

# Minimum Energy Efficiency Standard regulations

Peter Williams, Falco Legal Training

12 October 2015

# Minimum Energy Efficiency Standard regulations

- Legal aspects
- Landlord and tenant issues

# Minimum Energy Efficiency Standard regulations

- A whole new area of law
- Much is still unclear or unknown
- Clients may need advice from both lawyers and energy consultants/quantity surveyors
- DECC is due to publish guidance – but when??

# Legal aspects

- Restrictions on letting
- Properties subject to MEES
- Lettings subject to MEES
- Cost-effective works
- Exemptions
- Enforcement and penalties

# Restrictions on letting

- Abbreviated to “MEES” (formerly “MEPS”)
- Energy Act 2011 requires Secretary of State to make regulations
- Extremely long gestation period
- Take effect in April 2018
- Apply to commercial and residential properties
- This talk considers commercial properties only

# Overview (1)

- Owners (including tenants) must not grant a lease of property with an EPC rating of F or G
- Unless they have carried out all cost-effective energy efficiency improvements
- Or the property is not subject to MEES
- Or the letting is excluded
- Or an exemption applies

## Overview (2)

- Applies –
  - from **1 April 2018** to new lettings
  - from **1 April 2023** to all lettings, including existing lettings
- Does not affect freehold sales and purchases with vacant possession
- Does not affect owner-occupiers
- Does not affect tenants – until they wish to sub-let

# Properties subject to MEES

- Any property for which an EPC is required – so excludes (for example):
  - small stand-alone buildings (under 50m<sup>2</sup>)
  - places of worship
  - buildings with no heating or cooling
  - listed buildings (probably)
- So long as there is a valid EPC in place – immaterial whether obtained by L or by T
- Query if an EPC has been obtained voluntarily

# Lettings subject to MEES

- All lettings from 1 April 2018 except
  - leases for 6 months or less (so long as tenant has not been in occupation >12 months)
  - leases for 99 years or more
- Lease renewals are included although DCLG says that no EPC is needed
- Sub-lettings are caught – but tenants may not have the ability to improve the EPC rating

# Cost-effective works

- MEES originally based on the Green Deal
- Financing mechanism under which property owner borrows money to make energy efficiency improvements
- Loan is attached to the electricity meter and runs with the property
- Golden Rule – Green Deal available only if the savings outweigh the costs

# Cost-effective works

- Green Deal has not proved a success
  - too many different people
  - too much red tape
  - buyers and lenders are nervous
  - energy-saving improvements cost too much
- No sign of a Green Deal for commercial properties
- **Government withdrew Green Deal funding in August 2015**

# Cost-effective works

- Landlord is required to undertake any works that are “relevant energy efficiency improvements”
- (1) ~~Works for which a Green Deal is available~~
- (2) Works --
  - listed in Part L of the Building Regulations
  - with a payback period of seven years or less

# Works covered by Part L

- Improved insulation of walls, doors, roofs and windows
- Installation of renewable energy sources
- More efficient heating, cooling and lighting systems
- Installation of energy metering

# Cost-effective works

- Seven year payback
  - projected energy cost saving is less than the cost of the works spread over seven years
  - includes notional interest at BoE base rate
- Cost of the works
  - purchase of the improvement
  - installation cost
  - labour cost

# Cost-effective works

- Even after all cost-effective works are carried out, EPC rating may still be below E
- In that case, landlord will need to repeat assessment after five years
- Landlords may decide to carry out more works than are required by MEES

# Exemptions

- Exemptions are not a complete get-out
- Exemptions have to be logged on a register, which may be public
- Exemptions last only five years; after that time another exemption must be sought
- Exemptions are not automatically transferable to a new owner (apparently)
- NO EXEMPTION relating to affordability

# Five-year exemptions

- All cost-effective energy efficiency improvement works have been done
- Unable to obtain necessary consent, such as
  - tenant under existing lease
  - lender
  - planning consent
- Work will devalue property by more than 5%
- Insulation work will damage heritage property

# Six-month exemptions

- New owner – six months' grace
  - relevant only from 1 April 2023
- Accidental landlord – six months' grace
  - lease renewal – where caught
  - lease by operation of law
  - statutory overriding lease under 1995 Act
  - lease to guarantor following disclaimer
- Within six months, landlord must comply or register a new exemption

# Enforcement and penalties

- Enforcement is by trading standards officers
- Penalties are civil only
- Potentially significant penalties
- Up to 20% of rateable value (max £150,000)
- Who keeps the money?
- Leases >7 years need to be registered at the Land Registry so are public documents

# Landlord and tenant issues

- Can landlords pass on the costs of compliance with MEES to the tenants?
- Will tenants agree to contribute to the costs?
- Will tenants allow their landlords to carry out works during the term?
- Will MEES be relevant for dilapidations claims?
- Will MEES be relevant at rent review?
- Will any new provisions be included in leases?



[www.falcolegaltraining.co.uk](http://www.falcolegaltraining.co.uk)