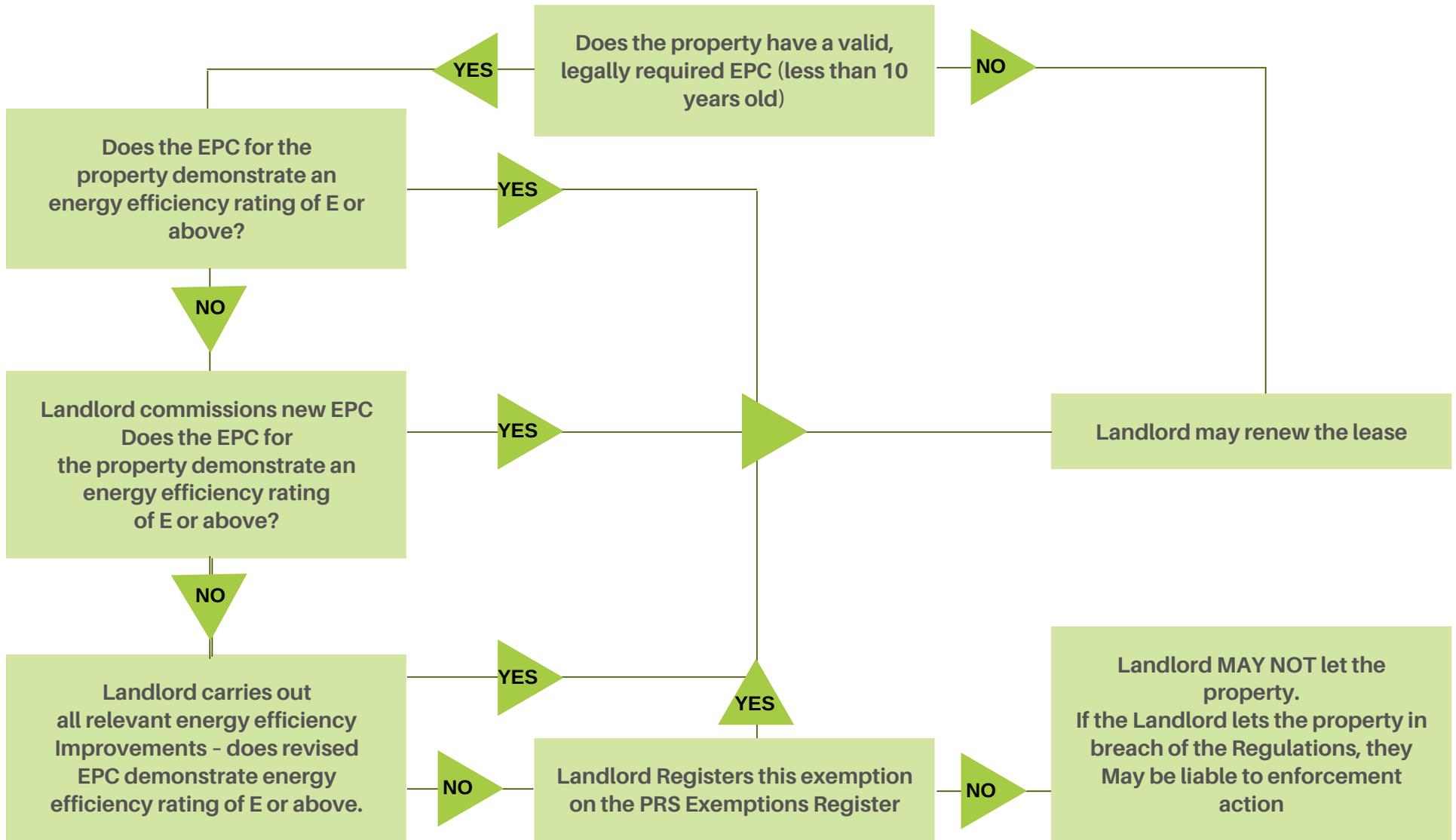


A Guide to MEES and Lease Renewals and Extensions



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TRANSACTIONS NOT CONSIDERED TO BE A SALE OR RENT

The purpose of providing an EPC during the sale or renting process is to enable potential buyers or tenants to consider the energy performance of a building as part of their investment. Not all transactions will be considered to be a sale or let to which the duties apply. These will include:

