



Department for  
Communities and  
Local Government

# Improving the energy efficiency of our buildings

Local Weights and Measures Authority guidance for the  
enforcement of the requirements of the Energy Performance of  
Buildings (England and Wales) Regulations 2012 (as amended)



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March 2016

ISBN: 978-1-4098-4800-4

# Foreword

This guidance is intended to help enforcement agencies to understand and enforce the requirements of the Energy Performance of Buildings (England and Wales) Regulations 2012 (S.I. 2012/3118 as amended). It has been updated to reflect the requirements of the Energy Performance of Buildings (England and Wales) (Amendment) (No. 2) Regulations 2015 (S.I. 2015/1681) which came into effect on 9 October 2015.

The guidance offers background on the legal framework for energy performance certificates and air-conditioning inspection reports and on the enforcement duties of local weights and measures authorities. It should be considered in parallel with the relevant regulations.

This document provides interpretation and guidance on enforcement activities – but it must be stressed that the Department for Communities and Local Government cannot provide legal advice nor can it provide a definitive interpretation of the law; as this is a matter for the Courts. Therefore, enforcement authorities should obtain their own legal advice where necessary in relation to proposed action.

This guidance is part of a suite of documents available to the public on gov.uk that explains the requirement for energy performance certificates (EPCs), display energy certificates (DECs) and air conditioning inspection reports under the Energy Performance of Buildings (England and Wales) Regulations 2012. Buildings in Northern Ireland and Scotland are subject to separate regulatory requirements and are not covered by or referred to in this guidance.

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# Energy Performance of Buildings Regulations Enforcement – key facts

It is the duty of every local weights and measures authority (LWMA) to enforce in their area:

- the making available of energy performance certificates;
- the appropriate commissioning and obtaining of energy performance certificates;
- the displaying of energy performance certificates;
- the inclusion in advertisements of energy performance indicators;
- compliance with the requirements regarding air-conditioning inspections; and,
- ensuring that required documents are produced within seven days.

Local weights and measures authorities have a range of measures at their disposal, from education and encouragement to the issuing of penalty charge notices. It is for them to determine the course of action that is appropriate for the circumstances.

Enforcing authorities are required to record all enforcement action taken. Details of these records should be submitted to DCLG on an annual basis and will feed into a final report to be published online.

Enforcement bodies have responsibility to collect sufficient information on relevant buildings to plan and implement effective enforcement action. There are several publicly available data sources on which to base enforcement of display energy certificates.

Where local weights and measures authorities would be required to potentially enforce against themselves or their parent authority under Regulation 34, they must transfer enforcement duties to another local weights and measures authority. The Department for Communities and Local Government should be notified of this transfer within three months of the amended regulations coming into force and of any changes in the future as part of the annual reporting process.

# Chapter 1

## Obligations

### Why is an EPC/DEC/air-conditioning inspection required?

- 1.1. The EU Directive on the energy performance of buildings (the Directive) came into effect progressively from 2007 and was transposed into UK regulations as an important part of the government's strategy to tackle climate change. The current requirements are set out in the Energy Performance of Buildings (England and Wales) Regulations 2012 (the regulations). These came into effect on 9 January 2013 and have subsequently been amended in 2013, 2014 and 2015.
- 1.2. The principle underlying both the Directive and the regulations is to make the energy efficiency of buildings transparent, inform occupiers and users about their building's or system's current energy performance and make recommendations on how to improve energy efficiency.

### What buildings require EPCs?

- 1.3. Any reference to a building includes a reference to a building unit in that building, except where otherwise stated in the regulations.
- 1.4. Buildings need an EPC either on construction or when they are to be sold or rented out.
- 1.5. An EPC is valid for 10 years or until a newer EPC is produced for the same building no matter how many times the property is sold or rented out during that period. Existing occupiers and tenants will not require an EPC unless they sell, assign or sublet their interest in a building.
- 1.6. A building offered for sale or rent, must include the energy performance indicator for the building as shown on the EPC, for example C, in any advertisements in the commercial media<sup>1</sup>. There is no requirement to include the full EPC in these advertisements; however, there are some circumstances in which full EPCs must be displayed.
- 1.7. Buildings with a total useful floor area of more than 500m<sup>2</sup> which are frequently visited by the public and have a valid EPC must display it in a prominent location.

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<sup>1</sup> Commercial media includes: newspapers and magazines; written material produced by the seller / landlord / estate or letting agent that describes the building being offered for sale or rent, the internet.

