



MINIMUM ENERGY EFFICIENCY STANDARD REGULATIONS

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MINIMUM ENERGY EFFICIENCY STANDARDS

- A whole new area of law – much is still unclear
- Good policy but poorly implemented
- Apply to commercial and residential properties but this talk covers only commercial property
- Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015
- DBEIS published guidance in February 2017
<https://www.gov.uk/government/publications/the-non-domestic-private-rented-property-minimum-standard-landlord-guidance>
- Should not be affected by Brexit (in theory anyway)

MINIMUM ENERGY EFFICIENCY STANDARDS



- How MEES will operate
 - key dates
 - cost-effective works
 - exemptions
 - enforcement and penalties
- The future
- Practical implications
- Implications for commercial leases
- Key differences for residential properties

OVERVIEW (1)



- Owners must not grant a lease of property with an EPC rating of F or G
- Unless they have carried out all cost-effective energy efficiency improvements
- Or the property is not subject to MEES
- Or the letting is excluded
- Or an exemption applies

OVERVIEW (2)

- Applies
 - from **1 April 2018** to new lettings
 - from **1 April 2023** to all lettings (including existing lettings)
- Does not apply to freehold sales – but incoming investors will be concerned in any case
- Does not apply to owner-occupiers
- Does not apply to tenants – until they wish to sub-let

PROPERTIES SUBJECT TO MEES

- Properties to which MEES applies:
 - any property for which an EPC is required
 - so long as there is a valid EPC – immaterial whether obtained by landlord or by tenant
 - uncertainty about “voluntary EPCs”
- Properties for which an EPC is not required
 - small stand-alone buildings (under 50m²)
 - places of worship
 - listed buildings ?? (uncertain at present)

LETTINGS SUBJECT TO MEES

- All lettings from 1 April 2018 except
 - leases for 6 months or less (so long as tenant has not been in occupation for more than 12 months)
 - leases for 99 years or more
- Lease renewals are expressly included – but unclear whether an EPC is needed on a lease renewal
- Sub-lettings are included

COST-EFFECTIVE WORKS

- Landlord is required to undertake any works that are “relevant energy efficiency improvements”
- Two categories of works:
 - (1) works for which a Green Deal plan is available
 - (2) works –
 - in an EPC recommendations report or in a surveyor’s report
 - listed in Part L of the Building Regulations
 - with a payback period of seven years or less

WORKS COVERED BY PART L

- Improved insulation of walls, doors, roofs and windows
- Installation of renewable energy sources
- More efficient heating, cooling and lighting systems
- Installation of energy metering
- Measures specified in an EPC recommendations report

SEVEN YEAR PAYBACK

- Seven year payback
 - complex formula in the regulations
 - projected energy cost saving over seven years exceeds the cost of the works
- Cost of the works
 - purchase of the improvement
 - installation cost
 - labour cost

COST-EFFECTIVE WORKS

- Even after all cost-effective works are carried out, EPC rating may still be below E
- In that case, landlord is permitted to grant lease, but will need to repeat assessment after five years
- Landlords may decide to carry out more works than are required by MEES

EXEMPTIONS

- Exemptions are not a complete get-out
- Exemptions have to be logged on a register, which may be open to public view
- Exemptions last only five years at most; after that time another exemption must be sought
- Exemptions are not automatically transferable to a new owner
- NO EXEMPTION relating to affordability

FIVE YEAR EXEMPTIONS

- All cost-effective energy efficiency improvement works have been done
- Unable to obtain necessary consent, such as
 - tenant under existing lease
 - lender
 - planning consent
- Work will devalue property by more than 5%
- Insulation work will damage property

SIX MONTH EXEMPTIONS

- New owner – six months' grace
 - relevant only from 1 April 2023
- Accidental landlord – six months' grace
 - preceding agreement for lease
 - lease renewal pursuant to the 1954 Act
 - lease by operation of law
- Within six months, landlord must comply or register a new exemption

ENFORCEMENT AND PENALTIES

- Enforcement is by trading standards officers
- Penalties are civil only
- Potentially significant penalties
- Up to 20% of rateable value (max £150,000)
- Who keeps the money?
- Leases >7 years need to be registered at the Land Registry so are public documents

THE FUTURE

- Current E rating is likely to be tightened up
- Extension of MEES on 1 April 2023
- Regular five-yearly reviews of the regulations
- Clean Growth Strategy (October 2017)

CLEAN GROWTH STRATEGY

- Clean Growth Strategy published in October 2017
- Various proposals around “more energy efficient commercial and industrial buildings” –
 - revision to Building Regulations relating to “heating, ventilation and air conditioning systems in new commercial buildings”
 - consult in 2018 on “how to improve the energy performance of these buildings through tighter minimum energy standards”

PRACTICAL ASPECTS

- Current building stock
- Deciding which works to carry out
- Voluntary improvements

CURRENT BUILDING STOCK

- According to the most recent figures:
 - 750,000 EPCs have been lodged
 - 19% are rated F and G
 - 17% are rated E
- BUT many buildings are not certified
 - total number of buildings is unknown
 - proportion of F and G ratings may differ
- Tenants and buyers may demand up-to-date EPCs

DECIDING WHICH WORKS TO CARRY OUT

- Landlords will need advice on their options
- Different combinations of works will deliver different results
- Considerations will include
 - absolute cost
 - time taken to carry out works
 - greatest potential for energy saving
 - greatest potential to increase rental value
 - whether costs can be recovered from tenants

VOLUNTARY IMPROVEMENTS

- Does a higher EPC rating mean a higher rent?
- Carrying out works that are not required by MEES may still represent good value for money
 - may preserve rental value
 - may reduce energy use
- Possible stigma may attach to sub-standard buildings even though they are exempt

VOLUNTARY IMPROVEMENTS

- Targeting a D rating may be sensible –
 - costs more BUT
 - better value than taking two bites
 - generates better energy savings
 - may preserve rental value
 - provides protection against rise in minimum rating
- Anticipated EPC rating can be checked without issuing a new EPC

IMPLICATIONS FOR COMMERCIAL LEASES



- No requirement that landlords pay the costs of compliance with MEES
- Landlords are keen to pass the costs to tenants –
 - service charge provisions
 - statutory compliance covenant
- New provisions in leases to protect landlords
 - controls on tenants obtaining EPCs
 - bar on alterations

IMPLICATIONS FOR COMMERCIAL LEASES



- Rent review
 - Suggestions that a building with an F or G rating may not be lettable and so the rental value is nil
 - some new assumptions are appearing in leases
 - probably not necessary because the rent review assumes there will be a letting
- Dilapidations
 - Not arguable that tenant must improve energy efficiency as part of reinstatement or dilapidations
 - Possible supersession arguments where landlord will need to carry out works before re-letting

KEY DIFFERENCES FOR RESIDENTIAL PROPERTIES



- Applies only to assured tenancies and regulated tenancies (will not apply to long leases)
- Second implementation date is April 2020 rather than April 2023
- Maximum penalty is limited to £5,000
- Cost-effective works currently limited to works at no cost to the landlord
- Government has announced a new requirement for landlords to spend up to £3,500 per property

QUESTIONS

