



Update on Minimum Energy Efficiency Standards (MEES) 2018 - Impact on Leases of Commercial Property

This Bulletin contains information about recent changes to pensions law and regulation which may affect our clients. Please read the information carefully and contact your financial adviser if you have any queries.

The Minimum Energy Efficiency Standards (MEES) that came into force on 1 April 2018 in England and Wales now apply to any new or renewal leases that are granted in respect of commercial property.

It is now unlawful for landlords to let premises that have an Energy Performance Certificate (EPC) with a rating below E without carrying out works to improve the energy efficiency of the building and to bring the EPC rating up to an E or better, unless the landlord obtains an exemption from the local authority. These exemptions are granted only to certain buildings that will never be able to achieve a higher efficiency rating, for example this may be the case with some listed buildings. In order to benefit from an exemption, a landlord will need to undertake relevant energy efficiency improvements, which are works that pay for themselves through energy bill savings over a seven year period. Furthermore, any exemption granted will be time limited to five years at best and then must be reapplied for.

If a landlord lets property in breach of the regulations the landlord will risk financial penalties and being 'named and shamed' on a publicly accessible register. The penalty for a breach continuing for three months or more is the greater of £10,000 or 20% of the rateable value of the property, subject to a cap of £150,000. Whether there may be escalated penalties for further continuing breaches is still not known.

The next implementation date to anticipate for further MEES legislation coming into force is 1 April 2023. From that date on the legislation will be extended to apply to existing leases. In other words, by that date all landlords of commercial property that is let must be in possession of an EPC with an E rating or better or have obtained an exemption from the local authority.

How can landlords react now to reduce their risk between now and April 2023?

1. Check the EPC rating of the building and consider the EPC recommendation report.
2. If the EPC has an F or G rating, start looking now at carrying out works to bring the building up to the required minimum standard or take advice on whether an exemption may apply.
3. If an EPC has an E rating, check the expiry date as overall efficiency standards have increased since EPCs were introduced nearly 10 years ago, so there is no guarantee that a renewal EPC will achieve the same rating. Consider whether works may need carrying out to achieve a higher rating, taking expert advice where appropriate.
4. If putting a lease in place, instruct the solicitor to incorporate clauses mitigating against future MEES risk.
5. If opportunities for negotiation with tenants arise (for example on lease renewal, re-gearing or break rights) consider undertaking energy efficiency improvement work: this benefits the tenant by reducing their outgoings.

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6. If looking at a prospective purchase, ensure that an EPC is provided at the outset and where the EPC has an F or G rating negotiate the purchase price on the grounds of the need to make improvements or obtain an exemption in order to let the property.

Scotland

The position is different in Scotland. There the position is regulated by the Scottish Climate Change Act and in particular section 63 which the Assessment of Energy Performance of Non-Domestic Buildings (Scotland) Regulations 2016 brought into force on 1 September 2016. The regulations apply to existing buildings (or units within a building that are designed or altered to be used separately) which have a floor area of over 1,000 m² and which do not comply with the 2002 or later Scottish Building Standards and are either sold or leased to a new tenant - lease renewals are excluded. The regulations also do not apply to properties improved under the Green Deal or temporary buildings and workshops with low energy demand.

Building owners need to assess the carbon and energy performance of their buildings and to identify improvements and produce an Action Plan, which sets energy and carbon targets and identifies measures to reduce energy consumption and greenhouse gas emissions from the building and sets energy improvement targets for the building. The building improvement measures will only be required where the energy savings over seven years would exceed the initial cost of the works or where a boiler is more than 15 years old.

The owner must provide a prospective buyer or tenant with the Action Plan, unless the tenant is an existing tenant renewing a lease or is a tenant taking a short term lease for less than 16 weeks. The Action Plan must be implemented over a three and a half year period, unless the owner defers by reporting annual operation operational energy use through a Display Energy Certificate (DEC). On completion of the Action Plan, a document of confirmation of improvement must be registered and a new EPC obtained. The action plan, the DEC, and the document of confirmation of improvement must all be registered in a central register.

Unlike the regulations for England and Wales, the Scottish equivalent regulations do not prevent owners from leasing properties with poor EPC ratings. Instead, owners will have to choose whether the energy efficiency of the property is to be monitored and reported annually or whether works will be done to the property to improve energy efficiency and reduce emissions.

If an owner fails to produce an Action Plan or fails to carry out the improvement measures within the three and a half year time limit in breach of the regulations, local authorities may impose a penalty charge of £1,000.

About this document

This Update is based on our understanding of the recent changes to pensions law and regulation.

Every care has been taken to ensure that it is correct. It is issued by DP Pensions Ltd for use by Pension clients and their advisers.

Please note that DP Pensions Ltd and D A Phillips & Co Ltd are not authorised to give financial advice. We do not know all of your circumstances or details of any other pension schemes of which you are a member. You should contact your financial adviser for help on how this legislation may affect you personally.

No responsibility to any third party is accepted if this information is used for any other purpose. The legislation and HMRC practice may change in the future.

If you have any queries regarding the information in this Bulletin and how it affects your circumstances then please contact your financial adviser.

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