There is no need to obtain an EPC specifically for this purpose, but if the property has one, it must be displayed.

- 1.8. It should be noted that having and displaying an EPC does not mean that a building does not also need a DEC, if it meets the criteria.

### **What buildings require DECs?**

- 1.9. All buildings occupied by a public authority where the total useful floor area is greater than 250m<sup>2</sup> and frequently visited by the public must obtain and display a DEC. For buildings over 1,000 m<sup>2</sup>, the DEC will be valid for one year and the recommendation report for seven. For all other buildings, both the DEC and the recommendation reports will be valid for ten years.
- 1.10. It should be noted that having and displaying a DEC does not mean that a building does not also need an EPC, if it meets the criteria.

### **What buildings require air-conditioning inspections?**

- 1.11. An air-conditioning inspection is required if the effective rated output of the system within a building is more than 12kW. These must be carried out at least every five years.

### **Situations where an EPC is not required**

- 1.12. An EPC is generally not required where the seller or landlord can demonstrate that the building is any of these:
- officially protected<sup>2</sup> as part of a designated environment or because of their special architectural or historic merit where compliance with certain minimum energy efficiency requirements would unacceptably alter their character or appearance
  - buildings used as places of worship and for religious activities
  - temporary buildings with a planned time of use of two years or less
  - Industrial sites, workshops, non-residential agricultural buildings with low energy demand and non-residential agricultural buildings which are in use by a sector covered by a national sectoral agreement on energy performance
  - residential buildings which are intended to be used less than four months of the year or where the owner or landlord could reasonably expect the energy consumption of the building to be less than 25% of all year round use

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<sup>2</sup> Listed buildings on the English Heritage (or its Welsh equivalent) website ([www.english-heritage.org.uk/caring/listing/listed-buildings](http://www.english-heritage.org.uk/caring/listing/listed-buildings))

- stand-alone buildings with a total useful floor area of less than 50m<sup>2</sup> (i.e. buildings entirely detached from any other building)
- 1.13. A building does not need an EPC where the seller or landlord can demonstrate that it is furnished holiday accommodation as defined by HMRC (see Glossary of Terms below) and the holiday-maker is not responsible for meeting the energy costs.
  - 1.14. Under certain circumstances buildings may be exempt where it may be demonstrated that they are to be demolished. This is subject to a number of conditions as set out in Regulation 8.
  - 1.15. DCLG is unable to provide specific advice regarding whether any of these exemptions may apply to specific properties. Specialist advice relevant to the circumstances should be sought if needed.
  - 1.16. There are no other exceptions to the EPC obligations although there may be some transactions which do not qualify as a sale or renting out. If in doubt, legal advice should be sought.
  - 1.17. **There are no exceptions to the requirement to have a DEC. If the building has a total useful floor area greater than 250m<sup>2</sup> and is occupied by a public authority and frequently visited by the public, a DEC must be obtained and displayed.**
  - 1.18. **There are no exceptions to the requirement to have an air-conditioning inspection if the effective rated output of the system within a building is more than 12kW.**



# Chapter 2

## Enforcement of the regulations

2.1. Regulations 34 – 43 of the Energy Performance of Buildings (England and Wales) Regulations 2012 (S.I. 2012/3118) (as amended) deal with enforcement and outline the powers and the responsibilities of enforcement authorities and their officers.

### What is it your duty to enforce and against whom?

2.2. The following table contains a brief summary of the Energy Performance of Buildings (England and Wales) Regulations 2012 (as amended) and related provisions of the Building Regulations 2010 that it is the duty of local weights and measures authorities to enforce.

| Regulation    | Area of responsibility                                                                                                                                                                                                                                                                                          | Relevant person                                                                                 |
|---------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|
| 6(2) and 6(5) | The EPC is made available free of charge to any prospective buyer or tenant, and given to the eventual buyer or tenant.                                                                                                                                                                                         | The relevant person (i.e. the seller or landlord)                                               |
| 7(2)          | The relevant person must ensure that an EPC is commissioned before marketing the building for sale or rent.                                                                                                                                                                                                     | The relevant person (i.e. the seller or landlord)                                               |
| 7(3)          | A person acting on behalf of the relevant person must satisfy themselves that an EPC has been commissioned before marketing on their behalf.                                                                                                                                                                    | A person acting on behalf of the seller or landlord (e.g. the property or letting agent)        |
| 7(4) and 7(5) | The relevant person and the person acting on their behalf must use all reasonable efforts to ensure that the EPC is obtained within 7 days of the start of marketing.<br><br>The EPC must be obtained within the period of 21 days following the expiry of the 7 day period mentioned in 7(4).                  | The relevant person and/or a person acting on their behalf (e.g. the property or letting agent) |
| 10(2)         | The energy performance certificate must be valid and must be displayed in a prominent place clearly visible to members of the public who visit the building, where a building has a total useful floor area of over 500m <sup>2</sup> , is frequently visited by the public and an EPC has been made available. | The owner or occupier.                                                                          |

