

MEES: The impact of the Minimum Energy Efficiency Standards on commercial lettings

Any commercial letting, subletting, tenant or landlord works, dilapidations claim and rent reviews effected on or after 1 April 2018 will be affected by the Minimum Energy Efficiency Standards (“MEES”) introduced by the government.

What’s happening?

From 1 April 2018 a landlord cannot lawfully grant a new tenancy, and from 1 April 2023 cannot extend or renew an existing tenancy, unless the property has an EPC rating of at least rating E. If rated lower the landlord must undertake relevant energy efficiency improvements (those recommended in a surveyor’s report, EPC recommendations report or Green Deal advice report or any other measure which will raise the property’s rating).

Penalties can range from £5,000 to £150,000 and include publication of a public notice.

How does this affect my lease?

Existing leases are not currently affected by MEES. Even if a lease entered into on or after 1 April 2018 contravenes MEES it will still be valid and both parties must abide by its terms.

Whilst MEES do not impose any direct obligations to carry out improvement works it will impact on existing and future leases as follows:

- *Dilapidations Claims:* Landlord dilapidations claims may be reduced for properties which do not meet MEES including the ability to claim for loss of rent and diminution of value.
- *Alterations:* Where tenant works will (or may) negatively impact the EPC rating of the building it is likely to be ‘reasonable’ for landlords to withhold consent or require reinstatement at the end of the lease.
- *Subletting:* Tenants who wish to sublet a property will become responsible for complying with MEES as they are now themselves landlords.
- *Rent review:* Rent review clauses may be construed as assuming that the property is MEES compliant, even if in reality it is not. Additionally, if the right to sublet contributes significantly to the lease’s value, then MEES may be taken into consideration. Rent may also be depressed if the lease contains provisions enabling the landlord to recover the cost of complying with MEES through the service charge.

When do MEES not apply?

MEES do not apply if the property is:

- Not required to have an EPC under legislation (for example where the premises do not contain any heating or air-conditioning equipment)
- Let on a fixed-term tenancy of 6 months or less or a lease of 99 years+
- Unable to have more relevant energy efficiency improvements done that can be paid for using a Green Deal plan, provided free of charge pursuant to an obligation placed on an energy company, or paid for using third party finance at no cost to the landlord

- Occupied under a licence or agreement for lease

Exemptions are available if:

- The tenant has prevented the landlord carrying out the works by refusing to consent to relevant energy efficiency improvements within the previous five years or to provide tenant confirmations required by the Green Deal.
- The landlord cannot obtain necessary third party consents despite reasonable efforts.
- A surveyor's report states that making the relevant energy efficiency improvement would result in a reduction of more than 5% of the market value of the property or building of which the property forms part.

Even if the landlord is successful in applying for an exemption, the exemption cannot be passed to a new owner or landlord when the property is sold and the landlord must apply for the exemption every 5 years.

Who pays?

Guidance makes it clear that landlords will be required to undertake required energy efficient improvement works if the works can satisfy the "7 year payback test" even if there are not the funds to do so.

Whether or not any costs for making a property compliant with MEES can be passed on to the tenant will depend on the terms of the lease and the way the improvement works have been carried out. In general it is unlikely that the tenant will be responsible unless there is specific drafting in the lease allowing the landlord to recoup the energy improvement work or the works have been carried out under Green Deal finance. In the case of Green Deal finance, the costs are usually added to the utility bill, thus making the utilities payer liable.

Effective Solutions for Businesses

TAYLOR
WALTON
SOLICITORS