

LATEST NEWS FROM THE LEGAL AND OPERATIONS TEAM – DECEMBER 2022

MINIMUM ENERGY EFFICIENCY STANDARDS AND EXISTING NON-DOMESTIC LEASES

A legal requirement to comply with minimum energy efficiency standards can apply to certain non-domestic tenancies that are already in existence if they will still be in existence on 1 April 2023 (even where the tenancy was entered into *before* 1 April 2017 when the minimum energy standards rules came into force).

The energy efficiency of a property is usually recorded in an energy performance certificate ('EPC') and the minimum acceptable energy efficiency standard for rented non-domestic properties is rating 'E'. Any property that has a 'valid' EPC with an energy efficiency rating of 'F' or 'G' is called a 'sub-standard' property.

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 provide that, from 1 April 2023, a landlord may **not continue to let** a 'sub-standard' non-domestic property. This is unless an applicable exemption applies and has been registered on the Exemptions Register.

This potentially problematic provision means that churches with certain existing letting arrangements that will still be in place on 1 April 2023 may be required to bring the property that is rented-out up to the required energy efficiency standard (at least rating 'E') or register a valid exemption. **Affected churches cannot simply do nothing.** (There are exceptions to this requirement, for example:

- where no EPC is required, eg because the relevant building is used as a place of worship or the leased property is a nationally listed building where compliance with minimum energy performance requirements would unacceptably alter the building's character or appearance;
- in connection with a lease of 99 years or more; or
- in connection with a tenancy granted for a term certain not exceeding six months, (unless the tenancy agreement contains provision for renewing the term or for extending it beyond six months from its beginning)).

Unless one of the exceptions applies, churches need to consider their position very carefully. An EPC lasts for 10 years. Because of the way the law is written, any energy performance certificate (EPC) that was registered on or earlier than 31 March 2013 would no longer be 'valid' at the relevant date of 1 April 2023 and so it does not need to be considered. Therefore, churches with ongoing letting arrangements that were entered into on or earlier than 31 March 2013 where either:

- the lease was granted in connection with an EPC that was registered on or earlier than 31 March 2013; or
- no EPC was required, for example, because the letting occurred before EPCs became necessary in relation to that letting (see below)

do not have to bring their property up to the minimum standard E or register an exception (unless there has been a later EPC that is still valid on 1 April 2023).

(The requirement to obtain an EPC in relation to a letting was introduced in a phased way from 6 April 2008 to 1 October 2008 depending on the floor area of the building let. If any church is in doubt as to whether they should have had an EPC, they should contact us at the e mail address below).

Unless an exception applies, any church that is continuing to let non-domestic property in connection with an EPC that was registered on or later than 1 April 2013 will still have a 'valid' EPC on 1 April 2023 and, therefore, if that EPC is at rating 'F' or 'G' the church will need to take action now to bring the property up to the required standard or register a valid exemption if the lease will be continuing on 1 April 2023. The action that can be taken will depend on the terms of the lease. The church probably will need to take legal advice and can, in the first instance, email us at: legal.ops@baptist.org.uk. We can look at the lease to see what rights the church may have as landlord and advise generally in relation to exemptions.

Enforcement action can be taken and there are heavy fines for non-compliance – potentially up to £150,000 plus a publication penalty which may cause reputational damage.

Therefore all churches who are letting non-domestic property need to take urgent action now to check the date of registration and energy rating of any EPC issued in relation to any non-domestic letting that may be in place on 1 April 2023 and, if necessary, undertake the required compliance action before the 1 April deadline.

(Because of the way the law is worded, any church that is letting property where there is no EPC – either because one was not required or where there was one but it will have expired by 1 April, 2023 should think very carefully before obtaining an EPC of the property (unless, of course it is legally obliged to obtain one for some reason). This is particularly the case where the church is not entirely confident that the property will not be 'sub-standard').

The rules are quite complicated and, if the church is in any doubt, it should e-mail us in the first instance at legal.ops@baptist.org.uk for further advice.

SMOKE ALARMS AND CARBON MONOXIDE ALARMS IN WALES – NEW REQUIREMENTS

New regulations relating to smoke and carbon monoxide alarms apply to all existing manse occupancy arrangements and existing residential tenancies of church property in Wales. Affected churches **must take all required action** as there are penalties for non-compliance. Please see our leaflets PM07 and PM08 to which there are links below:

PM07 Manse Occupancy under the Renting Homes (Wales) Act 2016 (Wales Only) can be found here: www.baptist.org.uk/resources/pm07

PM08 Letting a Manse in Wales can be found here: www.baptist.org.uk/resources/pm08

MANSE OCCUPANCY IN WALES - NEW LEGAL REQUIREMENTS

The law in Wales relating to how residential accommodation is provided changed on 1 December 2022. Churches that provide a manse for their minister in Wales **must take all required action** to comply with the new law. Please read our new leaflet PM07 Manse Occupancy under the Renting Homes (Wales) Act 2016 (Wales Only) which can be found here: www.baptist.org.uk/resources/pm07

RENTING RESIDENTIAL PROPERTY IN WALES - NEW LEGAL REQUIREMENTS

Because of a change in the law from 1 December 2022, churches in Wales that rent out a residential property to tenants **must take all required action** to comply with the law. Please read our new leaflet PM08 Letting a Manse in Wales which can be found here: www.baptist.org.uk/resources/pm08

Please direct any follow-up questions to legal.ops@baptist.org.uk