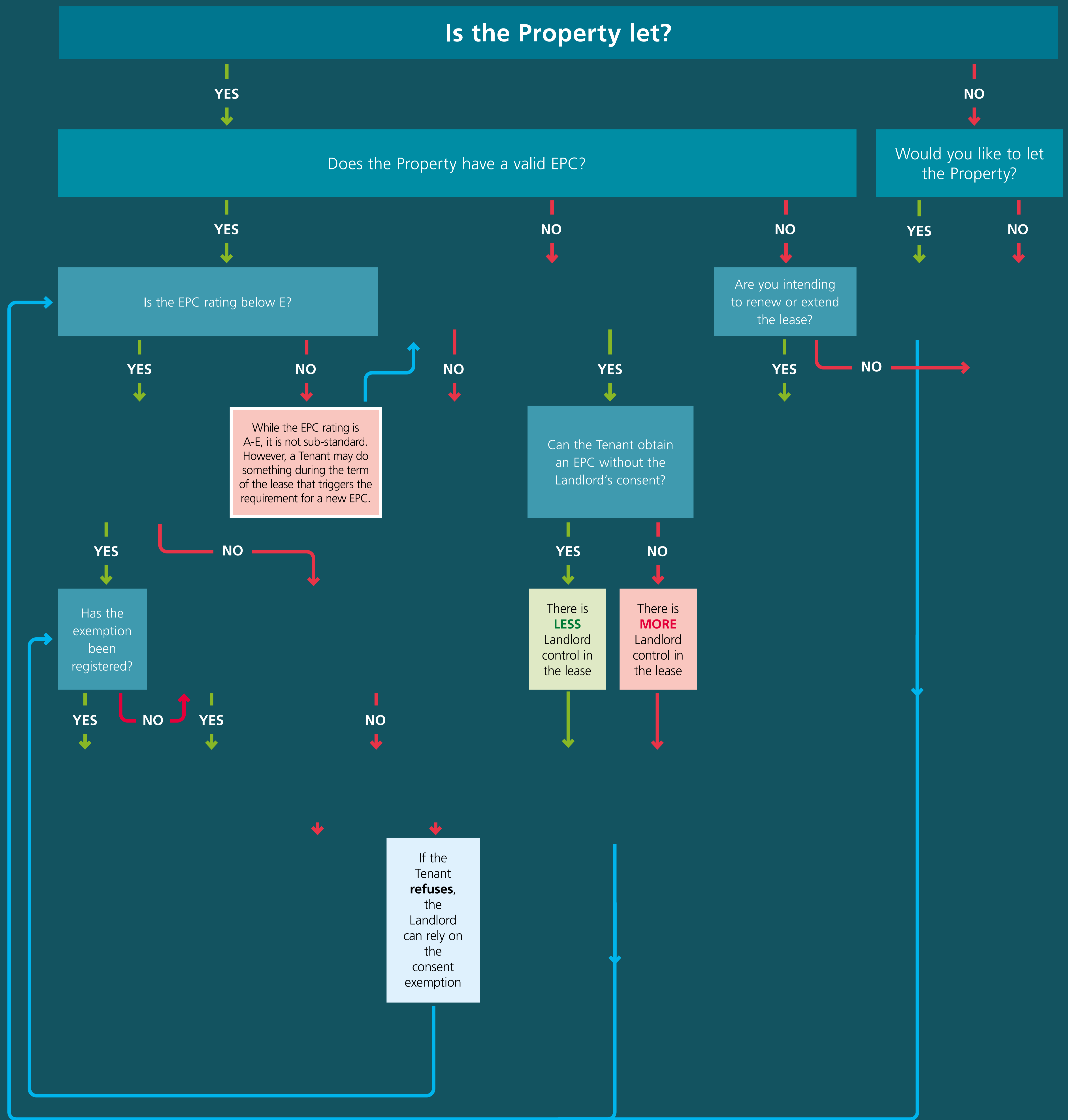


# The impact of MEES



## No MEES issue yet – but review.

There are a number of exemptions, which means a Landlord can freely continue to let premises with an F or G EPC rating. However, these need to be registered on the PRS Exemptions Register.

The terminology here can be confusing. Note that in this context, PRS refers to “Private Rented” (i.e. where the Landlord is not a public body) rather than “private rented sector” meaning the residential rented sector. Some exemptions apply to both domestic and non-domestic properties (i.e. residential and commercial) but some just apply to domestic (residential) or non-domestic (commercial).

### Details

---

The cost of making even the cheapest recommended improvement (i.e. any individual improvement) would exceed £3,500 (inc. VAT).

### Comments

---

- Landlord must show three quotations from different installers.
- Landlord must confirm that it is satisfied that the measures required exceed £3,500 (inc. VAT).

### Domestic Property

---

Yes.

### Non-domestic Property (i.e. Commercial)

---

No.

### Time limit to the Exemption

---

Five years.

Note that after the time limit has expired, the Landlord has to review the position again and, if relevant apply for the relevant exemption again.

## No MEES issue yet – but review.

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### Details

---

A recommended measure is not a “relevant energy efficiency improvement” because the cost of purchasing and installing it does not meet the Seven Year Payback test.

### Comments

---

- Seven Year Payback test: Landlord must show that the expected value of savings on energy bills that the measure (or package of measures) is expected to achieve over a period of seven years (commencing on the date the installation is completed) are less than the cost of repaying it. See Reg 28(3) – (8) for the formula: [The Energy Efficiency \(Private Rented Property\) \(England and Wales\) Regulations 2015 \(legislation.gov.uk\)](#) <sup>↗</sup>.
- Landlord must show three quotations from different installers.
- Landlord must confirm that it is satisfied that it does not meet the Seven Year Payback Test.
- Landlord must provide cost calculations.

### Domestic Property

---

Yes.

### Non-domestic Property (i.e. Commercial)

---

Yes.

### Time limit to the Exemption

---

Five years.

Note that after the time limit has expired, the Landlord has to review the position again and, if relevant apply for the relevant exemption again.

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### Details

---

All the “relevant energy efficiency improvements” for the property have been made (or there are none that can be made) and the property remains sub-standard.

### Comments

---

- Landlord has made all the relevant energy efficiency improvements that can be made (or none can be made) and the property still remains below the EPC E.
- Landlord relies on the information within the EPC. This needs to be provided. The Landlord could also rely on a separate report (but that report would need to be provided to support the exemption).

### Domestic Property

---

Yes.

### Non-domestic Property (i.e. Commercial)

---

Yes.

### Time limit to the Exemption

---

Five years.

Note that after the time limit has expired, the Landlord has to review the position again and, if relevant apply for the relevant exemption again.

## No MEES issue yet – but review.

There are a number of exemptions, which means a Landlord can freely continue to let premises with an F or G EPC rating. However, these need to be registered on the PRS Exemptions Register.

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### Details

---

The relevant energy efficiency improvement is either:

- (1) a cavity wall insulation;
- (2) external wall insulation; or
- (3) internal wall insulation (for external walls) **AND** the Landlord has written expert advice that the measure is not appropriate due to the potential negative impact on the fabric or structure of the property.

### Comments

---

— Landlord must provide expert advice from:

- an architect registered on the Architect Accredited in Building Conservation register; or
- a chartered engineer registered on the Institution of Civil Engineers’ and the Institution of Structural Engineers’ Conservation Accreditation Register for Engineers; or
- a chartered building surveyor registered on the Royal Institution of Chartered Surveyors’ Building Conservation Accreditation register; or
- a chartered architectural technologist registered on the Chartered Institute of Architectural Technologists’ Directory of Accredited Conservationists; or
- **ONLY IF NONE OF THE ABOVE ARE AVAILABLE**, from an independent installer of the wall insulation system in question who meets the installer standards for that measure ([Schedule 3 to the Building Regulations 2010 – The Building Regulations 2010 \[legislation.gov.uk\]](#))

— Landlord must provide a copy of that opinion.

