

Are you switched on to the Energy Act?

The warnings have been there for some time but there are now just **three years** to deal with the **£29bn green refurbishment bill** facing the commercial property industry – the potential cost to refurbish more than **200,000 commercial properties** in England and Wales to avoid them becoming illegal to let within four years.

The Energy Act 2011 contains a number of energy-related measures including the Government's flagship 'Green Deal' Policy and refers to the minimum energy standards a property should have.

From 1 April 2018, a landlord of a residential or commercial property which falls below a prescribed level of energy efficiency (EPC rating F or G) will not be able to let that property until the landlord has made certain energy improvements. This provision could potentially have severe implications for about 20% of all commercial properties considered to have energy certificates in those categories. This might include prime properties not just poorer secondary stock which currently dominates the amount of available space on the market in the **East Midlands**.

When the legislation comes into force all properties with an F or G rating will be caught by the regulations. A breach does not only occur when the property is next marketed after the regulations come into force therefore leaving existing tenancies at risk. The legislation applies to all lettings and re-lettings (not sales) and could include sub-lettings and assignments.

The implications of the legislation could apply to existing commercial leases that continue beyond 2018. There could be dilapidations issues arising, for example,

would landlords have to carry out improvements before it comes into force to avoid being in breach and if so could they be at risk of breaching its covenant for quiet enjoyment? Alternatively, the lease may contain a statutory compliance covenant which could oblige the tenant to carry out improvements in order to comply with the regulations. Valuations of properties and rent reviews will also be affected by the energy efficiency of a property.

Properties that do not conform to the new regulations could receive penalties from the trading standards of each local authority. For commercial property the Act does not currently stipulate a limit. However, the cost of achieving compliance may not be too severe as research shows that for most building types the EPC banding can be improved by increasing refurbishment costs by only 2 or 3%.

The Green Deal is a financing framework to encourage energy improvements to be completed. It will enable energy efficiency improvements to be made to properties at no up-front costs to landlords. Repayments are to be made via energy bills. Landlords and sub-letting occupiers will have satisfied their obligations once they have achieved an EPC E rating or have implemented the maximum package of works allowable under the Green Deal (even if they fall short of the E rating).



Protecting
your assets

What can you do?

Whilst there are three years until the legislation comes into force, property investors can and should start preparing now. The first step would be to assess the investment portfolio by commissioning EPC's and reviewing existing EPC's. The energy performance rating should be examined and the properties with low ratings identified and options considered that would boost low ratings.

If the rating is E or above then the owner is safe from the regulations until expiry of the EPC. If a rating of F or G is obtained then improvement works can be identified, costed and implemented through a programme of works or existing maintenance plan ready for April 2018. If the cost of the works required to bring a property up to an E rating or above is higher than the benefit of the letting then the investors may need to consider other options available such as disposal.

For all new property acquisitions between now and April 2018, the EPC should be carefully reviewed to determine whether any works are required to bring it up to standard which could have an impact on the investment value.

How can Innes England help?

We recommend that landlords and tenants concerned about the implications of the Act and how to achieve compliance should contact our specialist team of advisers. Innes England can identify the potential impact to you and ensure you achieve compliance by the time the regulations come into force. We can effectively provide an integrated service from identifying the risks of the Act and ensuring you achieve compliance by 2018 and in the most cost effective way. We can:

- Advise you on the implications of the Act for your property portfolio or individual buildings
- Produce EPC's and assess the current energy efficiency of a building / portfolio
- Review existing EPC's and advise on strategies to manage energy performance risks
- Produce a recommendation report to identify what improvement works are necessary in order to achieve compliance and when to implement the works
- Negotiate with landlords and tenants regarding any proposed improvements and ensure the works can commence in line with any relevant covenants within existing leases
- Specify, tender and project manage the improvement works to completion.

Speak to a member of the team



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