

**North East Derbyshire District Council**

**Cabinet**

**14 February 2018**

**Minimum Energy Efficiency Standards (Non Domestic)**

**Report of Councillor M Gordon, Portfolio Holder with Responsibility for  
Environment and Asset Management**

This report is public

**Purpose of the Report**

- To outline the impact of the Energy Efficiency (Private Rented Sector) (England and Wales) Regulations 2015 (Referred to as MEES) on the Council's commercial assets and address the corporate plan priority 'Assess the potential revenue impact and develop an action plan to address issues arising from the implementation of the Minimum Energy Standards on commercial properties by April 2018.'

**1 Report Details**

1.1 The Energy Efficiency (Private Rented Sector) (England and Wales) Regulations 2015 will make it unlawful from April 2018 to undertake new lets residential or commercial properties with an Energy Performance Certificate (EPC) rating of 'F' or 'G' (i.e. the lowest 2 grades of energy efficiency).

1.2 The requirements of the legislation are, in summary:

- The minimum energy efficiency standard (MEES) is set at an EPC rating of 'E'. Anything below an E rating would be unlawful to let (Subject to exemptions)
- From 1 April 2018, the regulations will be enforced upon the granting of a new lease and the renewal of existing leases. Landlords will be required to ensure compliance before the lease is granted. In special circumstances, landlords will be given an extension of six months from the date of the grant of the lease to comply with the regulations.
- From 1 April 2023, MEES will be extended to cover all leases, including where a lease is already in place.
- All non-domestic property types are in scope of the regulations, except for those that do not require an EPC under current regulations, such as listed buildings.
- MEES does not apply to lettings of 6 months or less, or to lettings of 99 years or more.

- The regulations apply to sub-lettings and assignments.
- 1.3 Over the past 12 months officers have reviewed the relevant legislation, attended conferences and seminars on the subject, sought professional advice from Compliance 365 and consulted with DCLG now named MHCLG, the department responsible for the enforcement of the regulation.
- 1.4 To fall within the MEES legislation, the asset must first sit within the ‘Energy Performance of Buildings (England and Wales) Regulations 2012’ (EPC Legislation). DCLG advised that it is for the landlord to determine whether they consider their buildings are exempt from requiring an EPC on the basis of the exemptions in the legislation.

There are a number of exemptions in the legislation (See **Appendix A** for full list) where an EPC may not be required and subsequently fall outside the MEES legislation. This report only focuses on one exemption that directly impacts on the Council’s commercial stock:

- (1) Industrial sites, workshops and non-residential agricultural buildings with low energy demand

The DCLG report title ‘Improving the energy efficiency of our buildings – a guide to energy performance certificates for the construction, sale and let- of non-dwellings’ defines a building as a *“roofed construction having walls, for which energy is used to condition the indoor climate; a building may refer to the building as a whole or parts thereof that have been designed or altered to use separately”*.

Low energy demand buildings are defined as *“buildings, or parts of buildings, designed to be used separately, whose purpose is to accommodate industrial activities in spaces where the air is not conditioned. Activities that are covered include foundries, forging and other hot processes, chemical process, food and drinks packaging, heavy engineering and storage and warehousing where, in each case, the air in the space is not fully heated or cooled. Whilst not fully heated or cooled these cases may have some local conditioning appliances such as a plaque or air heaters or air conditioners to serve people at work stations or refuges dispersed amongst and not separated from the industrial activities”*.

This exception is most relevant for former depot sites and industrial premises across the district. An assessment of the Council’s stock against the above has led to exemptions summarised in **Appendix C**.

- 1.5 In additions to exemptions and particularly relevant to business centres, if the building has a common heating system, then the landlord has a choice:
1. To prepare (or make available) an EPC for the whole building; or
  2. To prepare (or make available) an EPC for a part designed or altered to be used separately being offered for sale or let.

For public buildings such as Mill Lane, Display Energy Certificates (DEC), must be displayed. If the building is sold or let (or let in part), it will also require an EPC.

