



## New EPC Regulations: What You Need to Know



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Nearly 40% of global carbon dioxide **emissions** come from the real estate sector. With the rising focus on carbon emissions reduction and improving energy efficiency, it was inevitable that the UK government would turn to Energy Performance Certificate (“EPC”) improvements as a vital element in achieving the goal of “net zero” by 2050.

In pursuit of this, new regulations regarding EPC requirements for existing commercial tenancies have now come into effect in the UK under the new Minimum Energy Efficiency Standard (“MEES”) Regulations. This article explores what you need to know about the changes introduced by MEES.

### The Current EPC Position

The current EPC rating system ranges from A to G, with “A” indicating high energy efficiency and “G” being the lowest rating. When MEES first came into effect in October 2016, it made it illegal for landlords to grant new leases on commercial properties with an EPC rating below “E.”

### What’s Changing

As of 1 April 2023, the minimum “E” requirement applies to all “non-domestic private rented property.” This means that it will be applicable to existing leases, not just newly granted ones.

In respect of all existing commercial tenancies, landlords will be prohibited from continuing to lease properties with a valid EPC rating of “F” or “G.” That said, if the EPC rating of a leased commercial property was “F” or “G” but the term of that lease is continuing, even if the 10-year EPC certificate has expired the liability to carry out upgrade works up to a minimum “E” standard may not kick in until a new EPC is triggered. A new EPC is typically required where there is a new lease or renewal of an existing lease, when there is significant alterations or modifications made to a property, or during the sale of a property.

### Exemptions to These Changes

There are **exemptions** to these new rules, and whether these apply will depend on the circumstances. If an exemption applies, the landlord (or an agent for the landlord) must register the exemption on the PRS Exemptions Register before it can be relied upon.

The exemptions include:

(a) 7-year payback exemption: If the cost of necessary works to bring the property up to the minimum EPC standard would exceed the expected energy bill savings over a period of seven years.

(b) Consent exemption: Certain energy efficiency improvements, such as solar panels or external wall insulation, may legally require consent from local authorities or other third parties. Consent from superior landlord may be

required where the landlord is themselves a tenant. If the landlord has made reasonable efforts to obtain consent but it has been refused or granted with conditions that cannot be complied with, this exemption may apply.

(c) Devaluation exemption: If a report from an independent RICS registered surveyor advises that implementing the relevant energy-efficiency measures would reduce the market value of the property (or the building it is a part of) by more than 5%, this exemption may be applicable.

(d) New landlord exemption: The regulation acknowledges that in certain circumstances a person may become a landlord suddenly. Examples of these include circumstances where the tenant becomes insolvent and the landlord has been the tenant's guarantor, a new lease has been deemed created by operation of law, or a lease has been granted due to a contractual obligation on a contingent basis. It therefore recognises that it would be inappropriate or unreasonable for them to be required to comply with the regulations immediately. Such exemption will last for six months, allowing landlords to bring their properties up to the required standard within the period.

Other than (d) above, these exemptions typically last for five years. It's crucial to note the expiry date and review the situation in time to avoid future penalties. Once the exemption expires, landlords must make efforts to improve the EPC rating to "E." If achieving an "E" rating is still not possible, landlords must register another exemption and provide reasons why it was not feasible to attain the "E" rating.

### **Where Properties Are Exempt from an EPC Altogether**

There are also certain circumstances where an EPC certificate is not needed at all. This applies if the landlord can demonstrate that the building is:

- (a) Listed or officially protected, and to conform to the MEES requirements would "unacceptably alter it."
- (b) A temporary building used for 2 years or less.
- (c) A detached building where the total floor space is under 50 sq m.
- (d) Due to be demolished by the Seller/Landlord who holds all the relevant planning and building consents.
- (e) Vacant and is:
  - (i) due to be sold or rented out;
  - (ii) suitable for demolition and the site can be redeveloped; or
  - (iii) if your buyer or tenant has applied for planning permission to demolish it.

### **Closing Thoughts**

With the new MEES regulations in force, it is evident that the UK government is committed to driving energy efficiency and reducing carbon emissions in the commercial property sector. These regulations signal a significant shift towards achieving the "net zero" goal by 2050.

Landlords now face stricter requirements, with the minimum "E" rating applying to all non-domestic private rented properties. By prioritizing energy-efficient improvements, landlords can not only avoid penalties and adverse publicity but also contribute to a greener future.

As we move forward, it is essential for landlords to stay informed and adapt to future changes, as the government aims to further raise the EPC standards to "C" by 2027 and "B" by 2030.