|                                |                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                       |
|--------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|
| 11(2)                          | The energy performance indicator of the building expressed in the energy performance indicator must be stated in any advertisement of the sale or rental in commercial media.                                                                                                                                                          | The person placing the advertisement (relevant person or person acting on their behalf)                                               |
| 14(3)                          | Buildings over 250m <sup>2</sup> occupied by public authorities and frequently visited by the public must display a DEC in a prominent place clearly visible to the public and the occupier of the building must have in their possession or control at all times a valid recommendation report.                                       | The public authority occupying the building                                                                                           |
| 18(1), 20 and 21               | Air-conditioning systems with an effective rated output of more than 12kW must be inspected at intervals not exceeding five years and a copy of the inspection report must be kept. A person taking over the system must ensure that it is inspected within three months if no inspection report is given when responsibility changes. | The person who has control of the operation of the air-conditioning system                                                            |
| 35(5)                          | A valid EPC, recommendation report, advisory report or air-conditioning inspection report must be produced when required by an enforcement authority within seven days.                                                                                                                                                                | The seller or landlord, building occupier, or the person who has control of the operation of the air-conditioning system respectively |
| 29 (Building Regulations 2010) | A valid EPC for the building must be provided to the owner no later than 5 days after construction (building or modification) is completed.                                                                                                                                                                                            | The person carrying out the construction.                                                                                             |

Table 1: Regulations to enforce

### What penalties may be imposed?

2.3. It is the decision of the enforcement authority or its authorised officer to determine what action is appropriate when they find that breaches of the regulations are being committed. It may be that providing advice and information is sufficient to ensure compliance. In some cases educating the relevant person regarding the benefits of knowing the cost-effective energy efficiency improvements they could make may be all the encouragement needed to ensure compliance with the requirements. However, in some cases, it may be that only imposing a penalty will do. It is for the enforcement authority or its authorised officer to decide what is the appropriate action in the circumstances.

2.4. The table following summarises the penalties that may be imposed by the enforcement authority or its authorised officer, through serving a penalty charge notice.

| Regulation    | Requirement                                                                                                                                                                                                                                                                                                     | Penalty for breach                                                                                               |
|---------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|
| 6(2) and 6(5) | The EPC is made available free of charge to any prospective buyer or tenant, and given to the eventual buyer or tenant.                                                                                                                                                                                         | £200 (dwelling)<br><br>Calculated according to the formula in 38(2) (non-dwelling). Minimum £500. Maximum £5000. |
| 7(2)          | The relevant person must ensure that an EPC is commissioned before marketing the building for sale or rent.                                                                                                                                                                                                     | £200 (dwelling)<br><br>Calculated according to the formula in 38(2) (non-dwelling). Minimum £500. Maximum £5000. |
| 7(3)          | A person acting on behalf of the relevant person must satisfy themselves that an EPC has been commissioned before marketing on their behalf.                                                                                                                                                                    | £200(dwelling)<br><br>Calculated according to the formula in 38(2) (non-dwelling). Minimum £500. Maximum £5000.  |
| 7(4) and 7(5) | The relevant person and the person acting on their behalf must use all reasonable efforts to ensure that the EPC is obtained within 7 days of the start of marketing.<br><br>The EPC must be obtained within the period of 21 days following the expiry of the 7 day period mentioned in 7(4).                  | £200(dwelling)<br><br>Calculated according to the formula in 38(2) (non-dwelling). Minimum £500. Maximum £5000.  |
| 10(2)         | The energy performance certificate must be valid and must be displayed in a prominent place clearly visible to members of the public who visit the building, where a building has a total useful floor area of over 500m <sup>2</sup> , is frequently visited by the public and an EPC has been made available. | £500                                                                                                             |
| 11(2)         | The energy performance indicator of the building expressed in the energy performance indicator must be stated in any advertisement of the sale or rental in commercial media.                                                                                                                                   | £200                                                                                                             |