### Domestic Property

---

Yes.

### Non-domestic Property (i.e. Commercial)

---

Yes.

### Time limit to the Exemption

---

Five years.

Note that after the time limit has expired, the Landlord has to review the position again and, if relevant apply for the relevant exemption again.

## No MEES issue yet – but review.

There are a number of exemptions, which means a Landlord can freely continue to let premises with an F or G EPC rating. However, these need to be registered on the PRS Exemptions Register.

The terminology here can be confusing. Note that in this context, PRS refers to “Private Rented” (i.e. where the Landlord is not a public body) rather than “private rented sector” meaning the residential rented sector. Some exemptions apply to both domestic and non-domestic properties (i.e. residential and commercial) but some just apply to domestic (residential) or non-domestic (commercial).

### Details

---

Where third party consent is required to carry out the relevant energy efficiency improvement (e.g. superior Landlord’s consent/Tenant’s consent) and that consent has been refused.

### Comments

---

- Whether or not third party consent is required will depend on particular circumstances. Ask your solicitor to review the relevant documents (e.g. title documents, headlease, occupational lease and finance documents). Ask a solicitor [here](#) [↗](#).
- Landlord must provide evidence of correspondence/related documentation showing that consent was (1) required (2) sought and (3) refused.
- Regulation 31 ([The Energy Efficiency \(Private Rented Property\) \(England and Wales\) Regulations 2015 \[legislation.gov.uk\]](#)) [↗](#) provides more information.

### Domestic Property

---

Yes.

### Non-domestic Property (i.e. Commercial)

---

Yes.

### Time limit to the Exemption

---

Generally five years. But if the relevant consent is required from a Tenant and the relevant lease expires, then the time limit will be the expiry of that lease.

Note that after the time limit has expired, the Landlord has to review the position again and, if relevant apply for the relevant exemption again.

## No MEES issue yet – but review.

There are a number of exemptions, which means a Landlord can freely continue to let premises with an F or G EPC rating. However, these need to be registered on the PRS Exemptions Register.

The terminology here can be confusing. Note that in this context, PRS refers to “Private Rented” (i.e. where the Landlord is not a public body) rather than “private rented sector” meaning the residential rented sector. Some exemptions apply to both domestic and non-domestic properties (i.e. residential and commercial) but some just apply to domestic (residential) or non-domestic (commercial).

<h3>Details</h3> <p>All the relevant energy efficiency improvements would result in a reduction of more than 5% in the market value of the property/building.</p>	<h3>Domestic Property</h3> <p>Yes.</p>
<h3>Comments</h3> <ul style="list-style-type: none"><li>— Landlord must provide a report from a RICS surveyor that specific energy efficiency improvements would reduce the market value of the property/building by more than 5%.</li><li>— Note that other relevant energy efficiency improvements would still need to be carried out (i.e. it applies to a specific improvement).</li></ul>	<h3>Non-domestic Property (i.e. Commercial)</h3> <p>Yes.</p>
	<h3>Time limit to the Exemption</h3> <p>Five years.</p>

Note that after the time limit has expired, the Landlord has to review the position again and, if relevant apply for the relevant exemption again.

## No MEES issue yet – but review.

There are a number of exemptions, which means a Landlord can freely continue to let premises with an F or G EPC rating. However, these need to be registered on the PRS Exemptions Register.

The terminology here can be confusing. Note that in this context, PRS refers to “Private Rented” (i.e. where the Landlord is not a public body) rather than “private rented sector” meaning the residential rented sector. Some exemptions apply to both domestic and non-domestic properties (i.e. residential and commercial) but some just apply to domestic (residential) or non-domestic (commercial).

### Details

---

The Landlord has become a Landlord because of any of the following:

- the grant of a lease pursuant to a contractual obligation;
- a Tenant’s insolvency, by virtue of the Landlord having been the Tenant’s guarantor;
- the Landlord having been a guarantor, or a former Tenant, who has exercised the right to obtain an overriding lease of a property pursuant to section 19 of the Landlord and Tenant (Covenants) Act 1995(1);
- the deemed creation of a new lease by operation of law;
- the grant of a new lease pursuant to the provisions of Part 2 of the Landlord and Tenant Act 1954;
- the grant of a lease by order of the court (other than under Part 2 of the Landlord and Tenant Act 1954); and
- the Landlord has acquired the property which was already let by an existing tenancy.

### Comments

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- Ask your solicitor whether this exemption could apply to you). Ask a solicitor [here](#) .
- Landlord must confirm when they became the Landlord and a narrative explanation of the circumstances under which they became a Landlord (e.g. whether it’s pursuant to a contractual obligation).

### Domestic Property

---

Yes.

### Non-domestic Property (i.e. Commercial)

---

Yes.

### Time limit to the Exemption

---

Six months from the date they become Landlord.

Note that after the time limit has expired, the Landlord has to review the position again and, if relevant apply for the relevant exemption again.



## Conflicting Guidance

### EPC on lease renewals where there has never been an EPC for that property ▾

There is conflicting Government guidance on whether an EPC is required on a lease renewal. Whilst the EPC Regulations do not exempt renewal tenancies from the obligation to produce (and, if need be, commission) an EPC on letting, the EPC Non-Dwelling Guidance does say that *"Not all transactions will be considered to be a sale or let. These will include... lease renewals or extensions."* In addition, there are some discrepancies between the Non-Domestic MEES Guidance and the Domestic MEES Guidance which appear to conflict on the question of whether an EPC is needed on a lease renewal.

The Tenant's consent to works is required

There is a risk the Tenant could obtain a low EPC rating

If the Tenant consents, the Landlord must carry out works and obtain a new EPC. If not

If the Tenant refuses, the Landlord can rely on the consent exemption

applies

[READ MORE ▶](#)

Can an exemption apply?

[READ MORE ▶](#)

YES

NO

Has the exemption been registered?

YES

NO

YES

NO

If registered, there is no MEES issue yet but consider future review

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Review the lease to assess whether you can recover costs from the Tenant

[READ MORE ▶](#)

must carry out works and obtain a new EPC. If not

can rely on the consent exemption

## Conflicting Guidance

### Law vs Guidance ▾

Given the conflicting guidance as mentioned above, this begs the question as to what extent this guidance will be taken into account by a Court if and when a case comes before it on whether there has been a breach of the MEES Regulations by not having an EPC at lease renewal. As things currently stand, a Court will not be obliged to follow the Government guidance on this given this is guidance only.

## Conflicting Guidance

### Government proposed changes to MEES regulations ▾

As per our [Law Now article](#) [↗](#) issued, the Government issued two important consultations on energy efficiency in March 2021. It should be noted that in the context of the question about whether an EPC is required on lease renewals, the consultations include a proposal to have a continual requirement to have an EPC if letting, which will ensure that lease renewals are captured within the scope of the MEES Regulations, by ensuring that properties always have an up-to-date EPC during the whole time they are rented out.

Although the consultations closed in June 2021, there has been no further news on this and we are still awaiting a substantive Government response to such consultations and what future legislation may be enacted to give effect to such consultations. An October 2023 Government response to the Climate Change Committee's 2023 Annual Progress Report to Parliament stated "We have reviewed the responses to our consultation on minimum energy efficiency standards in the non-domestic private rented sector and are working hard to review the policy design to ensure it remains fair and appropriate for landlords and tenants. We plan to publish this in due course. The proposed timelines within the original consultation will require updating to allow sufficient lead in time for landlords and the supply chain." The Government previously announced the scrapping for domestic private rented property of the proposed minimum lawful "C" EPC rating by April 2025.

