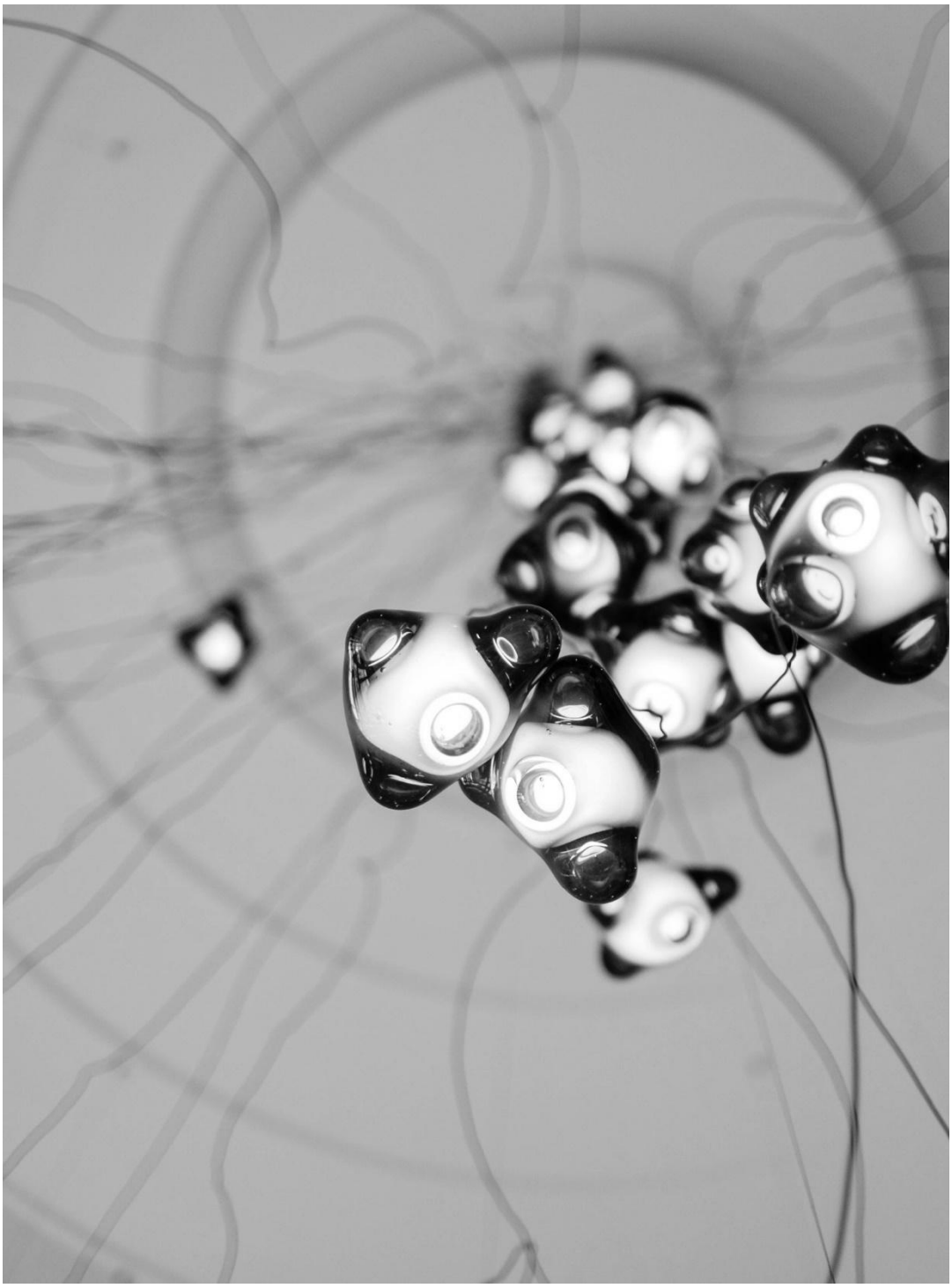
A Guide to MEES: The Minimum Energy Efficiency Standards



Mishcon de Reya

It's business. But it's personal.



This note gives an overview of how the Minimum Energy Efficiency Standards (or “MEES”) affect commercial properties. Different rules apply to residential properties.

In a nutshell, the rules require landlords to upgrade energy inefficient properties before renting them out. Since 1st April 2018, it has been against the law to rent out premises with a low energy rating. From 1st April 2023, existing leases became unlawful if the premises have a low rating.

A property is caught by these rules if its EPC (energy performance certificate) has a rating of “**F**” or “**G**”. The Government launched a consultation in spring 2021 which outlined significant reforms to MEES. A phased approach was proposed to raise the minimum grade from "E", with an interim milestone of grade "C" by 2027 and grade "B" by 2030. In November 2023, the Government announced that these timelines would slip to allow landlords time to prepare.

