

MEES – Overview of issues for residential leases

Minimum Energy Efficiency Standards Regulations (“MEES”)

MEES were brought into force by The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 and seek to impose minimum energy efficiency standards for properties. This is done by reference to the Energy Performance Certificate (“EPC”) rating of the property.

This Information Sheet provides an overview of some of the issues currently facing landlords of residential properties as MEES start to take effect.

Earlier implementation dates for residential properties

MEES take effect in two stages. They apply to both domestic and non-domestic properties but this Information Sheet focusses on residential properties only. Unless an exemption applies:

- By 1 April 2018, all properties caught by MEES must be improved to a specified minimum energy efficiency standard (EPC rating E) before they can lawfully be let to tenants.
- From 1 April 2020 where a lease is already in place, a landlord must not continue to let a property with an EPC that has a rating lower than an E. It should be noted that this is a full **3 years earlier** than it is for commercial properties.

Are just lettings affected?

Yes, unlike the EPC Regulations, MEES only apply on lettings and not on sales.

Is a letting granted in breach of MEES enforceable?

Whilst it will be unlawful to grant a lease of a substandard property after 1 April 2018 unless an exemption applies and is registered, the tenant will still have a valid lease and it will be enforceable.

Which residential leases are caught?

MEES apply to two main categories of residential lease:

- **Assured tenancies:** this category includes assured shorthold tenancies which are the most common form of tenancy used by landlords of privately rented accommodation.
- **Regulated tenancies:** various forms of regulated tenancy are included, for example Rent Act protected tenancies and some agricultural tenancies.

In contrast to the position for commercial leases, there is no upper or lower limit on the length of term of a tenancy that can be caught by MEES.

Which residential leases are not caught?

You need to check carefully, as there are many types of residential tenancy which are not caught by MEES, most notably:

- Social housing exclusions applying to registered providers of social housing and registered social landlords.
- The long list of tenancies set out in the Housing Act 1988 which do not satisfy the requirements of an assured tenancy. By way of example, lettings to companies, leases granted to students

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by specified educational institutions, Crown tenancies, and some holiday lettings.

Some residential properties will also fall outside the scope of MEES because, regardless of the type of tenancy granted, EPC certificates are not required for that type of property – the most obvious example for residential properties would be some short holiday lets and some listed buildings (but see below in respect of listed buildings).

Traps for the unwary

Will MEES apply on the letting of a listed building?

Unfortunately the guidance on whether a listed building needs an EPC has always been unclear. Until recently the approach usually adopted by agents was that on sale or lettings, listed buildings did not need EPCs. In an attempt to clarify the position the Government's guidance on EPCs was updated in December 2017. Rather unhelpfully this just indicates that a listed building will only be exempt from the need to have an EPC if compliance with MEES would unacceptably alter its character or appearance; examples are given of the type of energy efficiency works that are likely to be unacceptable, such as double glazing, new doors and external flues. As a result, you should assume an EPC is required for a listed building, and that MEES apply, unless you have sought advice on the type of energy efficiency works that could be required and discussed whether their impact is acceptable with your local authority.

Houses in Multiple Occupation (“HMO”)

Whilst the EPC guidance states that an EPC is not required for an individual room in

an HMO when it is rented out, the whole building will require an EPC if it is sold or rented out. Owners of HMO's need to be aware that if they have a valid EPC for their building (probably because the whole building was sold or rented out as a whole in the last 10 years), the MEES guidance states that if the EPC for the building is F or G, they will not be able to issue new tenancies for the non self-contained units within it without complying with MEES (i.e. they will need to bring it up to standard or register an exemption).

Lease renewals

Do MEES apply to lease renewals where the tenant is taking a further lease of its existing space? This is particularly relevant for landlords of residential properties, given the frequency with which many assured shorthold tenancies are renewed.

As MEES can only apply if there is an EPC, the first question is whether an EPC is required on renewal if one is not held. The guidance is contradictory. The EPC guidance reissued in December 2017 still states that an EPC is not required on a lease renewal – although there is nothing in the legislation to support this view. The MEES guidance, however, contains a case study which clearly states that an EPC is required on a lease renewal.

The second area of uncertainty is whether you can avoid the issue of MEES on lease renewals by simply letting an existing tenancy “roll on” under a statutory periodic tenancy which is deemed to exist when the tenant remains in occupation after the end of the contractual term of an assured shorthold tenancy. The MEES guidance does not cover this point.

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Until both matters are resolved it would be prudent to take the more cautious approach and assume that an EPC will generally be required on a renewal and that MEES do apply to tenancies that are allowed to “roll on”. Consequently landlords need to monitor tenancies that are about to expire and consider how they are going to comply with MEES when the term expires.

