

# MINIMUM ENERGY EFFICIENCY STANDARDS (MEES)

Minimum Energy Efficiency Standards (MEES) apply to both residential and commercial properties but the two regimes are different - this briefing covers commercial properties, described by the regulations as "non-domestic" properties.

## What is the effect of MEES?

In summary, a landlord of a commercial property with a valid energy performance certificate (EPC) with a rating of F or G must not let the property, unless an exception or exemption applies and (where required) is registered on the Private Rented Sector (PRS) exemptions register.

## Does that mean that owners and tenants of properties with an EPC rating of E or better will not be affected?

Not necessarily as:

- if a new EPC is obtained (e.g. after the current EPC expires), a lower F or G rating may be awarded, for example if the EPC criteria become more onerous or are applied differently by the EPC assessor; and
- the government may raise the MEES in future from E to a higher rating.

## MEES only apply where there is a "valid EPC"

An EPC is valid where:

- it was entered on the government EPC register no more than 10 years ago; and

- no other EPC for the property has since been entered on the register.

## What are the key dates?

**(i) New leases** – Starting on 1 April 2018 MEES applies to new leases. New leases include:

- lease renewals under the Landlord and Tenant Act 1954;
- leases granted pursuant to an agreement for lease;
- leases granted to guarantors following a tenant's insolvency;
- overriding leases granted to former tenants under the Landlord and Tenant (Covenants) Act 1995;
- leases created by a deemed surrender and re-grant; and
- leases granted by an order of court.

However, where a new lease falls into one of these categories, the landlord has 6 months following the grant of the lease to bring the property up to at least an E rating or register another exemption (more details below). The landlord must however register this 6

month exemption on the PRS exemptions register before the lease is granted.

**(ii) Continuing leases** – Starting on 1 April 2023, MEES will apply to all let properties with a valid EPC, whenever the lease was granted. A buyer of property subject to leases can benefit from a 6 month exemption from complying, provided it registers that exemption before completing the property purchase. At the end of that 6 months, it must either have brought the property up to an EPC rating of E or above, or registered another exemption.

### **Are some leases exempted from MEES?**

Yes, MEES do not apply to:

- leases granted for 6 months or less (unless at the time of the letting the tenant has been in occupation of the property for over 12 months, or the tenancy includes provisions to renew or extend it beyond 6 months from the beginning); or
- leases granted for 99 years or more.

### **Are some buildings exempted?**

Yes, buildings that do not have to have an EPC are exempted from MEES. These include:

- buildings which have no heating, mechanical ventilation or air conditioning;
- buildings which are to be demolished;
- listed buildings and buildings in a conservation area where complying with certain minimum energy efficiency requirements would unacceptably alter their character or appearance. In brief, some listed buildings and buildings in a conservation area will have to comply with MEES, while others will not;
- buildings used as places of worship and for religious activities;
- a temporary building with a time of use of two years or less;
- industrial sites, workshops, non-residential agricultural buildings with low energy demand;
- stand-alone buildings with a total useful floor area of less than 50m<sup>2</sup>.

### **What are the other exemptions?**

- All “relevant energy efficiency improvements” have been made (or none can be made) and the EPC rating remains below E. Relevant energy efficiency improvements means work of certain types specified in particular types of reports and which have an energy efficiency payback of 7 years or less. The government [February 2017 guidance](#) provides more details and advises how to calculate the 7 year payback.
- The landlord needs its tenant’s consent to carry out the improvement works, but cannot obtain this consent.
- The landlord needs another third party’s consent to carry out the works, but cannot obtain this consent. The third party could include, for example, a superior landlord, lender or the local planning authority. The landlord must show that it used reasonable endeavours to obtain such consent.
- A report from an independent surveyor states that making the relevant energy efficiency improvements would result in a reduction of more than 5% in the market value of the property.

### **What must a landlord do before relying on an exemption?**

Before a landlord can rely on an exemption, it must enter the exemption on the PRS exemptions register.

### **Where is the register?**

The register is on the Non-Domestic Private Rented Property Minimum Standard page of [www.gov.uk](http://www.gov.uk).

