When Do You Require an EPC for a Commercial Letting?

Part 3 of The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 outlines the minimum energy efficiency standard (MEES) which an EPC must have for a commercial property to be lawfully let. There are exceptions and exemptions to the EPC regime, which are summarised in the article below.

Is my building exempt from needing an EPC?

There are six types of commercial property excluded from the provisions of the Energy Performance of Buildings (England and Wales) Regulations 2012, which are:

- Religious buildings used as both a place of worship and for religious activities.
- Temporary buildings with a time of use of two years or less.
- Small buildings with a total useful floor area of less than 50m2 and not joined to other parts of a building.
- Non-residential agricultural buildings which are in use by a sector covered by a national sectoral agreement on energy performance.
- Industrial sites or workshops with low energy demand.
- Commercial buildings officially protected as part of a designated environment or because of their special architecture or historical merit, insofar as compliance with certain MEES requirements would unacceptably alter their character or appearance.

MEES Regulations and commercial lettings

Under the MEES Regulations, from 1st April 2023, any commercial property which requires an EPC cannot continue to be let without a minimum E rating, although there is currently no obligation to obtain a new EPC if an

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old one expires during the term of a tenancy. The regulations do not apply if the property is let:

- For a term not exceeding 6 months with no provision to extend or renew the tenancy; or
- For a term of 99 years or more

For all other commercial lettings, it is unlawful for a landlord to continue to let their property where the EPC rating given is an F or G.

Should a landlord be found in breach of the MEES Regulations, they could be subject to the following penalties:

- A breach of less than 3 months will be up to £5,000 or 10% of the rateable value of the property, capped at £50,000, whichever is greater, and/or a publication of non-compliance on the PRS exemptions register
- A breach of more than 3 months will be up to £10,000 or 20% of the rateable value of the property up to £150,000, whichever is greater, and/or a publication of non-compliance on the PRS exemptions register
- Providing false or misleading information, or failing to comply with a compliance notice, can result in a penalty of up to £5,000 and/or a publication of non-compliance on the PRS exemptions register

What if I am unable to obtain an EPC of an E?

The regulations acknowledge that it may not be possible, or cost-effective, to have a property meet the MEES, so there are exemptions that can be applied for:

7-Year Payback: If the cost of purchasing and installing the recommended improvements does not satisfy the test in Regulation 28(3) (i.e. would be greater than the expected value of the savings on energy bills over 7 years).

All improvements made: Where all relevant energy efficiency improvements have been made for the property, but the rating remains below an E.

Wall Insulation: If the only relevant improvements relate to wall insulation.

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Third Party Consent: Where improvements to the property require consent from a third party and, despite all best efforts, consent cannot be obtained.

Property Devaluation: Where the improvements would devalue the property by more than 5%.

New Landlord: A temporary 6-month exemption will be given to those who become a landlord suddenly in accordance with the circumstances listed in Regulations 33 and 36(2).

The above exemptions are 'self-certified' but must be noted on the Private Rented Sector Register. Exemptions must generally be valid for 5 years from the point at which they are registered. Unlike an EPC, any valid exemption will not pass over upon transfer of the property.

What requirements might my lender have?

Lenders may have concerns over the potential cost of improvement work required to increase the rating of their security property; they also will not want to take on the risk of inheriting fines for any non-compliance of their borrower.

Always check the lender's terms and conditions – some have begun to include MEES compliance conditions which must be adhered to during the term of the loan.

If you're unsure how MEES regulations might affect your property or financing arrangements, our Real Estate Finance team is here to help. We offer expert guidance on compliance, exemptions, and lender requirements. Get in touch today to discuss your options.

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