

ENERGY ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Energy Efficiency

Chapter 2: Private Rented Sector (England and Wales)

Introductory

Section 42: Meaning of ‘domestic PR property’ and ‘non-domestic PR property’: England and Wales

122. This section provides the definition of ‘domestic private rented property’ and ‘non-domestic private rented property’ for the purpose of this Chapter.

Domestic energy efficiency regulations

Section 43: Domestic energy efficiency regulations

123. This section gives the Secretary of State powers to make domestic energy efficiency regulations in respect of England and Wales. Under this section, the Secretary of State must make regulations prescribing the circumstances in which a landlord must undertake relevant energy efficiency improvements before letting the property. *Subsection (1)* gives the Secretary of State the power to define the types of domestic property which are to be the subject of the obligation to make relevant energy efficiency improvements whilst *subsection (2)* describes the obligation placed upon a landlord.
124. *Subsection (4)* defines concepts such as “energy performance certificate”, “landlord” and “relevant energy efficiency improvements”. “Relevant energy efficiency improvements” are those which are of a description specified in the regulations and can be (i) financed wholly by a green deal plan, (ii) provided free of charge under a scheme provided for under section 33BC or 33BD Gas Act 1986 or sections 41A or 41B Electricity Act 1989 (a ‘supplier scheme’¹), (iii) financed wholly by a combination of the green deal and subsidy under a supplier scheme, or (iv) financed under another specified financial arrangement. *Subsection (5)* provides the Secretary of State with the power to amend the definition of “energy performance certificate” if this is thought desirable or becomes necessary as a result of the source of the definition in the Energy Performance Regulations being amended. *Subsection (6)* places a duty on the Secretary of State to ensure that domestic energy efficiency regulations come into force no later than 1 April 2018.

¹ The schemes are currently the Carbon Emissions Reduction Target, provided for in the Electricity and Gas (Carbon Emissions Reduction) Order 2008 (SI 2008/188) and the Community Energy Saving Programme, provided for in the Electricity and Gas (Community Energy Saving Programme) Order 2009 (SI 2009/1905). This will include the Energy Company Obligation in the future.

Section 44: Further provision about domestic energy efficiency regulations

125. This section sets out further provisions that may be included in the domestic energy efficiency regulations. *Subsection (1)* describes how the regulations may make further provision: about the period within which the relevant energy efficiency improvements must be started or completed or may make provision granting exemptions from any requirements imposed by or under the regulations. Provision may also be made about how any requirement imposed by or under the regulations must be evidenced.
126. *Subsection (2)* provides further detail about the type of provision which may be made relating to exemptions. In this context, further provision may be made relating to the necessary permissions or consents which may be necessary before relevant energy efficiency improvements are permissible or about the likely negative impact on the value of a property of complying with the requirement to undertake relevant energy efficiency improvements. Under provision made under the power in this subsection, the Secretary of State could provide, for example, that a landlord is not required to make relevant energy efficiency improvements if he cannot obtain consent which is required to be given by his freeholder, or if the property is likely to be worth less as a result of the improvements being installed.
127. *Subsection (3)* sets out examples of the kind of further provision that may be made in regulations relating to the evidence required to demonstrate the application of an exemption or that a property falls outside the scope of any regulations made.

Section 45: Sanctions for the purposes of domestic energy efficiency regulations

128. This section enables the Secretary of State to make provision for the purpose of securing compliance by landlords with the requirements imposed on them. *Subsections (2) and (3)* provide that a local authority may enforce the requirements in the regulations and also that failure to comply with any requirements imposed by or under the regulations can lead to sanctions including the imposition of a civil penalty not exceeding £5,000.
129. *Subsection (4)* requires regulations to provide for a right of appeal to a court or tribunal against the imposition of a civil penalty and *subsections (5) to (8)* make further provision regarding appeals.

Tenants' energy efficiency improvements regulations

Section 46: Tenants' energy efficiency improvements regulations

130. This section gives the Secretary of State powers to make tenants' energy efficiency improvements regulations in respect of England and Wales. *Subsection (1)* requires the Secretary of State to make regulations for the purpose of ensuring that a landlord of a property caught by the regulations does not unreasonably refuse a tenant's request for the making of relevant energy efficiency improvements.
131. *Subsection (2)* describes the tenant's request which a landlord must not unreasonably refuse as a request for the consent to the making of such relevant energy efficiency improvements as are identified in the request.
132. *Subsection (4)* defines matters such as "landlord" and "tenant" and 'relevant energy efficiency improvements' in the same way as in subsection (4) of section 43. *Subsection (5)* requires the Secretary of State to ensure that the tenants' energy efficiency regulations come into force no later than 1 April 2016.