## Conflicting Guidance

### Penalties

A breach of not having an EPC would result in a fine charged at 12.5% of the rateable value of the premises, capped at £5,000. This is much smaller than a breach of MEES for having a sub-standard EPC which could result in a penalty up to £150,000, although here it could be argued that there is no breach of MEES as no EPC was required on a lease renewal. Note that a breach for not having an EPC does not impose any criminal liability and these are not really being enforced against by the Trading Standards of the local authority.

## Conflicting Guidance

Although there is conflicting Government guidance, the common view is that, where there has never been an EPC for the property, a lease renewal does not trigger a requirement to obtain an EPC. However, as mentioned above, the Government launched a consultation in 2021 which included a proposal that EPCs must be maintained on a continuing basis, rather than being triggered by a specific event such as a sale or letting.

Outside the scope of MEES, until a better answer is available, the common view is that there is conflicting guidance.

There is conflicting guidance.

### Analysis

Although there is conflicting Government guidance, the common view is that, where there has never been an EPC for the property, a lease renewal does not trigger a requirement to obtain an EPC. However, as mentioned above, the Government launched a consultation in 2021 which included a proposal that EPCs must be maintained on a continuing basis, rather than being triggered by a specific event such as a sale or letting.

If a Landlord voluntarily chooses to commission an EPC on a lease renewal, the Landlord is to consider whether the EPC rating is below "E".

However, if a Landlord does not commission an EPC for a lease renewal, there is a possibility (albeit very unlikely given lack of enforcement) that there could be a fine for not having an EPC.

applies  
[READ MORE](#)

### The most frequently encountered exemptions from MEES are:

- **Lack of consent** – the Landlord is unable to obtain any necessary third-party consent to undertake necessary energy improvement works (e.g. planning and Tenant’s consent to works). This is likely to be the most common exemption used.
- **Seven-year payback test** – the necessary energy improvements will not ‘pay for itself’ by way of energy bill savings over a seven-year period. Therefore, there are no “relevant energy improvement works” that can be carried out, or all such works have been carried out, but the EPC rating remains sub-standard.
- **Devaluation** – improvements will reduce the market value of the property by more than 5%.

The above exemptions last five years.

- **Short term extension of time to comply with letting restrictions** – this exemption lasts six months.

**All exemptions require registration on the PRS Exemptions Register. For more information on the exemptions, please click [here](#) .**

### There are also exclusions from MEES for the following types of leases let by the Landlord:

- **Short leases** – leases not exceeding six months (where there is no previous continuous period of occupation exceeding 12 months and no right to renew)
- **Long leases** – leases of 99 years or more.

These exemptions do **not** require registration on the PRS Register.

Has the exemption been registered?

YES

NO

YES

If registered, there is no MEES issue yet but consider future review

[READ MORE ▶](#)

Review the lease to assess whether you can recover costs from the Tenant

[READ MORE ▶](#)

Does the lease allow you to carry out works to make "relevant energy efficiency improvements"?

[READ MORE ▶](#)

There is **LESS** Landlord control in the lease

There is **MORE** Landlord control in the lease

### Does the lease allow for costs to be recovered from the Tenant?

Whether or not the costs for a particular item of energy improvement works are recoverable from a Tenant will depend upon the construction of the lease in question.

Some leases may include express drafting dealing with the Landlord's ability to recover the costs of energy improvement works but in the absence of express provisions, whether or not the Landlord can validly charge the Tenant for the cost of the works will depend on an analysis of the more generic provisions in the service charge clause.

The majority of service charge clauses provide for Landlords to recover repair and maintenance costs but not improvement costs and so for many existing leases, the recoverability of energy improvement costs from tenants may be limited.

If you require assistance with analysing specific lease provisions to determine energy improvement cost recoverability or advice on suitable provisions to include in new leases, please contact us [here](#) [↗](#).

# The impact of MEES

**The triggers requiring the provision of an EPC are either transaction or works related.**

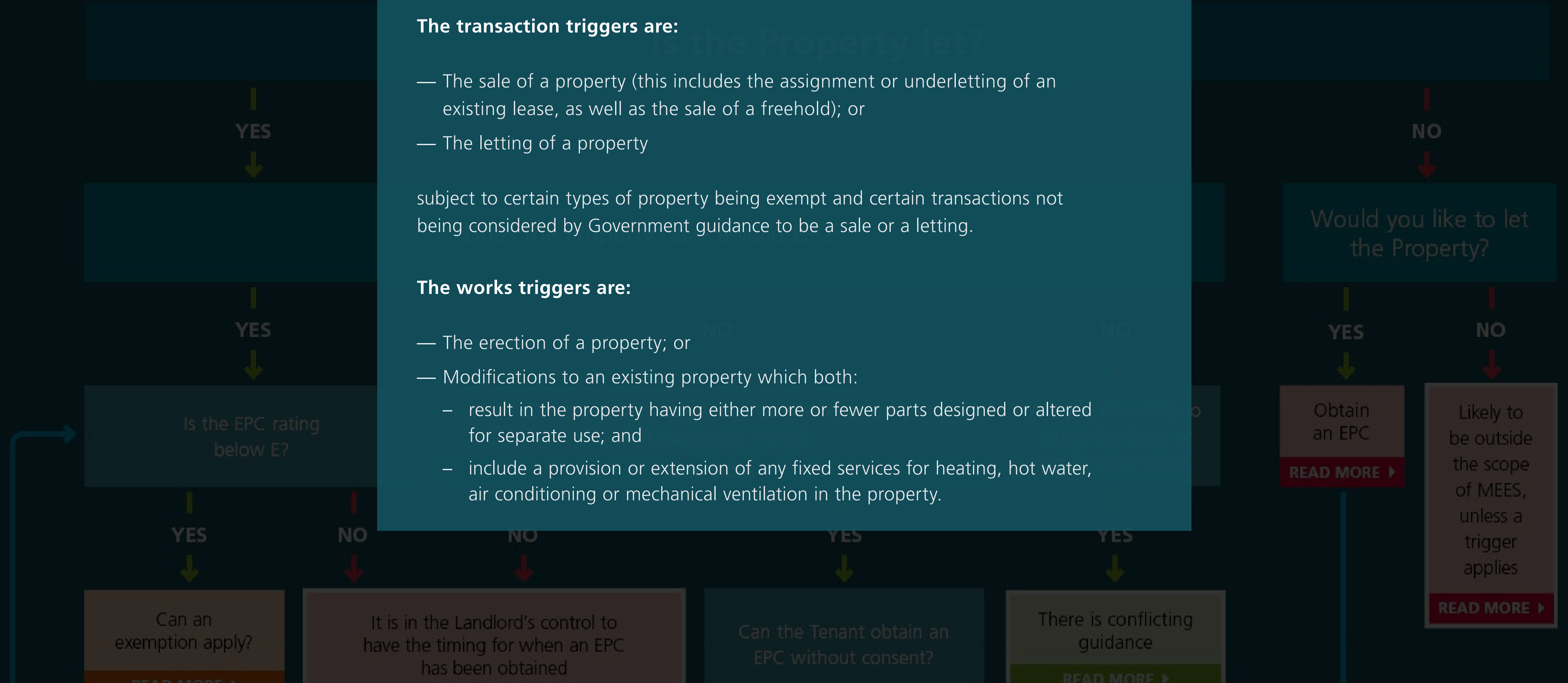
**The transaction triggers are:**

- The sale of a property (this includes the assignment or underletting of an existing lease, as well as the sale of a freehold); or
- The letting of a property

subject to certain types of property being exempt and certain transactions not being considered by Government guidance to be a sale or a letting.