The Government finally confirmed its plans for commercial properties in June 2026. The phased approach has been shelved. It is now proposed that from 2031, all commercial properties over 1,000 square metres will need to reach a minimum EPC rating of "**B**". Properties below 1,000 square metres will continue to be subject to the minimum rating of "**E**", with no new deadline being introduced.

What are the rules?

The rules were implemented in two phases:

1. Since 1st April 2018, it has been against the law for a landlord to grant a new lease of commercial property with an EPC rating of F or G. This also prevents subleases and lease renewals.

2. Since 1st April 2023, it has been against the law for a landlord to **continue** to let a commercial property with an F or G rating. This means that a lease that was legal when granted became unlawful in April 2023.

Unless, in either case, an exemption applies – see below.

Will MEES apply to all commercial properties?

Not quite – the following properties are excluded from MEES entirely:

1. A property which does not require an EPC (e.g. certain listed buildings; temporary buildings; and, in limited circumstances, buildings which are due to be demolished).

2. A property which does not in fact have a valid EPC. To be valid, an EPC must be no more than 10 years old and be the most recent EPC for the property.

3. A property let for a term of six months or less (unless there is a right of renewal beyond six months, or at the time of the grant of the lease, the tenant has already been in occupation for more than 12 months).

4. A property let for a term of 99 years or more.

5. A property occupied under a licence to occupy, assuming it is genuinely a licence and not a lease. The regulations only catch leases or tenancies.

For as long as a property falls into any of the above categories, no further consideration needs to be given to MEES as the rules currently stand.

Full exemptions (valid for five years)

If a property is caught by MEES, then the landlord may still let it (even with a grade F or G rating) if one of the following exemptions apply:

1. The landlord has carried out the recommended energy improvement works, but the property still has an F or G rating.

2. The recommended energy improvements do not pay for themselves in energy savings over a seven-year period. The regulations prescribe a detailed formula for this purpose.

3. The landlord has failed to obtain third party consent which is needed for the works, despite using reasonable efforts to do so, or consent has been given subject to a condition with which the landlord cannot reasonably comply. This would include the consent of a tenant, a superior landlord, a mortgagee, or the local planning authority.

4. The landlord has obtained a report by an independent surveyor, which says that:

   (a) making the energy improvements would reduce the property's value by more than 5%; or

   (b) where the relevant improvements relate to wall insulation, they could have a negative impact on the fabric or structure of the property.

The landlord must register its exemption on a central online register.

An exemption lasts for five years and is personal to the landlord. If the landlord sells the property, the new owner must apply for a fresh exemption.

The Government's MEES guidance states that the exemption for lack of tenant consent only remains valid so long as that tenant remains the tenant. So if the tenant assigns the lease, the landlord would have to seek fresh consent from the new tenant. However, this is not reflected in the MEES regulations and the guidance note is not legally binding.

Temporary exemptions (valid for six months)

There are also some temporary exemptions, designed to give landlords a six-month breathing space where they have recently taken on a lease. For example:

1. The landlord has bought a property which is subject to an existing lease.

2. The lease has been renewed pursuant to the Landlord and Tenant Act 1954.

3. The lease has been granted pursuant to a contractual obligation, e.g. an agreement for lease.

These temporary exemptions must also be registered on the central register. When the six months have expired, the landlord must either carry out the necessary energy improvements, or register a "full" exemption.

Penalties for breach

The landlord will be liable to pay a civil penalty of up to 20% of the rateable value of the property, capped at £150,000.

The landlord's details will also be put on a "name and shame" register.

No penalties will be payable by the tenant. The lease will remain valid and the tenant will still be liable to pay the rent and observe the lease covenants.

Enforcement of MEES falls to local authorities. To date, however, there seems to have been very little enforcement of the rules in practice, apart from a couple of reported cases relating to residential properties.

Practical questions: leases

It is important to remember that MEES imposes obligations on landlords, not tenants. So a landlord will not be able to pass these obligations onto a tenant under the typical tenant's covenant to comply with statute.

Will a landlord still be able to recover MEES-related costs from tenants?

For a full repairing and insuring lease of whole, no (unless the lease contains a specific clause to this effect, which many tenants may not accept).

For a lease of part, the landlord may be able to recover some MEES costs through the service charge, but this depends on the exact wording of the lease.

What should a lease say about MEES costs?

