

Landlords, It's All About You

The minimum energy standard initiative is once again on the radar following recently issued [guidance for landlords of non-domestic private rented property](#)¹ (the "Guidance"). The publication, aimed at both landlords and enforcement authorities, sheds light on how the 2015 Energy Efficiency Regulations² (commonly referred to as the MEES Regulations) are expected to operate and drives home the implications for landlords who do not observe the minimum standards requirements. If you have not acted already, the time to do so is now.

An understanding of which properties are affected, the importance of reviewing your portfolio and the sanctions resulting from non-compliance is critical if you want to manage effectively the cost and letting implications of the MEES Regulations over the coming months.

Why Do We Have the Regulations?

The Energy Act 2011 imposed a duty on the Secretary of State to introduce regulations to improve the energy efficiency of both domestic (not examined here) and non-domestic buildings within the private rented sector (PRS) in England and Wales. The MEES Regulations fulfil that duty and in the process impose potentially onerous obligations on landlords operating within the PRS.

Which Properties Are Affected?

All non-domestic properties let under any type of tenancy and which are legally required to have an Energy Performance Certificate (EPC).

The MEES Regulations will not capture short term tenancies (lettings not exceeding six months, unless there are provisions for renewal or extension or the tenant has already been in occupation for a continuous period of more than 12 months at the time of grant). Nor will tenancies granted for 99 years or more be caught.

There are a number of exceptions to the EPC requirement: "officially protected" buildings – but only up to a point (see our Q and A section below), places of worship, temporary buildings with an anticipated service life of two years or less, being among them. However, these are limited and if you want to rely on one of them, the Guidance should be read carefully to ensure the exception will apply.

The Effect of the Regulations: The Time to Act is Now

The MEES Regulations make it **unlawful** for a landlord:

- To let a non-compliant building after 1 April 2018
- To continue to let a non-compliant building after 1 April 2023

A non-compliant, or "sub-standard", building is a non-domestic privately rented property which has an EPC rating of F or G.

The 2023 deadline may seem a long way off but so did 2018 when the MEES Regulations were still a glint in the government's eye, pre-2015 approval. If landlords have not already taken steps to identify at-risk properties, then it is time to act. Aside from the capital outlay, there are a number of implications attaching to carrying sub-standard buildings within a portfolio, including:

- Marketability
- Impact on rent review where open market value is adversely affected by energy performance
- Availability of finance

Strategy – Has the Boat Already Sailed?

A well-prepared landlord will have been planning ahead. Many institutional landlords will already have been reviewing their portfolios to identify whether or not affected properties are already compliant, uncertified, or non-compliant – with all of the implications that brings. However, it is not too late to take action. If properties are non-compliant, consider:

- Potential exemptions; it is possible to register the property on the PRS Exemptions Register from April of this year
- Assessing the cost of upgrading energy ratings
- Disposal of any properties which will not be cost-effective to retain and exemption cannot be claimed

¹ The Department for Business, Energy and Industrial Strategy issued The Non-Domestic Private Rented Property Minimum Standard in February 2017.

² Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (SI 2015/962).

Compliance Matters!

There are both financial and publication (“name and shame”) penalties where a landlord fails to comply. Note that the maximum penalty amounts apply **per property** and **per breach**, so consistent failure to comply could be costly.

Infringement	Penalty (less than three months in breach)	Penalty (three months or more in breach)
Renting out a non-compliant property	<ul style="list-style-type: none"> Up to either: <ul style="list-style-type: none"> – £5,000 or – 10% of rateable value – maximum £50,000 Whichever is greater Publication of non-compliance 	<ul style="list-style-type: none"> Up to either: <ul style="list-style-type: none"> – £10,000 or – 20% of rateable value – maximum £150,000 Whichever is greater Publication of non-compliance
Providing false or misleading information, or failing to comply with a compliance notice	<ul style="list-style-type: none"> Up to £5,000 Publication of non-compliance 	

What Else Does the Guidance Tell Us?

The Guidance offers clarity around a number of potentially vexing issues:

Q: Can tenants use a landlord’s failure to comply with MEES Regulations as a reason to terminate their lease prematurely?

A: No.

Q: Are a tenant’s rights, such as the right to renew under the Landlord and Tenant Act 1954 Act, affected?

A: No. Landlord cannot refuse consent to renew solely on the basis that the property is sub-standard. However, the obligation to improve the property will arise on renewal.

Q: Do the minimum standards apply to mixed use properties?

A: Yes. However, landlords will need to carry out an assessment and apply the MEES Regulations as directed in the Guidance.

Q: Is a listed building excepted from the requirement for an EPC?

A: Not necessarily! The exception of “buildings officially protected as part of a designated environment or because of their special architectural or historical merit” only applies “insofar as compliance ... would unacceptably alter their character or appearance”.

Q: Will registration of a voluntary EPC mean that the landlord must comply with the minimum standard?

A: No. All requirements must apply for the minimum standard obligation to arise.

Q: I’ve made all of the “relevant improvements” but I can’t bring the property to the minimum standard. Can I let my property?

A: Yes. But the exception must be registered and it only lasts five years. After that, you must try again to improve the EPC rating.

Q: What if I need someone else’s consent to the works and they do not agree?

A: You may continue to let a sub-standard property if you can demonstrate that you have been unable to improve the rating because you have not been able to obtain consent to the works. You do have to have tried, though!

Q: Can I recover the cost of the works via the service charge?

A: Whilst the MEES Regulations do not prohibit this, it was recognised that it may not be possible to do so. Whilst, to a degree, it may come down to bargaining power, tenants are highly likely to resist any attempts to pass on the costs to them. It may be that if there is provision for the tenant to consent to the works, it might be more amenable to contributing towards them if there is a long term benefit in terms of energy cost savings.

The Message

It is worth not losing sight of the fact that these regulations are all about **minimum** energy requirements and many landlords may well want to achieve greater long term savings. However, there is a cost attached and in the current market there does not appear to be any appetite among tenants to share or bear the cost of those improvements. Given that landlords cannot let or continue to let sub-standard properties (that is, the obligation pre-dates the grant) there is little to motivate the tenant to contribute and landlords should not let any more time pass before they act to meet the expectations of the MEES Regulations.

The official Guidance, including tables illustrating the “compliance decision process” can be read on the [gov.uk website](https://www.gov.uk).

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