

ENGLAND AND WALES

Guidance Note: MEES and EPCs for Commercial Property

GLOSSARY

EPC: Energy Performance Certificate – A certificate issued by an accredited assessor rating the energy efficiency of a property from A (highest) to G (lowest). Certificate is typically valid for ten years.

MEES: Minimum Energy Efficiency Standards Regulations – These Regulations prohibit landlords from lawfully letting properties with a substandard EPC rating (currently a substandard rating is that of F or G).

For further details on these definitions please refer to the ESG Glossary Briefing Note.

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ENERGY PERFORMANCE CERTIFICATES

What is an EPC?

An EPC is a certificate issued by an assessor which provides information about the energy efficiency of the building in question. An EPC is required for both residential and commercial property. The EPC must rate the asset from A (most energy efficient) to G, and will also include details of the property, the date on which the EPC was issued, and a recommendation report suggesting ways of improving the energy efficiency of the property.

Details of every EPC is held on the EPC register, which is maintained by the UK Government. Each EPC will have a reference number

enabling it to be searched on the EPC register. Alternatively the register can be searched using the address of the property in question. The EPC register is open to the public and the EPCs are available for free, but this will not include the underlying data upon which the EPC is based.

The general rule is that an EPC is valid for ten years from the date on which it has commissioned, unless a new EPC for the same property has since been registered in which case that will become the valid EPC.

It is obligatory for public buildings to display their EPC in a place visible to the public. For private buildings, the EPC must be maintained but there is no requirement for it to be displayed.

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When do I need to obtain an EPC?

An EPC is required before a property is marketed to be let or sold. If there isn't already a valid EPC in place then a new one must be commissioned.

Some properties are exempt from requiring an EPC. These include certain listed buildings, properties with no roof or walls, religious properties and residential properties that are used for less than four months of the year.

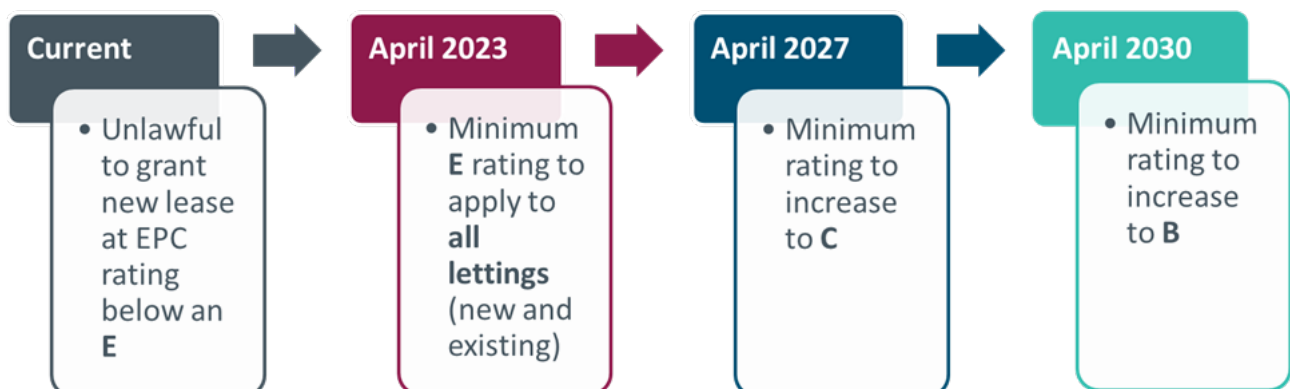
For leases, an EPC is not required if the term is less than six months or more than 99 years.

MINIMUM ENERGY EFFICIENCY STANDARDS REGULATIONS 2015 (MEES REGULATIONS)

The MEES Regulations were introduced in 2015, and are designed to incentivise landlords to make energy efficiency improvements to properties that have a substandard EPC rating. This is part of the UK Government's drive towards net zero carbon and a more sustainable property industry. A substandard EPC rating is that of an F or G, although the Government has consulted on increasing the

threshold to an EPC rating of C by 2027 and B by 2030, plus making it a requirement for all properties to have an EPC by 2025. This is not yet law, but is certainly the direction of travel that the Government is aiming for.