From a landlord's viewpoint, it may be best for the lease to stay silent on the costs of complying with MEES. If a landlord tries to add a clause saying MEES costs can be recovered through the service charge, this may simply prompt the tenant into amending this to say the exact opposite.

From a tenant's perspective, it is worth trying to get an express carve-out of all MEES costs.

Tenant alterations

It seems fair that a lease should contain an express covenant against the tenant carrying out alterations which adversely affect energy efficiency, whatever the current rating of the building. Otherwise, there is a risk that works carried out by a tenant could lower the EPC rating and prevent the landlord reletting after the tenant has left.

Tenant's ability to commission its own EPC

A landlord may want to restrict this in the lease, as a new EPC invalidates an old one. This could cause the landlord problems if the new certificate has a lower rating.

Landlord's right to carry out energy improvements

Often it may be preferable for landlords not to reserve an express right to do these, assuming they would rather have the option of postponing the works. This is because if the tenant refuses consent to the landlord doing the works, then the landlord would have an exemption to rely on.

Rent review

If a property is grade F or G, this could affect rent review. The tenant could argue that it is not lawful to grant the hypothetical lease, so the market rent should be zero.

In practice, the rent should already take into account the condition of the property, including the low energy rating. Landlords will therefore seek to include an assumption on review that the property may lawfully be let.

What about agreements for lease?

A landlord and tenant are allowed to enter into an agreement for lease of a grade F or G property. It is only granting the lease itself that is prohibited.

In many cases a new agreement for lease may be an opportunity to agree a landlord's retrofit or tenant's fitting-out works, leading to a new higher-grade EPC before the lease is granted.

Practical questions: buying an investment property

EPCs are key. The first thing for a buyer to do (even before making an offer) is to look at the EPC and recommendation report. If the seller does not produce an EPC at the marketing stage, then if an EPC exists, you can find it online by searching for "EPC register commercial".

The buyer should check how old the EPC is, and ask for more information about the basis on which it was produced. The more detail which was given to the EPC assessor about the building design and plant and machinery, the more accurate the EPC will be. Even if an EPC shows a D or E rating, if this was based on inaccurate assumptions then a revised EPC rating could be lower (or higher).

If the seller has relied on an exemption, the buyer will need to see full details. For example, a copy of the independent surveyor's report or, for the payback test exemption, copies of the quotes obtained for energy improvement works.

If the buyer cannot or does not want to do the improvement works, it will need to check the exemption still applies and then register its own exemption within six months of the purchase.

If no exemption is available, then the buyer must factor in the costs of carrying out energy improvement works and consider whether a price chip is appropriate.

A lender will also need to consider these points. If a property cannot be let without energy improvements being carried out, this will obviously affect the value of the security.

Plans for reform

The Government has always been clear that the minimum grade E threshold will be raised. Tough action is needed to meet the UK's carbon reduction targets.

A consultation launched by the Government in 2021 proposed the following reforms:

- From 2027, the minimum rating would be raised to "**C**" so properties with a rating of "**D**" or "**E**" would also be caught;
- From 2030, the minimum rating would be "**B**", so even properties with a "**C**" rating would be caught.

However, in November 2023 the Government rowed back from these proposals and announced an intention to 'update' timelines to allow landlords time to prepare.

The Government has not yet fully responded to its 2021 consultation but published an interim response in June 2026. The 2027 milestone has been scrapped. Landlords of buildings over 1,000 square metres will have until 2031 to achieve a minimum grade B. The existing exemptions will continue to apply.

Properties below 1,000 square metres will remain subject to the current minimum grade E requirement. Landlords of these properties will retain greater flexibility in when they carry out energy improvements, with no new deadline being introduced.

Secondary legislation will be needed to implement these planned reforms. We do not yet know if the other proposals set out in the 2021 consultation will be adopted, such as a more efficient payback test and a centralised database to help local authorities with enforcement.

The Government has consulted separately on changing the EPC rules, which will influence how MEES affects commercial properties. The Government has again only responded partially to this consultation, with the following proposals:

- The current metric used to prepare EPCs for commercial properties will remain the same, along with the 10-year validity period for an EPC.
- A new EPC may be required when an existing one expires for all privately rented buildings, although the Government is "working to refine the position" on this.
- An EPC will be required at the point of marketing a property, rather than at the point of sale or rent.
- An EPC will be required for all listed buildings. A new "negative impacts" exemption has been proposed for domestic properties, to ensure historic buildings remain protected. It seems likely the same approach will be taken for commercial properties.

Although much of the detail remains uncertain, it is clear that property owners need to be ready for the potential implications of the evolving EPC and MEES framework.

Contacts

Please get in touch with a member of the real estate team if you have queries about how MEES may affect your properties.



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