

# They're finally out

**Melanie Kendall-Reid** summarises the key requirements and clarifications now that the government's guidance on Minimum Energy Efficiency Standards has been published

In February, the Department for Business, Energy and Industrial Strategy published guidance for landlords and enforcement authorities on the minimum level of energy efficiency required to let non-domestic property under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (<http://bit.ly/2kPFWnv>).

This long-awaited guidance details the requirements against which compliance with the Minimum Energy Efficiency Standards (MEES) will be measured, and clarifies the numerous unanswered questions many have been asking since the legislation was passed two years ago.

The Energy Efficiency Regulations aim to tackle the least energy-efficient properties in England and Wales – those rated F or G on energy performance certificates (EPCs). The regulations establish a minimum rating of E for both domestic and non-domestic privately rented property.

By increasing the energy efficiency of non-domestic stock, the government aims to increase energy security while the demand for energy efficiency measures is expected to support growth and jobs in the green construction industry and

the supply chain for energy efficiency products.

There were several drafts before the final document was published. There has been a great deal of discussion on the interpretation of the regulatory requirements, taking into account the enormous array of scenarios under which a property can be leased. It is great to see that many of the situations that were put forward as potential issues have been addressed in the guidance.

## Feedback addressed

Key areas that have been the topic of much debate are now included in the guidance as a direct result of feedback from the industry.

- **EPC requirements:** where a building is required to have an EPC due to a sale, letting or modification, the landlord will be subject to non-compliance penalties if they do not register a valid certificate. Where a building is exempt from requiring an EPC, or the need for a new EPC has not been triggered, the building will not be subject to the minimum standards. There is no requirement to obtain an EPC to comply with the MEES.

- **Multiple EPCs for buildings and demised spaces:** with regard to multi-let properties, there are many situations where EPCs are registered and valid for both the entire building and



its demised spaces. In such circumstances, the EPC for the demised space will be relevant. Where there is an EPC for the whole building only and the demised space does not require an individual EPC, the certificate for the whole building will be relevant.

- **Listed building requirements:** it is a popular misconception that all listed buildings do not require an EPC. This is only the case where the character or appearance of the property would be altered by compliance with the energy performance requirements; for example replacement glazing or solar panel installations. The owner of such a property must seek appropriate advice on the requirement for an EPC.

- **Responsibilities of landlords and superior landlords:** it is clear that anyone who lets a building or part of a building on a qualifying lease must comply. There will therefore be occasions where tenants are also landlords. In addition, public bodies and local authorities acting as landlords will also be responsible.

- **Green Deal availability:** there is minimal reference to the Green Deal in the guidance documentation. However, there is clarification that, as the Green Deal funding was never extended to the commercial property sector, it is not applicable to comply at this time.

- **Lease exclusions:** the guidance is clear that leases are exempt if granted for

six months or less where the tenant has not been in situ for 12 months or more and there is no provision for renewal beyond six months. In addition, leases granted for a term certain of 99 years or more are also exempt.

- **Validity of EPCs:** where there is no requirement to renew the EPC and it expires during the tenancy, the property will not be required to comply with the MEES. This will become of particular interest in 2023 as, if the EPC has expired and there is no legal trigger to renew it, the requirement to comply with the minimum standards will not be applicable as the regulations state that compliance is required where there is a valid EPC in place.

The Private Rented Sector Exemptions Register was opened on 1 April and will be available online for public viewing, with non-compliance also being published through the platform. **C**



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