes situations where the landlord is unable to obtain funding to cover the cost of making improvements. Where a valid exemption applies, landlords must register the exemption on the national PRS Exemptions Register.

ENFORCEMENT OF THE MINIMUM LEVEL OF ENERGY EFFICIENCY

The Guidance states – “Local authorities will enforce compliance with the domestic minimum level of energy efficiency. They may check whether a property meets the minimum level of energy efficiency and may issue a compliance notice requesting information where it appears to them that a property has been let in breach of the Regulations (or an invalid exemption has been registered in respect of it). Where a local authority is satisfied that a property has been let in breach of the Regulations it may serve a notice on the landlord imposing financial penalties.

The authority may also publish details of the breach on the national PRS Exemptions Register. The landlord may ask the Local Authority to review the penalty notice and, if the penalty is upheld on review, the landlord may then appeal the penalty notice to the First-tier Tribunal. Details of this process are set out in chapter

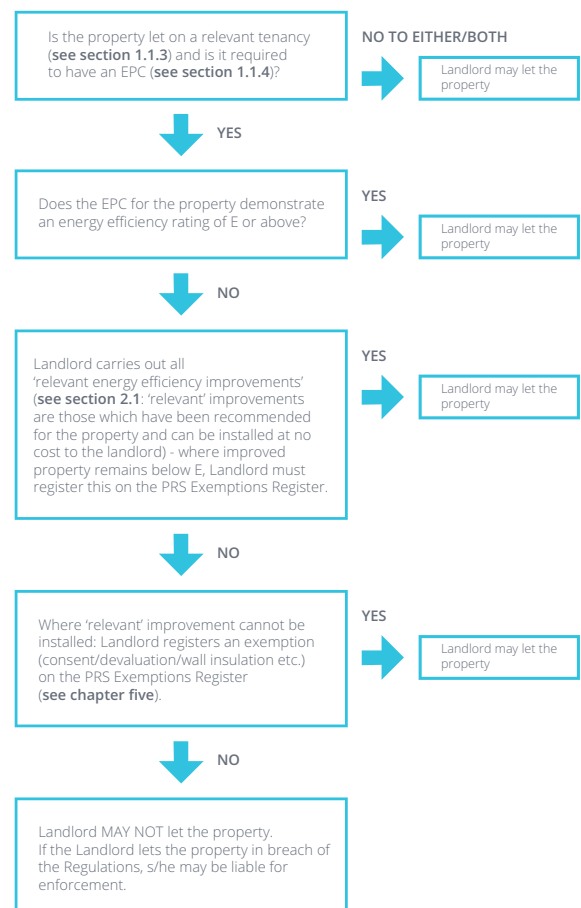
six. A Local Authority may also serve a penalty notice for the lodging of false information on the Exemptions Register.

MINIMUM STANDARDS REGULATIONS COMPLIANCE DECISION PROCESS

The following flow chart has been taken from the “The Private Rented Property minimum standard – landlord guidance documents - Domestic Landlord Guidance”:

Minimum Standards Regulations Compliance Decision Process: Figure 1 below sets out the key decision points a landlord will need to consider to help them comply with their responsibilities under the Regulations:

Figure 1 - Decision tree for minimum level of energy efficiency process



**RELEVANT TENANCIES
(REGULATION 19) 4**

For the purposes of the domestic minimum standard provisions the relevant tenancy types are:

- An assured tenancy (including an assured shorthold tenancy) defined in the Housing Act 1988;
- A regulated tenancy defined in the Rent Act 1977;
- A domestic agricultural tenancy as set out in the Energy Efficiency (Domestic Private Rented Property) Order 201514 as follows:
 - A tenancy which is an assured agricultural occupancy for the purposes of section 24 of the Housing Act 1988;
 - A tenancy which is a protected occupancy for the purposes of section 3(6) of the Rent (Agriculture) Act 1976;
 - A statutory tenancy for the purposes of section 4(6) of the Rent (Agriculture) Act 1976.

SOCIAL HOUSING EXCLUSION

The minimum standards do not apply in the social housing sector, therefore, even if a property is let on one of the tenancy types listed above, it will be excluded from the minimum standard provisions.

A property will also be excluded if the landlord is a body registered as a social landlord under Chapter 1 of Part 1 of the Housing Act 1996.

**ENERGY PERFORMANCE
CERTIFICATE (EPC)**

The Guidance states – Please note that there is no obligation to obtain an EPC on the letting of an individual non self-contained unit within a property, such as a bedsit or a room in a house in multiple occupation (HMO). However, the property in which the unit is situated may already have its own EPC covering that property as a whole; this could be because the property had been bought within the past ten years, or because it had previously been rented out on a whole-property basis. If a property as a whole has a valid EPC and that EPC shows an energy efficiency rating of F or G, then the owner/ landlord will not, from April 2018, be able to issue new tenancies for non-self-contained units within the property until steps are taken to comply with the Regulations.