Exemptions

There are four main types of exemption a landlord may rely on where it intends to let out a sub-standard residential property after 1 April 2018, or needs to continue to let after 1 April 2020:

- **No relevant improvements:** There are no relevant energy efficiency improvements that can be made to the property or all relevant energy efficiency improvements have been made. In relation to residential properties, MEES currently has a “no cost to landlord” principle, however this is due to change in April 2019. Details are set out below (although it is possible these dates may slip as a date for the amendments to the Regulations to come into force has still to be made):
- **Position up to 31 March 2019:** Up until the end of March 2019, if funding is not available to fully cover the cost of making a recommended improvement, the landlord will not be required to make that improvement and can apply for an exemption.

Various “no cost” funding sources are mentioned. The main source of funding was expected to come from Green Deal financing. Under the

scheme, Green Deal providers fund improvements and the debt is then recovered by the property’s energy supplier. The aim was for tenants to pay for the improvements through their energy bills whilst still enjoying energy savings. Not enough Green Deal providers have entered the market and consequently, amendments are being made to the regulations to require landlords to pay for some improvement works themselves – see below:

- **Position from 1 April 2019 when cost cap introduced:** Even if no funding is available, Landlords will generally need to spend up to £3,500 (inclusive of VAT) per property in an attempt to improve sub-standard properties to a minimum of EPC band E. Money spent by landlords on unregistered energy efficiency improvements since 1 October 2017 can be taken into account.
- **Curtailment of exemptions already registered:** Landlords have been able to register an exemption where they are unable to access “no cost” funding for relevant improvements since the PRS Exemptions register opened on 1 October 2017. As exemptions are normally valid for a period of five years the Government wants to ensure that landlords have not rushed to register exemptions on this basis before landlords are obliged to pay for improvements when the cost cap is introduced. To achieve this, the amended regulations limit the validity of any “no cost” exemption registered between 1 October 2017 and 31 March 2019 to 31 March 2020. This means that any landlords who have this exemption, or intend to apply for it before 31 March

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2019, would need to take steps to improve their F or G properties in line with the requirements of the amended regulations, or seek to register a new exemption, by 31 March 2020.

- **Inability to obtain consent:** Despite reasonable efforts, within the preceding 5 years the landlord has been unable to obtain the consent of the tenant or a third party (e.g. superior landlord, mortgagee, planning authority) to the making of the relevant improvements.
- **Devaluation:** An independent surveyor's report within the preceding 5 years states that any relevant energy efficiency improvement would result in a reduction of more than 5% of the market value of the property or the building of which it forms part.
- **Temporary exemptions:** A temporary six month exemption is available in limited circumstances such as where a lease is granted pursuant to a court order or by operation of law. It is also available where a landlord is acquiring a substandard property after 1 April 2020 that is already let.

Exemptions will generally last a maximum of 5 years. Although it should be noted that an exemption based on failure to obtain a tenant's consent will expire when the tenancy is assigned or terminated and as mentioned above, existing registered exemptions based on inability to fund improvements will, under the current proposals, terminate on 31 March 2020.

Exemptions are not transferrable although, as stated above, there will be a 6 month exemption available to landlords who acquire an already let substandard property after 1 April 2020.

What do you need to do now?

If you have a let property that has a rating of F or G that is coming up for renewal or you are marketing to let, then you need to double check you have complied with MEES. Even if an exemption under MEES applies, it needs to be registered in the PRS Exemptions Register to be valid.

Going forward, to ensure that landlords are not suddenly hit with requirements to carry out works, or to register exemptions on 1 April 2020, they need systems in place to monitor their portfolios to identify potentially substandard properties and to track whether any registered exemptions have expired.

You should also be aware that MEES for residential properties are likely to be reviewed by the Government in the coming months given the pressure to meet climate change targets; commercial properties are already the subject of a MEES review. We do not yet know what the proposals will be for residential properties but the Government's proposals for commercial properties are to increase the required EPC rating from E to B by 2030. We assume therefore that something similar may be proposed for residential properties. Many property owners will therefore be faced with carrying out energy efficiency improvements and/or registering an exemption if these changes are made.

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What happens if a landlord fails to comply?

There are financial penalties for breaching MEES. For residential properties, the minimum penalty is between £2,000 and £4,000. Penalties above £2,000 will be imposed where the breach has been in existence for more than 3 months at the time the penalty notice is served. Further penalties can be imposed for non-compliance.

There is of course also the risk of reputational damage for landlords who are found to have flouted the rules.

Further information

This Information Sheet has been prepared to highlight some of the key issues relating to MEES. It is based on our understanding of MEES as at November 2019 and may be affected by subsequent changes to the regulations and non-statutory guidance. For more information, please contact Sarah Easton on 01892 510000 or by email at:

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