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What's That Coming Over The Hill Is It A Monster? Or, What Are The Implications Of The Minimum Energy Efficiency Standards?

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There may be lots of things coming over the metaphorical future hill in the next few months from Brexit to an election, but to use the words of the band The Automatic "what's that coming over the hill is it a monster?" The first part of the Minimum Energy Efficiency Standards established in the Energy Act back in 2011 comes into effect next April 2018, but what will the implications be for investors, owners and occupiers of commercial property; is it a monster that will rampage through the world of commercial property affecting investments, costs and property deals?

On the first of April 2018 it will be illegal to agree a lease, or renew any lease on a commercial property which has an "F" or a "G" Energy Performance rating. Those brightly coloured Energy Performance Certificates (EPC's) will suddenly take on new significance.

At the end of February 2017 the Government published its long awaited guidance on the standards, in a document entitled "The Non-Domestic Private Rented Property Minimum Standard Guidance for landlords and enforcement authorities on the minimum level of energy efficiency required to let non-domestic property under the *Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015.*" The document is available online at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/593422/Dom_Private_Rented_Property_Minimum_Standard_-_Landlord_Guidance_2_.pdf

The publication of this document sheds new light on the implications of the regulations, how they may be applied, and what can be done to manage our property interests.

Property owners and landlords are currently required to provide an EPC for potential buyers or tenants before marketing a property to sell or rent. Energy Performance Certificates rate premises from A to G with “EPC A” rated premises being the most efficient and “EPC G” being the least efficient. The EPC contains information about a property’s energy use and typical energy costs. The EPC also provides recommendations about how to reduce energy use.

From the 1st of April 2018 it will no longer be legal to lease a commercial property with the two lowest energy ratings “EPC F” and “EPC G”, with the intention of the regulations being to remove those energy inefficient properties from the Private Rented Sector (PRS). It is suggested that in the region of one in five properties in the private rented sector fall below an EPC E rating.

The regulations are to be enforced by the Local Weights and Measures Authorities (LWMAs). Where a landlord lets a sub-standard property LWMAs may impose a financial penalty of up to £5,000, or of up to 10% of the rateable value of the property (whichever is greater), subject to a maximum financial penalty of £50,000. If the breach continues for three months or more a further penalty of £10,000 or 20% of the rateable value of the property (whichever is greater), up to a maximum of £150,000 may also be imposed. The financial penalties for not complying are significant and have obviously been set to encourage compliance.

Certain exemptions from the regulation are available, which need to be self-certified by the landlord by entering details, and supporting documents, onto an online PRS Exemptions Register, which would then allow an F or G rated property to be let. These exemptions can be a temporary, for five-years, or full exemptions depending on their nature. Main exemptions are available for **High Costs** – if the costs of making remaining improvements do not provide a simple seven year payback, **Value** – if installing remaining measures will decrease the capital value of the property by more than 5%, **Negative impact** – where an energy improvement would have a potential negative impact on the fabric or structure of the property **Consent**– where a landlord is unable to obtain legally required third party consents to do the works (such as from a superior landlord or tenant) **New Landlord** where a party becomes a landlord they may be exempt under certain conditions for a maximum of six months

Landlords of F and G rated non-domestic property are able to register valid exemptions. The Exemptions Register is currently being piloted and you can submit an emailed request for inclusion in the pilot version of the register, however the full register should be available on gov.uk for property registration after the 1 October 2017. Entering an

exemption will require a variety of proofs to be provided from valuations to payback calculations with onus is on the landlord to comply, register an exemption, or face the enforcement penalties.

So what do we need to do?

EPC continue not to be required for certain buildings, so checking you are required to have an EPC is a good first step. A building is exempt from needing an EPC if it's due to be sold or rented out with vacant possession in anticipation of demolition and redevelopment and an application for planning permission has been made. Certain property types, for example places of worship, will remain unaffected by the regulations coming into force. It should be noted the exemption does not apply to all listed buildings: where the properties character or appearance would *not* be altered by compliance with energy performance requirements an EPC may be legally required.

Properties which are not covered by the Regulations include for example, buildings which are not legally required to have an EPC, or buildings let on very short, or very long, leases. These properties will not be required to register for any exemption.

Where a property is rated EPC E or above, the landlord will not be required to take any further action. However some caution is required when relying on old EPCs. EPC's over 10 years old are no longer valid and EPC's dating back to their introduction in 2008 will soon need renewal. The method of computer modelling for assessment of energy performance certificates has altered since 2008 and you may find your E rated property being reclassified as F or G rated on renewal of the certificate.

On finding you have an F or G rated property it may be appropriate to apply for an exemption on a permanent, or temporary basis to allow your plans for the property to be fulfilled. The relevant supporting documentation will need to be assembled and the online PRS Exemptions Register entry will need to be made.

So where does that leave us in considering what is coming over the hill? We would predict:

- In most circumstances it will be a fairly easy exercise to pull out the EPC and review what, if anything, needs to be done to bring premises up to the crucial EPC E standard. In many cases it may be sufficient to undertake limited works to improve premises ratings.
- Landlords will be responsible for meeting the cost of improvements, but this will no doubt lead to a careful review of lease clauses to see where responsibility or costs can be passed on. Switched on Landlords and tenants will understand how

their lease terms, break dates, renewal dates and EPCs fit with MEES and understand their rights. In undertaking works to upgrade properties the benefits of the works to Landlords and tenants may be very different and exploring the right solution is likely to be subject to some discussion and agreement.

- Careful consideration will need to be given if to apply for exemptions. Making applications will require proof and have associated costs, meaning in some cases it may be cheaper and easier to do the works rather than go through the exemption process, but in some instances registering an exemption will provide the correct solution.
- The demand for good energy assessment advice and contractors' prices for making energy improvements are likely to increase in response to what will no doubt be a last minute rush as the regulations come in, Decisions on how to manage, improve, or redevelop those G and F properties will need to be made

Is it a monster? MEES will no doubt have significant impacts on some commercial property, however in most instances it is just a new set of legislation to consider, manage appropriately and keep any monsters away.

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Matthew is a Chartered Building Surveyor who works for Stratton Creber Commercial; who can assist with all aspects of your commercial property and who specialise in the South West. Stratton Creber Commercial have free flowchart showing how the future elements of MEES, beyond 2018, are to be implemented if you would like a copy or If you would like to talk to Matthew he can be contacted on 07834 996419 or matthewwilliams@sccplymouth.co.uk