

MEES and EPC Regulations



EPC Regulations – What do I need to know?

The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment No.2) Regulations 2008 (the '**EPC Regulations**') impose 3 obligations upon landlords of commercial property:

01

To commission an Energy Performance Certificate ('**EPC**') before marketing the property if there is no valid EPC;

02

To put the EPC rating in any advertisements of the property for sale or letting; and

03

To make a valid EPC available to prospective buyers or tenants of the property.

An EPC will not be required for specified types of property, which include places of worship, listed buildings or residential buildings intended to be let for less than 4 months per year.

Further, an EPC will not be required where there is a renewal of a lease to the same tenant, a lease extension or a not-for-value transaction, amongst others.

Once obtained, an EPC will be valid for 10 years and there is no requirement for a landlord to renew an EPC where the certificate provided has ceased to be valid, unless any one of the obligations above are triggered.

MEES Regulations – What do I need to know?

From 1 April 2023, The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (the '**MEES Regulations**') require all landlords of commercial properties with an EPC rating of F or G that are 'continuing to let' to improve their EPC rating to at least an E or register an exemption on the PRS Exemptions Register.

There are a number of exceptions to this requirement. Notably, (a) where a tenancy is granted for a certain term of more than 99 years, (b) where the expected value of the savings arising as a result of the energy performance improvements do not (over a period of 7 years) equal or exceed the cost of implementation or (c) where a specified event has occurred in the previous 5 years, such as a tenant refusing the landlord entry to the property to conduct remedial works. A number of the exemptions are only valid for a maximum of 5 years and do not run with the land when the property is sold.

How could this change in the future?

It has been suggested that the MEES Regulations will go further to require commercial properties to have an EPC rating of C or higher by 1 April 2027, and B or higher by 1 April 2030.

Under current government proposals, it is also proposed that from 2025 the required EPC rating for residential properties will rise to a rating of C or higher for any new lettings, and in 2028 any continuing tenancies will also be required to have an EPC rating of C or higher.

Why is this important to me?

If you are a landlord of a property with an EPC rating of an F or G, you will need to take action. You can either conduct remedial works at your property and obtain an EPC with a rating of at least an E, or register an exemption on the PRS Exemptions Register.

If you fail to take action, the local authority can enforce the MEES Regulations with the penalty depending on the length of the breach:

1. For a breach lasting less than 3 months, a landlord may receive a fine. This may be the higher of (a) £5,000 or (b) 10% of the property's rateable value up to a maximum of £50,000.
2. For a breach exceeding 3 months, a landlord may still receive a fine. This may be the higher of (a) £10,000 or (b) 20% of the rateable value of the property up to a maximum of £150,000.

In addition, the local authority can publish the details of the breach on the publicly accessible section of the PRS Exemptions Register.

If applicable, landlords should engage contractors as soon as possible to conduct remedial works to their properties, or register a relevant exemption. In light of the regulatory horizon, it may be beneficial to conduct remedial works that enable the property to obtain an EPC with a higher rating as this may be required in the future.

If you are uncertain about the application of the regulations to your commercial or residential property portfolio, please get in touch with the PwC Legal Real Estate team.

Examples of how the EPC and MEES Regulations impact various properties:

CP Collection Limited is the landlord to a portfolio of commercial properties. Each of these properties has a tenant in situ. Amongst CP Collection Limited's portfolio are the following properties:



Property 1 – Floor Five of a central London office building

Floor Five of a central London office building is let to Tenant Investments Limited on a 5 year lease from October 2022. The EPC was obtained when the property was let to Tenant Investments Limited. The EPC rating at that time was an F. Assume no relevant exemptions apply on the facts.

CP Collection Limited will be 'continuing to let' the property on 1 April 2023. As a result, they will be required to comply with the MEES Regulations as the EPC rating falls below an E. As the 1 April 2023 deadline has now passed, they must now conduct remedial works at the property, obtaining an EPC rating of an E or higher.

This is regardless of the fact that the existing EPC was only obtained in October 2022 and is valid under the EPC Regulations.

Property 2 – Detached, four-storey retail building

A detached, four-storey retail building is let to Fashion Limited on a 10 year lease from January 2015. A new EPC was obtained in November 2020. The EPC rating at that time was a G. CP Collection Limited requested access to the property in January 2023 to conduct remedial works to increase its EPC rating but this access was refused by Fashion Limited.

While CP Collection Limited will be 'continuing to let' the property on 1 April 2023 and the EPC rating falls below an E, as Fashion Limited has refused to allow CP Collection Limited to enter the property to complete remediation works, CP Collection Limited should be able to make use of an exemption.

This exemption must be registered with the PRS Exemptions Register and will only be valid until the property is either disposed of by the owner, the lease is determined, the completion of works to improve the EPC rating or the expiry of 5 years. Evidence of Fashion Limited's refusal to permit access will need to be provided in order to successfully register the exemption.

Property 3 – Hotel building

A hotel building based in Cornwall is let to Accommodation Limited on a 999 year lease from January 1950. An EPC was obtained in March 2009. The EPC rating at that time was an E.

This building will not fall under the MEES Regulations as the property is both let on a term exceeding 99 years and the EPC rating is an E. Despite the fact that CP Collection Limited will 'continue to let' beyond 1 April 2023, they will not be required to obtain a new EPC unless any of the triggers under the EPC Regulations applies. Even then the resulting EPC need not be of a rating of E or above.

Property 4 – Church

A church based in central London is let to Faith Limited on a 50 year lease from 1 January 2003. An EPC was obtained on the letting of the property. The EPC rating at that time was an F.

Under the EPC Regulations, an EPC is not required for a place of worship. As a result, there is no requirement for CP Collection Limited to have an EPC. As a place of worship is not required to have an EPC, it will not be caught by the MEES Regulations (even if the EPC rating would be below an E).

How might the EPC and MEES Regulations impact the lenders willingness to lend?

A lender is unlikely to be able to lend to facilitate the acquisition of a sub-standard EPC rated property. It is also likely that the lender will be required to update their conditions precedent to ensure that the EPC Regulations and the MEES Regulations are appropriately captured.

How we can help you?

As you can see, ascertaining whether a property falls under either/both the EPC Regulations and/or the MEES Regulations is a complicated matter. If you are uncertain about the application of the regulations to your commercial or residential property portfolio, please get in touch with the PwC Legal Real Estate team.



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