

NEW REGULATIONS UNDER THE ENERGY ACT

TIME FOR MEES

What are MEES?

The Minimum Energy Efficiency Standards (“MEES”) were introduced in the Energy Act 2011. The regulations governing how the MEES regime will operate have now been published. MEES apply to both residential and commercial properties, but the two regimes are different, so this briefing note discusses the regime as it applies to commercial properties only.

In a nutshell, MEES require a landlord of a commercial property with an energy performance certificate (EPC) rating of F or G to carry out works to bring the property up to a minimum of an E rating in order to be able to let it.

The MEES regime only applies to properties that have a current EPC (i.e. one registered no more than 10 years ago). If a landlord has not complied with a requirement to obtain an EPC, it appears the MEES regime will not apply.

MEES do not apply to leases granted for 6 months or less (unless the tenant will have, at the time of the letting, been in occupation of the property for over 12 months); or to leases granted for a period of 99 years or more.

When do I have to comply with the MEES regulation?

MEES will apply to new leases from 1 April 2018. These include:

- lease renewals;
- 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; and
- leases created by a deemed surrender and re-grant.

However, in respect of those leases listed above, the landlord will have 6 months following the grant of the lease to carry out any necessary works to bring the EPC rating up to an E.

MEES will apply to all let properties with a current EPC, whenever the lease was granted, from 1 April 2023.

Are there any exemptions?

There are several exemptions in the regulations:

- where the landlord can demonstrate that recommended improvement measures will not pay for themselves in energy savings over a 7 year period. This is the most complicated part of the MEES regime. The improvements must be specified in either a Green Deal Report, or in an EPC recommendation or surveyor's report. The landlord will also be exempt if he has carried out all the recommended works, but they have still not brought the property up to an E rating:
- if the landlord needs his tenant's, or other third party's, consent to carry out the improvement works, and he cannot obtain this consent. The third party could include a superior landlord, lender or the local planning authority. The landlord needs to show that he has used reasonable endeavours to obtain the relevant consent; and
- if the landlord obtains a report from an independent surveyor which states that making the relevant energy efficiency improvement would result in a reduction of more than 5% in the market value of the property.

To be effective, any exemption must be entered on a central register to be set up by the Department for Energy and Climate Change. The request for registration must be supported by evidence.

An exemption lasts for 5 years. If, at the end of the 5 year period, the landlord requires an extension of an existing exemption he must register it again, together with supporting evidence.

The benefit of an exemption does not transfer to the new owner of a let property. The new landlord will need to register his own exemption.

What happens if I do not comply?

When the Energy Act was first published, the fear was that failure to comply with the MEES provisions would invalidate a lease or require a landlord to evict a tenant. This is not the case. The regulations make it clear that the penalty for non-compliance is a civil penalty, i.e. a fine. The fines depend on the length of non-compliance and are based on the rateable value of the property as follows:

- up to 3 months in breach: 10% of the rateable value of the property (subject to a minimum of £5,000 and a maximum of £50,000) and
- 3 months and over in breach: 20% of the rateable value of the property (subject to a minimum of £10,000 and a maximum of £150,000).

In addition, the breach may be published on the central register, which is a public record.

Local Authorities are responsible for enforcement. It is not clear if they will be allowed to keep the fines levied – if they are then this could be a powerful inducement to enforce.

What should I do now?

Landlords should identify if they have any F or G rated properties and consider if they wish to carry out necessary works to improve their rating to an E. Practically this may only be possible if the properties are vacant.

This information is necessarily brief and is not intended to be an exhaustive statement of the law. It is essential that professional advice is sought before any decision is taken.

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