When produced, an EPC will also be accompanied by a recommendations report setting out any energy efficiency measures which may be suitable for installation in the property.

Once an EPC is lodged on the EPC register it is valid for a period of ten years. A new EPC is not required each time there is a change of tenancy (or even when the property is sold), provided the earlier certificate is no more than ten years old. An owner, landlord or tenant will be free to commission a further EPC within that ten-year period if they choose. If a voluntary EPC of this type is produced and lodged for a property which is already legally required to have a valid EPC, then this new EPC will become the current one for the property, replacing the earlier one.

SOLICITORS

Once an EPC reaches the ten-year point and expires, there is no automatic requirement for a new one to be commissioned. A further EPC will only be required the next time a trigger point is reached, i.e. when the property is next sold, let to a new tenant, or modified as above.

There is also no requirement to produce a new EPC after carrying out energy efficiency improvement works to comply with the Regulations. However, for the purposes of the Regulations, it is recommended that landlords do commission a fresh, post installation EPC. A new EPC will reflect the improvements made, alongside any change to the energy efficiency rating of the property. A post installation EPC will, in all likelihood, be the easiest way for a landlord to demonstrate that they have complied with the Regulations”.

CIRCUMSTANCES WHERE AN EPC MAY NOT BE REQUIRED

Guidance issued by the Ministry of Housing, Communities and Local Government (MHCLG) notes that an EPC is not required where the landlord (or the seller, if relevant) can demonstrate that the building is any of the following:

- A building that is officially protected - as part of a designated environment or because of their special architectural or historic merit where compliance with certain minimum energy efficiency requirements would unacceptably alter their character or appearance.
- A building used as places of worship and for religious activities .
- Listed buildings on the Historic England (or Welsh equivalent) at: <https://historicengland.org.uk/listing/the-list/>
- A temporary building with a planned time of use of two years or less.
- Industrial sites, workshops, non-residential agricultural buildings with low energy demand and non-residential agricultural buildings which are in use by a sector covered by a national sectorial agreement on energy performance.
- Stand-alone buildings with a total useful floor area of less than 50m² (i.e. buildings entirely detached from any other building)
- HMO's (Houses in Multiple Occupation, for example these can be bedsits, hostels, shared houses etc) which have not been subject to a sale in the previous ten years, or which have not been let as a single rental in the past ten years.

A building will also not need an EPC where the landlord can demonstrate that it is furnished holiday accommodation as defined by HMRC, and the holidaymaker is not responsible for meeting the energy costs.

Under certain circumstances buildings may also be exempt from the requirement to obtain an EPC where it may be demonstrated that they are to be demolished. This is subject to a number of strict conditions as set out in Regulation 8 of the Energy Performance of Buildings (England and Wales) Regulations 2012.

There are no other exceptions to the EPC obligations although there may be some transactions which do not qualify as a sale or a letting. If in doubt, the landlord should seek further advice.

WHAT DO YOU NEED TO DO?

It is vital that you understand whether the property is legally required to have an EPC at any time from 1 April 2018, and whether it is or is not exempt from having to comply with the minimum level of energy efficiency provisions.

If there is any doubt about whether a property (or the building it is in) is legally required to have an EPC (or whether an existing EPC is legally required or voluntary), or about any of the other criteria described above, advice should be sought from the local trading standards team.

FREQUENTLY ASKED QUESTIONS

Q: When do the minimum standard regulations come into force?

A: The regulations come into effect for new domestic tenancy agreements from the 1 April 2018 and will apply to all tenancies (including long term tenancies) from 1 April 2020.

Q: What types of tenancies are covered by these Regulations?

A: The tenancy types are:

- An assured tenancy (including an assured short hold tenancy) defined in the Housing Act 1988.
- A regulated tenancy defined in the Rent Act 1977;
- An agricultural tenancy as set out in the Energy Efficiency (Domestic Private Rented Property) Order 2015 (see paragraph 1.1.3 for more details).

Q: Are these Regulations UK wide?

A: These Regulations apply to properties rented in England and Wales only. They do not apply to rental properties situated in Scotland or Northern Ireland.

Q: Do all privately rented domestic properties need to be at EPC E by 1 April 2018?

A: No. All relevant domestic private rental properties (i.e. those which are legally required to have an EPC, and which are let on a relevant tenancy type – see Q2 above) must be at a minimum of EPC band E by 1 April 2020 (or have a valid exemption registered for them). Between 1 April 2018 and 1 April 2020, properties will only need to meet the standard (or have a valid exemption registered) at the point at which a new tenancy is entered in to. Where no new tenancy has been entered in to, a private rental property may be lawfully let below EPC band E up until 1 April 2020.

Q: My property is already above EPC F or G; do I need to do anything?

A: No. If a private rental home is already above EPC F or G then no action is required by the landlord.

Q: What is an EPC and when is it required?

