

## Energy regulations and the role of landlords, tenants and lenders



As delegates at this week's [COP26](#) grapple with the systemic change needed to achieve decarbonisation, what role can property owners and occupiers play in achieving energy efficiency in their buildings?

### What are the current Minimum Energy Efficiency Standards (MEES)?

- Embedded in The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (SI 2015/962) more catchily known as the "[MEES Regulations](#)".
- Different rules apply depending on whether the property is a domestic or non-domestic private rented property. At present, the minimum EPC rating is an "E"
- Since April 2020, those substandard properties with a rating of F and G are being tackled but that E rating is likely to change. With most properties in the C-E category, the amount of work required is only going to increase.

### Next key dates under the MEES Regulations

From **1 April 2023**, the current rule preventing landlords from continuing letting a domestic property which is rated F or G will expand to include non-domestic properties.

Carrying out such works when the tenant is still in occupation, is not always straightforward. However, the longer length of leases of non-domestic properties, and security of tenure protection means that waiting for possession is not always possible. This interplay means that good and early communication with tenants and legal advisors is

needed.

## Key questions to ask

- Does the lease reserve rights of entry to the Landlord to carry out the works?
- Can / should the cost of the improvements works be recoverable from the tenant under the lease / service charge?
- What about associated costs over and above the works themselves?

There are some statutory rights of entry under the Energy Performance of Buildings (EPB) Regulations; but the detail in the legislation is limited.

## Recent examples of issues that we've seen include:

- A tenant asking for landlord to pay the additional staffing cost to open up a property outside key trading / business hours to enable improvements to be carried out
- Asking a landlord to delay improvements, so that they could be carried out in line with the tenant's own internal fit out / rebranding programme
- Seeking a separate contractual agreement for shared capital cost of improvements.

Landlords can find themselves in the undesirable position of having tenants frustrate or at least delay their attempts to comply with MEES.

## Can any exemption from MEES be claimed?

There are exemptions – but we find the most common situations raised by our clients, often do not fall within these.

For example: there is an exemption if a landlord has used reasonable endeavours but been refused consent to carry out improvement works by a relevant third party (including tenants, superior landlords and local planning authorities).

What are reasonable endeavours? Has the tenant actually refused? Or is it seeking differing terms of payment or timing of works? Evidence of refusal must be submitted and is open to public scrutiny.

“Temporary exemptions” actually apply to a quite limited group of “involuntary” landlords. For example, those becoming a landlord after an insolvency / guarantor situation. It cannot be used by existing landlords allow delay to, say, accommodate a request on timing of the works.

The remaining exemptions relate to devaluation or permitted breach and are again quite technical; and all exemptions are time limited; and personal to the landlord.

## So what are the consequences of breach?

Remember breach of MEES does not affect lease validity.

Enforcement is by local authorities who may issue compliance notices, penalty notices and impose fines for up to 18 months after the offense, even if the landlord no longer owns the property. Given the significant constraints on local authority budgets over recent years, we have yet to see any evidence that enforcement action is being brought. This is likely to change.



## So what might the next decade look like?

[The UK Energy White Paper 2020](#) proposed an incremental milestone approach.

Based on history of this legislation, the rating will apply initially to new lettings or sales, and (say 12 months later) to all continuing lettings. However time is tight. To achieve the target set, it might look like this:

- 1 April 2023 – E rating compulsory for all continuing lettings (already in force)
- 1 April 2025 – D rating compulsory for all continuing lettings
- 1 April 2027 – C rating compulsory for all continuing lettings
- 1 April 2030 – B rating compulsory for all continuing lettings

Particularly for domestic homes – how many outside the scope of feasible improvements that are “cost effective practical and affordable”?

## Retrofitting the future

The bottom line is that securing a “B” EPC rating will, in most cases, require fundamental changes to building services. There is not a “one size fits all” solution.

If we can help you through this fast-moving legislative landscape, please [talk to us](#).



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