**The works triggers are:**

- The erection of a property; or
- Modifications to an existing property which both:
  - result in the property having either more or fewer parts designed or altered for separate use; and
  - include a provision or extension of any fixed services for heating, hot water, air conditioning or mechanical ventilation in the property.







**Under Part 3 of the MEES Regulations, you will need to consider whether a property is “sub-standard” where:**

- it is already let; or
- a new lease is to be granted.

The MEES Regulations do not apply to a sub-standard property that is owner occupied.

The MEES Regulations apply potentially to both lettings and sub-lettings, as well as the sale of a freehold property.

Has the exemption been registered?

YES

NO

YES

If registered, there is no MEES issue yet but consider future review

[READ MORE ▶](#)

Review the lease to assess whether you can recover costs from the Tenant

[READ MORE ▶](#)

Does the lease allow you to carry out works to make "relevant energy efficiency improvements"?

[READ MORE ▶](#)

There is **LESS** Landlord control in the lease

There is **MORE** Landlord control in the lease

### There is a risk the Tenant could obtain a low EPC rating

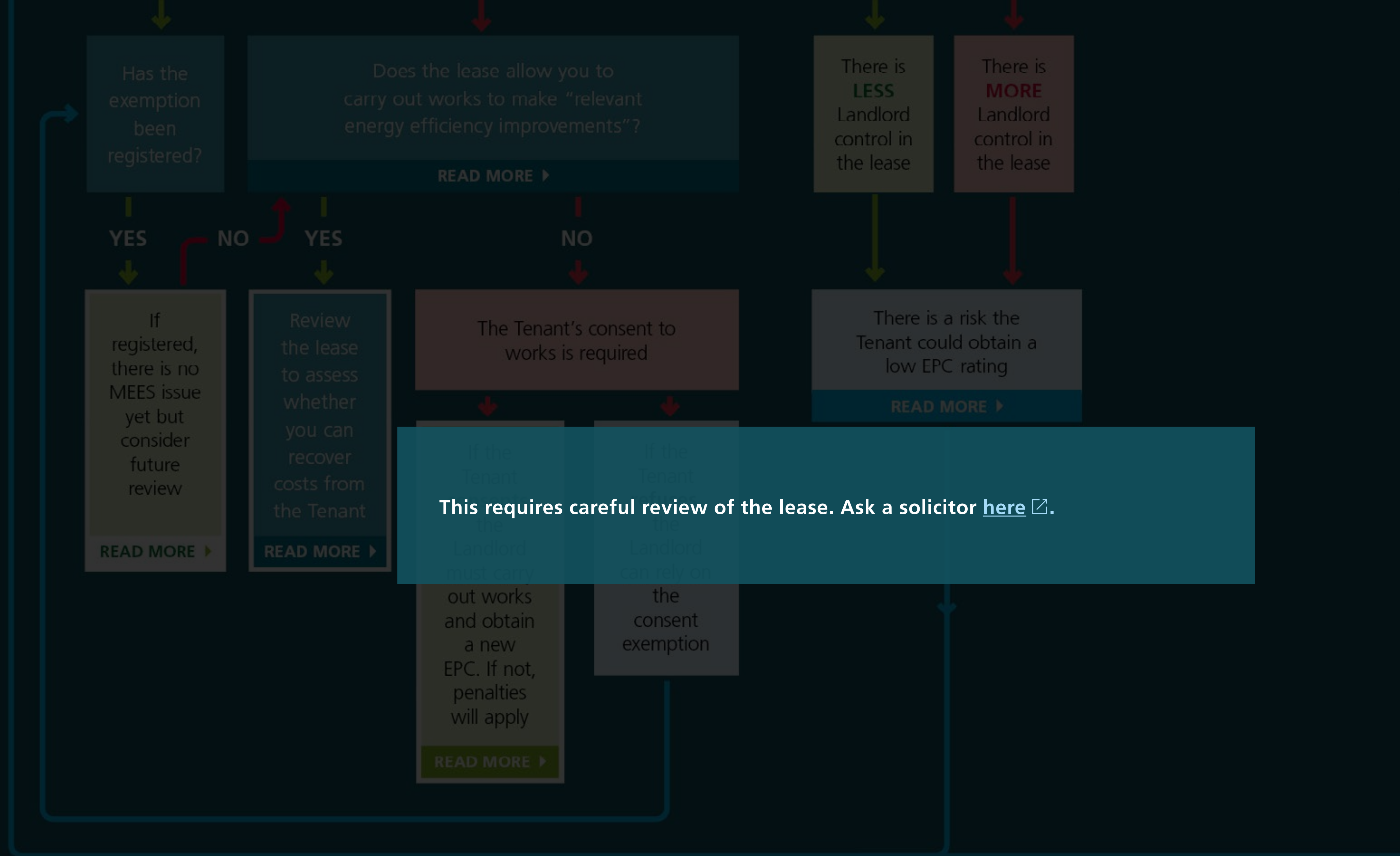
In the context of the MEES Regulations, if a Tenant obtains an EPC with a sub-standard rating, a Landlord must not grant new leases or continue existing leases (subject to any available exemption).

However, from a Landlord and Tenant perspective, a lower EPC rating could be used strategically by tenants in connection with the following:

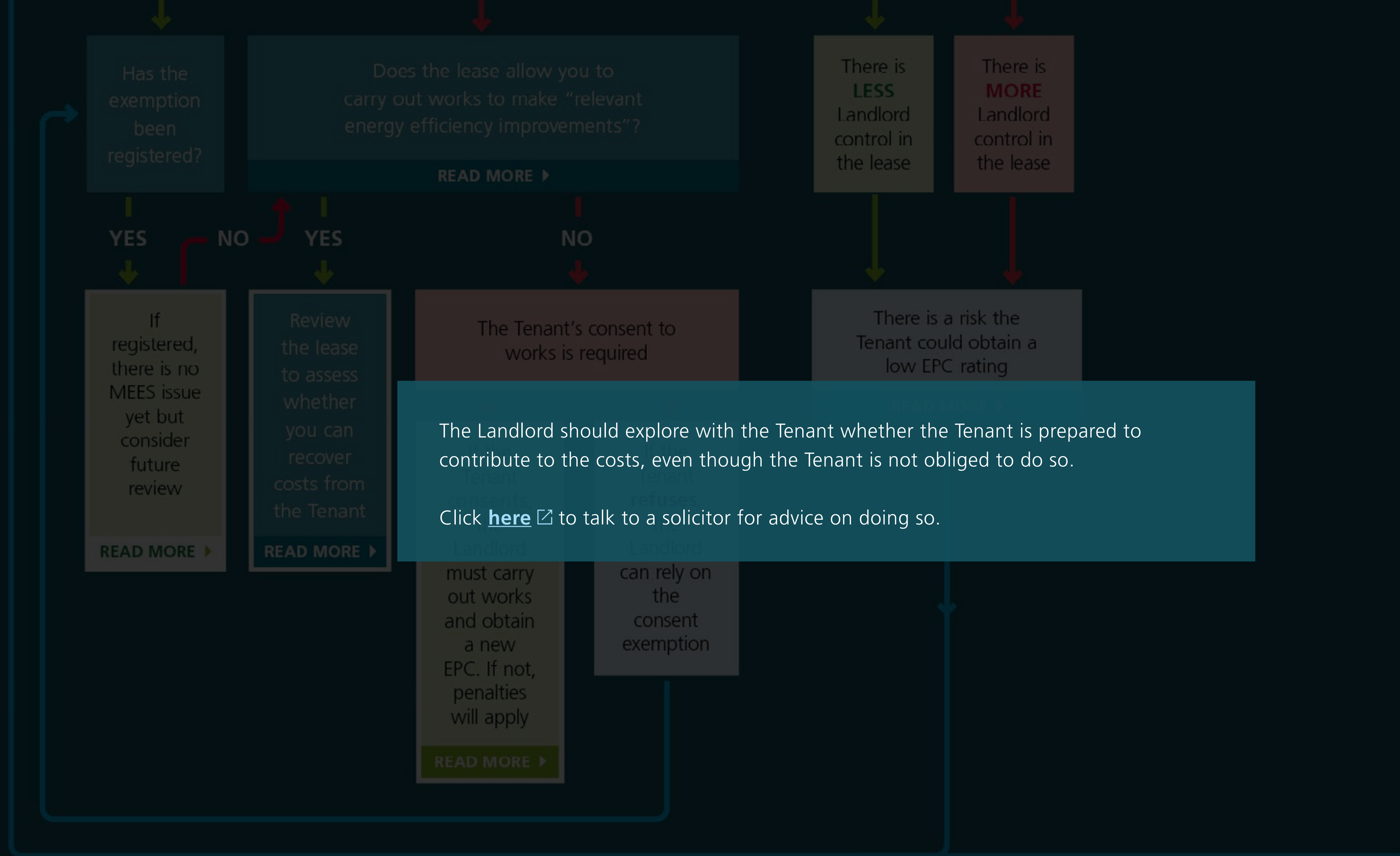
- Rent reviews
- Landlord improvement works
- Dilapidation claims

