

## The MEES (Minimum Energy Efficiency Standards) Regulations

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.

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, 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 will apply to residential properties from 1 April 2020. The April 2018 deadline applies to lease renewals as well as new lettings. The MEES regulations apply in England and Wales. There are different but complimentary regulations applying in Scotland (Section 63 of the Climate Change (Scotland) Act)

### 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 – CO<sub>2</sub> emissions '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

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 being termed 'sub-standard' in the regulations.

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 is generally where the landlord has no choice whether to grant the lease.

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

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, 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.

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.

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 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.