

Insights

MEES, THE NEXT CHAPTER: PLOTTING RESIDENTIAL REAL ESTATE'S ROUTE TO NET ZERO

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SUMMARY

MEES Regulations have meant that since 1 April 2020 landlords of residential property have been prohibited from letting out properties below a minimum EPC rating of E unless they have registered an exemption. With the last step of the initial phase of the MEES journey coming to fruition last month in respect of a similar prohibition on lettings of commercial property, the anticipated trajectory of the Government's green policy means that all lettings of residential property would need to achieve a minimum threshold of EPC C by 2028. In this article, we look in detail at the current legislation affecting residential property, what we can expect for the next phase of the MEES journey and the wider implications this may have on the residential housing market.

WHAT ARE MEES?

Minimum Energy Efficiency Standards (**MEES**) were brought into force (pursuant to the Energy Efficiency (Private Rented Property) (England & Wales) Regulations 2015 (the "**Regulations**")) in stages from 2016, with the intention of improving the energy efficiency of privately rented buildings in England & Wales. The standards are measured by reference to the energy performance certificate (**EPC**) rating (A-G) of a property and affect private rented properties in both the residential and commercial sectors. This article deals with MEES in relation to **residential properties** (referred to in the Regulations as "domestic PR property") only.

THE RULES

The Regulations apply to properties that are legally required to have an EPC which are let under a **qualifying tenancy agreement**. Since 1 April 2020 those Regulations have broadly provided that all such properties must have an EPC rating of E or higher. Where a property's EPC rating is lower than an E it is termed "sub-standard" and the Regulations require landlords to make energy efficiency improvements to rectify that, or to register a relevant exemption on the PRS Exemptions Register.

WHICH PROPERTIES ARE EXCLUDED?

The following types of properties are excluded from the definition of domestic PR property (under s42(2) Energy Act 2011):

- Low cost rental accommodation - defined in s69 of the Housing and Regeneration Act 2008. It must be provided by a private registered provider of social housing, below market rent, and can be let only to “people whose needs are not adequately served by the commercial housing market.”
- Low cost home ownership accommodation - defined in s70 of the Housing and Regeneration Act 2008. This covers shared ownership arrangements, equity percentage arrangements, and shared ownership trusts which are offered (by housing associations) to “people whose needs are not adequately served by the commercial housing market”.
- Where the landlord is registered as a social landlord under Chapter 1 of Part I of the Housing Act 1996.

In addition, the MEES regime will not apply where a property does not have a valid EPC at the point of assessment.

WHAT IS A QUALIFYING TENANCY AGREEMENT?

The definition includes:

- assured tenancies for the purposes of s1 of the Housing Act 1988;
- regulated tenancies for the purposes of s1 of the Rent Act 1977; and
- any other type of tenancy specified by a statutory instrument. At present, the Regulations only specify three types of agricultural tenancy.

EXEMPTIONS

Where the Regulations do apply, landlords will also be permitted to continue to let “sub-standard” properties if one of the following exemptions applies and is formally claimed:

Exemption (and relevant Regulation)	Details	How to claim an exemption
Consent 31(1A)	The landlord needs to obtain third party consent in order to carry out improvement works but, despite the landlord's	Landlords must make an application on the “ PRS Exemptions Register ” on the Gov.uk website in order to avoid enforcement action.

	reasonable efforts, the relevant third party has refused.	Exemptions (excluding the New Landlord Exemption) are valid for a maximum of five years and cannot be transferred.
New Landlord (33)(1)) and 36(2))	A person has recently become the landlord of a sub-standard property and it is unreasonable to comply with the Regulations immediately. Note - this exemption is valid for 6 months only.	
Improvements already made (25(1)(a))	All the relevant energy efficiency improvements for the property have been made and the property remains sub-standard.	
No improvements can be made (25(1)(b))	The landlord has obtained a report and/or the EPC shows that there are no improvements that can be made.	
Wall insulation (24(2))	The landlord has obtained a report from an expert stating that a recommended wall insulation measure would have a negative impact on the fabric or structure of the property.	
Devaluation (32(1))	The landlord has obtained a report from an independent surveyor which states that making the relevant improvement needed to lift the property from the "substandard" category would result in a reduction of more than 5% in the market value of the property.	
High cost	The landlord has received three quotes from qualified installers stating that the cost of installing even the cheapest	

	recommended measure would exceed £3,500 (including VAT).	
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CONSEQUENCES OF BREACH

If a local authority believes a landlord is in breach of the Regulations, a compliance notice may be served. This notice will request relevant information in order to determine whether a breach has occurred. Where an authority is satisfied that the landlord is in breach, a financial penalty may be imposed (for up to 18 months after the breach) and details of the breach published on the PRS Exemptions Register. Where an enforcement authority proposes more than one financial penalty under (a) or (b), and (c) or (d) below, the total amount must not exceed £5,000. The £5,000 cap applies per property, per breach. This means a local authority can levy future fines if the landlord, after being fined, proceeds to let out a sub-standard property on a new tenancy.