- lease renewals or extensions
- compulsory purchase orders
- sales of shares in a company, which does not involve the sale of the building in which that company is located, where buildings remain in company ownership
- lease surrenders

EPC OVERVIEW

As noted at the start of this chapter, the minimum standards provisions only apply to those non-domestic properties which are legally required to have an **Energy Performance Certificate (EPC)**. This includes individual properties, such as retail units situated within larger buildings, which are required to have their own individual EPC. Given this, a private rented property is covered by the minimum energy efficient provisions if it is required to have an EPC by any of the following:

- The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) regulations 2007
- The Building Regulations 2010
- The Energy Performance of Buildings (England and Wales) Regulations 2012

Page 12 of MHCLG's "A guide to energy performance certificates for the construction, sale and let of non dwellings: Improving the energy efficiency of our buildings" (December 2017) states **a lease renewal or extension is not a trigger for an EPC as the purpose of an EPC** is to "enable potential buyers or tenants to consider the energy performance of a building as part of their investment". The MEES regulations rely entirely on the EPC regulations with regard to the requirement for EPCs, so though there is a requirement for compliance with the minimum standard for extensions and renewals there is not a requirement for an EPC at this stage and they can only be enforced if there is already a valid, legally required EPC on the EPC register.

The BEIS Guidance document "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" (February 2017) (and the MEES Regulations themselves) makes it clear **MEES only apply to properties that are legally required to have EPCs**.

In summary, if at the point of lease renewal or extension there is no valid, legally required EPC there is no requirement to comply with MEES at this stage.

Note: The recent Call for Evidence on EPCs did discuss new 'legal triggers' for EPCs that may be introduced through amendments to the EPC regulations in the future.

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SCENARIO 3

A property let on a twenty year lease with an F rated EPC obtained in 2012: On 1 April 2023 the landlord is continuing to let the property but in this scenario will not be captured by the minimum energy efficiency provisions because the EPC expired in 2022, and there is no legal requirement on the landlord to obtain a new one at that point (because the tenancy is ongoing).

This is emphasised in this example from the BEIS Guidance document (page 21, which demonstrates the principle with regard to the 2023 'continuing to let' scenario and an ongoing tenancy, but would appear to apply equally when there is a lease renewal or extension and no valid, legally required EPC on the EPC register.

1954 ACT

There are a number of situations when a landlord may register a temporary six month exemption (including when a person becomes the landlord on purchasing an interest in a property and, on the date of the purchase, it was let on an existing tenancy) allowing time to improve the property or gather information on further exemptions. This includes the situation where a new lease has been granted under Part 2 of the Landlord and Tenant Act 1954. With regard to Part 2 of the Landlord and Tenant Act 1954 it also says in the Guidance Document (Chapter 1, paragraph 12):

In such cases the landlord may not refuse consent to the lease renewal on the basis that the property is sub-standard. Likewise, tenants may not use a landlord's failure to comply with the minimum energy efficiency standards as a reason to prematurely terminate their lease. Where, after 1 April 2018, the tenancy is being renewed or extended, or a new tenancy is being granted, and the property is at EPC F or G, the landlord should either improve the property to at least an E, or register an exemption, should one apply. In situations where a new lease is granted in accordance with Part 2 of the Landlord and Tenant Act 1954, and where the property to be let is below an EPC E, the landlord may be eligible for a temporary, six month exemption from the requirement to improve the property to an E.

Disclaimer

The above comments are not to be construed as legal advice, but merely a summary of the current regulations and guidance wording. Independent legal advice should be obtained if you are in doubt as to any of the requirements. Guidance documents current as at December 2018.