

Minimum Energy Efficiency Standards in buildings - Update April 2017

April 24, 2017

It is now just under one year until the new Minimum Energy Efficiency Standards (or MEES) regime comes into force. From 1 April 2018, it will be unlawful for landlords to agree a new tenancy or a renewal for a property rated F or G on its energy performance certificate (EPC), unless certain exemptions apply.

Some properties may require costly energy efficiency works to bring them up to an E rating, or have to be removed from the rental market. Failure to act could lead to financial penalties and reputational damage.

The government has recently issued guidance aimed at non-domestic landlords, local weights and measures enforcement authorities and others with an interest in the non-domestic private rental sector, such as letting agents and other property management agencies.

Ten things landlords need to know about the new MEES regime:

1. **F and G properties aren't necessarily unlettable** – if you have F or G rated properties in your portfolio, consider redoing the EPC and investigating what works could be done. It may be possible to obtain an E rating with inexpensive works.
2. **Band E is a minimum** – but that could change in the future.
3. **Cost-effectiveness is key** – take expert advice on whether particular improvements would be cost-effective to install. If not then you could benefit from an exemption.
4. **Exemptions must be registered** – where a landlord believes that one of his/her properties qualifies for an exemption from the MEES, an exemption must be registered on the PRS Exemptions Register.
5. **But the register isn't open yet** – the Exemptions Register is currently being piloted and will be available on gov.uk by 1 October 2017. However, landlords who wish to register an exemption as part of the pilot should email the BEIS minimum standards team PRSregisteraccess@beis.gov.uk. Any valid exemptions registered as part of the pilot will remain valid and will not need to be resubmitted at a later date.
6. **Temporary exemptions may buy you some time** – a temporary exemption of six months applies for anyone buying a property subject to an existing, non-complying tenancy. The buyer has six months to either comply with MEES or establish a fresh exemption. Temporary exemptions also apply if tenancies arise by operation of law (for example, by way of a surrender and regrant) or as a result of insolvency or in some other situations.
7. **Leases might need to change** – some landlords are prohibiting tenants from doing anything which might impair the energy efficiency of a property. For example some types of lighting are very energy intensive.
8. **Listed buildings require special treatment** – listed buildings may in some cases be exempt from the requirement to have an EPC. However, this needs to be considered on a case-by-case basis.
9. **Enforcement** – renting out a non-compliant property can lead to a fine of up to £150,000 (per property) and publication of the non-compliance.
10. **Appeals** – landlord appeals will be heard by the First-tier Tribunal, part of the court system administered by Her Majesty's Courts and Tribunals Service.

Actions for landlords with large property portfolios

- Assess portfolio to establish which properties need an EPC and what current EPC ratings are:
 - Plan to upgrade where an E rating is not achieved/an exemption cannot be claimed.
 - Determine next steps where an E rating cannot be achieved/an exemption cannot be claimed (remove from the market or sell?).
 - Deliver a programme of refurbishments/upgrades.

What impact can MEES have on occupiers?

Although most of the responsibility is placed on the landlord of a property, some impact could be felt by the occupier. The following points should be noted:

- Leases are still valid - The validity or enforceability of a lease is not affected if a landlord lets a property (or renews a lease) in breach of the MEES requirement. A landlord cannot terminate the tenancy or require the tenant to vacate because the landlord has failed to achieve the MEES requirement.
- Landlords may restrict tenant's modifications – landlords may start to impose restrictions on what modifications tenants can make to the premises, particularly if what they do might affect the EPC rating (for example energy intensive lighting).

Next steps

Download a copy of our Guide to Minimum Energy Efficiency Standards for a summary of the legislations and our advice. To discuss the impact of MEES in greater detail please contact a member of our team.

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