

MEES Regulations

14 March 2017

A guide to the Minimum Energy Efficiency Standard regulations

This briefing note aims to provide an overview of what the Minimum Energy Efficiency Standard regulations are, properties exempt, enforcement provisions and the impact on dilapidations relating to non-domestic properties.

An Overview of MEES. The Minimum Energy Efficiency Standard regulations, known as 'MEES' originate from the Energy Act 2011, which required the government to set minimum energy performance standards for non-domestic privately rented property.

From **1 April 2018**, the **MEES regulations** triggers an enforcement mechanism that will apply to all privately rented commercial buildings. The new legal standard makes it unlawful to lease all privately rented commercial properties or permit lease renewals unless the building can achieve an EPC rating of 'A' through to 'E'. This brings threats and opportunities for landlords and tenants.

From **1 April 2023**, all leases of private rented properties that commence before 1st April 2018 must comply with the MEES regulations. This therefore will impact existing leasehold interests.

Why MEES. The government has identified the built environment as a major contributor to Greenhouse Gas emissions which directly affects the United Kingdom's targets to reduce carbon emissions by **2030**. The government estimates that **18%** of commercial properties across the UK hold EPC ratings of F or G, which fall below the standards set in the MEES regulations. MEES therefore, aims to set new standards to tackle Greenhouse Gas from our current stock of buildings, with the building regulations ensuring new properties meet the required standard.

Exempt buildings. Identifying if a building and tenancy are caught up within the new MEES regulations is not always straightforward. There are various exemptions Landlords can claim for depending on the circumstances surrounding their property. These are:

- **The 'Golden Rule':** if the Landlord has carried out all possible cost-effective improvements but the building does not meet the standards, then that particular

property would be exempt from reach the standards for 5 years. By using the Green Deal's 'Golden Rule' where improvements must pay for themselves within 7 years the property may be exempt from complying with the MEES standards.

- **Devaluation:** If a specialist independent surveyor determines that the relevant improvements that could be made to the property to improve its EPC rating would have a negative impact on the market value of the property then the building could be exempt. There however, must be a 5% or more reduction in the market value for this to apply.
- **Third Party Consent:** If the Landlord cannot obtain necessary consents to install the required energy efficiency improvements despite all reasonable efforts then the property will be exempt. Consents include from the tenants, lenders, superior landlords and local authorities, especially in the case of listed buildings.

All exemptions must be registered via the central government PRS Exemptions Register, which is to go live in April 2017.

Enforcement and Penalties. Local Weights and Measures Authorities (LWMAs) will enforce the provisions set out in the MEES regulations as well as Trading Standards who will also undertake enforcement activity. The enforcement teams can impose hefty penalties for Landlords that do not improve their properties. Penalties range from a minimum penalty of **£5,000** to a maximum of **£50,000** within the first three months of a penalty notice being served. After three months, the penalty will rise to a minimum penalty of **£10,000** to a maximum of **£150,000**.

Dilapidations matters. The MEES regulations are set to impact existing leases from **1 April 2023**, which will impact how building surveyors advise tenants and landlords in relation to dilapidations matters. Landlords will have to undertake all reasonable efforts to implement improvements to their properties, excluding exempt properties to improve its **EPC** rating during the term of a lease.

The **Jervis v Harris** clause which provides certain powers to the Landlords to enter their property to carry out repair works when tenants fail to do so, will not have the same enforcement under the MEES regulations. The new regulations place the obligations on the Landlord to carry out the works, therefore entry to a property, mid-term will unlikely be unlawful under the Leasehold Property (Repairs) Act 1938.

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'Green' lease provisions are seen to be the answer to facilitate access to MEES improvements, ensuring both the tenant and landlord share the benefits of any improvements made to meet the new standards. Tenants who sign up to a new 'Green' lease should be aware of potential business interruption before agreeing to sign a lease on a building with an EPC Rating of F or lower.

The argument of **supersession** was hot topic at the 2016 RICS Dilapidations conference, with possible lease end claims being superseded by any wholesale replacements of mechanical and electrical equipment due to a poor energy ratings.

To conclude. As with any hot topic in the Building Surveying profession, MEES is no different and there are varying opinions on the impact of this regulation especially in relation to dilapidations claims. As ever dilapidations matters must be considered on a case by case basis with regard to the lease documents and issues with the specific property.

Whilst MEES does not fundamentally change standard dilapidations procedures, energy enhancement works both mid-term and at term end will surely increase in prevalence and the impact of such improvements must be considered.

Landlords need to identify cost effective improvements early on and put in place strategic plans for implementing such works in advance of the 2018 and 2023 deadlines.

All parties of a lease need to understand the implications of this new legislation and the possible outcomes both mid-term and at lease end regarding dilapidation issues.

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