

# Minimum Energy Efficiency Standards (MEES): commercial property

The **Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015** prohibit landlords of commercial property from granting new leases of properties with energy performance certificate (EPC) ratings of F and G, subject to certain exemptions.

## What changes are happening and when?

<p><b>1 April 2018</b></p> <p>It will be unlawful to grant a new lease of non-domestic private rented property with an EPC rating of less than E.</p>	<p><b>1 April 2023</b></p> <p>The prohibition is extended and it will be unlawful to continue to let non-domestic private rented property with an EPC rating of less than E.</p>
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## What tenancies are affected?

All **non-domestic private rented property** considered a **'sub-standard'** property – those that have an EPC rating below E. Unless:

- It is a lease of less than six months or more than 99 years; or
- An EPC is not required.

## Contacts

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## What are the exemptions?

<p>↻ The seven year payback test (the Golden Rule)</p>	<p>↻ Unable to obtain third party consent</p>
<p>↻ Devaluation of at least 5%</p>	<p>↻ Recently becoming a landlord a temporary six-month exemption: this applies in limited circumstances</p>

## What are the penalties?

**Financial penalties:**

- A breach lasting **up to 3 months** – 10% of the property's rateable value subject to a minimum penalty of £5,000 and a maximum of £50,000
- A breach lasting **3 months or more** – 20% of the rateable value, with a minimum penalty of £10,000 and a maximum of £150,000
- Publication penalty – against landlords on the public part of the PRS Exemptions Register

**Where a property is let in breach or where a penalty is imposed, the lease remains valid and in force.**

⚠ An exemption must be registered on the PRS Exemptions Register.

## Key issues for the Landlord if the property is sub-standard

<p><b>Dilapidations</b></p> <p>Key arguments on terminal dilapidations:</p> <ul style="list-style-type: none"> <li>— <b>Tenant:</b> if in repair and the property is below an E rating, any repair works may be superseded by the landlord having to carry out works under the Regulations.</li> <li>— <b>Landlord:</b> even if more extensive works may be required to comply with MEES, this does not prevent the tenant being liable for the underlying costs of repairs necessary to remedy any disrepair.</li> </ul>	<p><b>Rent reviews</b></p> <p>Much will turn on the actual wording of the rent review hypothesis but key arguments are:</p> <ul style="list-style-type: none"> <li>— <b>Tenant:</b> the market value is zero because the property cannot be lawfully let. If energy efficiency improvements have to be made, this would lead to a period of disruption so a hypothetical tenant would require a rent-free period and/or a rental reduction.</li> <li>— <b>Landlord:</b> it is assumed that there is a willing landlord and a willing tenant, so there is a market for the property. If the express wording of the clause states that the property can be lawfully let or is fit and available for immediate use, MEES may be disregarded.</li> </ul>	<p><b>1954 Act lease renewals</b></p> <ul style="list-style-type: none"> <li>— Some updating/modernisation: can be made to protected leases on renewal. It is unclear what balance the court will strike, but as it is new legislation there will be scope for including some reasonable changes to reflect MEES.</li> <li>— Determining rent under s.34 LTA 1954: the Act requires tenant's improvements to be disregarded unless carried out under an obligation to the landlord.</li> <li>— <b>Tenant:</b> if the property was sub-standard before fit-out, the tenant could seek a lower rent, or a rent-free period to reflect any disruption through the landlord carrying out any energy efficiency works.</li> <li>— <b>Landlord:</b> s.34 valuation requires the actual property to be valued at the valuation date.</li> </ul>
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## What should you be doing?

Audit portfolios but beware commissioning wholesale renewal of all EPCs across portfolios as this could result in the **downgrading of a property** where it may have been lawfully let for the foreseeable future.

**Review drafting:** The ability of landlords and tenants to protect themselves through **careful drafting** will be important to regulate the impact of the MEES Regulations on the relationship and avoid contentious situations.

Review **the guidance** published by the government on 23 February 2017, clarifying some aspects of the Regulations and providing practical advice.