|                                |                                                                                                                                                                                                                                                                                                                                |                                                                                                                 |
|--------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| 14(3)(a)                       | The occupier of a building over 250m <sup>2</sup> occupied by a public authority and frequently visited by the public must have in their possession or control at all times a valid recommendation report.                                                                                                                     | £1,000                                                                                                          |
| 14(3)(b)                       | Buildings over 250m <sup>2</sup> occupied by public authorities and frequently visited by the public must display a DEC in a prominent place clearly visible to the public.                                                                                                                                                    | £500                                                                                                            |
| 18(1), 20 and 21               | Air-conditioning systems with an effective rated output of more than 12kW must be inspected at intervals not exceeding five years and keep a copy of the inspection report. A person taking over the system must ensure that it is inspected within three months if no inspection report is given when responsibility changes. | £300                                                                                                            |
| 35(5)                          | A valid EPC, recommendation report, advisory report or air-conditioning inspection report must be produced when required by an enforcement authority within seven days.                                                                                                                                                        | £200                                                                                                            |
| 29 (Building Regulations 2010) | A valid EPC for the building must be provided to the owner no later than 5 days after construction (building or modification) is completed.                                                                                                                                                                                    | £200(dwelling)<br><br>Calculated according to the formula in 38(2) (non-dwelling). Minimum £500. Maximum £5000. |

Table 2: Penalties

## Defences

- 2.5. Regulation 37 sets out the circumstances in which a person shall not be liable to a penalty charge for not making an EPC available to a prospective tenant. These include where a person is able to demonstrate that they have made all reasonable efforts to obtain an EPC since becoming subject to the duty, and where the prospective tenant required urgent relocation and an EPC was given as soon as reasonably practicable thereafter..

## Reviews

- 2.6. Regulation 39 sets out an enforcement authority's obligations regarding the

conduct of reviews of the issuing of penalty charge notices. These include considering any representations made by the recipient of the penalty charge notice and deciding whether to confirm or withdraw the penalty charge notice. It also sets out the circumstances in which the authority shall withdraw the penalty charge notice.

## **Appeals**

- 2.7. If the recipient of the penalty charge notice is dissatisfied with the confirmation of the notice after the review, they may appeal to a county court on any of the grounds specified in regulation 40.

## **Duty to cooperate and obstruction of enforcement officers**

- 2.8. Regulation 45 sets out the duty of a person with an interest in, or in occupation of, a building, to cooperate with any seller or landlord to enable them to comply with requirement to make an EPC available or ensure the inspection of an air-conditioning system. They must also allow access to the building to any energy assessor appointed by the seller or landlord. Regulation 42 establishes a penalty for obstructing an enforcement officer or for imitating an enforcement officer of a fine not exceeding level 5 on the standard scale, upon summary conviction.

## **What about local authority buildings?**

- 2.9. Regulation 34A of the EPB regulations (as amended by Energy Performance of Buildings (England and Wales) (Amendment) (No. 2) Regulations 2015 (SI 2015/1681)) sets out the responsibility of local weights and measures authorities to transfer enforcement responsibility to another enforcement authority when either its parent local authority, or any other local authority within its area, is subject to a duty under any of the regulations in Table 1 (i.e. Regulations 6(2), 6(5), 7(2), 7(3), 7(4), 7(5), 10(2), 11(2), 14(3), 18(1), 20, 21 and 35(5), or the duty to provide an EPC on construction).
- 2.10. In the first instance, local weights and measures authorities should identify which properties may come within the scope of regulation 34A and then must enter into an agreement with one or more other enforcement authorities that will then have responsibility to enforce compliance. For example, if a local authority occupies a property that is greater than 250m<sup>2</sup> and frequently visited by members of the public, then that other enforcement authority will have enforcement responsibility for the duty to create and display a DEC in relation to that building. DCLG should be notified that transfer agreements under section 34A have been made within three months of the amended regulations coming into force, or as soon as reasonably practicable thereafter. Local weights and measures authorities should also notify DCLG of any further

changes to these agreements as part of the annual reporting process.