Commercial leases must therefore be carefully drafted to minimise a Tenant's ability to obtain an EPC which may turn out to have a lower, sub-standard, rating.

**Ask a solicitor [here](#) ↗.**

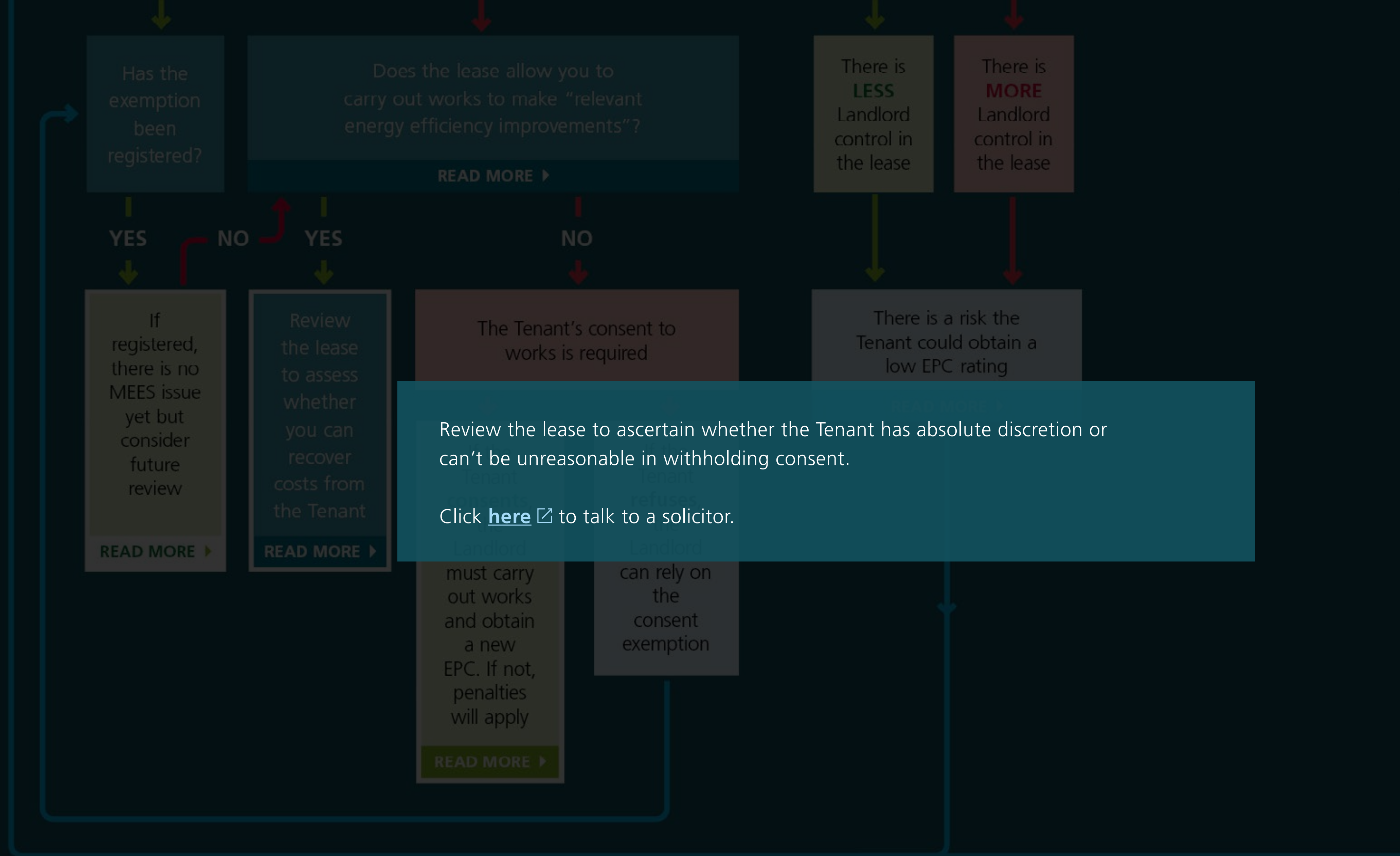


This requires careful review of the lease. Ask a solicitor [here](#).



The Landlord should explore with the Tenant whether the Tenant is prepared to contribute to the costs, even though the Tenant is not obliged to do so.

Click [here](#) to talk to a solicitor for advice on doing so.



Review the lease to ascertain whether the Tenant has absolute discretion or can't be unreasonable in withholding consent.

Click [here](#) to talk to a solicitor.

