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# MEEES, EPCs & Non-Domestic Private Rented Property

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17 May 2023



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# The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015/962

**The** “PR Regulations”



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# The Policy Background

## How did we get here?

### **The Climate Change Act 2008**

The Climate Change Act 2008 established a legally-binding target “to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline.”

In order to achieve this target, the Act introduced a system of ‘carbon budgets’ which provide limits on the amount of emissions that may be produced in successive five-year periods (the first period beginning in 2008).

“[2.17] The energy we use for heating and powering our non-domestic buildings is responsible for around 12% of the UK’s emissions, three quarters of which come from private businesses, with the remainder from public buildings.”

The Carbon Plan: Delivering Our Low Carbon Future (HM Government), December 2011

# The Energy Act 2011

## The Enabling Act

S.49(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 in subsection (2) [i.e. the obligation to make to the property such relevant energy efficiency improvements as are provided for by the regulations].

S.42(1)(b) defines what is meant by “non-domestic private rented property” (which is referred to in Ch.2 of the Energy Act 2011 as “non-domestic PR property”). Essentially, this covers any property situated in England & Wales which is “let under a tenancy” and “is not a dwelling.”

# The PR Regulations

## Properties Covered

The PR Regulations apply to all “non-domestic PR properties” within the meaning of s.42(1)(b) of the Energy Act 2011 (reg.20(1)), with three broad exceptions:

1. If the property “was not required” to have an energy performance certificate by the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 and “is not required” to have an energy performance certificate by the Building Regulations 2010 or the Energy Performance of Buildings (England and Wales) Regulations 2012 (reg.20(2)).
2. If the property is let “on a tenancy granted for a term certain not exceeding six months” unless (i) the tenancy agreement contains provision for renewing / extending the term beyond 6 months from its beginning or (ii) at the time the tenancy is granted, the tenant has been in occupation for a continuous period of more than 12 months (reg.20(3)(a)).
3. If the property is let “on a tenancy granted for a term certain of 99 years or more” (reg.20(3)(b)).

# “Sub-standard” property

A non-domestic PR property is “sub-standard” where:

“... the valid energy performance certificate expresses the energy performance indicator of the property as being below the minimum level of energy efficiency [i.e. an energy performance indicator of band E] ...”  
(reg.22(a))

# The Prohibition

Unless (i) reg.29 or (ii) one or more of the exemptions in regs.31–33 applies, a landlord of a sub-standard non-domestic PR must not “**let the property**” (reg.27(1)).

The expression “**let the property**” means (reg.27(2)):

On or after **1 April 2018**: (i) “grant a new tenancy”; or (ii) “let the property on such a tenancy as a result of an extension or renewal of an existing tenancy.”

On or after **1 April 2023**, “continue to let the property on such a tenancy.”

## Reg.29

### Relevant Efficiency Improvements Undertaken

This provides an exception to the prohibition on letting sub-standard property where a landlord:

1. Has made all the relevant energy efficiency improvements for the property; or
2. There are no relevant energy efficiency improvements that can be made to the property.

**If a landlord wishes to rely on this exception, then it must be registered on the 'PRS' (Private Rented Sector) Register. The exception then lasts for a period of 5 years.**

# Exemptions

## Third Party Consent Exemption

Reg.31

Where energy efficient improvements may legally require third party consent (e.g. from a superior landlord / the current tenant / local authority / lender) before they can be installed in a property.

## Property Devaluation Exemption

Reg.32

Where the landlord has obtained a report from a surveyor advising that the installation of specific energy efficiency measures would reduce the market value of the property by more than 5%.

## Exemption Due to Recently Becoming a Landlord

Reg.33

A temporary (six-month) exemption from the prohibition on letting a sub-standard property where a person becomes a landlord in certain limited circumstances (e.g. where a new lease has been granted under the 1954 Act).

## Note

Exemptions from the prohibition on letting which are claimed by a landlord may not pass over to a new owner or landlord upon a sale or transfer. If a let property is sold or transferred with an exemption registered, the exemption will cease to be effective.



# Some Problem Areas

Continuation tenancies under the 1954 Act.

Mixed-use properties.

Sub-letting.

Lease of shell & core.



# ‘Future Trajectory Implementation’

## Consultation Paper

The Future Trajectory to 2030 (15 Dec 2020 – 7 January 2021)

“The Government’s preferred trajectory is that all non-domestic privately rented buildings achieve a minimum energy efficiency standard of EPC Band B by 1 April 2030, provided the measure ... [is] cost effective.”

## Energy White Paper

Powering our Net Zero Future (Dec 2020)

“All rented non-domestic buildings will be EPC Band B by 2030, where cost effective.”

## Consultation Paper

Implementation of the EPC B Future Target (17 March – 9 June 2021)

“The future EPC B requirement is an ambitious target designed to drive the UK towards net zero, by encouraging investment in the fabric and services of rented non-domestic buildings throughout the stock.”

## Framework

Phased Implementation

“The Government has taken all the feedback on board and has decided that the preferred approach is to design a new implementation framework that includes one interim milestone: EPC C by 2027.”



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Thank you

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