### **Are exemption applications checked before they are registered?**

No, exemptions are self-certified. However, enforcement authorities will carry out audits to ensure that exemptions have been registered in compliance with the MEES regulations.

### **What evidence of qualifying for an exemption must be provided?**

The government [February 2017 guidance](#) details the evidence that must be provided when registering each type of exemption.

### **When don't you need to register an exemption?**

It is not necessary to register:

- exemptions for properties which are not required to have an EPC; or
- properties let on very short, or very long, leases as detailed above.

### **Is there a fee for registering an exemption?**

No.

### **Is an exemption certificate issued?**

No.

### **How long do exemptions last?**

- Most exemptions last for 5 years. If, at the end of that period, the landlord still wants to rely on that exemption, it must register it again.
- However the temporary exemptions, mentioned above for new owners and for where the landlord is obliged to grant a lease, only last 6 months.
- Moreover, the government [February 2017 guidance](#) indicates that where a landlord registers an exemption based on a tenant refusing consent to works, that consent lasts until either that tenant is no longer tenant (although that is not stated in the regulations themselves), or five years, whichever is earlier.

### **Do exemptions transfer to a new owner of a let property?**

No, a new landlord has to register its own exemptions.

### **Who enforces the regulations?**

Local weights and measures authorities.

### **What are the penalties for not complying?**

- a fine - the amount depends on the length of non-compliance and the property's rateable value:
  - less than 3 months in breach: 10% of the rateable value of the property (with a minimum fine of £5,000 and a maximum of £50,000); and
  - 3 months and over in breach: 20% of the rateable value of the property (with a minimum fine of £10,000 and a maximum of £150,000).
- the breach may be published on the central register, which is a public record.

There are separate penalties for failing to comply with a compliance notice or for providing false or misleading information.

### **Are leases granted or continuing in breach of the regulations valid?**

Yes.

### **What should landlords do now?**

Landlords should:

- identify if they have any F or G rated properties and consider how to comply with the regulations applying to:
  - new leases granted on or after 1 April 2018, including any leases the landlord has a statutory or contractual obligation to grant, for example under a statutory lease renewal or a tenant's option to renew; and
  - both new and existing leases, commencing 1 April 2023.
- identify properties where the EPC expires over the next couple of years. Particularly where the EPC rating is D or E, consider taking advice on whether the property may fall to an F or G rating when a new EPC is obtained.

### **Do the rules apply to tenants underletting?**

Yes, the rules apply in the same way to tenants granting an underlease on or after 1 April 2018 or continuing to

underlet property on 1 April 2023.

### Are minimum standards likely to rise?

Yes, and landlords should bear this in mind now when considering how to comply with MEES.

- The government's [Clean Growth Strategy](#) published in October 2017 stated that the government intends in 2018 to:
  - consult on improving the energy performance of buildings and on higher minimum standards; and
  - issue a call for evidence on extending triggers for obtaining an EPC and on how EPCs may be improved. This [call for evidence](#) was published in July 2018.
- The [Green Finance Taskforce](#) issued a report to the government in March 2018 – [Accelerating Green Finance](#). One recommendation is that '*a trajectory and minimum energy standard for commercial properties of EPC B by 2035 by adopted*'.

### More information

The Government [February 2017 guidance](#) for Landlords.

## TO FIND OUT MORE

For further information about any of the issues raised in this guide, please contact:



### DARYL RIVERO

Partner

+44 (0)1483 401237

[daryl.rivero@stevens-bolton.com](mailto:daryl.rivero@stevens-bolton.com)



### LOUISE KELLAWAY

PSL

+44 (0)1483 401245

[louise.kellaway@stevens-bolton.com](mailto:louise.kellaway@stevens-bolton.com)

Tel: 01483 302264 Fax: 01483 302254

[www.stevens-bolton.com](http://www.stevens-bolton.com)

The information contained in this guide is intended to be a general introductory summary of the subject matters covered only. It does not purport to be exhaustive, or to provide legal advice, and should not be used as a substitute for such advice.

© Stevens & Bolton LLP July 2018

Stevens & Bolton LLP is a limited liability partnership registered in England with registered number OC306955 and is authorised and regulated by the Solicitors Regulation Authority with SRA number 401245. A list of the members may be inspected at its registered office