# The impact of MEES

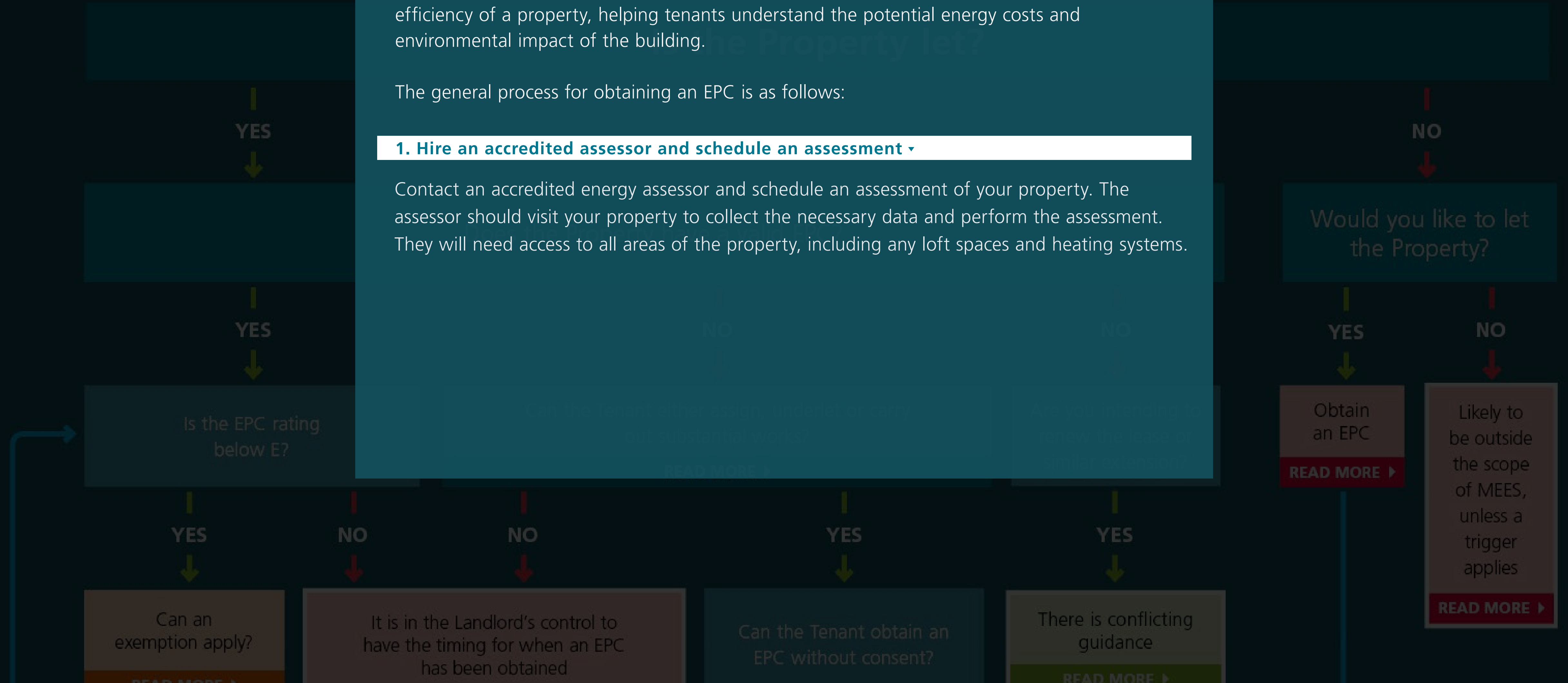
## Obtain an EPC

Obtaining an Energy Performance Certificate (EPC) is an important step in the process of granting a lease to a new Tenant. An EPC provides information about the energy efficiency of a property, helping tenants understand the potential energy costs and environmental impact of the building.

The general process for obtaining an EPC is as follows:

### 1. Hire an accredited assessor and schedule an assessment ▾

Contact an accredited energy assessor and schedule an assessment of your property. The assessor should visit your property to collect the necessary data and perform the assessment. They will need access to all areas of the property, including any loft spaces and heating systems.



# The impact of MEES

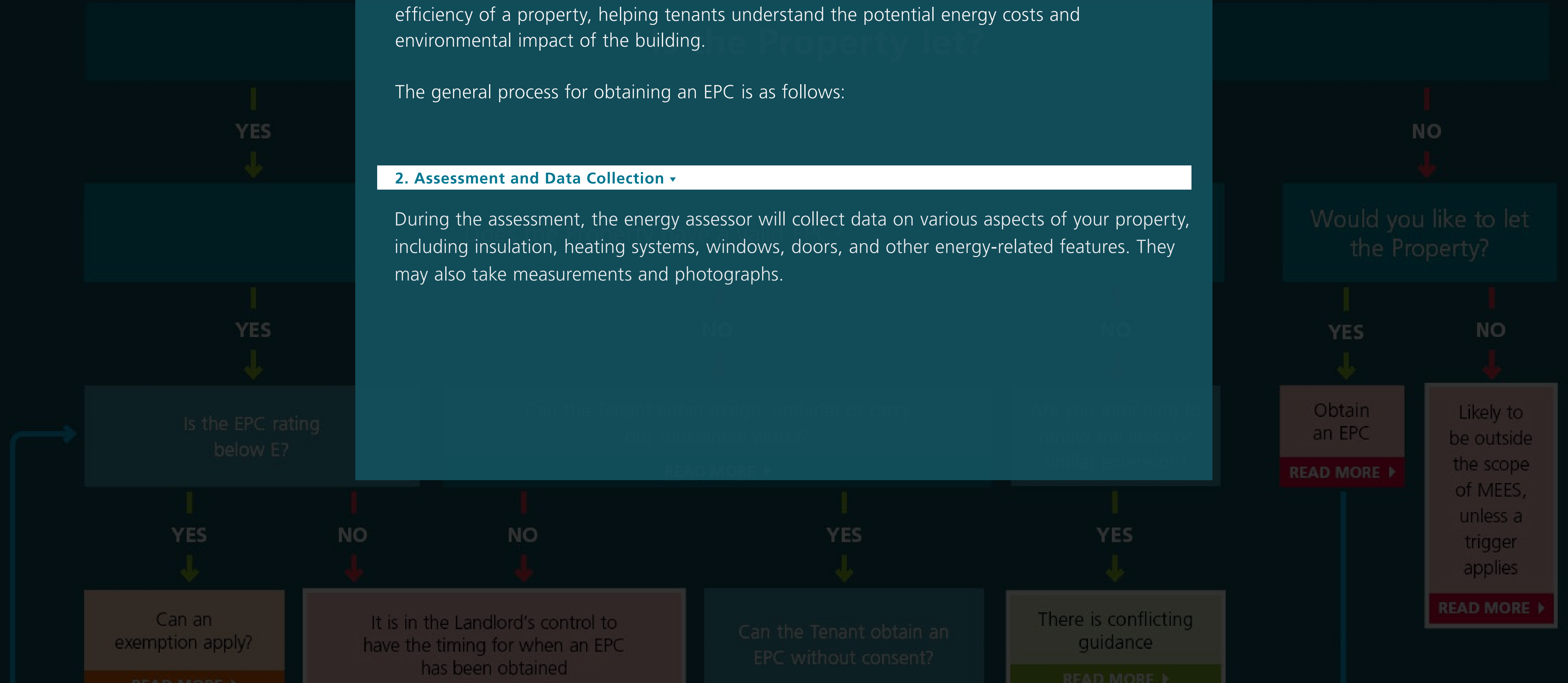
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The general process for obtaining an EPC is as follows:

### 2. Assessment and Data Collection ▾

During the assessment, the energy assessor will collect data on various aspects of your property, including insulation, heating systems, windows, doors, and other energy-related features. They may also take measurements and photographs.