## How can I find details of properties owned or occupied by public authorities in my area?

2.11. Regulation 34B of the EPB regulations (as amended by Energy Performance of Buildings (England and Wales) (Amendment) (No. 2) Regulations 2015 (SI 2015/1681)) requires enforcement authorities to collect sufficient information on relevant buildings to plan and implement effective enforcement action. As part of the UK's commitment to open data, there is a comprehensive range of existing free to use data sets of public authority land and assets on which to base an effective programme of enforcement action.

| Public Authority                | Description                                                                                | Source                                                                                                |
|---------------------------------|--------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
| Central Government and agencies | Available as open data on Government Property Finder                                       | <a href="https://www.gov.uk/find-government-property">https://www.gov.uk/find-government-property</a> |
| Ministry of Defence             | Available as open data on Government Property Finder                                       | <a href="https://www.gov.uk/find-government-property">https://www.gov.uk/find-government-property</a> |
| NHS Property Services           | Available as open data on Government Property Finder                                       | <a href="https://www.gov.uk/find-government-property">https://www.gov.uk/find-government-property</a> |
| Schools                         | Searchable on Department for Education                                                     | <a href="https://www.gov.uk/find-school-in-england">https://www.gov.uk/find-school-in-england</a>     |
| Local Authorities               | Available as open data on local authority websites and some on Government Property Finder. | N/A                                                                                                   |
| Police                          | Searchable UK Police Portal                                                                | <a href="https://police.uk">https://police.uk</a>                                                     |

Table 3: Open data sources

# Chapter 3

## Reporting to DCLG

3.1. Every local weights and measures authority is required to report on enforcement activity undertaken on an annual basis under Regulation 34C of the EPB regulations (as amended by Energy Performance of Buildings (England and Wales) (Amendment) (No. 2) Regulations 2015(SI 2015/1681)). These reports will be collated by DCLG and published annually. Authorities are also strongly encouraged to publish their annual reports on their own websites in the interests of increased transparency. A blank reporting template may be found annexed to this guidance and should be completed and returned no later than two months after the end of each financial year (i.e. the last working day in May). In this annual report, local authorities must in accordance with this guidance record and report on:

- The numbers of inspections and other compliance and enforcement activities undertaken during this period. and
- Numbers of complaints made by members of the public.

and in compliance with regulation 34C(d) must

- Identify all agreements for the transfer of enforcement responsibility with other authorities for buildings which are the responsibility of either, and any changes to such agreements.

3.2. This and any other report should be submitted to the Secretary of State via this email address: [EPC.Enquiry@communities.gsi.gov.uk](mailto:EPC.Enquiry@communities.gsi.gov.uk).

# Reporting template

| Name of enforcement authority                                                                                                                                           |                                                                                            |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| The number of inspections and other compliance and enforcement activities undertaken during this period.                                                                |                                                                                            |
| Numbers of complaints made by members of the public.                                                                                                                    |                                                                                            |
| Other authority/authorities which it has entered into enforcement agreements (if any) (please also identify any changes to such agreements during the reporting period) |                                                                                            |
|                                                                                                                                                                         |                                                                                            |
|                                                                                                                                                                         |                                                                                            |
| Email address to which completed form to be returned                                                                                                                    | <a href="mailto:EPC.Enquiry@communities.gsi.gov.uk">EPC.Enquiry@communities.gsi.gov.uk</a> |



# Glossary of terms

A **building** means 'a roofed construction having walls, for which energy is used to condition the indoor climate'.

A **building unit** means 'a section or floor within a building that has been designed or altered to be used separately'.

A **stand-alone** building is a building that is free standing, i.e. entirely detached from any other building.

The **total useful floor area** is the total area of all enclosed spaces measured to the internal face of the external walls, that is to say it is the gross floor area as measured in accordance with guidance issued to surveyors:

- a. the area of sloping surfaces such as staircases, galleries, raked auditoria, and tiered terraces should be taken as their area on the plan; and
- b. areas that are not enclosed, such as open floors, covered ways and balconies, are excluded.

A **dwelling** means a building or part of a building occupied or intended to be occupied as a separate dwelling. This would imply that it is a self-contained unit designed to provide living accommodation for a single household (i.e. it does not share communal facilities).

A **non-dwelling** is a building that is not a dwelling, such as retail units and offices.

If a **building** that is to be used for **industrial or commercial purposes** (e.g. a workshop or an office) also contains living accommodation, it should be treated as a **dwelling** if the industrial or commercial part could revert to domestic use, without significant alteration, on change of ownership. This could be the case if:

- a. there is direct access between the industrial or commercial space and the living accommodation; and
- b. both are contained within the same thermal envelope; and
- c. the living accommodation occupies a substantial proportion of the total area of the building (e.g. a small manager's flat in a large non-domestic building would not mean the whole should be treated as a dwelling).