Section 47: Further provision about tenants' energy efficiency improvements regulations

133. *Subsection (1)* describes the further provision that may be included in the tenants' energy efficiency regulations. Regulations can deal with the form, content and service of the request by the tenant and the response from the landlord. They may also set out

exemptions from any requirement imposed by or under the regulations. Provision may also be made about how any requirement imposed by or under the regulations must be evidenced.

134. *Subsection (2)* provides further detail about the type of provision which may be made relating to exemptions. In this context, further provision may be made relating to the necessary permissions or consents which may be necessary before relevant energy efficiency improvements are permissible or about the likely negative impact on the value of a property of complying with the requirement to undertake relevant energy efficiency improvements.
135. *Subsection (3)* sets out examples of the kind of further provision that may be made in regulations relating to the evidence required to demonstrate the application of an exemption or that a property falls outside the scope of any regulations made.

Section 48: Sanctions for the purposes of tenants' energy efficiency improvements regulations

136. *Subsection (1)* of this section enables the Secretary of State to make provision in the regulations for the purpose of securing that landlords comply with any requirements imposed by or under the tenants' energy efficiency improvements regulations.
137. *Subsection (2)* enables the Secretary of State to make provision for a tenant to make an application to a court or tribunal for a ruling that a landlord has not complied with a requirement imposed by the regulations.
138. *Subsections (3) to (8)* describe in greater detail the type of provision which the Secretary of State may make in relation to matters such as the tenant's application to a court or tribunal, the procedure for making such an application, the grounds upon which an application may be made, the powers of the court or tribunal and how a landlord or tenant may appeal against any decision of a court or tribunal.

Non-domestic energy efficiency improvements regulations

Section 49: Non-domestic energy efficiency regulations

139. This section is very similar to section 43 in that it requires the Secretary of State to make regulations for the purpose of ensuring that a landlord of a non domestic property of a type specified in the regulations does not let that property until the landlord has undertaken relevant energy efficiency improvements. It is a provision which applies to the non-domestic sector in a way which section 43 applies to the domestic sector. Accordingly, the discussion of the provisions of section 43 above apply to section 49.

Section 50: Further provision about non-domestic energy efficiency regulations

140. This section is materially identical to section 44 and therefore the discussion of the provisions of that section should be read here.

Section 51: Sanctions for the purposes of non-domestic energy efficiency regulations

141. This section enables the Secretary of State to make provision for the purpose of securing that landlords comply with the requirements imposed on them under non-domestic energy efficiency regulations. *Subsection (2)* provides that provision may be made enabling (i) a local weights and measures authority to enforce any requirement imposed by or under the regulations applying to landlords of non domestic properties; (ii) sanctions to be imposed for non compliance with any requirements imposed by or under the regulations and also for sanctions to imposed for the provision of false information. The section also makes clear that non compliance may be enforced by the imposition of a civil penalty by a local weights and measures authority.

*These notes refer to the Energy Act 2011 (c.16)
which received Royal Assent on 18 October 2011*

142. *Subsections (3) to (7)* provide more detailed provision about a right of appeal to a court or tribunal against the imposition of a civil penalty.

General

Section 52: Regulations and orders: Chapter 2

143. This section enables the Secretary of State, when making orders or regulations under Chapter 2, to make different provision for different cases or circumstances or for different purposes. It provides for orders under sections 43(5) or 49(5) to be made by statutory instrument subject to the negative procedure. Statutory instruments containing an order under section 42(1)(a)(iii) or regulations under this Chapter are subject to the affirmative procedure.
144. *Subsection (5)* requires the Secretary of State to obtain the consent of Welsh Ministers before making provision under this Chapter where such provision will amend or revoke provision contained in a Measure or Act of the National Assembly of Wales. The requirement for consent under subsection (5) does not apply where the Secretary of State is making incidental or consequential provision; see subsection (6). *Subsection (7)* requires the Secretary of State to consult Welsh Ministers before making any domestic energy efficiency regulations or tenants' energy efficiency improvement regulations which apply to properties situated in Wales.

Section 53: Crown application: Chapter 2

145. This section provides that Chapter 2 binds the Crown.