- 1.6 Cabinet can see from the above that EPC and MEES legislation is a complex area and relies upon the landlord interpreting the legislation in order to assist decision making and demonstrate compliance. The table in **Appendix C** hopes to simplify the impact on the Council's stock, in particular highlighting exemptions and assets which need to be improved in energy performance terms.
- 1.7 As a combination of exemptions and EPC assessments across all of the Council's commercial assets thirteen of the properties don't currently comply with the MEES legislation, details of which can be found in **Appendix D**. These properties are long standing tenancy agreements which will not be impacted by the MEES legislation in April 2018. The majority of the leases for properties with a requirement improved EPC ratings, particularly the retails units have leases that expire in the next couple of years and will require renewal within the years 19/20 and 20/21. These properties will require an EPC to be undertaken and a rating higher than an F achieved prior to a new lease being agreed and/or by 1 April 2023 when MEES will be extended to cover all leases, including where a lease is already in place.
- 1.8 With regards the financial impact of the recommended improvements, whilst there is undoubtedly a cost to these improvements, in the main the improvements are installing more efficient light fittings/bulbs and adding heating controls which Officers deemed to be costs which can be incorporated in existing and future repairs and maintenance budgets for the relevant unit.
- 1.9 The Corporate Plan priority is to 'Assess the potential revenue impact and develop an action plan to address issues arising from the implementation of the Minimum Energy Standards on commercial properties by April 2018.' It is hoped that this report provides Cabinet with the information required to satisfy the target and the comfort that the Council is well placed, prior to the implementation of MEES and the potential financial risk from the introduction of MEES is negligible.
- 1.10 In the case of any non-domestic properties, where there are domestic properties above or in the same building, a joint review of the works with Rykneld will be carried out before any work is undertaken, excluding repairs, servicing etc.

## **2 Conclusions and Reasons for Recommendation**

- 2.1 The Corporate Plan priority is to 'Assess the potential revenue impact and develop an action plan to address issues arising from the implementation of the Minimum Energy Standards on commercial properties by April 2018.' It is hoped that this report provides Cabinet with the information required to satisfy the target and the comfort that the Council is well placed, prior to the implementation of MEES and the potential financial risk from the introduction of MEES is negligible.
- 2.2 Based upon officers reviewing the relevant legislation, attended conferences and seminars on the subject, seeking professional advice from Compliance 365 and consulting with DCLG, the exemptions explained in the report are Officer interpretation. DGLG state that it is for the landlord to make reasonable assumptions

in determining any exemptions however, as the legislation is enforced and case law is established, the exemptions may need to be reviewed again.

### **3 Consultation and Equality Impact**

- 3.1 DGLG acknowledge that “*the Regulations and the accompanying guidance copy out specific wording from the Directive, which we believe has introduced some confusion.*” The Council have consulted directly with DGLC to clarify the exemptions and better understand the implementation and future enforcement.
- 3.2 There are no Equality Impact issues arising from this report.

### **4 Alternative Options and Reasons for Rejection**

- 4.1 Cabinet could fail to agree with the interpretation of the legislation, particularly the application of exemptions. Officers would take into consideration such an objection and reassess the revenue impact accordingly.
- 4.2 Cabinet could take a zero risk approach to exemptions and insist that all properties let have an EPC rating of A to E, thus ensuring compliance. On assets such as the various industrial units across the district, this approach will be extremely costly and some interventions would carry significant planning risk.

### **5 Implications**

#### **5.1 Finance and Risk Implications**

- 5.1.1 Based upon the interpretation of the legislation to date the financial risk to the Council is very low, and can be accommodated in normal repair and maintenance budgets. However, as the legislation is enforced (By Environmental Health/Trading Standards) and case law is established, the interpretation and exemptions may need to be reviewed accordingly, which may in turn increase the financial risk to the Council.

#### **5.2 Legal Implications including Data Protection**

- 5.2.1 There are no immediate legal implications arising from this report.

#### **5.3 Human Resources Implications**

- 5.3.1 There are no HR implications arising from this report.

### **6 Recommendations**

- 6.1 That Cabinet acknowledge the report and agree this satisfies the corporate priority accordingly

## 7 Decision Information

<p><b>Is the decision a Key Decision?</b>  A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds:  BDC: Revenue - £75,000 <input type="checkbox"/>  Capital - £150,000 <input type="checkbox"/>  NEDDC: Revenue - £100,000 <input type="checkbox"/>  Capital - £250,000 <input type="checkbox"/>  <input checked="" type="checkbox"/> Please indicate which threshold applies</p>	No
<p><b>Is the decision subject to Call-In?</b>  (Only Key Decisions are subject to Call-In)</p>	No
<p><b>District Wards Affected</b></p>	All
<p><b>Links to Corporate Plan priorities or Policy Framework</b></p>	Assess the potential revenue impact and develop an action plan to address issues arising from the implementation of the Minimum Energy Standards on commercial properties by April 2018.

