

Changes to Energy Regulations

Minimum Energy Efficiency Standards Explained

Energy efficiency is a key part of the UK Government's energy policy and new regulations, set to come into force in April 2018, will extend minimum standards in this area. Minimum Energy Efficiency Standards (MEES) apply to both commercial and domestic rental properties and raise a number of issues which landlords will need to address.

MEES Requirements

MEES already impose a prohibition on the landlords of domestic property unreasonably withholding their consent to a tenant making energy efficiency improvements at their own cost. This regime came into force on 1st April 2016 and applies regardless of what the lease may specify regarding restrictions on tenant's alterations or improvements, although there are limited exemptions which may be available to the landlord.

The new standards will prohibit landlords from letting (or continuing to let) their property if it has an EPC rating of F or G (called "substandard property" in the MEES Regulations) in any of the following situations;

- From 1st April 2018, where the landlord wants to grant a new lease, or renew or extend an existing lease, whether of domestic or commercial property;
- From 1st April 2020 for all domestic property where there is an existing lease in place;
- From 1st April 2023 for all other commercial property where there is an existing lease in place.

MEES Exclusions and Exemptions

While the majority of properties will be included in the new legislation, there are exclusions and exemptions which will enable landlords to continue to sub-let sub-standard property. The exclusions include leases of less than six months or of more than 99 years, properties where an EPC is not required and cases where an independent assessor has determined either that all relevant energy efficiency improvements have been made to a property or such improvements that could be made would not pay for themselves through energy savings over a seven year period (the Seven Year Payback Test). Otherwise landlords may be able to register one or more of the following exemptions:

- Consent: despite reasonable endeavours, necessary consents to the improvements cannot be obtained;
- Devaluation: the measures proposed would devalue the property by 5% or more;
- Temporary: a temporary six months exemption, which applies in limited circumstances after the landlord has acquired the property.

Exemptions will need to be registered before 1st April 2018, otherwise landlords in breach could find themselves subject to enforcement action and financial penalties.

None of the exemptions lasts indefinitely and will not pass to a new owner or landlord, so landlords will need to regularly review their property to see whether measures can be implemented to improve the EPC rating or whether the grounds for exemption still apply.

Further Considerations

Those properties that are rated F and G are already at risk, but those which are rated D and E may also soon be caught by the regulations. If the EPCs for those properties are now reaching the end of their shelf life (10 years), landlords may receive a nasty surprise when they are renewed, as efficiency standards have increased over the last few years with the result that properties rated D or E some years ago may now only merit an F or G rating.

Prospective buyers and tenants will be well advised to demand an up to date EPC if the existing one is a few years old and/or seek a price reduction to take account of the need to spend money on the property to bring it up to the minimum rating.

There are also potential implications arising from the new regulations in terms of rent review, dilapidations and lease renewals and there is already debate in the property industry about the extent to which new leases which need to be amended to take account of the new regulations.

For further information, or to learn how Berwins' Commercial Property Team can support you, contact us today

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