

# What UK Commercial Tenants Need to Know About Changes to Minimum Energy Efficiency Standards

## Do the latest changes to the MEES Regulations apply to me?

If you have a lease of a commercial premises that was granted before 1 April 2018 and the premises have an energy performance certificate (EPC) rating of F or G, the landlord could now be subject to legal action under the Minimum Energy Efficiency Standards Regulations (MEES Regulations).

From 1 April 2023, it is no longer lawful for landlords to continue to let commercial properties in England and Wales with an EPC rating below an E unless certain exemptions apply. This extends the obligations already imposed by the MEES Regulations on landlords, who have been prohibited from granting new leases of properties with an F or G rating since 1 April 2018.

## How do I know if the premises have an F or G rating?

Check the EPC provided by the landlord on grant of the lease to see whether the premises were rated F or G. Alternatively, find existing EPCs via the UK government [portal](#).

If the premises were rated F or G and no works have been carried out since the date of the EPC by either yourself or the landlord, the landlord will likely be in breach of the MEES Regulations.

If you believe the rating of the premises may have changed since the start of the lease, a new EPC can be commissioned. Check the terms of the lease for any specific clauses setting out whether you are entitled to commission an EPC or whether you must request that the landlord do so. The drafting of the lease also may cover who will be responsible for the cost of commissioning a new EPC.

## What are the cost implications of a lease being in breach of the MEES Regulations?

Quite simply, the less energy-efficient the premises are, the higher the bills will be. In the likely event that the lease requires you to pay for the energy used at the premises (whether directly to the supplier or through a service charge), it is in your interest for the premises to be as energy efficient as possible, especially taking into account energy prices in the current climate.

## Can I terminate my lease for breach of the MEES Regulations?

In short, no. Neither party can terminate a lease due to a breach of the MEES Regulations. Both parties must therefore continue to observe and perform the covenants in the lease. Most importantly, you must continue to pay all sums due under the lease to avoid being at risk of forfeiture.

## What are the landlord's obligations in the event of a breach?

Landlords are expected to fund and carry out works to increase the energy efficiency of the premises, resulting in an improved EPC rating of E or above. Failure to do so (without a valid exemption) could result in financial penalty and/or a publication penalty. However, historically, enforcement action has been limited (most likely due to limited resources of enforcement authorities). It therefore may fall to you to nudge the landlord into action, if you decide it is in your best interests to do so.



## Can the cost of improvement works be recharged to me?

This will depend on the terms of the lease. It may be possible for landlords to recover the cost of improvements through a service charge (if there is one). Check the scope of any service charge provisions contained in the lease and consider whether these go further than general repair and maintenance costs. If the service provisions are wide enough to allow the landlord to recover efficiency improvements, then expect a potential increase in service charge costs.

## What rights does the landlord have to access the premises to carry out improvement works?

The lease may contain either a general right for the landlord to access the premises during the term of the lease or a more specific right to enter to carry out energy-efficiency improvement works or works required under statute. Such clauses may set out on what terms you are required to grant the landlord access. In the absence of such drafting, the landlord will need to make a separate request to access the premises. If you refuse access, the landlord could obtain a third-party consent exemption, meaning the landlord will no longer be required to carry out any improvement works under the MEES Regulations. You therefore should be mindful to how you respond to access requests from the landlord.

## What other cost implications could there be for me?

Consider the cost implications of the latest changes to the MEES Regulations on:

### 1. REINSTATEMENT.

If you carry out alterations that improve the energy efficiency of the premises, the landlord may agree that a blanket reinstatement obligation should not apply here, and specific wording to that effect should be included in any licence for alterations. Going one step further, it may be possible to push the landlord to make a cost contribution toward any alterations that offer a significant improvement to the energy efficiency of the premises or an improvement in its EPC rating.

### 2. RENT REVIEW.

If the lease contains future rent reviews, consider seeking the advice of a rent surveyor who can offer an opinion as to whether a substandard EPC rating may have a negative impact on the open market value of the property, and result in a smaller rental increase or even a nil uplift at rent review.

### 3. RENT OBLIGATIONS.

More generally, it may be considered as appropriate to approach the landlord for a rent concession to reflect the cost implications for you of a substandard EPC rating.



#### 4. UNDERLEASES.

If you have granted an underlease of the premises (either in whole or in part), it is important to recognise that you too will be subject to the MEES Regulations (in your capacity as landlord), so it is no longer lawful to continue to underlet premises with an F or G rating. Pay close attention to the terms of the lease and the terms of the underlease to establish the best way forward and consider taking appropriate legal advice as soon as possible to discuss your options. If you require the consent of the landlord to carry out any improvement works under the MEES Regulations and this is withheld or subject to unreasonable conditions, then you could claim an exemption, which must be registered before it can be relied upon.

### What about ESG considerations?

It is important to consider whether occupancy of a substandard property aligns with your ESG initiatives. In newer leases, you may even find an obligation on you to comply with the landlord's ESG objectives (which could provide the landlord with a route to require rights to access to your premises and carry out energy improvement works "by the back door").

### Conclusion

It is doubtless in everybody's interests for properties to be as energy efficient as possible. However, before taking any action, carefully consider the implications of (a) continuing to occupy substandard premises against (b) attempting to compel the landlord to carry out energy improvement works. Whilst the potential cost savings of occupying a more efficient building are clearly attractive, possible interruptions to your operations from your premises whilst landlord works are carried out cannot be ignored, nor can the potential of the cost of any works being recharged to you. In any event, consider seeking legal advice before taking any further action or reaching out to the landlord.

If you have any questions about the above or would like to discuss further, please do not hesitate to contact the London McGuireWoods real estate team, who would be more than happy to assist.

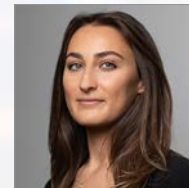
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