

# MEES – Overview of issues when taking a commercial lease or buying a property subject to a commercial lease

This Information Sheet is being sent to you because you are taking a commercial lease or buying a property subject to a commercial lease that is affected by Minimum Energy Efficiency Standards Regulations (MEES).

## What are 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.

MEES do this by reference to the Energy Performance Certificate (“EPC”) rating of a property. Therefore, for MEES to apply a property must have an EPC.

## Is an EPC required for every commercial property?

No, an EPC is not always required. For example, properties without heating, air conditioning or ventilation equipment and some listed buildings do not require an EPC. Therefore, some commercial properties will fall outside the scope of MEES because an EPC is not required for that type of property. For further guidance on when an EPC is required click [here](#).

## Do MEES apply to all commercial properties?

MEES apply to leases (of properties that require an EPC) granted for a term of more than 6 months but less than 99 years.

Some leases of less than 6 months may also be caught where the tenant has previously been in occupation or has a right to renew or extend the term.

## Are just lettings affected?

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

## What do the MEES say?

So far, MEES have taken effect in two stages. Therefore, for applicable properties, unless an exemption applies:

- 1 From 1 April 2018, all properties must have a minimum energy efficiency standard of EPC rating E or above before they can lawfully be let.
- 2 From 1 April 2023 where a lease is already in place, a landlord must not continue to let a property with an EPC rating lower than an E rating.

## Future changes to MEES

The Government have proposed further changes to MEES. They launched a consultation regarding their plans to require commercial buildings to have a rating of EPC C by 2028 and B by 2030 (or have obtained one of the exceptions listed below). This consultation ended in June 2021 but the outcome has not yet been published.

Many property owners will therefore be faced with carrying out potentially major energy efficiency improvements and/or registering an exemption if these changes are made. For further information, see our article on the Government’s proposals [here](#).

**Head Office**  
Heathervale House  
2-4 Vale Avenue  
Tunbridge Wells  
Kent TN1 1DJ  
T 01892 510000  
F 01892 540170

**Thames Gateway**  
Corinthian House  
Galleon Boulevard  
Crossways Business Park  
Dartford  
Kent DA2 6QE  
T 01322 623700  
F 01322 623701

## MEES – Overview of issues when taking a commercial lease or buying a property subject to a commercial lease

Continued

### Is a letting granted in breach of MEES enforceable?

Unless an exemption applies (and is registered) it is unlawful to grant a lease of a substandard property after 1 April 2018 and to continue to let after 1 April 2023. However, the tenant will still have a valid lease and it will be enforceable.

### What happens if a landlord fails to comply?

There are financial penalties for breaching MEES. The minimum penalty is between £5,000 and £10,000 to a maximum cap of £150,000. The penalty is calculated using either 10% or 20% of the property's rateable value. The higher rateable value will be used to calculate the penalty where the breach has been in existence for more than 3 months at the time the penalty notice is served.

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

### Exemptions

There are four main types of exemption a landlord may rely on when it lets out a substandard commercial property after 1 April 2018, or continue to let after 1 April 2023:

#### 1 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. For the purposes of this exemption an improvement will be relevant if the savings on energy bills

it produces for the property, over no more than 7 years, are equal to or greater than the cost of the improvement works.

#### 2 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.

#### 3 Devaluation

An independent surveyor's report within the preceding 5 years states that any relevant energy efficiency improvements would result in a reduction of more than 5% of the market value of the property or the building of which it forms part.

#### 4 Temporary exemptions

A temporary six month exemption is available where a landlord acquires a substandard property after 1 April 2023 that is already let. This exemption is also available to a landlord when it is renewing a lease pursuant to Part 2 of the Landlord & Tenant Act 1954 and certain other limited circumstances such as where a lease is granted pursuant to a court order.

Exemptions are not transferrable.

If an exemption under MEES applies it needs to be registered in the central PRS Exemptions Register to be valid. [Click here](#) for a link to the PRS.

#### Exemption duration

Exemptions will last a maximum of 5 years. Although it should be noted that an

## MEES – Overview of issues when taking a commercial lease or buying a property subject to a commercial lease

Continued

exemption based on failure to obtain a tenant's consent will expire when the tenancy is assigned or terminated.

### Who pays for the cost of carrying out energy efficiency improvement works?

This is a tricky question. To a large degree it will depend upon the provisions in your lease.

The MEES regulations place responsibility to deal with MEES on the landlord and it is therefore believed that a covenant by the tenant to comply with statutory obligations will not make them liable to undertake energy improvement works. However some leases do seek to pass on or share the costs of compliance.

### Key Provisions

There are provisions in your lease that you should consider carefully in relation to MEES. If you are reading this advisory note in a Report on Property we have sent you, any key provisions will have been summarised in the lease reports appended to your Report on Property. In particular, you should consider the paragraph titled "Net Zero". Relevant provisions may relate to:

**Access rights:** does a landlord have rights of access to carry out energy improvement works? Is consent required from the tenant or someone else?

**Service charge:** do the service charge provisions seek to pass on the cost of improvement works to the tenant in so far as that is possible or has the tenant carved out any liability.

**Length of term and break option:** is the term appropriate if MEES requirements are raised and extensive energy improvement works need to be undertaken?

**Rent review:** what will happen on a rent review if the property has a substandard EPC and it is now unlawful to continue letting it?

**Alienation:** wills MEES impact the tenant's ability to assign or underlet?

**Alterations/fit out works:** will the tenant be able to carry out any alterations they require without impacting the EPC rating?

**Dilapidations:** What impact could MEES have on any dilapidations claim made at the end of the term?

### What do you need to do now?

If you are going to be the landlord of a substandard (or potentially substandard) property you need to consider what action you are going to take and when in relation to MEES. You need to consider when and how you are going to do the works to comply with MEES (now and in future) or if are you going to seek to register an exemption. Remember, for an exemption to be valid it must be registered with the PRS Exemptions Register.

To ensure as a landlord you are not caught out by MEES you also need to put systems in place to monitor your portfolios to identify substandard (and potentially substandard) properties and to track whether any registered exemptions have expired.

If you are going to be the tenant of a substandard (or potentially substandard) property you need to carefully consider the

## MEES – Overview of issues when taking a commercial lease or buying a property subject to a commercial lease

Continued

terms of the lease and ascertain from the landlord when and how it intends to do the required works to bring the property up to standard. It is also important to ascertain who is paying for these works and what affect the landlord's actions will have on your business (now and in the future). You also need to consider any future plans you may have and how they interrelate with MEES. For example, if you wish to do fit out works to the property or to sublet it.

### Further information

This Overview Information Sheet has been prepared to highlight some of the key issues relating to MEES in the context of taking a commercial lease or buying a property subject to a commercial lease. It is based on our understanding of MEES as at April 2023 and may be affected by subsequent changes to the regulations and non-statutory guidance.

For more bespoke information, please speak with the solicitor acting on your matter or if they are not available contact Sarah Easton on 01892 510000 or email at:

[sarah.easton@ts-p.co.uk](mailto:sarah.easton@ts-p.co.uk)

© Thomson Snell & Passmore LLP All Rights Reserved