



# COLLAS CRILL EXPLAINS... ENERGY EFFICIENCY REGULATIONS AND THE UK PROPERTY MARKET

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Since April 2018 it has been unlawful to sell or let residential or commercial properties in England and Wales with an Energy Performance Certificate ('EPC') rating of 'F' or 'G'.

For many, it remains unclear if, when and why an EPC needs to be produced and what impact the Domestic Minimum Energy Efficiency Standard ('MEES') Regulations have on their property.

This guide looks at the key things you need to know about EPCs, the MEES Regulations and practical tips to consider when selling, letting or taking security over a property in England and Wales.

Words in bold text are defined at the end of this note.

What is an EPC?

Since 2007, it has been a legal requirement to produce EPCs when selling, letting or constructing a building.

An EPC measures the energy efficiency of a property on a scale of A (most efficient) to G (least efficient) in terms of fuel costs and carbon emissions.

An EPC gives insight into a property's energy use and typical energy costs, and also recommends how energy use can be reduced and money saved.

Once obtained, an EPC is valid for 10 years and there is no automatic process of renewal.

MEES Regulations

MEES is an offshoot from the old Coalition Government's package of 'Green Deal' measures to reduce carbon emissions. The 2019 Climate Change Order has cemented this commitment, setting an ambitious target of zero carbon emission by 2050.

To pack a punch and deliver on this, MEES has come into force and sets a minimum EPC rating of E for all types of domestic and non-domestic (e.g. commercial) property required to have an EPC.

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If a building is not legally required to have an EPC (such as places of worship, listed buildings or buildings due to be demolished, for example) then MEES does not bite.

In practice, MEES works by:

1. ensuring minimum standards of energy efficiency on newly built stock entering the market; and
2. tackling older and underperforming buildings already existing in the built environment.

Sellers and landlords of buildings which have an EPC rating of F or G will need to make sure they have obtained the minimum E rating before they can lawfully sell or let them.

The expenses incurred in not only carrying out improvements, but also the potential loss of rental income, could be severe.

### Exemptions

For those properties required to have an EPC, a small number will benefit from prescribed exemptions. To be valid however, any exemption must be registered on the [PRS Exemptions Register](#).

Examples of some of the exemptions available are:

### Devaluation

When the required improvements will cause damage or reduce the value of the property by 5% or more, an exemption can be registered. To succeed, an application will need to be accompanied by a report prepared by an independent RICS surveyor, evidencing that the installation of relevant measures would devalue the property by more than 5%. This type of registered exemption lasts 5 years. On expiry, the landlord must try again to improve the property's EPC rating to E. If this cannot be achieved a further exemption may be registered.

### Consent

This applies if it is not possible to gain consent for improvement works to be completed. Types of consent can range from local authority planning consent, consent from mortgage lenders, tenants, superior landlords, or other third parties. There is no exhaustive list of who could object (or for what reason) to works being carried out.

A registered exemption under this category lasts 5 years. Note, where a tenant does not consent to improvements being made, any exemption will only remain valid for as long as that person remains tenant. This means improvements would need to be made before the property is re-let on any new tenancy.

### Cost

This applies when an independent assessor determines that all improvement measures are not cost-effective. The test for this is the 'Golden Rule' which provides that the cost of the improvements must pay for themselves through energy savings within seven years.

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## Penalties

The consequences of non compliance are:

### Compliance notice

This may be served up to 12 months after the suspected breach, requesting further information to determine whether the landlord has breached MEES.

### Penalty notice

This may be served on landlord if, in the last 18 months, it has been in breach of the prohibition on letting a sub-standard property, failed to comply with a compliance notice or has uploaded false or misleading information to the PRS Exemptions Register. The penalty notice may also include a financial penalty or publication penalty (or both).

### Financial penalty

The authorities may impose a financial penalty up to 18 months after the breach has occurred. Whilst the authority does have discretion as to the amount of the penalty, it is subject to the maximum penalties set out in the law depending on the type of breach. An overall maximum penalty of £5,000 per any domestic property and up to £150,000 per non-domestic property applies.

### Publication penalty

The authorities can publish details of a landlord's breach on a publicly accessible part of the PRS Exemptions Register.

## Practical tips

It is important for landlords, tenants and lenders to understand their rights and obligations under MEES.

## Landlords

Landlords should consider their portfolios and understand which properties are in scope of MEES.

Leases provisions should be reviewed (such as service charges, yielding-up, statutory compliance and rent review) in case improvements are required, and the landlord wishes to recover their costs from the tenant.

On the grant of new leases, landlords should check they have sufficient rights to enter for installing/repairing any energy efficiency measures. Alternatively, obligations to install and/or repair the same could be put to the tenant.

## Tenants

Tenants should equally check their leases to ascertain who responsibility falls to in MEES.

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When a tenant sub-lets or assigns, they could be caught by MEES, even in scenarios where the superior landlord is exempt from the requirement to produce an EPC to them.

## Lenders

Lenders will need to closely monitor their security. Any non-compliant buildings could lead to reductions in value.

Lenders will also want sufficient covenants, representations and warranties built into their finance documents to protect against borrowers who fall foul of MEES.

For those enforcing security, receivers will be treated as owners and/or landlords and MEES will apply on their future dealings of that property. Lenders should be mindful that this could impose additional costs and delay the onward sale or letting.

## Looking ahead

Over time, the minimum standard will be raised as the Government works to meet their zero carbon emission targets.

Indeed, the 2020 Bill is proposing to make it a legal requirement that the minimum rating be brought up to C by 2035.

This means that some buildings which are currently compliant might not be in the not too distant future. Property professionals should keep their eyes open and ears to the ground as developments unfold.

## Terms used

**2019 Climate Change Order** means the Climate Change Act 2008 (2050 Target Amendment) Order 2019

**2020 Bill** means The Domestic Premises (Energy Performance) Bill

**EPC** means Energy Performance Certificate

**MEES or MEES Regulations** means The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, as amended

## About Collas Crill

We are a leading offshore law firm. We are easy to do business with and give practical advice to overcome tough challenges. Through our network of offices, we practise British Virgin Islands, Cayman Islands, Guernsey and Jersey law, and advise in relation to buying, selling, letting and financing UK residential and commercial property.

## About this guide

This guide is one of a series of 'Collas Crill explains...' and gives a general overview of this topic. It is not legal advice and you may not rely on it. If you would like legal advice on this topic, please get in touch with one of the authors or your usual Collas Crill contacts.

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