

Guidance Notes:
Residential Tenants' Energy Efficiency Improvements

1. Introduction

This document is to assist landlords and tenants in navigating the provisions of Part 2 of The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015. Part 2 of the 2015 Regulations gives residential tenants the right to request the landlord's consent to make energy efficiency improvements to their rented property.

Tenants must demonstrate that the improvements will be made at no cost to the landlord. They may be financed by green deal funding, provided free of charge by an energy company, funded by a grant or paid for by the tenant (or a combination of the above).

Landlords must not unreasonably refuse consent if the tenant's request complies with the 2015 Regulations.

2. "Domestic Private Rented Property"

Part 2 of the 2015 Regulations applies only to "domestic private rented property". The definition covers assured (and assured shorthold) tenancies and certain other tenancies.

Temporary buildings with a time of use of 2 years or less are excluded from Part 2, as are buildings that are due to be demolished.

3. Relevant Energy Efficiency Improvements

Part 2 applies only to "relevant" energy efficiency improvements. Relevant improvements are:

air source heat pumps
biomass boilers
biomass room heaters (with radiators)
cavity wall insulation
chillers
cylinder thermostats
draught proofing
duct insulation
gas-fired condensing boilers
ground source heat pumps
hot water showers
hot water systems
hot water taps
external wall insulation systems
fan-assisted storage heaters
flue gas heat recovery devices
heating controls for wet central heating systems or warm air systems

heating ventilation and air-conditioning controls (including zoning controls)
high performance external doors
hot water controls (including timers and temperature controls)
hot water cylinder insulation
internal wall insulation systems (for external walls)
lighting systems, fittings and controls (including rooflights, lamps and luminaires)
loft or rafter insulation (including loft hatch insulation);
mechanical ventilation with heat recovery systems
micro combined heat and power
micro wind generation
oil-fired condensing boilers
photovoltaics
pipework insulation
radiant heating
replacement glazing
roof insulation
room in roof insulation
sealing improvements (including duct sealing)
secondary glazing
solar blinds, shutters and shading devices
solar water heating
transpired solar collectors
under-floor heating
under-floor insulation
variable speed drives for fans and pumps
warm-air units
waste water heat recovery devices attached to showers
water source heat pumps
a measure installed to enable the supply of gas through a service pipe to the property where the property is not fuelled by mains gas and is situated within 23 metres from a main of a gas transporter

4. Tenant's Request for Consent to Relevant Energy Efficiency Improvements

The tenant's request for consent must be in writing and must comply with Regulation 8 of the 2015 Regulations.

The tenant's request must:

- Specify the relevant energy efficiency improvements for which consent is sought;
- If relevant, include written confirmation that any other tenant of the property from whom consent is required has given consent;
- Be accompanied by a copy of any EPC recommendation report, green deal report or surveyor's report in which a relevant energy efficiency improvement has been recommended;
- Be accompanied by evidence of any funding secured by the tenant (e.g. green deal funding), evidence that the improvement will be provided free of charge (e.g. by an energy company) or confirmation that the tenant will wholly or partly fund the making of the improvements.

- If green deal funding is not being used for all the improvements, be accompanied by a copy of a quotation from a green deal installer or an installer who meets relevant installer standards under the Building Regulations 2010;
- If green deal funding is being used to fund all or some of the improvements:
 - identify the installer;
 - request that the landlord gives certain confirmations required under the Green Deal Framework (Disclosure, Acknowledgement, Redress etc.) Regulations 2012;
 - be accompanied by any confirmation required from another person under the Framework Regulations;
- Specify any making good works the tenant will undertake at its own expense after the relevant energy efficiency improvements are made.

5. When a Tenant's Request may not be made

Regulation 9 of the 2015 Regulations sets out circumstances in which a tenant may not make a request for consent. These include:

- After the tenant has served notice to end the tenancy;
- Within 3 months before the expiry of a fixed term tenancy, where the tenant has notified the landlord of an intention to vacate;
- Where the landlord has served a valid section 8, notice section 21 notice or notice to quit to end the tenancy;
- Where the landlord has commenced proceedings for possession or for a breach of the tenancy agreement and the proceedings are ongoing or the Court has made an order for possession;
- Where the tenant has arranged for an energy efficiency improvement to be made the property within the last 6 months under a green deal plan;
- Where the tenant has within the last 6 months made a tenant's request in relation to the property in respect of which either the devaluation exemption (making the improvement would devalue the property by more than 5%) or the consent exemption (a third party consent was refused or granted subject to an unreasonable condition) applied.

6. Landlord's Duty to not Unreasonably Refuse a Tenant's Request

Under Regulation 10 of the 2015 Regulations, the landlord must not unreasonably refuse consent to the making of a relevant energy efficiency improvement specified in the tenant's request.

