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Your Guide to Energy Efficiency in the Private Rental Sector



Introduction

In 2016, two pieces of legislation relating to energy efficiency, came into force:

The Tenant's Energy Efficiency Improvement and Minimum Energy Efficiency Standards (MEES). Both of these have a real impact on private landlords.

All domestic tenants now have the right to request consent for energy efficiency improvements. In addition to this, it is now unlawful to let a domestic property below a certain efficiency standards, with fines imposed on those who do not comply.

Landlords may need to improve their properties but at the very least should commission an Energy Performance Certificate (EPC) to find out where they stand.



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Tenants' Energy Efficiency Improvements



From the 1st April 2016 all domestic tenants have the right to request energy efficiency improvements to their properties.

This regulation applies to domestic properties let under longer term assured and regulated tenancies. Your tenant will likely be eligible to request energy efficiency improvements if he or she:

- Pays Rent to you
- Has control over their home
- Does not live in the same building as you
- Moved into the property between 15 January 1989 and 27 February 1997 with no notice given that they have an assured shorthold tenancy

Can a residential private landlord refuse a tenants request?

If the building is exempt from having an EPC then you are not required to provide consent. Your tenant must also show that the improvements could be installed with no upfront cost to you. Funding schemes are intended to facilitate energy efficiency without the need for upfront costs.

If a tenant considers that the landlord has not complied with the regulations, they can take the case to a First-tier Tribunal General Regulatory Chamber, which will hear and determine applications.

Minimum Energy Efficiency Standards (MEES)



From April 2018 changes to legislation will make it unlawful to let a residential property with an Energy Performance Certificate (EPC) rating below an 'E'.

In an attempt to ensure that all tenants enjoy a right to live in an energy efficient home, the Minimum Energy Efficiency Standards will be phased in over the next five years.

Phase one - from 1st April 2018, private rented properties must achieve an energy efficiency rating of at least an E on their EPC. The regulations will initially only apply upon the granting of a new tenancy to:

- A new tenant
- An existing tenant

Phase two - from 1st April 2020, the regulations will apply to ALL privately rented properties which are required to have an EPC.

What does this mean for Landlords?

An EPC is already required to let or market a property legally, but the new laws surrounding MEES means that an EPC with a rating of F or G is not sufficient for compliance. If your property does not meet the minimum standard, then unfortunately you cannot let or market that property within the law. Rent reviews could also be affected as a result of this. Financial penalties for non-compliance can also be as much as **£5000** in the domestic sector.

MEES: Landlord self funding and cost cap (April 2019)



Following an amendment to MEES regulations, from 1st April 2019, the 'no cost to the landlord' provision is no longer available. This means that landlords can no longer register a 'no cost to landlord' exemption on the PRS Exemptions Register.

Where third party funding (ECO, Green Deal, grants etc) is unavailable, landlords must use their own funding to cover the cost of improving their property to EPC band E. This requirement is subject to a spending cap of £3,500 (inclusive of VAT) for each property.

Those who have already registered for the 'no cost to landlord' exemption prior to regulation changes (1st April 2019), will no longer be exempt for five years, and will now need to make the necessary improvements to their property to ensure it meets EPC band E (or as close as possible) by April 2020.

About the cost cap

The £3,500 (incl VAT) cost cap applies to the overall cost of improving the property and is not a cap applied to individual measures. Landlords only need to fund what is necessary to improve the property to EPC band E. The spending cap is not a requirement and analysis shows that the average cost of improving a property from EPC band F or G to band E, would be much less than this.

In cases where a landlord is unable to improve their property to band E within the £3,500 cap, then they should install all measures which can be installed up to the £3,500 cap, and then register an exemption on the basis that 'all relevant improvements have been installed and the property remains below an E'.

Combined third party and self-funding

Landlords may be able to secure some third-party funding, but it might not be enough to improve their property to EPC band E. In this case regulations stipulate that landlords must top up this third party funding with funding from their own pockets, provided that the combined value is less than the £3,500 (incl VAT). If the combined funding is insufficient to improve the property to EPC band E then the landlord should install all measures which can be installed up to the value of £3,500, and then register an exemption on the basis that 'all relevant improvements have been installed and the property remains below an E'.

