Gaby Hardwicke SOLICITORS

Briefing Note: Energy Efficiency in Privately Rented Commercial Property

Introduction

This note provides a short summary in relation to the requirements of the Energy Performance of Buildings (England and Wales) Regulations 2012 (the "2012 Regulations") applying to Energy Performance Certificates ("EPCs"), which are to be made available to prospective buyers or tenants whenever a building used for commercial purposes is constructed, sold or let.

This note also provides some points to consider in light of the *Energy Efficiency (Private Rented Property) England and Wales Regulations 2015* (the "2015 Regulations"), which aims to improve energy efficiency in both residential (i.e. domestic) and commercial (i.e. non-domestic) privately rented property, and reflects the Government's *Non-Domestic Private Rented Property Minimum Standard Guidance for Landlords issued in February 2017* (the "2017 Guidance").

In addition, this note will consider, in brief, the further proposed changes to be implemented following an open consultation published in March 2021. It is the aim of the Government for the proposals to take effect from April 2025.

Briefing Note

Reviewed July 2025

Summary:
A short summary on the various measures in place (and due to be put in place) in the UK, aimed at increasing energy efficiency in privately rented commercial buildings.

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The most significant difference in respect of residential property, from the commercial property position discussed below, is that the requirements for privately rented commercial properties from 1 April 2023 have applied to privately rented residential properties since 1 April 2020.

This guide should not be relied upon as legal advice and you should contact us for advice on your specific circumstances.

Overview of an EPC

Since 2008, an EPC has been required upon the construction, sale or letting of virtually all properties (domestic and non-domestic) in England and Wales and gives a property an energy efficiency rating from A (being the most efficient) to G (being the least efficient).

Once granted, an EPC would usually remain valid for 10 years or, if earlier, until works are undertaken to the property in question which would require a new EPC to be obtained.

There are properties in respect of which an EPC is not required, most notably some listed properties and properties within a conservation area. In circumstances where an owner or occupier of such property is uncertain as to whether an EPC is required, appropriate advice should be sought at the earliest opportunity.

The 2012 Regulations place an obligation on the 'relevant person,' (being the seller, landlord or person carrying out the construction of the property in question) to make a valid EPC available, free of charge, to any prospective buyer or tenant. An EPC must be commissioned by the relevant person before the property is put on the market and should be made available to any prospective buyer or tenant at the earliest opportunity and, in any event, within the timeframe specified in the 2012 Regulations. No viewings should be arranged, or details of the property distributed, until a valid EPC has been made available.

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If the above conditions are not adhered to, the 'relevant person' may be liable for a penalty charge. This penalty will be imposed by Trading Standards Officers and, in most cases, the penalty will be 12.5% of the rateable value of the building, with a minimum of £500 and a maximum of £5,000.

Once lodged on the EPC register, the EPC will remain valid even after a property is sold on. Therefore, future owners of the property can use the EPC for their benefit, so long as it is less than 10 years old. However, an owner, landlord or tenant is free to commission, produce and lodge a voluntary EPC at any point which will then become the current EPC for the property. Once an EPC certificate expires, there is no automatic requirement to produce a new one until the next time the property is sold, let or relevantly modified.

The effect of the 2015 Regulations

The 2015 Regulations brought into force the minimum energy efficiency standards ("MEES"). MEES are designed to tackle the very least energy efficient properties in England and Wales, namely those rated F or G on their EPCs, with the overarching aim of improving energy efficiency in privately rented properties. A property that fails to meet MEES is known as a sub-standard property and is not legally lettable without the landlord first implementing recommended energy efficiency improvements so that MEES are met. There are, therefore, implications for landlords, lenders and tenants. The 2015 Regulations have come into effect in stages (an overview of which is set out below) and not all privately rented commercial properties are subject to them, so it is important to take legal advice as to how, and to what extent, you might be affected in your particular circumstances.

Stage 1, Registering Exemptions

Landlords of sub-standard commercial properties have been able to register valid exemptions to MEES on The National PRS Exemptions Register ("Exemptions Register") since April 2017. A valid and registered exemption will allow a landlord to let, or continue to let, a sub-standard property without meeting MEES.