# The impact of MEES

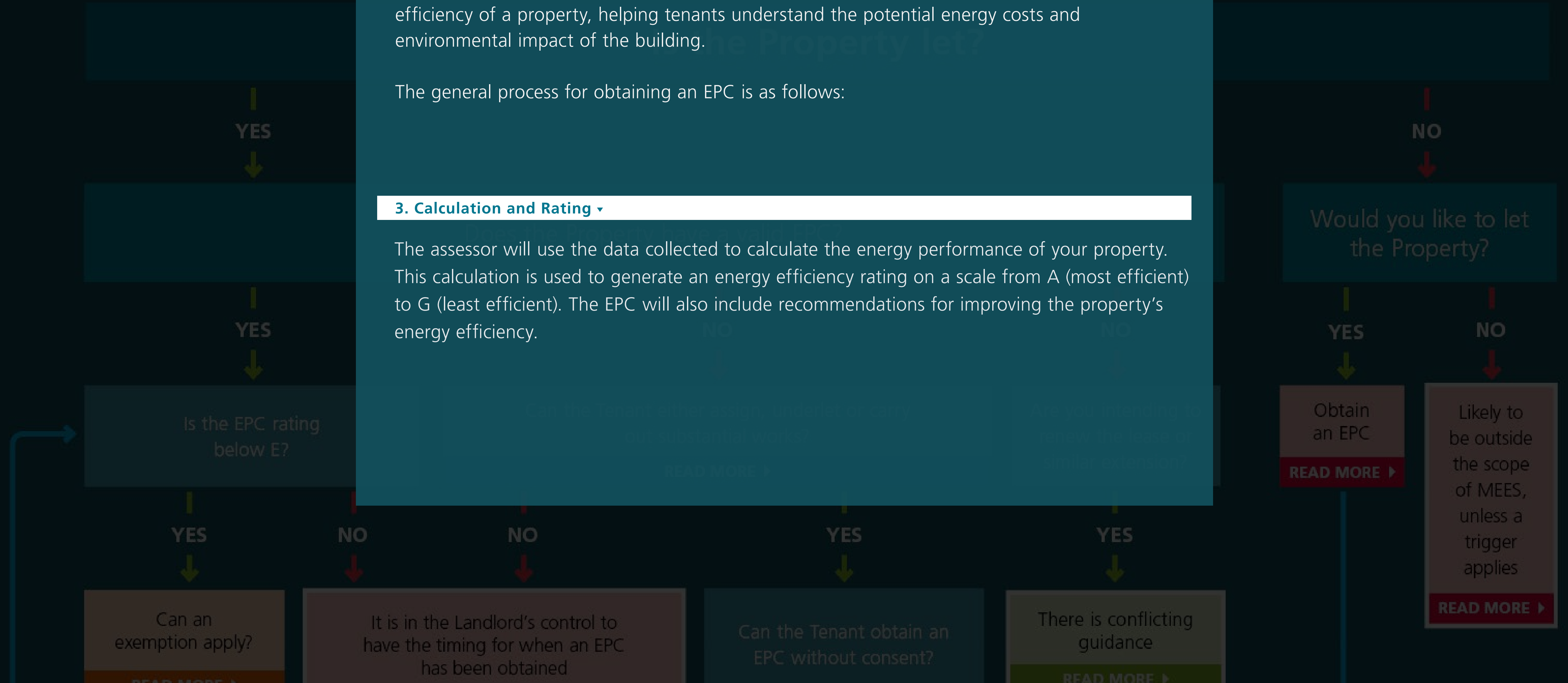
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The general process for obtaining an EPC is as follows:

### 3. Calculation and Rating

The assessor will use the data collected to calculate the energy performance of your property. This calculation is used to generate an energy efficiency rating on a scale from A (most efficient) to G (least efficient). The EPC will also include recommendations for improving the property's energy efficiency.





# The impact of MEES

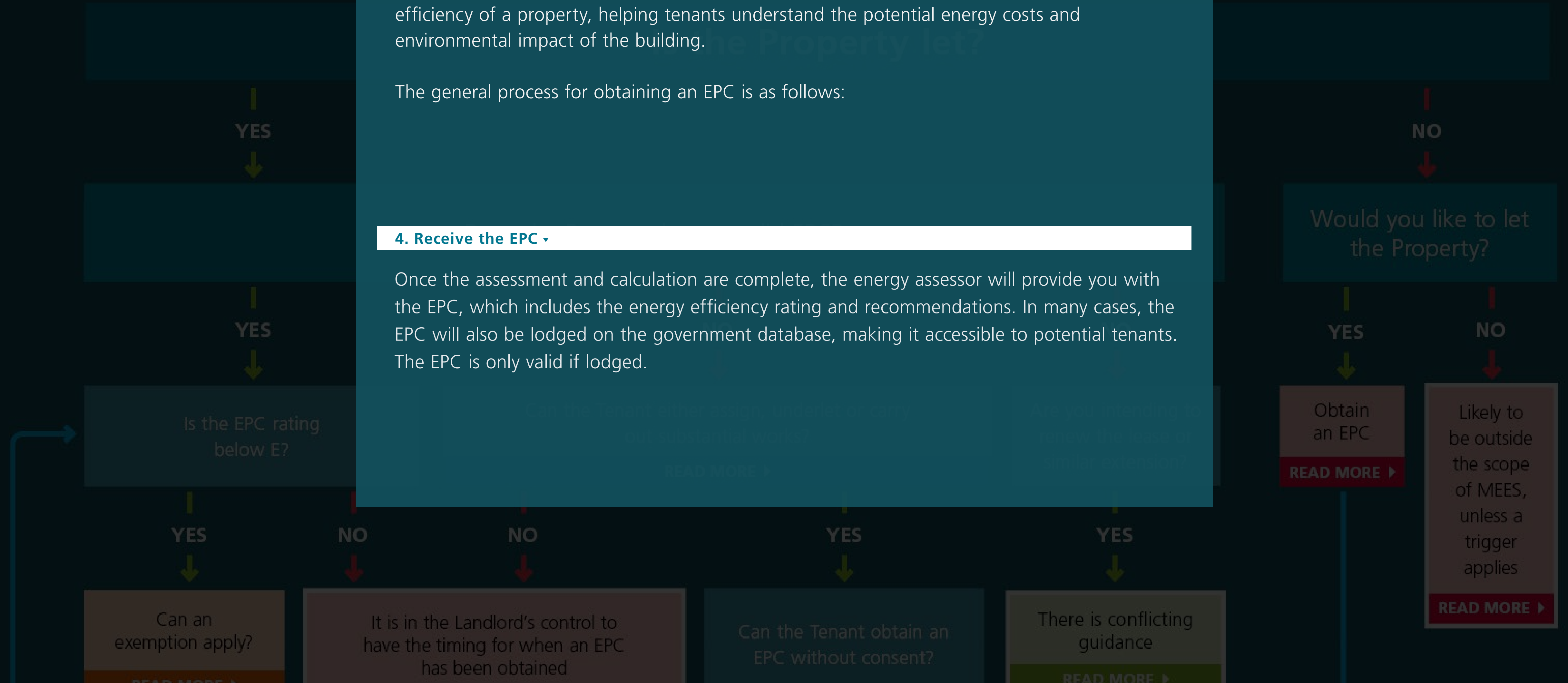
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The general process for obtaining an EPC is as follows:

### 4. Receive the EPC ▾

Once the assessment and calculation are complete, the energy assessor will provide you with the EPC, which includes the energy efficiency rating and recommendations. In many cases, the EPC will also be lodged on the government database, making it accessible to potential tenants. The EPC is only valid if lodged.