The landlord may reasonably refuse consent where:

- Another tenant has submitted a request to the landlord in relation to the property within the last 6 months and the landlord has complied with the 2015 Regulations in relation to that request;
- A notice has been served under the Housing Health & Safety Rating System (HHSRS) in relation to the property and remains in force;

- A demolition order has been made, and remains in force, in relation to the property under the Housing Act 1985;
- The property is affected by an order under the Housing Act 1985 in relation to a clearance area;
- The request relates to cavity wall insulation, external wall insulation systems or internal wall insulation systems (for external walls) and the landlord has obtained a written opinion advising that it is not an appropriate energy efficiency improvement, due to its potential negative impact on the fabric or structure of the property;
- The request specifies an improvement which is the same, or substantially the same, as an energy efficiency improvement proposed by the landlord in the last 6 months to which the tenant refused consent;
- The landlord has made reasonable efforts to obtain third party consent but consent has been refused or granted subject to a condition with which the landlord cannot reasonably comply;
- An independent surveyor's report states that the improvements would result in a reduction of more than 5% in the market value of the property.

There may also be other circumstances in which it is reasonable for the landlord to refuse consent.

7. Superior Landlords

In some situations, the landlord will not be able to consent to a tenant's request without the consent of the landlord's own landlord, the "superior landlord".

The landlord must keep the superior landlord informed of any tenant's request and provide the superior landlord with copies of the landlord's initial response, intended counter proposal (if relevant) and full response.

The superior landlord is under a similar duty to the landlord not unreasonably to refuse consent.

8. Landlord's Initial Response

The landlord must provide a full response to the tenant's request letter (see section 9 below). In some circumstance, an initial response is also required. This is the case where:

- The landlord intends to serve a counter proposal (see section 10 below);
- There is a superior landlord;
- The landlord wishes to obtain evidence or advice before deciding whether to consent to an energy efficiency improvement because:
 - the tenant's request was not accompanied by an EPC recommendation report, a green deal report or a surveyor's report;
 - the tenant's request relates to wall insulation and the landlord intends to obtain a written opinion as to whether it is an appropriate energy efficiency improvement for the property;

- the landlord intends to rely on the devaluation exemption (making the improvement would devalue the property by more than 5%);
- the tenant's request specifies an improvement for which third party consent has not been given.

The initial response must state:

- Whether there is a superior landlord whose consent is required. If so, the landlord must state which improvements require the superior landlord's consent and confirm that the superior landlord has been served with a copy of the tenant's request;
- Whether the landlord wishes to obtain evidence or advice (as set out above);
- Whether the landlord intends to serve a counter proposal;
- That the landlord will serve a full response.

9. Landlord's Full Response

The landlord must provide a full response to the tenant's request letter.

If no initial response letter has been served, the full response must be served no later than one month after the date of service of the tenant's request.

If an initial response letter has been served stating that there is a superior landlord and/or that the landlord wishes to obtain evidence or advice, the full response must be served no later than 3 months after the date of service of the tenant's request.

If an initial response letter has been served stating that the landlord intends to serve a counter proposal, the full response must be served no later than 4 months after the date of service of the tenant's request.

The full response must:

- State, in relation to each proposed energy efficiency improvement whether the landlord gives consent and, if relevant, whether the superior landlord has consented;
- If green deal funding is being used to fund all or some of the improvements, state whether the landlord will give any confirmations required under the Green Deal Framework (Disclosure, Acknowledgement, Redress etc.) Regulations 2012;
- Be accompanied by any counter proposal made by the landlord (see section 10 below).
- If the landlord is refusing consent, or refusing to give any confirmation required in relation to green deal funding, set out the landlord's reasons and be accompanied by supporting evidence.

10. Landlord's Counter Proposal

The landlord's full response may include a counter proposal specifying energy efficiency improvements which differ from those specified in the tenant's request.

If a superior landlord's consent is required before the improvements can be made, the landlord must not serve the counter proposal on the tenant until the superior landlord has given their consent.

A counter proposal must:

- Specify the energy efficiency improvement(s) proposed by the landlord;
- Specify any making good works to be undertaken after the relevant energy efficiency improvements are made;
- Confirm that all the energy efficiency improvements specified in the counter proposal would deliver the same, or substantially the same, savings on the energy bills for the property as all the relevant energy efficiency improvements specified in the tenant's request letter;
- Confirm that all the energy efficiency improvements specified in the counter proposal would not result in an initial, or continuing, cost to the tenant which exceeds the cost of all the relevant energy efficiency improvements specified in the request letter;
- Specify the date by which the landlord proposes to make all the energy efficiency improvements (no later than 6 months from the date of service of the counter proposal);
- Seek the tenant's consent to the making of the improvements;
- If green deal funding is being used to fund all or some of the improvements, request that the tenant gives certain confirmations required under the Green Deal Framework (Disclosure, Acknowledgement, Redress etc.) Regulations 2012;
- Confirm that the landlord has obtained any third party consent.

Where a counter proposal is served:

- The tenant's request ceases to have effect;
- The tenant must serve a response within one month of the date of service of the counter proposal.
- If the tenant gives the required consent and (if relevant) green deal confirmation, the landlord must make the improvement(s) by the date specified in the counter proposal.

11. Effect of an Improvement Notice under HHSRS

If the landlord receives an improvement notice under the Housing Health and Safety Rating System (HHSRS), the landlord must serve a copy on the tenant and specify the works that will be carried out to comply with the notice and the timescale for completion of the works. Any tenant's request will cease to have effect.

11. Enforcement

If the landlord has failed to comply with the 2015 Regulations, e.g. by failing to serve a response, unreasonably refusing consent or failing to carry out the works specified in a counter notice, the tenant may apply to the First Tier Tribunal for an Order consenting to the making of the energy efficiency improvements specified in the tenant's request.