
Real Estate Tip of the Week: EPCs and Lease Renewals: Inconsistent Regulations

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The EPC and MEES Regulations both seek to address issues relating to energy performance. However, the implementation of both sets of regulations often leads to confusion. This is particularly apparent with the topic of EPCs and lease renewals. So, do you need a valid EPC on the grant of a renewal lease?

EPC Regulations

- The Energy Performance of Buildings (England and Wales) Regulations 2012 sets out the obligation to provide an EPC when “selling” or “renting out” a property (Regulation 6). Rather unhelpfully, neither of these terms are defined in the EPC Regulations.
- The Department for Communities and Local Government subsequently set out a guidance note in 2017, specifying that certain transactions would not fall within the scope of a sale/letting. Lease renewals are listed as being outside of the scope.
- So we have guidance (not law) setting out that an EPC is not required for a lease renewal under EPC regulations.

MEES Regulations

- The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (SI 2015/962) (“MEES Regulations”) went in the opposite direction to the EPC Regulations.
- The MEES Regulations prohibit the letting of sub-standard non-domestic private rented property as a result of an extension or renewal of an existing tenancy on or after 1 April 2018 (Regulation 27). So how do we know if the property is sub-standard without having an EPC to confirm?
- The Non-domestic MEES Guidance note suggests that in the absence of a valid EPC, a new EPC would be required on re-letting to a current tenant.

So the EPC Regulations, read in conjunction with the guidance note, sets out that an EPC is not required for a lease renewal. However the more recent MEES Regulations, read in conjunction with the guidance note, sets out that a valid EPC is required. The safest approach might be to stick with the most recent regulations and obtain an EPC.

It's clear that the different energy efficiency regimes are not always consistent and are not easy to follow. If you're in the process of negotiating a lease renewal, we can advise on the best way forward.

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