Pursuant to Part 3 of the MEES Regulations a landlord of substandard commercial property must not grant a new lease nor, since 1 April 2023, continue to let the property unless the landlord can demonstrate a valid temporary exemption.



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Exemptions

There are various exemptions available. These last for five years, save for an exemption granted to new landlords when the property is first acquired which only lasts for six months. The primary exemptions are:

- Where the landlords needs consent from a third party (e.g. a tenant or superior landlord) to carry out works to improve the EPC rating and the landlord hasn't been able to obtain this. This arises most often where the tenant is in occupation and is refusing to grant access to the landlord for the works to be carried out.
- Where the relevant energy efficiency improvement would result in a reduction of more than 5% in the market value of the property (as assessed by an independent surveyor).
- Where the landlord has made all the relevant energy efficiency improvements to the property that can be made but the property still remains substandard.

Exemptions are personal to the original landlord, and so any incoming purchaser will need to apply for a new exemption or carry out improvement works to bring the property up to an EPC rating of E or above.

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Chambers UK Guide

**Penalty for failing to comply**

The statutory responsibility for compliance rests with the landlord. It is important to note that having a substandard EPC rating will not invalidate the lease itself (this will remain in place) but the landlord could be subject to civil sanctions.

There is a maximum fine of £5,000 for failing to comply with a compliance notice or for registering false or misleading information on the EPC register. However, under the MEES Regulations the penalties for non-compliance are more onerous. The enforcement agency has discretion as to the financial penalty, but these could be up to a maximum fine of £150,000.

There will also be a reputational risk to landlords given that the EPC register is public. Now that the requirement to have an EPC of E or above applies to existing lettings it is also easier to check to see which properties are failing to comply, as there is no longer any need to check the date on which the lease was granted to see if the MEES Regulations were in force at the date of grant.

Sellers of property should also note that the enforcement agency can pursue predecessor landlords for past breaches looking back 18 months from the last point of breach. It is important that sellers keep a full paper trail to evidence compliance, attempts to obtain consent, any exemptions and any other information that provides a full bank of evidence should any questions be asked.

Existing Leases

Since 1 April 2023 it has been unlawful to continue to let commercial premises with an EPC rating of below an E, unless a valid exemption has been applied for and registered.

New Leases

As mentioned above, a landlord looking to grant a new commercial lease will need to ensure that the property has an EPC rating of E or above, or must have registered for an exemption. Otherwise, they will be in breach of the MEES Regulations.

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Lease Renewals

The EPC Regulations and MEES Regulations are currently inconsistent in their guidance on lease renewals. The EPC Regulations are silent as to renewal leases, but the guidance states that an EPC must be provided where a building is rented to a new tenant, which would seem to exclude existing tenants taking a renewal lease of the same premises, and goes on to say that lease renewals or extensions are excluded.

However, the MEES guidance suggests that an EPC would be needed on the reletting of the property to the current tenant or to a new tenant, which indicates that renewal leases are brought within the scope of MEES and require an EPC. If you need guidance in relation to this please speak to a member of the Forsters CRE team who will be happy to assist.

Looking to the future

As we mentioned earlier in this note, the Government has consulted on its intention to increase the EPC rating to C in 2027 and B by 2030, which means that a large number of commercial properties will need to carry out energy improvement works to increase their EPC rating and ensure that their leases remain valid.

EPCs also only provide a snapshot in time of the energy efficiency of the property, rather than assessing the actual energy usage of the building going forward. This is where data sharing between landlords and tenants, and constant assessing of ongoing energy and utilities usage is critical. We have seen the introduction of NABERS, an Australian rating system which requires an annual submission of energy use data,

which many property owners are already adopting in the UK. We are also increasingly seeing lease drafting to allow for data sharing and energy efficiency assessments, and for landlords and tenants to work collaboratively towards net zero targets.

If you would like advice on anything covered in this note, or on sustainable lease drafting in general, please speak to a member of the Forsters CRE Sustainability team.

The law is accurate as at July 2023.



VICTORIA TOWERS

Partner
Commercial Real Estate

T: +44 (0)20 7863 8462

E: victoria.towers@forsters.co.uk



LOUISE IRVINE

Senior Knowledge Development
Lawyer, Commercial Real Estate

T: +44 (0)20 7399 4778

E: louise.irvine@forsters.co.uk



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