

New regulations could see UK landlords and tenants looking to their laurels as the government consults to increase the speed of delivery of energy efficiency in relation to non-domestic rented property. If you want to be heard, the time to speak is now.

## Consultation on Minimum Energy Efficiency Standards – Trajectory to 2030

Landlords, if you thought that a minimum energy efficiency level of E was a challenge, the Department for Business, Energy and Industrial Strategy may have a shock in store for you. Its ongoing consultation<sup>1</sup> (the Consultation), closing on 7 January 2020, proposes to raise the minimum energy threshold from the current energy performance level of E, to a new minimum of B by 2030. And if that sounds a long way off, we could see changes as soon as 2024, if an incremental increase is favoured.

For both landlords and tenants, the minimum energy efficiency standards (MEES) merit serious attention. The possibility of higher minimum standards and the spectre of increasing regulation mean that landlords must look to their portfolios and consider how best to manage the transition into an age of committed energy economy. Tenants could well see changes to leases that could impact their own profitability and business continuity.

The Consultation is an opportunity for both parties to have their voices heard in this latest move towards a zero-carbon future.

What, then, does the Consultation propose, and what is its likely impact?



## The Purpose of the Consultation

Under the original MEES regulations, since April 2018 landlords have not been able to grant any new tenancies, or extend or renew existing tenancies for properties with an EPC rating of F or G. From 1 April 2023, this restriction extends to the continuation of tenancies. However, energy savings under the current regulations are not making sufficient headway in energy efficiencies and the proposed amendments seek to secure faster action in the non-domestic private rented sector to support growth of national income while cutting greenhouse gas emissions.

The government believes that the UK is “well-positioned to take a leading international role in the development of low carbon technologies, systems and services” and has an ambitious target to “bring all greenhouse gas emissions to net zero by 2050”. This cannot happen without action.

The aim of the Consultation is to increase energy efficiency in non-domestic buildings. The proposal is that this will be done in one of two ways:

- The government’s preferred objective is that landlords of all non-domestic privately rented properties achieve a minimum energy efficiency standard of **B** by 1 April 2030, provided that recommended actions are cost effective by meeting a seven-year payback test. This test is met if the expected value of savings on energy bills over a seven-year period is equal to or greater than the cost of the energy saving measures taken.
- The alternative trajectory is that all non-domestic privately rented buildings reach an EPC **C** by 1 April 2030 if similarly cost effective.

This supports the government’s goal of reducing business energy use by 20% by 2030, and is a key factor in achieving the 2050 target. It is anticipated that the long lead-in will allow landlords and businesses to plan effectively, as well as give the energy efficiency market certainty of demand in the medium to long term.

Also under consideration is whether the new EPC rating (whatever it turns out to be) will apply as of a single implementation date, or if an incremental increase, such as to EPC D by 2024, EPC C by 2026 and EPC B by 2028 might offer more opportunities for early improvements.

<sup>1</sup> [Non-domestic Private Rented Sector Minimum Energy Efficiency Standards: future trajectory to 2030.](#)

## Exemptions

The Consultation envisages that the current exemptions will remain in place. These are:

- **Third party consents** – where a landlord has been refused consent to improvement works by a relevant third party (including tenants, superior landlords, local planning authorities)
- **Devaluation** – where an independent surveyor considers that energy saving works will reduce the market value of the property by more than 5%
- **Compliance with regulation 29 conditions<sup>2</sup>** – despite all relevant energy efficiency measures being taken, the EPC rating remains below the minimum standard (or there are no relevant energy efficiency improvements to be made)
- **Temporary exemptions**

Exemptions will continue to be registrable and penalties for breach will continue to apply.

## What Does the Government Want Your Views On?

The government is inviting submission of evidence to improve its understanding of energy use, as well as trying to establish what effect the current MEES have had since they were introduced.

Critically, though, this is an opportunity for both landlords and tenants to give their views on:

- Whether or not 2030 is an appropriate timeline within which to achieve the proposed minimum energy efficiency levels, including preference of phased milestones, or single backstop and whether incentives might encourage earlier compliance
- Administration of the seven-year payback test
- What opportunities and challenges an EPC B trajectory might bring
- Effective enforcement
- How to overcome situations where tenants have fit-out requirements and are willing to fund the improvement of the building at the start of the tenancy (i.e. meaning that the landlord will not be compliant with MEES at commencement of letting)
- Whether the costs, savings and payback periods reflect current experience
- The risk of void periods
- The prospect of landlords and tenants sharing costs

The government's figures indicate that the ambitious EPC B trajectory will see an estimated £5 billion of investment over the next decade, with an average payback time of between 4-5 years, and bill savings of £1 billion in 2030 alone. Unsurprisingly, an EPC C trajectory, while representing a less significant investment, delivers significantly lower savings and fails to deliver the carbon reduction targets for the sector.

## Potential Impact

Landlords will continue to be primarily responsible for delivering efficiencies. They, therefore, need to:

- Examine their portfolios, identifying those properties at greatest risk and assess the cost of compliance
- Ensure that energy data is readily to hand in a consistent format
- Weigh up the cost of failure to comply, which risks financial penalties
- Consider how to approach tenants with a view to passing on or sharing costs with the incentive of reduced energy bills

Tenants will need to consider how far they are prepared to share, or bear, the cost of buildings improvements and weigh these against energy savings costs. Lease clauses covering:

- Energy performance
- Works
- Alterations
- Restrictions on obtaining EPCs
- Reinstatement and rent review provisions

should be carefully scrutinised to ensure that the tenant is not disadvantaged by the requirements of any revisions to the regulations.



<sup>2</sup> The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015.

## Verdict: Well Worth a Read

It is well recognised that when it comes to paying for energy-saving measures, landlords and tenants are not necessarily on the same page. MEES expects landlords to bear the cost of energy-saving measures, but tenants, arguably, reap the benefits. Although leases being negotiated now frequently do try to pass on costs to tenants, astute tenants on relatively short-term lets will resist contributing towards something they see as offering little benefit to them. The Consultation acknowledges this “misaligned incentive” as one of the main barriers to achieving its low-carbon goal.

There is immense pressure to deliver change and increase energy efficiencies. This is not a consultation meandering toward a carbon-free future. It means business. If your business is commercial rented property, whether letting or occupying, it is worth taking the time out to respond.

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