A publication penalty involves the name of the landlord (if the landlord is an organisation), the property address, amount, and details of the breach being published. The information must be published for a minimum of 12 months.

(a) For breaches lasting less than 3 months:	Up to £2,000 and a publication penalty for renting out a non-compliant property.
(b) For breaches lasting more than 3 months:	Up to £4,000 and/or publication penalty for renting out a non-compliant property.
(c) For providing false or misleading information on the PRS Exemptions Register:	Up to £1,000 and/or publication penalty for providing false and misleading information.
(d) Failure to comply with a compliance notice:	Up to £2,000 and/or publication for failure to comply with a compliance notice.

It is for local authorities to pursue breaches but to date they have struggled with the resource (and arguably the incentive) to do so – at the date of writing there is still no evidence on the register of any breaches being recorded or fines being levied. Recognising this challenge, BEIS ran an enforcement pilot in 2019, followed by an enforcement competition in 2021 with extra funding for the 59 winning authorities. Best practice guidance has been promised – there have long been rumours a future fix will include a direct cut of the penalty pot for local government. Perhaps the real policing will come from a different direction – with lenders setting their own ESG targets, they will also form expectations as to the eco-credentials of the assets against which they lend (whether that be EPC ratings or more specific requirements around renewable energy), as green financing moves into the mainstream.

WHAT NEXT?

In the government's 2020 consultation on "Improving the energy performance of privately rented homes," a preferred policy scenario was set out which envisaged a single target of EPC C using a

phased trajectory. Under this policy, “new tenancies” would be expected to achieve C by 2025, whilst a deadline of 2028 would apply to all other ongoing tenancies. New tenancies are defined as a tenancy where a domestic tenancy is let to a new tenant, or a contract with the existing tenant is renewed or extended. However, no legislation was issued on this basis and it is now expected that the 2028 deadline will apply to **all** domestic properties that fall within the scope of the Regulations.

However, ensuring every property in the market reaches a C rating within the next five years could be an unrealistic target and has been met with concern from industry experts for a number of reasons:

- Old Housing Stock

Whilst the Build to Rent market remains popular with investors who are building high quality, energy efficient homes, the majority of housing in England & Wales is old – in fact some of the oldest housing stock in Europe - the Office of National Statistics projected in 2020 that of the UK’s 28 million households (rented and owned) there were approximately 17 million properties below an EPC C. Crucially, this means more costly, extensive, and challenging retrofits. Whilst a single date of compliance for all tenancies would allow landlords more time to deliver, it could also lead to a risk of supply-chain bottlenecks, and a sudden increase in pricing for works and materials.

- Who should bear the ultimate cost?

Although currently the law makes it clear that the obligation to comply lies with the landlord not the tenant, private tenants may indirectly end up bearing the burden of the cost as landlords seek to recover the capital expenditure of works by increasing the level of the rent, albeit this may be offset by lower utility costs for the tenant going forward. However, the initial capital expenditure itself may prove too difficult to swallow for landlords given the backdrop of rising interest rates, the looming Renters Reform Bill, a possible rent cap and the potential abolition of s21 notices (making it a lot more difficult for landlords to end tenancies). The political mood music has for some time been pro-tenant – but there will be a limit to how far landlords can be pushed without impacting investment in the market and further perpetuating housing issues. Market thermometers such as the [NRLA's Landlord Confidence Index](#) indicate that the climate is already proving challenging.

- Increasing the cost cap to £10,000

Under the Regulations, there is a “high cost” exemption which is designed to ensure that the cost of improvement is reasonable and proportionate for landlords. However, realistically, improving the energy performance to a C will often require further improvements and investment. The government is therefore consulting on increasing the cost cap to £10,000 (potentially adjusted to allow for inflation).

When deciding on any next steps, it is clear that policymakers must carefully balance their commitment to a carbon free environment against the cost of living crisis to mitigate against the risk of landlords, particularly buy-to-let investors, selling up. Key policy recommendations set out in the BPF's February 2023 "Towards Net Zero" report include zero VAT on residential repairs and maintenance, targeted tax incentives, setting up a national retrofit programme, and mandating onsite renewables for larger schemes. This is against a backdrop of previous government backed schemes such as the Green Homes Grant (whereby landlords could apply for vouchers to fund two thirds of the cost of hiring tradespeople), have not proven as successful in practice as hoped.

In 2021's Heat and Buildings Strategy, the government pointed to the [Simple Energy Advice](#) online platform as a tool for both owners and occupiers and suggested that a new policy mandating a minimum EPC B by 2030 (where cost effective) would come out in the coming months – we're still waiting for that to land. In that same year the government's Net Zero Strategy announced £3.9 billion of new funding to go towards decarbonisation of heat and buildings. Looking to the future, it will be interesting to see how the government proceeds to allocate those funds, how it sets a stretched but realistic EPC target for the domestic market and whether it is enough to meet its ambition of warmer homes, increased efficiency, and reduced bills.

This article was co-authored by Alisha Mae-Aplin, Knowledge Management - Paralegal

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MEET THE TEAM



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