

# MEE time

**Energy efficiency** On 22 July DECC published a consultation on Minimum Energy Efficiency Standard Regulations, which have to take effect by 1 April 2018. Peter Williams explains the proposals and urges readers to respond to the consultation

The Department of Energy & Climate Change issued a consultation on 22 July on Minimum Energy Efficiency Standard Regulations for non-domestic properties in England and Wales (“MEES”). The consultation is seeking views on the content of the regulations that will flesh out the primary legislation in the Energy Act 2011.

The draft regulations have not yet been published, so there are some aspects of the scheme that remain unclear, but the government is proposing to outlaw lettings of commercial properties with an energy performance certificate (“EPC”) rating of F or G from 1 April 2018, subject to some complex exemptions. The government believes that this may affect as many as 18% of non-domestic properties. Much of the consultation concerns how the proposed exemptions should operate.

The consultation runs for only six weeks, closing at 11.45pm on Tuesday 2 September 2014. At the time of publication, virtually half of that time will already have passed.

This article is about the main issues from the consultation and not the detail. The writer urges the reader to read the consultation to obtain the full picture and provide their responses to the government.

## No upfront cost to the landlord

The principal protection for landlords is that where a property falls below an E rating, the landlord is only required to make those improvements that can be made at no upfront cost. Once those improvements have been made, the property can be let even if the EPC rating is still below E. The most likely manner in which landlords will make improvements in this way will be through a Green Deal finance arrangement (although the government acknowledges that Green Deal finance is not yet available for commercial properties).

A further protection for landlords is that the regulations will not require landlords to carry out improvements where a necessary third party consent is not available. This might include, for example, consent from a tenant, a superior landlord or the local authority.

The government is also asking whether

### Key points

- The government is consulting on the details of Minimum Energy Efficiency Standards
- The consultation runs until 2 September
- A backstop date of 1 April 2023 is proposed by which time (subject to exemptions) all tenanted commercial properties will need to have an EPC rating of E or above

an exemption should apply where improvement works would result in a material reduction in a property’s value. The government thinks it unlikely that energy efficiency improvements could have this effect but is nevertheless seeking views on including this provision in the regulations.

Where any exemptions apply, the government proposes that they should be limited to five years. At that point the landlord will need to carry out any necessary works, or ensure that a new exemption is available.

## Backstop date of 2023

Another section of the consultation considers which lettings should be subject to the new requirement. The government is proposing that it should not apply to very short leases (six months or less) or very long leases (more than 99 years) but that otherwise it should apply to all new lettings and lease renewals from 1 April 2018.

However, it is also proposing a backstop date of April 2023 by which time (subject to the exemptions mentioned above) all tenanted commercial properties would have to be compliant. This would apply to those properties where leases were already in place on 1 April 2018. In such cases,

landlords will have to consider what improvements can be made to their properties even though tenants are in occupation, and then seek their tenants’ consent to carry out such works.

Possibly some tenants will be delighted with the idea that their building will be made more energy-efficient at the landlord’s cost. Others will be horrified by the idea of their landlord carrying out works to their premises while they are in occupation. The latter will presumably withhold their consent. The consultation does not make it clear whether there is going to be an obligation on the tenant to act reasonably in these circumstances, or whether the tenant will have an absolute right to say no.

Interestingly, it seems that this backstop date will be relevant only where the building already has an EPC. So far as the writer can tell, no new EPC trigger events are being created. So where a lease was granted before 2007 (when EPCs started to be required), and will still be in place in 2023, commissioning an EPC now may turn out to be exactly the wrong thing to do, as it will bring the backstop date into play.

## Enforcement

As with EPCs, enforcement of MEES will be the responsibility of trading standards officers (TSOs). The consultation document asks how penalties for non-compliance should be set: at a percentage of a property’s rateable value (and, if so, what percentage), or some other method. It also asks whether it would assist TSOs if some form of exemption certificate should be available where a property qualified for an exemption and, if so, whether it should be mandatory for landlords to obtain such a certificate when they were claiming an exemption. This would have cost implications, of course.

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*The consultation document is at [www.gov.uk/government/consultations/private-rented-sector-energy-efficiency-regulations-non-domestic](http://www.gov.uk/government/consultations/private-rented-sector-energy-efficiency-regulations-non-domestic). A separate, parallel consultation on domestic properties is at [www.gov.uk/government/consultations/private-rented-sector-energy-efficiency-regulations-domestic](http://www.gov.uk/government/consultations/private-rented-sector-energy-efficiency-regulations-domestic)*

“To achieve the UK’s legislative targets, CO<sup>2</sup> emissions from all buildings must be ‘close to zero’ by 2050. This implies in the longer term, UK buildings will need to reach energy efficiency standards of close to an A EPC rating.” **Extract from the foreword to the DECC consultation**