

If you are a landlord of non-domestic property with an EPC of F or G, then 1 April was a significant date for you.

Regulations intended to improve the energy efficiency of private rented property (the MEES Regulations¹) delivered a new deadline at the beginning of this traditionally showery month.

The weather could well reflect landlords' moods, with the imposition of an efficiency standard on existing lettings, meaning that it is unlawful for a landlord to continue to let a non-domestic property with an energy performance rating of F or G, unless a valid exemption has been registered.

But just how important is it for landlords to comply, and what if they cannot?



1 April – Automatic Breach of Regulations With EPC Below E

If portfolios have not already been reviewed and appropriate action taken, there really is no time to lose. All non-domestic private rented properties with a current EPC should be checked to ensure that the rating is E or above.

Landlords of substandard properties (any building with an EPC rating of F or G) are, as of 1 April, exposed to the risk of enforcement action, with Trading Standards able to impose fines of up to £160,000 (in a case where the landlord has let a substandard property, registered misleading information and failed to comply with a compliance notice).

Even if enforcement feels unlikely in the current, cash-strapped local authority climate, there are other considerations:

- Many landlords and tenants are committed to achieving environmental, social and governance objectives; compliance with a minimum energy efficiency standard, where possible, will support that.
- Lenders are likely to require compliance. Failing to comply, therefore, could impact the ability to secure suitable finance.

What Does Compliance With MEES Regulations Look Like?

To avoid being penalised, a landlord must either:

- Carry out energy improvement works to bring the EPC rating to E or above
- Register a valid exemption on the PRS Exemptions Register

Whether or not landlords can carry out necessary works could well depend on access rights within the relevant leases. With insufficient rights and a tenant unwilling to agree to works being carried out (e.g. for interruption of trade considerations) landlords may need to claim an exemption based on lack of consent. There are other exemptions, which a landlord might wish to explore, that might alleviate the financial burden of improvements, most commonly:

- **High-cost exemption** – Where the costs of purchasing and installing improvements cannot be recovered over seven years.
- **Devaluation** – Where (according to an independent report) the landlord has, within a specified period, been unable to increase the EPC rating to the relevant minimum level because energy efficiency improvements would result in a reduction of more than 5% in the market value of the property.

¹ Energy Efficiency (Private Rented Property) (England and Wales) 2014 (SI 2015/962)



- **Property remains substandard after works** – Where all relevant energy efficiency improvements for the property have been made (or there are none that can be made) and the property remains substandard.

If an EPC expired prior to 1 April and there has been no trigger legally requiring the landlord to commission a new EPC, then according to government guidance, the landlord is not in breach of MEES Regulations where a tenancy is continuing (even where the expired EPC indicates that the building is substandard). However, given the direction of travel, landlords are likely to want to factor in the cost of any likely improvement works to any forecasts.

Unanswered Questions – Listed Buildings

Listed buildings, and whether they require an EPC, remain a grey area and 1 April did not deliver any further clarity on this. This has been promised in future proposals however, indicating that there will be a requirement for listed buildings and buildings in conservation areas to require an EPC on letting. This will automatically bring listed buildings into the MEES regime.

In the meantime, due to the difficulties in interpreting the EPC Regulations,² the cautious approach is that owners of listed buildings commission an EPC and then consider whether any recommended works would unacceptably alter the building's character or appearance (taking them outside the EPC Regulations and, therefore, outside the MEES Regulations). The position is unsatisfactory but one that needs consideration, as lenders, too, are very likely to be mindful of the implications of non-compliance with the MEES Regulations.

² Energy Performance of Buildings (England and Wales) Regulations 2012 (SI 2012/3118)

When a Tenant Becomes a Landlord

This is no time for tenants to be complacent either.

Tenants may well find themselves considering access requests from landlords to accommodate energy efficiency works. And, on a sub-letting, a tenant will become a landlord, and subject to the EPC and MEES Regulations. A good look at the lease should inform who is responsible for commissioning an EPC and carrying out, and paying for, relevant works.

Can Landlords Expect to Pay More in Future?

Proposals to raise the minimum energy performance level to B by 2030, with a phased move to C by 2027, indicate that there may be more in store for landlords. The government response to a 2021 consultation that sought views on improving implementation, enforcement and delivery of energy efficiency measures feels a long time coming but proposals are still very much on the table. Ageing buildings and those with poor energy performance are, therefore, potentially significant liabilities in a landlord's portfolio.

This current marker in the sand is a good reminder of what may be coming down the tracks, and an opportunity to review portfolios not only to ensure compliance now, but also to prepare for the future.

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