

Countdown to minimum EPC standards

Will your property be lettable in April 2018?

The MEES (Minimum Energy Efficiency Standards) Regulations make it unlawful from April 2018 to let buildings (both commercial and domestic) in England and Wales which do not achieve a minimum Energy Performance Certificate (EPC) rating of 'E'. As poor energy performance is not limited to old or obsolete buildings, MEES have significant impacts for a number of landlords, tenants, and property advisors. Landlords need to take action now to avoid higher compliance costs and protect revenues from their properties.

In February 2017, the Government released the guidance on the application of the MEES regulations for non-domestic property. This clarifies when the regulations apply, how to identify the relevant energy efficiency works that must be carried out on 'F' or 'G' rated properties, the routes for exemption and the enforcement process. Although the regulations apply to commercial and residential properties, this note largely focusses on the application to commercial property.

The key differences under the regulations for residential properties is that from April 2016, tenants are able to request consent from their landlord to install Green Deal compliant energy efficiency improvements, as long as there is no up-front or net cost to the landlord. Also, the requirements from 1 April 2023 for commercial properties discussed below will apply to residential properties from 1 April 2020.

The April 2018 deadline applies to lease renewals as well as new lettings indicating a strengthening of Government intent regarding energy and environmental legislation in the UK.

The MEES regulations apply in England and Wales. There are different but complimentary regulations applying in Scotland, which have been developed under Section 63 of the Climate Change (Scotland) Act, known as 'Action on Carbon and Energy Performance' (ACEP). Northern Ireland does not yet have an equivalent of the Energy Act or ACEP but there is a draft Climate Change Bill currently under review.

Why MEES?

The aims of the MEES regulations are to:

- Improve the energy efficiency of the most inefficient properties (i.e. those with an EPC rating of 'F' or 'G')
- Work toward achieving the UK's legislative targets – CO₂ emissions from all buildings must be 'close to zero' by 2050
- Help to tackle the traditional barrier to the implementation of energy efficiency works in buildings (aka the 'split incentive') where the landlord foots the bill for improvements that benefit the tenant

The key implications of MEES include:

- Making it impossible to market some properties unless they are upgraded
- The valuation of such properties will be affected - with associated implications for secured lending
- Rent reviews on 'F' and 'G' rated properties will be affected
- There may also be implications for dilapidations assessments

Key points

MEES requires a property in England and Wales to be brought up to a minimum EPC rating of 'E'

MEES requires properties within the scope of the regulations to be brought up to a minimum EPC rating of 'E', with those properties below this (i.e. with an EPC rating of 'F' or 'G') being termed 'sub-standard' in the regulations.

MEES applies to new lettings and lease renewals from 1 April 2018

MEES applies to the grant of a lease on or after 1 April 2018, including lease renewals. The landlord will need to ensure a property complies with MEES before the lease is granted (providing a valid EPC is legally required). However, in certain circumstances the landlord will have six months after the lease is granted to comply – this generally being where the landlord has no choice whether to grant the lease.

MEES will apply to all existing leases from 1 April 2023

From 1 April 2023 MEES will be extended to cover all leases, including existing leases but only if the property is legally required to have an EPC on the relevant date. An EPC commissioned voluntarily (i.e. at any time other than when the property was to be sold or let) will not, in itself, require the landlord to comply with MEES.

Properties that do not need an EPC are not within the MEES regime

MEES only applies to buildings that require an EPC under current regulations. Importantly, not all listed buildings or those in a conservation area will be automatically exempt from the regulations. MEES also does not apply to very short lettings, or to lettings of 99 years or more.

Landlords will be exempt after all cost-effective energy efficiency improvements have been carried out

Broadly, landlords will be exempt from meeting the minimum 'E' rating, for five years, where they have implemented all cost-effective improvement measures, determined by a seven-year payback test, and the minimum 'E' rating has not been met.

Landlords will be exempt if third party consents are not available or if compliance would devalue the property

Landlords will be exempt, again for five years, if consent to undertake works is refused from a third party (e.g. Local Authority) or an incumbent tenant, or if the implementation of measures would result in a devaluation of the property by 5% or more.

An exemption from MEES cannot be transferred to a buyer

Where a non-compliant property occupied by a tenant is sold, or transferred to another lender in the case of receivership, the new landlord will have six months to improve the property or seek to demonstrate that an exemption applies.

Exemptions will need to be lodged on a central register

The Government has created a central register for landlords to lodge evidence (on a self-certification basis) to demonstrate exemptions from MEES free or charge. Details of exemptions will be made public, and the register will be used to inform compliance enforcement. Exemptions must be registered before they can be relied upon.

Penalties for non-compliance could be significant

Penalties are largely based on the rateable value of a commercial property with a maximum fine for non-compliance of £160,000 (per asset).

The Government will review MEES in 2020

There had originally been an expectation that the minimum EPC rating under MEES would be raised over time. However, this has not been implemented, and the Government will review the performance of MEES in 2020.

Further information

For more detailed guidance on MEES and information about how our Sustainability Solutions team can assist in devising a strategy to mitigate risks and ensure compliance, please contact:

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