## 8 Document Information

Appendix No	Title
Appendix A	Full list of EPC Legislation Exemptions
Appendix B	DCLG Correspondence (Addressed to BDC due to the joint Officer's email address)
Appendix C	Non compliant properties
Appendix D	EPC assessments
<p><b>Background Papers</b> (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)</p>	
<p>Energy Efficiency (Private Rented Sector) (England and Wales) Regulations 2015  Energy Performance of Buildings (England and Wales) Regulations 2012</p>	
<b>Report Author</b>	<b>Contact Number</b>
Commercial Property & Developments Manager	2210

## **Appendix A**

### Full list of EPC Legislation Exemptions:

- (a) buildings officially protected as part of a designated environment or because of their special architectural or historical merit, in so far as compliance with certain minimum energy performance requirements would unacceptably alter their character or appearance;
- (b) buildings used as places of worship and for religious activities;
- (c) temporary buildings with a time of use of two years or less;
- (d) industrial sites, workshops and non-residential agricultural buildings with low energy demand;
- (e) non-residential agricultural buildings which are in use by a sector covered by a national sectoral agreement on energy performance;
- (f) residential buildings which are used or intended to be used;
  - (i) for less than four months of the year, or
  - (ii) for a limited annual time of use and with an expected energy consumption of less than 25% of what would be the result of all-year use; and
- (g) stand-alone buildings with a total useful floor area of less than 50m<sup>2</sup>.

## Appendix B - DCLG Correspondence



Department for  
Communities and  
Local Government

*Department for Communities and Local  
Government*  
Eland House - London

Matt Broughton  
Bolsover District Council  
(By email)

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[www.gov.uk/dclg](http://www.gov.uk/dclg)

Our Ref: 3309257  
Your Ref:

Date: **12 May 2017**

Dear Sir/Madam,

Thank you for your email of 3 April 2017 to BEIS, about non-domestic private rented property minimum standards. I have been asked to reply as EPCs fall within my policy area.

As discussed over the phone, requirements for energy performance certificates derive from the Energy Performance of Buildings Directive. This was transposed into UK law in the Energy Performance of Buildings Regulations which came into force in January 2013. EPCs have to be made available when buildings are sold or let. They are used to demonstrate that new buildings meet building regulations and ensure that consumers are aware of the efficiency of properties they are buying or renting.

However, the Regulations and the accompanying guidance copy out specific wording from the Directive, which we believe has introduced some confusion. This is because the historic/listed building exemption provision in the Directive itself cross refers to wording intended for use in exempting such buildings from certain minimum energy efficiency requirements. We appreciate the need for clarity on this point, not least because of the requirements for minimum energy efficiency standards for the private rented sector. We are therefore looking into this to consider what may need to be done to clarify the position.

As I said over the phone, it is for you to decide whether you consider your buildings are exempt from requiring an EPC on the basis that any recommendation would adversely impact the historic character of the buildings. I'd recommend taking your own legal advice on this point to help you reach a decision.