**Buildings that are industrial sites and workshops with low energy demand.** These include buildings, or parts of buildings designed to be used separately, whose purpose is to accommodate industrial activities in spaces where the air is not conditioned. Activities that would be covered include foundries, forging and other hot processes, chemical

process, food and drinks packaging, heavy engineering and storage and warehouses where, in each case, the air in the space is not fully heated or cooled. Whilst not fully heated or cooled these cases may have some local conditioning appliances such as plaque or air heaters or air conditioners to serve people at work stations or refuges dispersed amongst and not separated from the industrial activities.

**Non-residential agricultural buildings with low energy demand** include buildings, or parts of buildings designed to be used separately, that are heated for a few days each year to enable plants to germinate but are otherwise unheated.

**Rooms for residential purposes are not dwellings.** A Room for residential purposes is defined in the Building Regulations 2010 as a room, or a suite of rooms, that is not a dwelling-house or a flat and that is used by one or more persons to live and sleep and includes a room in a hostel, an hotel, a boarding house, a hall of residence or a residential home, but does not include a room in a hospital, or other similar establishment, used for patient accommodation

**Furnished holiday accommodation** meets the following criteria in the Income Tax (Trading and Other Income) Act 2005, as amended in April 2012, which are set out after this definition:

- it must be “furnished holiday accommodation” that meets the requirement in section 323(3)(a) and the requirement in section 323(3)(b) as qualified below in relation to sections 325 and 326;;
- it must be “qualifying holiday accommodation” as described in section 325(1) that meets the availability condition in section 325(2) and the letting condition in section 325 (3) and (4), and is not let for any period of longer term occupation within the meaning of section 325 (4);
- it must not be under-used holiday accommodation as defined in section 326(1)

### **Income Tax (Trading and Other Income) Act 2005 extracts:**

#### **323 Meaning of “commercial letting of furnished holiday accommodation”**

(1) A letting is a lease or other arrangement under which a person is entitled to the use of accommodation.

(2) A letting of accommodation is commercial if the accommodation is let—

- (a) on a commercial basis, and
- (b) with a view to the realisation of profits.

(3) A letting is of furnished holiday accommodation if—

- (a) the person entitled to the use of the accommodation is also entitled, in connection with that use, to the use of furniture, and
- (b) the accommodation is qualifying holiday accommodation (see sections 325 and 326).

(4) This section applies for the purposes of this Chapter.

### **324 Meaning of “relevant period” in sections 325 and 326**

(1) For the purposes of sections 325 and 326 “the relevant period” for accommodation let by a person in a tax year is determined as follows.

(2) If the accommodation was not let by the person as furnished accommodation in the previous tax year, “the relevant period” is 12 months beginning with the first day in the tax year on which it is let by the person as furnished accommodation.

(3) If the accommodation—

(a) was let by the person as furnished accommodation in the previous tax year, but

(b) is not let by the person as furnished accommodation in the following tax year,

“the relevant period” is 12 months ending with the last day in the tax year on which it is let by the person as furnished accommodation.

(4) Otherwise “the relevant period” is the tax year.

### **325 Meaning of “qualifying holiday accommodation”**

(1) Accommodation which is let by a person during a tax year is “qualifying holiday accommodation” for the tax year if the availability, letting and pattern of occupation conditions are met.

(2) The availability condition is that, during the relevant period, the accommodation is available for commercial letting as holiday accommodation to the public generally for at least 210 days.

(3) The letting condition is that, during the relevant period, the accommodation is commercially let as holiday accommodation to members of the public for at least 105 days.

(4) For the purposes of the letting condition, a letting of accommodation for a period of longer-term occupation (see subsection (6)) is not a letting of it as holiday accommodation.

(5) The pattern of occupation condition is that, during the relevant period, not more than 155 days fall during periods of longer-term occupation.

(6) For the purposes of this section a “period of longer-term occupation” is a continuous period of more than 31 days during which the accommodation is in the same occupation otherwise than because of circumstances that are not normal.

### **326 Under-used holiday accommodation: averaging elections**

(1) This section applies if during a tax year a person lets both—

(a) qualifying holiday accommodation, and

(b) accommodation that would be qualifying holiday accommodation if the letting condition (see section 325(3)) were met in relation to it (“under-used accommodation”).