

Minimum energy efficiency standards

The Assessment of Energy Performance of Non-domestic Buildings (Scotland) Regulations 2016

Scope

On 1st September 2016, new legislation came into effect under Section 63 of the Climate Change (Scotland) Act 2009. In accordance with these regulations, all owners of Scottish non-residential property with an area of more than 1,000 square metres will be impacted. The regulations will be triggered when a property owner plans to sell the property or grant a lease to a new tenant. The regulations will not apply to lease renewals or to short term leases. Owners of affected buildings must produce an 'Action Plan' which identifies areas to improve energy performance in the buildings and how these targets can be met through physical improvements to the buildings. The EPC and Action Plan will form part of the marketing material and should be lodged on the Scottish Register. Unlike in England and Wales, these regulations do not prohibit the letting of 'F' or 'G' EPC rated units or buildings.

Requirements

The Action Plan must be issued by a registered Section 63 Advisor and should include:

- measures detailing how to improve the energy performance of the property and reduce greenhouse gas emissions;
- the energy performance target and emission target; and
- any recommended improvement measures or state none, where appropriate.

Once an Action Plan is produced, owners can choose to either implement the improvement measures or to defer the improvements by reporting operational energy ratings (actual measured energy use via a Display Energy Certificate, or 'DEC') on an annual basis. If the owner chooses to implement the Action Plan, they will have up to 42 months (3.5 years) to carry out the improvements. All Action Plans and DEC's must be lodged on the Scottish EPC Register. The payback period of the improvement measures must be no greater than 7 years as measured through savings in energy bills.

Exemptions and penalties

Properties that will be exempt from having to comply with the regulations include:

- buildings that already meet energy standards equivalent to those introduced by 2002 Building Regulations;
- buildings that have already been improved via a Green Deal (a UK Government funding mechanism);
- workshops and non-residential agricultural buildings with low energy demand; and
- temporary buildings which will not be used for more than 2 years

Local Authorities will be responsible for enforcement and will be able to impose a £1,000 fine for non compliance.

Risks to property owners

An Action Plan has to be in place for eligible commercial properties before they can be let or sold. A sale or new letting could therefore be delayed/lost if an Action Plan/EPC is not in place.

It is not clear if/when the Legislation may be widened to residential and/or smaller commercial premises.

Many landlords have already been proactive in reviewing their EPC ratings, identifying gaps where ratings are unknown, running new assessments and establishing where EPC expiry dates align to lease events. The Better Buildings Partnership have provided some helpful advice with regards to the quality of an EPC and for commissioning a new EPC assessment (<http://www.betterbuildingspartnership.co.uk/>)



The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

Scope

In March 2015, the Department of Energy and Climate Change (DECC) announced that Minimum Energy Efficiency Standards (MEES) had been approved by Parliament. Under these regulations, all leased properties which legally require an Energy Performance Certificate (EPC) will need to comply with MEES. The minimum energy efficiency standard has been set to an EPC 'E' rating, meaning any property or unit with an 'F' or 'G' EPC rating will be considered as substandard and therefore unlettable from the dates below

Exemptions and penalties

For commercial properties, leases over 99 years or less than six months are exempt. For residential properties, certain tenancies including those provided by social landlords are excluded. There are also a few instances where owners of either commercial or residential property can apply for an exemption. These include:

- where improvement works would not be cost-effective – where cost savings resulting from the improvement works would not cover the capital costs within a seven-year payback period

- where any necessary third-party consents cannot be obtained (e.g. from a tenant or superior landlord)
- where an independent surveyor provides written advice that any improvements will reduce a property's value by 5% or more. This diminution in value does not include the actual cost of the improvement works.

In all cases, exemptions will only last for five years and will need to be registered.

Risks to property owners

Although the regulations affect everyone in the real estate market in England and Wales, their impact will be most significant for property owners. In addition to potential loss of rental income, unplanned capital or operational expenditure and financial penalties, non compliance with regulations could also result in increased void rates and difficulty in attracting good quality tenants. Preparing for MEES now is essential. This means understanding what your EPC risk profile is and putting strategies in place for those properties at risk. This will help avoid the risk of publication and a financial penalty of up to a maximum of £150,000 depending on the level of infringement.

Contacts:

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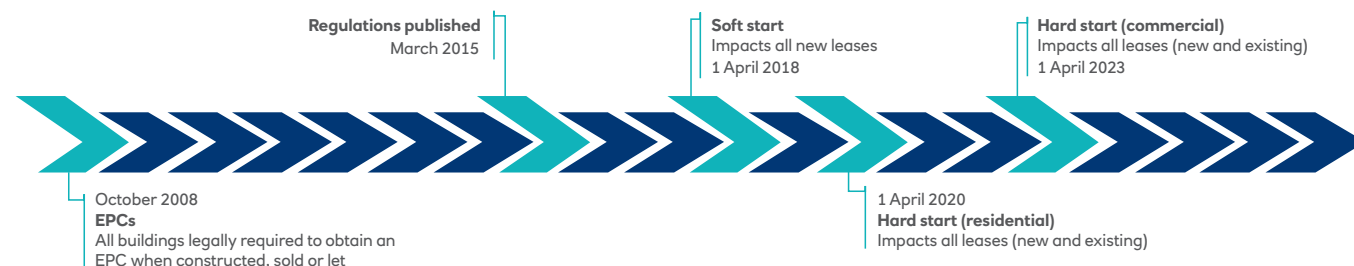
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Timing of enforcement



Security may be required. Product fees may apply. Over 18s only

ANY PROPERTY USED AS SECURITY, WHICH MAY INCLUDE YOUR HOME, MAY BE REPOSSESSED IF YOU DO NOT KEEP UP REPAYMENTS ON A MORTGAGE OR OTHER DEBT SECURED ON IT.

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