



EPC INSIGHTS

8 things on MEES, EPC and automation

CARBONPROFILE

LEADERS IN ENERGY EFFICIENCY

April 2023 Deadline

what does it mean?

From April this year, where a property is subject to a lease and has a valid EPC that is F or G rated, the landlord must take the necessary steps to improve the EPC to a minimum rating of E or register a valid exemption.

It is important to understand where action is required and where no immediate action is required. For example if there was an EPC that was F or G rated for a lease but the EPC has expired, if the property has not been marketed to a potential new tenant there is no requirement under MEES to undertake a new EPC. In these circumstances the landlord does not have to take any immediate action.

April 2025 deadline

what does it mean?

The rules at this point change and the lease event no longer drives the requirement to produce an EPC. From April 2025 all commercial leases must be covered by a valid and compliant EPC or the landlord must have registered a valid exemption.

Our advice is to look at properties with no EPC or and expired EPC at least 12 months before the 2025 deadline to allow adequate time to consider the options for the property

can you compare
Previous EPC
with new EPC?

Many landlords are relying on their previous EPC ratings as a guide to what level of compliance they are at. We have found this to be a mis-guided approach as previous ratings can not be relied on as a guide. With the number of changes in the EPC software methodology over the last 10 years ratings are NOT comparable to their previous rating. The biggest change was in June 2022 where the carbon factors were amended considerably in some cases completely changing the strategy for an asset.

The basic rule of thumb here should be that if the your EPC was produced before 15 June 2022, the EPC rating will not be the same as the previous. Where the property has gas as the main source of heating the EPC is likely to be significantly worse.

Not all bad news as if the property is electrically heated then the rating is likely to improve

Software

is it worth using technology to manage ongoing compliance requirements?

There are two ways to consider this, we have all been managing building compliance for years and EPCs will now be part of the overall compliance picture for all commercial buildings. There is always an option to plug the EPC compliance in to the existing software used to manage gas certificates, electrical testing certificates, lift inspections etc

The EPC and decarbonisation conversation is probably one of the most discussed topics across all property businesses at the moment and this is likely to continue with all levels of the business requiring data. With this in mind consideration should maybe be given to utilising a bespoke software platform that manages not only compliance today but enables you to build your future requirements in terms of improvements required and building a cost profile for future compliance.

Our platform CP Net Zero enables you to do just that, demos available from May 2023.

Band B

is it really achievable?

The simple answer is..... there is no simple answer...! Today it is unlikely that all buildings will be able to reach Band B in line with the requirements and exemptions will need to be used, however the regulations acknowledge that technology and cost profiles will change going forward and future compliance planning will still be required in line with available technology and the right cost point.

What is important to note is that each asset is different and although we are mainly looking at improvements in heating and lighting, making the right decisions is critical to ensuring future compliance and not wasting money through poor data management throughout the EPC process and decision making not aligned to the EPC requirements.

Tenants

their role in getting improvements made?

The expectation of the regulators is that landlords and tenants will work together to find the right interventions that achieves the landlords' requirements under the regulations and create value for the tenant.

Some interventions required to bring a property up to the required standard will create too much disruption to be acceptable to tenant operation, in these cases the tenant can refuse access to the Landlord and the Landlord can file an exemption. The exemption ends after 5 years or in line with the tenants lease whichever is sooner.

The right improvements can provide significant benefit to tenants as more efficient lighting and heating or improvements to the thermal performance of the building will, over time save them money. In some cases the savings are seen back quickly, for example, replacing old style lighting with LEDs can provide a 45 - 70% reduction in energy requirement.

Green leases and MEEES

what this means for solicitors and their clients

The Royal Institution of Chartered Surveyors (RICS) Code for Leasing Business Premises in its lease negotiation and best practice section states:

“Parties are encouraged to include in leases provisions relating to sustainability and the environment that urge cooperation throughout the lease term between the landlord and the tenant to ensure that the property is used as sustainably as possible. These are sometimes called ‘green clauses’...”

Solicitors are also encouraged in all appropriate cases to discuss with their clients whether to include green provisions in leases they are producing and negotiating (see why green leases?).

These could include:	
1	Light green provisions can commit both parties to principles which are usually not legally binding and are aspirational or limited in scope.
2	Light green provisions are more likely to be appropriate where the parties are limited in their resources and/or sustainability targets.
3	Medium green provisions may create obligations but are not intended to impose an unreasonable economic burden upon the parties or require them to act commercially unreasonably.
4	Medium green provisions are more likely to be appropriate where the parties are reasonably well resourced and have set sustainability targets.
5	Dark green provisions are specific in nature, can be legally binding and place a greater onus on both parties. Here, a breach might result in forfeiture of the lease unless agreed otherwise.
6	Dark green provisions are more likely to be appropriate where the parties are well resourced and have set public and/or binding net zero targets.

Some clients may wish to use a blend of green lease provisions (see NHS model green lease) to suit their current needs and any plans to increase their climate ambition over time.

Where a lease is already in place, the parties can enter into a memorandum of understanding (MoU) which provides a roadmap for co-operation between the parties on increasing the sustainability of the property.

Currently, it is not common practice for the parties to vary the provisions of an existing lease to introduce new green clauses.

Enforcement

what is the proposed enforcement for non-compliance?

Landlords who let sub-standard property (currently EPC bands F and G) but who have not registered a valid exemption will be liable to financial penalties and other action by way of enforcement.

Type of Non-Compliance	Penalty
Providing false of misleading information to PRS Exemptions Register	A fine of \$5000 and publication of non-compliance
Renting out a non-compliant property for a period of less than 3 months	A fine of 10% of the rateable value with a minimum fine of \$5,000 and a maximum of \$50,000
Renting out a non-compliant property for a period of more than 3 months	A fine of 20% of the rateable value with a minimum fine of @10,000 to a maximum of \$150,000