



MARCH 2015

MINIMUM ENERGY EFFICIENCY STANDARDS:
NON-COMPLIANCE RISKS SIGNIFICANT FINES, MAJOR
COMMERCIAL RESTRICTIONS AND A DAMAGED REPUTATION. BUT
COMPLYING IS NOT ARDUOUS, AND CAN EVEN BE BENEFICIAL



MINIMUM ENERGY EFFICIENCY STANDARDS

On 26 March 2015, The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 were made bringing into force the minimum energy efficiency standards (MEES). A copy of the regulations can be found [here](#).

From 1 April 2018, a landlord will be unable to let an F or G Energy Performance Certificate (EPC) rated property (known as a sub-standard property). The regulations not only apply to lease renewals (where an EPC exists), but also to sub-letting, so capturing tenants who wish to dispose of unwanted space. This is pretty much as set out in the Government's consultation.

In five years, so from 1 April 2020, the regulations become more onerous, capturing all property leases (where an EPC exists for the property) and not just new transactions. Initially, the regulations target landlords of domestic properties must also meet the minimum standard and then from 2023, this extends to landlords of non-domestic properties.

Furthermore, the Government proposes to review MEES in 2020 and so we may see the standard tighten.

The introduction of MEES might be viewed as onerous. However, practical and energy-conscious landlords are likely to already have plans in place and so the formal introduction of MEES will not be a worry.

WHEN DO THE REGULATIONS NOT APPLY?

The regulations do not capture all F and G rated properties. Properties that fall outside of the scope include those that are not required to have an EPC under the Energy Performance of Buildings Regulations 2012, which means that listed buildings do not need to comply with MEES. In addition, a property with a short lease (defined as less than 6 months) or with a long lease (greater than 99 years) is excluded.

Exemptions also arise when:

- All cost effective improvements works that have a simple payback period of seven years have been undertaken. These works include replacing inefficient mechanical and electrical services installations, fabric improvements and the provision of renewable technologies.
- The Green Deal Golden Rule applies, where the cost of the improvement works exceeds the value of the total energy savings exceeds the cost of the improvement works (over a maximum investment period 25 years) ie the investment must pay for itself. This only applies when a Green Deal Installer has carried out the improvements.
- A landlord is unable to obtain third party consent, for example from the planning authority, lender, superior landlords, etc.
- An independent surveyor determines that the energy efficiency improvements would devalue the property by more than 5% (such as providing thermal insulation to the internal face of external walls).

If a sub-standard property is sold, the new owner/landlord has only 6 months to comply with the regulations; an important due diligence consideration for prospective purchasers and occupiers.

However, exemptions last for 5 years and to qualify for an exemption a landlord must register the property on the public Private Rented Sector [PRS] Exemptions Register and state the reasons.

WHAT ARE THE PENALTIES FOR NON-COMPLIANCE?

The penalties for non-compliance range from £2k to £150k and will be based on the rateable value of property. Penalties



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also apply where a landlord has registered false or misleading information on the PRS Exemptions Register and will be another due diligence consideration.

There does not appear to be any limit in the regulations to the number of penalties that can be issued.

WHAT DOES IT MEAN FOR LANDLORDS?

As stated in the introduction, the introduction of MEES will not be a cause for concern for proactive landlords that recognise the importance of energy performance and have well-established plans in place.

However, more reactive landlords; those that do not have a strategy in place or perhaps thought that the regulations would not be introduced could find that they are “at risk” and unable to let properties. Furthermore, in addition to the loss of rent they may face significant penalties and as names of landlords in breach of the regulations will be published on the PRS Exemptions Register, damage to their reputations. Finally, the Government’s publication of energy performance data allows greater analysis and knowledge of a portfolio’s poor energy performance and that could in turn have a detrimental effect on a company’s or a fund’s financial performance.

MEES may well bring a number of softer benefits in terms of meeting CSR objectives and helping landlords to differentiate their properties in the marketplace. Well performing, efficient buildings which provide positive environments are proving to be increasingly popular with occupiers as such workplaces can play a vitally important role in the battle for talent and staff retention. MEES will provide a tangible benchmark in support of corporate reputation and send positive signals to prospective customers and clients of the occupying business.

WHAT TO DO?

Firstly, it is important that you assess the risk, identifying any of your properties currently with an E, F or G rating. That must include verifying the accuracy of the existing EPCs, as variations in assessments can lead to incorrect ratings. Close attention must be paid to certificates produced shortly after EPCs were introduced in 2008 and to those where there is a reliance on default settings in the calculation of the rating. This is particularly important for landlords with domestic properties in their portfolios as the regulations’ teeth start to bite from 1 April 2020.

Next, once your potentially “at risk” properties have been identified, we recommend that you develop a plan of improvements and determine what works can be undertaken as part of regular maintenance and refurbishment works. Quite often a rating will be improved by merely carrying out cyclical or planned replacement works at little or no additional cost. In fact, in our experience simply re-modelling a property using accurate data can improve the rating without executing any works.

Collaboration is essential as it is unlikely that your leases will include provisions for you to carry out energy efficiency improvement works within tenanted areas. It is also important that you maintain good relationships with your tenants and discuss your proposals with them well in advance of the commencements of any works. When entering into new leases (or renewing existing ones) consider the inclusion of green lease provisions or attaching a memorandum of understanding to the lease as this should provide flexibility and a framework for collaboration. In addition, it is important that you pay closer attention to your tenants’ fit-out proposals to make sure that they do not have a detrimental effect on your properties’ EPCs.

When evaluating works, consider whether they will have any impact on the value of your property and also consider what consents are needed. It could be that an F or G rated property is exempt and if it is, ensure that property is listed on the



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PRS Exemptions Register, noting that any false or misleading information could incur a penalty.

If you are concerned about funding your improvements works, a Green Deal provider or an alternative funder may be able to help. There are an increasing number of funders specialising in energy efficiency retrofitting.

Finally, when completing due diligence, it is important to make sure that the EPC is reviewed to determine whether the property could be at risk. If it is, include provision within your investment appraisal to determine whether compliance with MEES would have any impact on the investment value. For occupiers, consider if compliance with MEES might constrain any future plans to sub-let part of the space.

HOW CAN TFT HELP?

TFT adopts a qualified, holistic approach to energy efficiency. This builds on a firm understanding of landlord and tenant matters, leases, statutory compliance, experience with historic buildings and expertise in risk management. We have extensive portfolio experience and have implemented pilot studies as a strategic approach to assess and improve your property portfolio performance.

Highly accurate energy modelling qualifies plans which are formulated promptly and implemented to schedule. Applying our complementary expertise in building surveying, cost consultancy, sustainability, M+E services and project management, we integrate planned improvements within maintenance, repairs and refurbishments, in a cost-effective and efficient way. We place energy efficiency within a commercial context, providing due diligence to inform both risk and opportunity.

Tuffin Ferraby Taylor is able to provide in-house CPD sessions which address MEES and the issues and opportunities arising out of the new regulations.

A link to the new Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 can be found [here](#)

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