Regards  
Phil Philippou

## Appendix C

Asset	EPC / DEC required	Reason	EPC Rating	Compliant? - Yes (Green) To be confirmed (Amber) No (Red)
2013 Mill Lane	EPC – space available for letting	DEC due to it being a public building, the EPC due to leased offices within	DEC Rating C	
	DEC – public building exceeding 1000m2		EPC Rating D	
Pioneer House	EPC	Office accomodation	Rating E	
Midway Business Centre	Exempt	Industrial building, low energy demand.	N/A	
Coney Green Business Centre (Offices)	EPC	Office accomodation	Rating C	
Coney Green Business Centre (Industrial)	Exempt	Industrial building, low energy demand.	N/A	
Clay Cross Depot, Bridge Street, Clay Cross	Exempt	Industrial building, low energy demand.	N/A	
Lower Mantle Close, Clay Cross	Exempt	Industrial building, low energy demand.	N/A	
Pavilion Workshops, Holmewood	Exempt	Industrial building, low energy demand.	Unit 10 - Office Unit rating C	
Norwood Industrial Estate, Bedgrave Close, Killamarsh	Exempt	Industrial building, low energy demand.	N/A	
Norwood Industrial Estate, Ellison 's Road, Killamarsh	Exempt	Industrial building, low energy demand.	N/A	
Norwood Industrial Estate, Rotherham Close, Killamarsh	Exempt	Industrial building, low energy demand.	N/A	
Stonebroom Industrial Estate	Exempt	Industrial building, low energy demand.	N/A	
Southgate /Market Street Shops, Eckington	EPC	Retail Premises	Eight out of nine properties have been assessed and five out of eight are rated as "G or F."	
Unit 3 Fir Road Shops, Eckington	EPC	Retail Premises	Rating C.	
Unit 4 Fir Road Shops, Eckington	EPC	Retail Premises	Rating F	
Unit 6-8 Fir Road Shops, Eckington	EPC	Retail Premises	Rating C	
Shop Unit 25 High Street, Dronfield	EPC	Retail Premises	Rating F	
1 Bridge Street, Clay Cross	EPC	Retail Premises	Rating E	
Former Darby & Joan Club, Clay Cross	EPC	Community Centre	Rating E	
Holmgate Darby & Joan Club	EPC	Community Centre	Rating E	
47 Peveril Road, Eckington	EPC	Detached former depot building now used as body building club	Rating F	
Rotherside Court, Eckington Business Park, Eckington	EPC	Office/workshop accomodation	Rating between "B" & "C"	
Stonebroom Village Hall	EPC	Community Centre	Rating G	



## Appendix D

Southgate /Market Street Shops, Eckington – Various retail premises with a typical recommendation for improvement as follows:

<b>Recommendation</b>	<b>Potential impact</b>
Replace tungsten GLS lamps with CFLs: Payback period dependent on hours of use.	HIGH

Unit 4 Fir Road Shops, Eckington– Retail premises with the following recommendation for improvement:

<b>Recommendation</b>	<b>Potential impact</b>
Replace tungsten GLS lamps with CFLs: Payback period dependent on hours of use.	LOW
Consider replacing T8 lamps with retrofit T5 conversion kit.	HIGH
Introduce HF (high frequency) ballasts for fluorescent tubes: Reduced number of fittings required.	LOW
Add time control to heating system.	LOW

Unit 25 High Street, Dronfield - Retail premises with the following recommendation for improvement:

<b>Recommendation</b>	<b>Potential impact</b>
Replace tungsten GLS lamps with CFLs: Payback period dependent on hours of use.	LOW
Consider replacing T8 lamps with retrofit T5 conversion kit.	HIGH
Introduce HF (high frequency) ballasts for fluorescent tubes: Reduced number of fittings required.	LOW

47 Peveril Road, Eckington - Retail premises with the following recommendation for improvement:

<b>Recommendation</b>	<b>Potential impact</b>
Replace tungsten GLS lamps with CFLs: Payback period dependent on hours of use.	LOW
Add time control to heating system.	LOW
Consider replacing T8 lamps with retrofit T5 conversion kit.	HIGH
Add optimum start/stop to the heating system.	LOW
The default heat generator efficiency is chosen. It is recommended that the heat generator system be investigated to gain an understanding of its efficiency and possible improvements.	LOW
Some walls have uninsulated cavities - introduce cavity wall insulation.	MEDIUM

Stonebroom Village Hall – Community building with the following recommendation for improvement:

<b>Recommendation</b>	<b>Potential impact</b>
Replace 38mm diameter (T12) fluorescent tubes on failure with 26mm (T8) tubes.	HIGH
Replace tungsten GLS lamps with CFLs: Payback period dependent on hours of use.	LOW
Add time control to heating system.	MEDIUM
Add optimum start/stop to the heating system.	MEDIUM
The default heat generator efficiency is chosen. It is recommended that the heat generator system be investigated to gain an understanding of its efficiency and possible improvements.	LOW
Some walls have uninsulated cavities - introduce cavity wall insulation.	MEDIUM