

Heating and cooling in multi-let buildings – potential new costs for landlords

New regulations will: (1) require landlords to provide information about their multi-let buildings' communal heating / cooling systems to the National Measurement Office by 30 April 2015; (2) place obligations on landlords to install meters to measure the supply of heat and cooling to individual occupiers in these buildings by 31 December 2016; and (3) require bills to occupiers to be based on the actual supply to those occupiers.

These new requirements derive from the 2012 European Energy Efficiency Directive and are contained in [The Heat Network \(Metering and Billing\) Regulations 2014](#). They apply to "communal heating" which is defined as the provision of heating / cooling / or hot water to more than one occupier in a building. The obligations are placed on a "heat supplier" (the person who supplies communal heating to end users in a building and charges for it). This term is likely to include landlords of multi-let buildings (commercial and blocks of flats) who pass on the cost of energy to their tenants whether directly or through service charges.

Notification requirement

Heat suppliers are required to provide certain information to the Secretary of State about their communal heating systems including, e.g., heating capacity, volume of heat generation and supply, and metering equipment installed. The deadline for notification is **30 April 2015** (or before the equipment is first used after that date for new heating systems installed from time to time). This information must then be updated every four years.

Installation of Meters / Heat Cost Allocation Equipment

The heat supplier must ensure that meters are installed in the building to measure supply of heat, cooling or hot water to each individual occupier unless it would not be technically feasible or cost-effective to do so¹. This obligation applies from **31 December 2016**.

If metering is not cost effective or technically possible, then the heat supplier must install "heat cost allocators"² and thermostatic radiator valves on room radiators, and install hot water meters unless, again, it would not be cost-effective to do so (or, for meters, unless this is not technically feasible).

The regulations deem the installation of meters **not to be technically feasible** in certain circumstances. For example, where there is more than one entry pipe for a heating / cooling system into individual premises.

¹ As drafted, it appears that the heat supplier could choose to meter any one of them, but this does not seem to be the policy intent.
² These measure the supply of heat so that the cost can be allocated to individual parts of a building.

The method of calculation of cost effectiveness is prescribed by the regulations and based on a list of specified costs and on notional energy savings over 10 years.

Heat suppliers have to ensure meters or heat cost allocators are continuously operating, maintained in working order, and replaced where necessary.

Importantly, the regulations do not provide an exception to the requirements in case of lack of consent from tenants to carry out works. While the installation of meters may seem to be fairly minor, tenants may resist on a number of grounds relating to the disturbance it might cause to the business, for example:

- Where meters would need to be installed in sensitive or highly controlled environments in the tenant's demise, such that access is problematic; or
- Where the installation of meters might lead to critical service interruptions, for example, a chilled water meter serving the cooling of critical IT equipment, or might cause other impacts through the carrying out of hot works.

It is surprising that the regulations have not dealt with this issue³. It should also be noted that landlords may have obligations to install meters / heat cost allocators even where the heat is provided to the building by a district heating network.

Actual Use Billing

Where meters or heat cost allocators are installed, heat suppliers must bill based on actual consumption of heat / cooling, and supply certain billing information, where the cost of doing so for each occupier would not exceed £70 per year. Significantly, this obligation already applies as from **19 December 2014**, although breaches before 30 April 2015 cannot be punished by criminal prosecution.

This may cause the landlord difficulties where metering is or can be installed, but, for example, the lease provides for energy costs to be divided based on floorspace occupation. Again, the regulations do not cater for this difficulty.

Enforcement and Penalties

The National Measurement Office (NMO) will enforce the regulations. All of the main duties are subject to criminal penalties including fines. Notably the duty to install meters is subject to a potentially unlimited fine if a heat supplier is convicted on indictment. The NMO could apply civil sanctions (e.g. compliance notices and enforcement undertakings) instead of prosecuting offences if it wishes.

Final Comments

If they are not already doing so, landlords need to collate the information needed for the notification to the NMO by 30 April 2015 for each of their multi-let buildings. Landlords should begin to consider the extent to which further metering in each such building is needed and is technically / economically possible based on the criteria in the regulations. Where work is needed, landlords will have to consider a strategy for carrying it out by 31 December 2016, bearing in mind any restrictions under their leases.

³ Unlike the detailed provisions on tenants' consent contained in the regulations governing the new Minimum Energy Efficiency Standard, see our [February 2015 client briefing](#).

Notes

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