



The **MEES (Minimum Energy Efficiency Standards) Regulations** are intended to improve the energy efficiency of both residential and commercial private rented property. This note looks at commercial property only.

“Minimum Energy Efficiency Standards” are measured by reference to the energy performance certificate (EPC) rating of a property. The current benchmark of “sub-standard” is where the property has an EPC with a rating of F or G.

Existing Restrictions

Subject to certain exemptions (see below), property owners cannot grant a tenancy to either new or existing tenants of properties that have an EPC rating of F or G.

New Restrictions from 1st April 2023

In addition, from 1st April 2023, property owners must not **continue to let** properties that have an EPC rating of F or G.

Therefore, from 1st April 2023, all let properties with an EPC rating will need to have a minimum rating of E.

Future Restrictions – 2027 Onwards

From 1 April 2027 it is likely that properties will need to have an EPC rating of C before being let increasing to a B rating by 1 April 2030.

No legislation to that effect is yet in force but the UK Energy White Paper 2020 confirmed that this is likely to be the trajectory.

Enforcement and Penalties

In respect of breaches lasting less than 3 months, a landlord renting out a sub-standard commercial property can lead to a fine of £5,000 or, if higher, 10% of the property’s rateable value, up to a maximum of £50,000.

Breaches of MEES regulations lasting longer than 3 months can trigger a fine of the higher of £10,000 or 20% of the rateable value of the property, up to a maximum of £150,000.

Adverse publicity and reputational damage are also likely to be a material concern.

Effect on Occupiers

Whilst a breach of MEES Regulations does not affect the validity of the lease, from 1st April 2023 an occupier will not be able to sub-let or to continue to sub-let unless the EPC rating is at least an E rating or it has claimed an exemption .

Which commercial properties are exempt from the MEES regulations?

Properties that do not require an EPC such as:

- Properties (eg warehouses) that do not use energy (i.e. heating or aircon) to condition the indoor climate;
- Temporary buildings (with an intended life of 2 years or less);
- Listed buildings (if compliance would unacceptably alter their character or appearance);
- Small buildings – standalone building of less than 50m²;
- Industrial site or workshop with low energy demand (level not specified);
- Properties to be demolished (in certain circumstances).

Which leases are exempt from the regulations?

Only the following:

- **Less than 6 months** – A tenancy not exceeding a term 6 months unless either : (i) it contains an option to renew or extend beyond the 6 months or; (ii) the tenant has already been in occupation for more than 12 months.
- **More than 99 years** – Any tenancy for a term of more than 99 years.
-

What other exemptions are there?

Even if the above exemptions do not apply there are certain legitimate reasons which permit an owner to continue to let “sub-standard” commercial property without enforcement.

The principal ones are:

- **Consent exemption**- the landlord needs consent from the tenant in order to carry out the improvement works and the tenant has refused consent. This exemption may also apply where a third party, whose consent, is needed for an improvement, has refused that consent or has granted consent subject to a condition with which the landlord cannot reasonably comply.
- **Improvements already made** – All the relevant energy efficiency improvements for the property have been made (or there are none that can be made) and the property remains sub-standard.
- **Devaluation exemption** – The landlord has been unable to increase the EPC rating because the landlord has obtained a report from an independent surveyor which states that making the relevant improvement would result in a reduction of more than 5% in the market value of the property.
- **New Landlord** – 6 month exemption for a purchaser of sub-standard property subject to an existing tenancy.
- **Seven Year Payback** – the landlord can show that the expected value of savings on energy bills over 7 years is less than the cost of the improvements.

Claiming an Exemption

The landlord or its agent must enter the relevant details on the PRS Exemptions Register (a digital service) to avoid enforcement action. The exemptions are time limited and none will last more than five years. Temporary exemptions do not last more than six months from the date the person became the new landlord. Guidance suggests that exemptions are personal and cannot be passed on to successor landlords.

What action should owners take before 1st April 2023?

On 1st April 2023 the next ratchet in the MEES Regulations will take effect so that the minimum rating becomes E.

To mitigate the risks of enforcement action and to the extent not done so already, property owners should check their records to:

- Identify let properties either with an EPC rating of F or G;
- Identify let properties with no current EPC and obtain them where necessary;
- In respect of any let properties with an F or G rating consider whether any exemption can be registered or renewed on the PRS Exemptions Register;
- In particular, check the relevant lease to see if tenant or 3rd party consent is needed to the improvements and whether any costs are recoverable. Apply for consent where required.
- If no exemptions can be registered or renewed, plan and implement the relevant improvements before 1st April 2023 liaising with the tenant(s) as appropriate.