Potential registerable exemptions include:

- in respect of properties which are listed or within a conservation area, where an EPC is not required; and
- where it has been determined by an independent surveyor that the relevant energy efficiency improvements (i) are not financially viable, or (ii) would reduce the market value of the property by more than 5%.

It is crucial that exemptions are registered on the Exemptions Register to avoid any penalties.

It is important to note that registered exemptions will not pass to a new owner or landlord upon the sale, or other form of transfer, of a property. A new owner or landlord will therefore need to either improve the property to meet MEES at this point, or register a fresh exemption if they intend to continue letting the property.

Stage 2, 1 April 2018 – Prohibition on New Lettings of Sub-Standard Commercial Properties

Since 1 April 2018, it has been unlawful to grant a relevant new lease, or let as a result of an extension or renewal of an existing lease, any private commercial properties that are deemed sub-standard. This rule applies to all such properties which require an EPC and appears to extend to lease extensions/renewals, sub-lettings and assignments.

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Briefing Note: Energy Efficiency in Privately Rented Commercial Property

It should also be noted that if/when a sub-standard property is sold, the new owner/landlord has a temporary exemption of only 6 months (which must be registered on the Exemptions Register) during which to comply with the 2015 Regulations. Compliance can be very expensive and this is therefore an important due diligence consideration when purchasing a property.

Stage 3, 1 April 2023 – Prohibition on Letting All Sub-Standard Commercial Properties with Valid EPCs

From 1 April 2023, the 2015 Regulations will become more onerous, capturing all privately rented commercial properties where a valid EPC exists, regardless of whether there has been any change in/to the tenancy agreement/lease. The implementation of this stage will amount to a complete prohibition on the letting of all such sub-standard commercial property, without the landlord first implementing recommended energy efficiency improvements, so that MEES are met (unless a valid exemption applies, and is registered on the Exemptions Register).

The new regime will have tough penalties imposed by the enforcement authorities, with the level of such penalties being dictated by the duration of the breach. The amounts will be capped at the greater of (i) £10,000 or (ii) 20% of rateable value, up to a value of £150,000. A record of the breach will also be published on the Exemptions Register, and additional penalties will be imposed for registering false or misleading information and/or for failing to comply with a compliance notice.

Given the various measures already in place, and the staged implementation of the 2015 Regulations (including the 1 April 2023 deadline which is fast approaching), energy efficiency in privately rented commercial properties is not an issue which will be going away. In fact, the Government is looking to bring in further changes from April 2025 in their continuing effort to increase the energy efficiency of commercial properties.

Proposed Further Changes by Government

Following an open consultation in 2021, the Government is proposing to introduce a further two-staged change to the MEES regulations:

Stage 1 – From 2025-2027

From 1 April 2025, all non-domestic rented properties (which are not exempted from the MEES regulations) are required to have a valid EPC. This means that if an EPC has expired then a new EPC must be obtained, unlike at present. The EPC will need to be registered on the relevant database.
Moreover, as of 1 April 2027, non-domestic rented properties must have a minimum rating of ‘C’. So, by this date, landlords must have carried out the necessary improvements to their property to satisfy this rating, or register a valid exemption.

Stage 2 – From 2028-2030

By 1 April 2028, landlords will be required to present a valid EPC and from 1 April 2030, the minimum rating will be increased to ‘B’. Therefore, by this later date, a landlord will have to register an EPC which demonstrates a ‘B’ rating or register a valid exemption.

It should be noted that the Government is proposing to enforce MEES once a property has been occupied for a period of at least 6 months and is fully operational.

There are various exemptions available and advice should be sought as to whether any such exemptions apply to a landlord’s particular circumstances.

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In light of the contents of this note, whether you are a landlord or tenant, you should:

- consider including provisions relating to energy efficiency of the relevant building(s) in new leases being granted, renewed or extended; and
- take legal advice if you are unclear as to how, and to what extent, the forthcoming changes might affect your particular circumstances; and
- take legal advice if you are unsure as to whether any of the possible exemptions may apply to your circumstances

We would be happy to advise you further on these issues.

If you would like to know more about this topic or our legal services, please contact Hannah Bambury on 01323 435900 or hannah.bambury@gabyhardwicke.co.uk.

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