

Roll up your sleeves: MEES is tightening its grip



Two interesting things happened at the end of October.

The first was Rishi Sunak's announcement that, despite key manifesto commitments on protecting the environment, he would not be attending COP27 citing the pressing domestic agenda. The backlash to this culminating in the first U-turn of his premiership.

The second was Defra's statement on 28 October 2022, that they would not be in a position to lay legislation before Parliament by the deadline required under the Environment Act 2021; due to the volume of responses to the consultation dating back to March 2022, and there would therefore be a delay to its environmental targets for England.

Despite official statements that the Government remains "*committed to net zero and to leading international and domestic action to tackle climate change*"; we have mixed messaging from the Government in terms of its engagement with the climate crisis, with priorities being reordered and timetables slipping.

The MEES timetable is one timetable however that shows no sign of slipping.

What to know now?

Back in November 2021, as delegates at [COP26](#) grappled with the systemic change needed to achieve decarbonisation, we published a discussion piece looking at [the role property owners, occupiers and lenders can play in achieving energy efficiency in their buildings](#).

As COP27 gets under way no-one can escape the fact that, come 1 April 2023, not only will landlords granting a



new lease of commercial premises need to hold an EPC with a rating of E or above (or register a valid exemption) but it will also be unlawful for a landlord to “*continue to let*” a sub-standard property (i.e. a property with an EPC rating of below an E).

What to do now?

Landlords intending to grant a new lease or continue existing leases of sub-standard property need to take immediate action either to:

- make “*relevant energy efficiency improvements*” to the premises so that it is no longer considered sub-standard i.e. achieve an EPC of E or above; or
- register a legitimate reason on the PRS Exemption Register for not providing an energy rating of E or above.

It is worth noting that the legislation does not give an automatic right of entry to landlords to carry out energy improvement works. Whether or not a landlord has such a right will depend on the drafting of the lease. Where there is no such right, a landlord will need to get the tenant’s consent. If the tenant will not give consent, the landlord may be able to register a “consent exemption” – something we go on to discuss below.

Does this really apply? The property is scheduled for upgrade works soon?

There are some categories of leases outside of the remit of MEES Regulations. For example, commercial properties let for more than 99 years or for less than six months.

Notably, one category that does not exist is an exemption for properties where there may be an intention whether or not contractually binding to carry out works to reach a standard rating.

Sub-standard property can only still be leased where the landlord has a *legitimate reason* for not improving the energy efficiency rating however if an exemption applies, this must be registered on the Private Rented Sector (PRS) Register and will generally be valid for 5 years.

So remind me – what are the permitted exemptions?

Available exemptions include:

1. **Consent** – where the landlord has, within the preceding 5 years, been unable to increase the EPC rating because a prescribed situation applies such as not being able to obtain the necessary consent from a third party (e.g. the tenant)
2. **Devaluation** – where the landlord has obtained a report setting out that the installation of specific energy efficiency measures would reduce the market value of the property, or the building of which it forms part, by more than 5%;
3. **All improvements made** – where a landlord has made all the possible relevant energy efficiency improvements and the property is still below the minimum rating, or there are no improvements that can be made; and
4. **Economic efficiency** – where the costs of carrying out the relevant improvements will not be recovered within seven years.

There is a six month temporary exemption for a purchaser of a property with a substandard rating to give time to carry out works required to bring the property up to the standard or to register a longer term exemption.

There is no exemption however for the common situation where landlord and tenant have a contractual



agreement, that may for example require one party to carry out the works needed to the property; and to achieve an assessment of a standard rating.

The rules surrounding exemptions are detailed but the key thing to remember is that exemptions must be registered in advance of any breach, in order to be relied upon.

Penalties for non-compliance

Whilst non-compliance with MEES does not invalidate the subject lease, and tenants will be required to continue to pay rent, non-compliance may result in a fine for the landlord of up to £150,000 per offence as well as reputational damage as a result of publication penalties resulting from details of a breach being entered onto a publicly accessible part of the PRS Exemptions Register.

Local authorities are responsible for enforcing the MEES regulations through compliance notices and fines though in some cases, landlords may benefit from a six-month grace period to comply with the letting restrictions. Identifying non-compliance is a highly resource intensive task and local authorities require access to good quality and up-to-date data which is often difficult to access or not available. These resourcing and data access issues combined with the ongoing challenges to public finances may explain why local authorities appear to have adopted a light touch to date. It goes without saying that when the new MEES requirements come into force in April 2023, the cost of enforcement and monitoring compliance will increase significantly. Local authorities are going to require additional funding support and it will be interesting to see what approach the local authorities adopt in terms of enforcement going forward.

The long road to 2030 and beyond

Whilst the 1 April 2023 deadline looms large, there's more to come.

Defra's delay in legislation means a delay to certainty. However it seems likely that the minimum standard will be raised to a C or higher by 2027, followed by a B or higher in 2030.

If implemented, this means that from April 2023, landlords will have 7 years to raise energy ratings in all commercial buildings from an E to a B rating (or make sure an appropriate exemption is registered).

Next steps

There is no escaping the fact that securing a "B" EPC rating will, in most cases, require fundamental changes to building services and therefore some degree of expenditure which is of course not an appealing prospect in the current economic climate.

Improvement works are both costly and time consuming and it is therefore critical that landlords set out on a path now to enable them to meet the various regulatory hurdles that they will need to negotiate up to 2030 and beyond.

The silver lining to this cloud is that whilst improvements are more often than not framed against a legal and regulatory background, there are significant economic gains by improving a building's carbon footprint resulting, not least from improved property valuations.

We are recommending that all clients affected or potentially affected by the MEES regime:

- **Carry out a thorough review of the current property portfolios** to check when current ratings expire and identify sub-standard (or potentially sub-standard) properties.



- Consider whether any available exemptions apply and make sure that they are registered on the PRS Register.
- **Adopt a collaborative approach** and where works are required to be carry out to bring a property up to the required standard, engage with tenants at an early stage.
- **Review existing drafting in leases** to make sure it remains fit for purpose in the context of the upcoming changes and consider including bespoke MEES related drafting in any new lettings.
- **Stay alert to further Government reforms** – this is a fast moving sector and further Government reforms including decreasing the validity period of EPCs from 10 years, increasing the number of triggers for a new EPC (for example an extension requiring planning permission may become a trigger), introducing a property compliance and exemptions database and changes to the rules on listed buildings are being considered amongst a plethora of other initiatives.

We're meeting with lots of clients at the moment to explain the obligations and talk through the various different options available in the run up to April 2023. If we can help you through this fast-moving legislative landscape or you would like us to come and talk to you please [talk to us](#).

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