



## Government unveils the PRS Energy Efficiency Regulations

The Government has now laid before Parliament the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (the “PR Regulations”) and published its response to the consultation in relation to the same that was undertaken over the summer last year. Please see [here](#) our previous update on the consultation. In large measure the Government has adopted the proposals set out in the consultation papers but has been receptive to the views expressed by the respondents to the consultations. Please see the links to the Government responses [Domestic](#) and [Non-Domestic](#). We therefore now have a much clearer idea of how exactly the PR Regulations - and the various exemptions within the PR Regulations - will operate and also the penalties for non-compliance.

A significant new feature of the PR Regulations is that all exemptions will be required to be notified to a PRS Exemptions Register that will be run by the Department of Energy & Climate Change. This will be a centralised database of exemptions and will be open to public inspection. Failure to register any exemption will render the exemption ineffective and will itself amount to non-compliance with the PR Regulations. Local authorities – who will enforce the PR Regulations probably using their trading standards departments - will be entitled to require landlords to furnish them with evidence to support any claim to exemption and landlords will also be in breach of the PR Regulations if they claim an exemption to which they are not properly entitled.

We have in Table 1 summarised the key provisions in the PR Regulations which relate to the proposed minimum energy efficiency standard that will apply within the domestic and non-domestic private rented sectors. In Table 2 we have summarised the new right for tenants of a domestic private rented property to request the consent of their landlord to carry out energy efficiency improvements and place a duty on the landlord (and any

superior landlord) not unreasonably to withhold its consent to the improvement being made.

The detail contained within the PR Regulations is quite complicated - and in some cases still a matter for conjecture - and we will not attempt to summarise the same here. The PR Regulations still require Parliamentary scrutiny so their precise wording may be subject to further refinement. It is however anticipated that the PR Regulations will be passed before this session of Parliament is dissolved on 30 March 2015. Once the PR Regulations have been passed we will be organising briefings on them for our clients and contacts.

| <b>Table 1</b>                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                          |
|-----------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Summary of PRS Minimum Energy Efficiency Standards Regulations</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                          |
|                                                                       | Domestic Properties                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Non- Domestic Properties                                                                                                                                                                                                                                                 |
| <b>Types of property in scope</b>                                     | All properties which have a valid EPC and are either required to have an EPC or are part of a larger unit that is required to have an EPC when sold or let.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                          |
| <b>Types of tenancy in scope</b>                                      | <ul style="list-style-type: none"> <li>Assured tenancies under Housing Act 1988</li> <li>Regulated tenancies under Rent Act 1977</li> <li>Certain types of agricultural tenancy</li> </ul> <p>NB. Where the landlord is a RSL the tenancy is excluded</p>                                                                                                                                                                                                                                                                                                                                                                                                                        | <p>All tenancies other than:</p> <ul style="list-style-type: none"> <li>tenancies for term of 99 years or more</li> <li>tenancies for term of 6 months or less (unless contain right of extension/renewal or the tenant has been in occupation for 12 months)</li> </ul> |
| <b>Minimum standard</b>                                               | EPC rating of "E"                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                          |
| <b>Date for compliance</b>                                            | <ul style="list-style-type: none"> <li>New lettings as from 1<sup>st</sup> April 2018</li> <li>Existing lettings as from 1<sup>st</sup> April 2020</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <ul style="list-style-type: none"> <li>New lettings as from 1<sup>st</sup> April 2018</li> <li>Existing lettings as from 1<sup>st</sup> April 2023</li> </ul>                                                                                                            |
| <b>Exemptions</b>                                                     | <ul style="list-style-type: none"> <li>Landlord has made all "relevant energy efficiency improvements" (meaning such qualifying energy efficient improvements as listed in the Schedule to the Green Deal (Qualifying Energy Efficiency Improvements) Order 2012 as can be funded at no upfront cost to landlord by means of Green Deal Finance, ECO or grant funding or – in the case of non domestic property only – pass a seven year payback test.)</li> <li>There are no relevant energy efficiency improvements that can be carried out to the property (e.g. because the improvements would have a potential negative impact on the fabric or structure of the</li> </ul> |                                                                                                                                                                                                                                                                          |

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|--------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                      | <p>property as certified by an independent surveyor.).</p> <ul style="list-style-type: none"> <li>• The only relevant energy efficiency improvements that can be carried out would have a material adverse effect (more than 5%) on the open market value of the property (as assessed by an independent surveyor.)</li> <li>• The landlord has been unable, despite making reasonable efforts, to obtain the required third party consents (e.g. of the tenant in occupation) to carry out the qualifying energy efficiency improvements.</li> <li>• Where the lease was created by operation of law/order of court/statutory renewal process.</li> <li>• New landlord following acquisition of non-compliant property or following tenant insolvency or grant of overriding lease.</li> </ul> <p><b>N.B. All exemptions must be registered on PRS Exemptions Register to be valid.</b></p> |                                                                                                                                                                                                                                                                                                                                                                                  |
| <p><b>Duration of Exemptions</b></p> | <p>Five years generally (but only six months, where lease created by operation of law/order of the court or where the landlord is "new".).</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                  |
| <p><b>Penalties</b></p>              | <p>£1000 for providing false or misleading information to PRS Exemptions Register</p> <p>£2000 for failure to comply with compliance notice from local authority</p> <p>£2000 for less than three months non-compliance</p> <p>£4000 for three months or more non-compliance</p> <p>N.B. Overall maximum for single offence £5000</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <p>£5000 for providing false or misleading information to PRS Exemptions Register</p> <p>£5000 for failure to comply with compliance notice from local authority</p> <p>10% of rateable value (minimum £5000; maximum £10,000) for less than 3 month non-compliance</p> <p>20% of rateable value (minimum £10,000; maximum £150,000) for three months or more non-compliance</p> |

**Table 2**  
**Summary of Tenant's Energy Efficiency Improvements Regulations**

|                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Types of property in scope                                     | All properties regardless of whether they must have an EPC or are required to have an EPC (other than temporary buildings or buildings awaiting demolition.)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Types of tenancy in scope                                      | <ul style="list-style-type: none"> <li>• Assured tenancies under Housing Act 1988</li> <li>• Regulated tenancies under Rent Act 1977</li> <li>• Certain types of agricultural tenancy</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| What relevant energy efficiency improvements can be requested? | Tenant can request consent to install relevant energy efficient measures (see above)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| On what grounds can landlord refuse consent?                   | <p>Landlord may not unreasonably refuse consent but may refuse consent where:</p> <ul style="list-style-type: none"> <li>• previous tenant has made request in preceding 6 months to which landlord responded in accordance with the regulations</li> <li>• landlord has been unable, despite making reasonable efforts, to obtain any required third party (e.g. of superior landlord) consents</li> <li>• landlord already undertaking statutory health and safety works</li> <li>• landlord has been advised by a suitably qualified person that the works would have a detrimental impact on the fabric or structure of the building</li> <li>• landlord has been advised by an independent surveyor that the works would result in a reduction of more than 5% of the property</li> </ul> |
| When must landlord respond to request?                         | Landlord must respond to request within one month of request. Landlord may also make request to carry out the improvements itself within three months of initial response to the tenant's request.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Implementation date                                            | Tenant will be able to request consent to carry out relevant energy efficiency measures as from 1 <sup>st</sup> April 2016.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Disputes                                                       | First tier Tribunal will determine disputes.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

**For further information on the PRS Energy Efficiency Regulations please contact:**



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