MEES Exemptions



The Government has outlined some instances where Landlords may be exempt from complying with MEES. All exemptions are likely to have a time constraint.

Landlords can register a property as exempt from the private rented property minimum standards through the online PRS Exemptions Register. A landlord would need to provide relevant supporting evidence when registering for an exemption. Landlords can register for the following exemptions:

'High Cost' Exemption

If the cost of making even the cheapest recommended improvement to a property exceeds £3,500 (inc VAT)

'All Improvements Made' Exemption

Where all the "relevant energy efficiency improvements" for the property have been installed, however the property still remains below EPC band E.

'Wall Insulation' Exemption

Certain wall insulation systems may not be suitable in certain situations, even when they have been recommended for a property, and are within funding requirements. A written statement from a chartered building professional can be used to highlight the fact that a property cannot be improved to EPC band E, as the recommended wall insulation would have a negative impact on the property.

'Consent' Exemption

If consent to undertake work to install the required energy efficiency improvements is denied by a tenant, lender, planning authority or higher landlord, this will make the landlord exempt from MEES for five years (unless the tenant who denied consent vacates the property).

'Devaluation' Exemption

Where a chartered surveyor (RICS registered) advises that installation of specific energy efficiency measures would reduce the market value of the property by more than 5%.

'New Landlord' Exemption

Where an individual has become a landlord unexpectedly, it is deemed unreasonable and inappropriate to expect them to comply immediately with the standard. A temporary six month exemption may be used in this case.

Improvement to Tenant Rights



The Deregulation Act 2015 protects tenants against unfair eviction where they have raised a legitimate complaint about the condition of their home. This includes issues about its energy efficiency.

New legislation will also affect your rights to evict a tenant who has a legitimate complaint concerning your energy efficiency compliance. Shorthold tenancies granted on or after 1st October 2015 are subject to new rules brought about by Section 33 of the Deregulation Act.

The rules are designed to prevent 'retaliatory eviction' practices and effectively make it more difficult for you to serve a section 21 eviction notice to tenants where complaints have been raised about the condition of your property. This would include complaints about its energy efficiency.

What does this mean for Landlords?

Before serving a section 21 notice you must demonstrate that you have complied with the relevant legal obligations concerning:

- The condition of the dwelling
- The health and safety of occupiers in the dwelling
- The energy performance of the dwelling
- Gas certification

And

- All the above information has been provided to the tenants.

As such, if you have not provided your tenant with an EPC, you will risk losing the right to issue an eviction notice.

Housing Health and Safety Rating System



The Housing Health and Safety Rating System (HHSRS) employs a risk assessment approach to minimise the risks from hazards to health and safety in dwellings.

Owners are obliged to comply with any terms of improvement notices or prohibition orders. The landlord is responsible for looking after the exterior of the dwelling as well as installations inside the dwelling.

Excess cold

Excess Cold is one such hazard that can threaten the health of an occupant through low indoor temperatures. This hazard in particular is evidenced through poor heating systems, lack of thermal insulation, excess ventilation, and low energy efficiency ratings. Since the introduction of Minimum Energy Efficiency Standards (MEES) some local authorities have been interpreting dwellings with F and G EPC rating as indicators of hazard, however, this should not be automatically assumed.

What enforcement action could occur against Landlords?

If there are any risks to the health and safety of an occupant, the Environmental Health Officer can enforce corrective measures in the form of improvement notices and prohibition orders. The local authority charges for issuing these notices, and failure to comply with them within the specified time frame is deemed a criminal offence.

Elmhurst's trained and accredited members can assess a property's energy efficiency and produce an EPC either for an individual property or accross a landlord's housing portfolio.

to find your local Elmhurst energy assessor please use our '**Find an Assessor**' facility on the Elmhurst website:

www.elmhurstenergy.co.uk/search-for-assessor



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