A: Energy Performance Certificates (EPCs) are needed whenever an eligible property is constructed, sold or rented out. Property owners must provide an EPC for potential buyers or tenants before marketing a property to sell or rent. This is a requirement of the Energy Performance of Buildings (England and Wales) Regulations 2012. In addition, a landlord will be required to obtain an EPC after installing certain improvements before they let the property. This is a requirement of the Building Regulations 2010.

An EPC contains:

- Information about a property's energy use and typical energy costs
- Recommendations about how to reduce energy use and save money

SOLICITORS

An EPC for a domestic building gives the property an energy efficiency rating from A (most efficient) to G (least efficient) and is valid for ten years. The EPC relates to the property rather than to the owner, therefore an EPC obtained by a previous owner of the property will remain valid even after a property is sold on, so long as it is less than ten years old.

Q: How do I arrange an assessment in order to determine my property's EPC rating and (if necessary what improvement works are needed to bring the Minimum Standard) who would perform the assessment?

A: You can search for an accredited assessor to undertake a domestic EPC assessment here:

<https://www.epcregister.com/searchAssessor.html>

Since 2007 all rental properties (with few exceptions) have been required to have a valid EPC before being let on a new tenancy. Therefore, you should already have an EPC for your rental property, and to not have one is unlawful. If you do not have an EPC for the property that you rent, you should make arrangements to obtain one immediately.

Q: How can I find out the current EPC rating for my property is?

A: If you don't have your certificate to hand then you can search for a PDF copy using the property postcode here:

<https://www.epcregister.com/reportSearchAddressTerms.html?redirect=reportSearchAddressByPostcode>

Q: Are Houses in Multiple Occupation (HMOs) excluded from the PRS Regulations?

A: HMOs are not excluded from the Regulations. The Regulations apply to all privately rented properties that are legally required to have an EPC, and where rooms are let on one of the qualifying types (most likely assured tenancies). An HMO will be in scope where it meets these criteria. However, individual rooms within HMOs are not required to have their own EPC, so a property which is an HMO will only have an EPC if one is required for the property as a whole (typically this will be if the property has been build, sold or rented as a single unit at any time in the past 10 years). If an HMO is legally required to have an EPC, and if it is let on one of the qualifying tenancy types, then it will be required to comply with the minimum level of energy efficiency.

Q: I am a landlord who lets holiday cottages throughout the year. I do not know the basis on which these properties are let; am I still required to comply with the Minimum Standard Regulations?

A: Holiday cottages are typically let under a licence to occupy, rather than a tenancy. This type of rental property is, therefore, generally outside of the scope of the Regulations and not required to meet the Minimum Standard. If there are any concerns about whether a property is occupied under a licence or a tenancy, and whether the landlord is subject to the Regulations, legal advice should be sought.

Q: How long is an EPC valid for and when or what triggers reassessment?

A: Once produced, an EPC is valid for ten years. A landlord can choose to commission a new EPC at any time for any reason, but this would be entirely voluntary. The only time a new EPC is legally required for a property is if the

SOLICITORS

most recent certificate is more than ten years old, and the property is to be sold or rented again.

Q: I am a landlord with multiple properties with F or G EPC ratings. Is there any flexibility that would be shown to me due to the scale of works that I need to commission? Is there limit on the number of properties that I would need to improve to EPC E?

A: No, all properties in scope of the Regulations will need to comply and there is no limit on the number of properties a multi-property-owning landlord would be required to ensure are compliant. The Regulations are clear that landlords only need to undertake improvements which can be made without incurring a cost. So, if suitable 'no-cost' finance cannot be obtained for a particular property, the landlord would need to register an exemption for that property rather than improve it to E. But, assuming that the no-cost principle can be satisfied, there is no limit to the number of substandard properties a landlord is required to improve.

However, landlords should note that between 1 April 2018 and 1 April 2020, properties only need to be improved to meet the standard when a new tenancy is entered in to with a new or existing tenant. If a new tenancy has not been entered into during that period, then a property may still be lawfully let below EPC E. Therefore, landlords with multiple properties would not necessarily need to improve all of their substandard properties at the same time and can phase improvement work over this two year period as and when new tenancies are entered in to.

Q: Are there any types of domestic rental property which are not covered by the Regulations?

A: The Regulations provisions apply to all domestic privately rented properties that are a) legally required to have an EPC, and b) are let on a qualifying tenancy types.

Listed buildings (and buildings within a conservation area) will not be required to meet the standards outlined in the Regulations if they are not required to have an EPC; if an individual listed building is required to have an EPC (and if it is let on a qualifying tenancy type) then it will be covered by the Regulations.

Q: What are the average energy bills for domestic properties across different EPC bands?

A: The average annual energy bills by EPC band are as follows:

EPC Band	Average Annual Energy Bills, SAP-based (2014)
A/B	£750
C	£1,060
D	£1,330
E	£1,710
F	£2,180
G	£2,860