# The impact of MEES

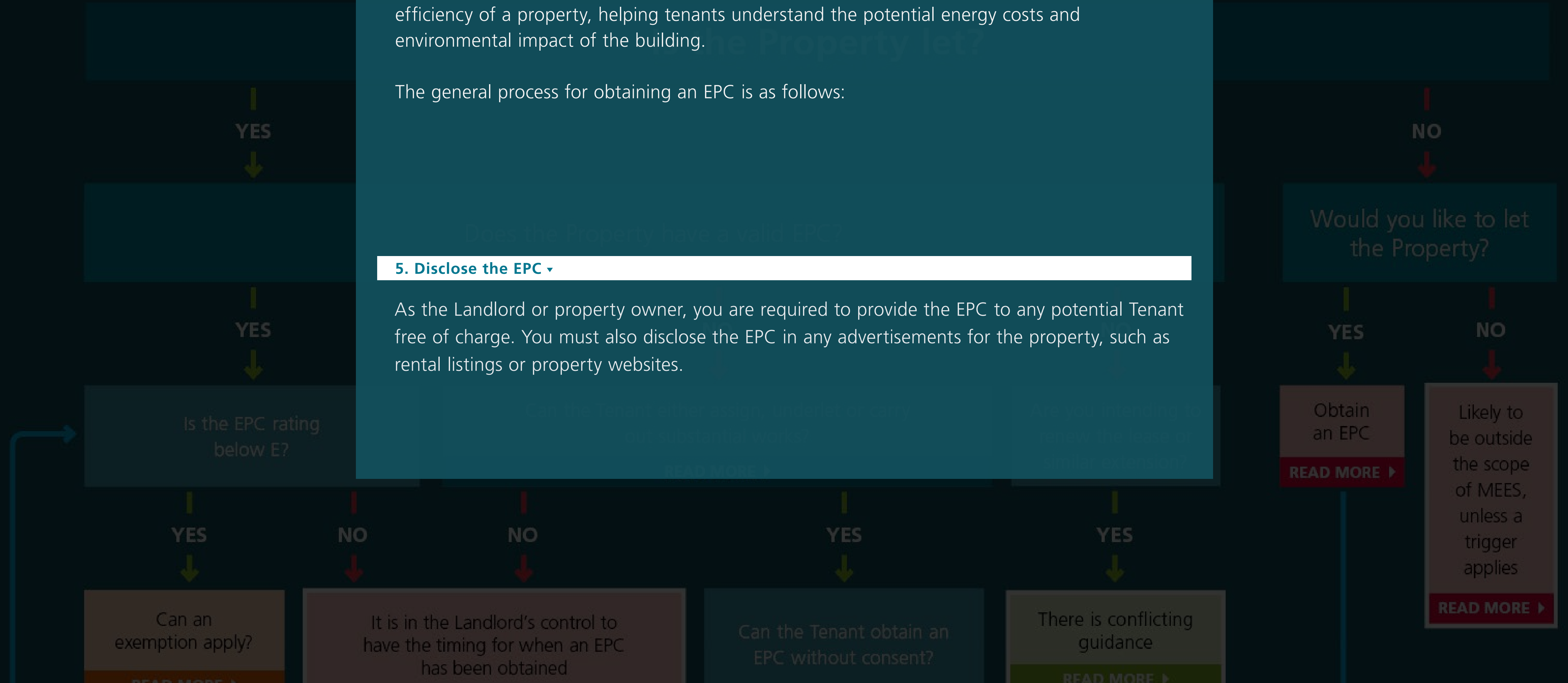
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The general process for obtaining an EPC is as follows:

### 5. Disclose the EPC ▾

As the Landlord or property owner, you are required to provide the EPC to any potential Tenant free of charge. You must also disclose the EPC in any advertisements for the property, such as rental listings or property websites.



# The impact of MEES

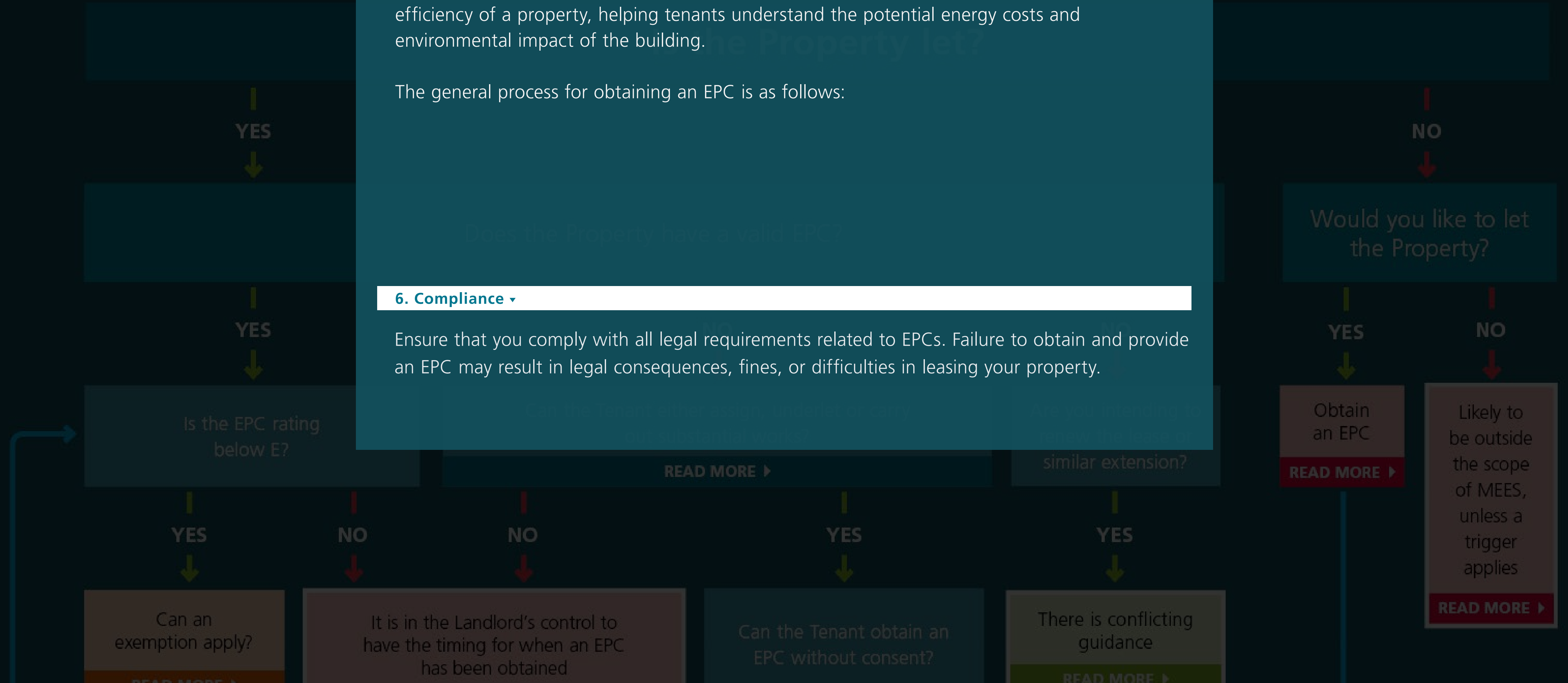
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Obtaining an Energy Performance Certificate (EPC) is an important step in the process of granting a lease to a new Tenant. An EPC provides information about the energy efficiency of a property, helping tenants understand the potential energy costs and environmental impact of the building.

The general process for obtaining an EPC is as follows:

### 6. Compliance ▾

Ensure that you comply with all legal requirements related to EPCs. Failure to obtain and provide an EPC may result in legal consequences, fines, or difficulties in leasing your property.



# The impact of MEES

## Obtain an EPC

Obtaining an Energy Performance Certificate (EPC) is an important step in the process of granting a lease to a new Tenant. An EPC provides information about the energy efficiency of a property, helping tenants understand the potential energy costs and environmental impact of the building.

The general process for obtaining an EPC is as follows:

### 7. Entering into an Agreement for Lease ▾

If you are entering into an Agreement for Lease (“**AfL**”) which allows for works to be carried out, consider whether the works may affect the rating of the EPC or may require a new EPC to be obtained (see [Can the Tenant either assign, underlet or carry out substantial works?](#) [↗](#) for further information regarding when this applies).

Terms in the AfL may be required to deal with the obtaining of the new EPC and, if the new EPC is below an E, or such other standard agreed between the parties, terms relating to any energy efficiency improvements which may need to be carried out.

