

FACT SHEET

MINIMUM ENERGY EFFICIENCY STANDARDS (MEES) FOR COMMERCIAL PROPERTY

Background and summary

Since the Government pledged to reach net zero carbon emissions by 2050 they've been focusing on how best to improve the energy performance of commercial properties.

The MEES Regulations require a minimum energy efficiency standard to be met before a property can be let in certain circumstances.

The prohibition of new leases, both domestic and commercial, where the property was sub-standard (having an EPC rating of F or G) came into force on 1 April 2018. This was extended to a prohibition on continuing existing leases of sub-standard domestic properties, which is also due to extend to commercial properties on 1 April 2023.

What properties are caught?

Non-domestic privately rented properties, specifically a property which is:

- *Situated in England and Wales*
- *Let under a qualifying tenancy*

MEES don't apply to long leases for 99 years or more, or short leases of less than six months so long as they don't include a right to renew and the tenant has not already been in occupation for a continuous period of 12 months

- *Not a dwelling*
- *Required to have an EPC*

You don't need one for:

- *Listed or officially protected properties where the requirements would unacceptably alter them*
- *Temporary buildings to be used for two years or less*
- *Places of worship or other religious activities*
- *Industrial sites, workshops or non-residential agricultural buildings that don't use much energy*
- *Detached buildings with a total floor space under 50 square metres*
- *Properties due to be demolished (with consents in place to do so)*
- *Properties due to be sold or rented out with vacant possession, suitable for demolition where the site could be redeveloped and the buyer or tenant has applied for planning permission to demolish it*



Who do the MEES apply to?

The obligations of the MEES Regulations fall primarily on Landlords. However, if a tenant sublets the property, those obligations will also apply to them as they will become the landlord in that context.

Landlords will need to consider what is required of them under the MEES Regulations if they wish to grant a lease or, as of 1 April 2023, continue to let their property.

What if a property is “sub-standard”?

A landlord must not grant a new lease (from 1 April 2018) or continue existing leases (from the date of 1 April 2023) unless:

- *They make sufficient energy efficiency improvements to the property, resulting in the property no longer being sub-standard; or*
- *The appropriate information has been registered on the Private Rented Sector exemptions register or ‘PRS Exemptions Register’ which is a searchable online register*

What exemptions can be registered?

In the case of non-domestic property, the following exemptions are available by way of application to the online register:

- *‘7 year payback’ – applies where a landlord can prove that the cost of improvements outweighs the financial benefit of them in terms of the expected value of savings on energy bills over seven years. This exemption applies for five years*
- *‘All improvements made’ – applies where all relevant energy efficiency improvements have been made but the property remains sub-standard. This exemption applies for five years*
- *‘Wall insulation’ – applies where the landlord provides expert evidence that the recommended insulation type in the recommended works is not appropriate to the property due to the potential negative impact on its fabric or structure. This applies for five years*
- *‘Consent’ – applies where a third party’s consent is required before an energy efficiency improvement can be installed and the consent is refused or imposed subject to conditions which the landlord isn’t reasonably able to comply with. This could include planning permission, lender consent, or, depending on the terms of the leases relating to the property, superior landlord or tenant consent. This applies for five years (or, in the case of a tenant’s consent, until they cease to be the tenant)*
- *‘Devaluation’ – applies where an independent surveyor provides a report stating that the energy efficiency measures would reduce the market value of the property, or the building which it forms part of, by more than 5%. This applies for five years*
- *‘New landlord’ – applies temporarily – for six months – if someone becomes a landlord suddenly as a result of certain circumstances including completion of contingent contractual obligations, insolvency, an overriding lease being granted etc. This also applies where a person becomes a new landlord when purchasing an interest in a property where it is let to an existing tenant.*

What happens if you don’t comply?

If the MEES regulations do apply, they won’t affect the validity of new and existing leases. However, failure to comply will make landlords liable to enforcement action. This could include fines and public exposure of the landlord’s unjustified failure to comply with the MEES regulations, which wouldn’t be great PR.



What about the future?

- *In October 2019, the Department for Business, Energy and Industrial Strategy published a consultation to seek views on improving the energy performance of commercial properties. As a result of this consultation, the UK Energy White Paper 2020 confirmed that the future route for commercial MEES will be EPC B by 1 April 2030.*
- *A further consultation in March 2021 focused on practical delivery, including proposing an interim milestone of EPC C by 2027, and looked at enforcement.*
- *Whilst a lack of resource in the department of Trading Standards and Environmental Health has made policing the MEES difficult, greater fines and more practical enforcement methods may be on the horizon.*
- *Changes may be imposed which require tenants to co-operate in order to achieve compliance, and so exemptions centred on a tenant's refusal to consent to works may become a thing of the past.*
- *There's an indication that the Government may impose an annual performance rating – and publication – in respect of large buildings over 1,000m² because of their high energy use accounting for over half of the total energy use amongst commercial properties.*
- *Local authority planning guidance in some areas suggests that firms engaged on large projects should go above and beyond the current national building regulation requirements in a bid to achieve ambitions around climate change.*
- *Raising the bar in terms of the minimum rating will result in a greater pool of sub-standard properties and the potential for more frequent discussions centred on value, taking into account the costs of any likely works that a property buyer may need to incur in order to be able to let the premises going forward.*
- *Tenants looking to take leases may seek to negotiate on their rent where the property might not hit the standard in the future or where it looks like the landlord is able to benefit from an exemption.*

What should landlords do now?

- *Landlords should aim to obtain higher EPC standards than the minimum currently set at E where they can, to get ahead of more stringent standards looming in the future. They should also consider how best to facilitate the possibility of requisite energy efficiency works in the context of new leases, considering rights to be reserved, questions of consent and alterations policies.*
- *Although it's clearly a landlord's obligation, it may be that parties agree to apportion the cost of improvements between them, particularly where the tenant looks set to benefit from them or where a more energy efficient property would align with a tenant's own green credentials.*
- *Developing an energy data sharing policy would also be a worthwhile endeavour.*

Further reading

You might want to look at the Government's latest update here:
[Gov.uk: Improving Energy Performance Certificates: action plan - progress report](#)

**For more
information
please contact:**

Aimee Barrable, Partner
T: 07842 311448, E: a.barrable@stephens-scown.co.uk
www.stephens-scown.co.uk