Energy efficiency in commercial buildings

In recent years the commercial property sector has been affected by a number of green initiatives. This note updates the picture to June 2016.

The Carbon Reduction Commitment (CRC)

In autumn 2015 the Government carried out a consultation into business energy efficiency taxes. As a result, it announced in March 2016 that it will abolish the CRC from the end of the 2018-19 compliance year and increase the main rate of climate change levy from 1 April 2019.

Minimum Energy Efficiency Standards (MEES)

From 1 April 2018, a landlord of a non-domestic privately-rented property cannot grant a new tenancy (other than a long lease of 99 years or more, or a non-renewable letting to a new tenant for 6 months or less) unless:

- a valid energy performance certificate (EPC) gives the property an energy efficiency rating of at least band E; or
- if the property is rated F or G, the landlord has made all the energy efficiency improvements that can be made to the property (or none can be made); or
- the landlord has registered a valid exemption on the PRS Exemptions Register.

Exemptions are available in various circumstances, including where the property is not required to have an EPC; where the owner cannot obtain third party consents for the necessary energy efficiency improvements; or where those works would devalue the property by more than 5% of its market value. An exemption will last for 5 years and will be personal to each property owner.

At first these rules will only apply to new lettings and lease renewals but from 1 April 2023 landlords of properties let on existing leases which have an EPC must ensure that the property is either rated E or above or that an exemption is registered on the PRS Exemptions Register.

There are some situations where a new landlord or, from 1 April 2023, a new owner can register a temporary exemption, which will expire after 6 months, in order either to carry out any necessary works or to register a substantive exemption.
In April 2016 the Department for Energy and Climate Change issued some draft guidance to help property owners interpret the MEES regulations, and plans to issue a final version to the public once it has reviewed comments on the current draft. The areas of uncertainty include the following:

- Will MEES apply where a property owner has obtained an EPC voluntarily? The draft guidance implies that MEES will apply if the property is required to have an EPC, but not otherwise. It is anticipated that the final version of the guidance will contain further clarification on this question.

- Are listed buildings subject to MEES? Listed buildings will not be subject to MEES if they do not require an EPC. This is the case where compliance with MEES requirements would unacceptably alter their character or appearance. It is thought that the same rules will apply to non-listed buildings in a conservation area.

- What will happen where, in order to be able to sublet, an intermediate tenant of part of a building needs to carry out works to elements of the building that are key to energy efficiency (such as the heating or air conditioning plant) that are common parts and are therefore controlled by the freeholder? The intermediate tenant will be able to lodge an exemption if the landlord refuses consent to the proposed energy efficiency works. However, if the landlord does consent then it is not clear who will be responsible for funding the works.

It is hoped that the final version of the guidance will answer the questions that remain outstanding. In the meantime, landlords are reviewing their properties to assess whether any improvement works are needed.
Changes to the rules allowing access to data held on the Energy Performance of Buildings Registers (EPB Registers).

There are now over 15 million data entries on the EPB Registers, including data obtained in connection with the preparation of EPCs and Display Energy Certificates (DECs), air condition reports and recommendation reports. The Government has decided to allow greater access to that data in order to facilitate improved energy efficiency. New regulations which came into force on 6 April 2016 have made the following changes to the regime:

- When commissioning an EPC report of a security-sensitive building such as a royal building, a prison or a government or armed forces building, called an "excluded building", it will now be possible to require the energy assessor to ensure that no data from the inspection be entered on the EPC register.

- Energy assessors must now enter on the EPC register a certain amount of information from every recommendation report, unless the excluded buildings regime has been invoked.

- The rules on publicising the information which must be included in an EPC, DEC, air-conditioning report or recommendation report (called "general access data") have been altered so that now an owner/occupier cannot opt out of disclosing information if:
  - (i) the person requesting disclosure can quote the EPC's unique reference number; or
  - (ii) the data requested is required to be included in a DEC - in other words, it relates to a public building.

- At present, the data which underlies EPCs and the connected reports (called "bulk access data") can only be disclosed to certain authorised bodies (such as government agencies, universities, energy companies and some green charities) on request, in an anonymised format, for a fee and for certain prescribed purposes only. The Government has decided that from 1 June 2016, some data can be published for free on the internet (unless an opt-out applies) to anyone who wants it.

The data in question includes details such as the address (including the postcode, local authority, county and constituency); the energy rating and potential energy rating; the building type; the inspection date; the transaction type; the main and any secondary heating fuels; if the building is air-conditioned then whether an air-conditioning system inspection has been requested and the system’s estimated and actual rated output; any specialised energy requirements; any renewable energy supply; the floor area and current CO2 emissions per floor area; the unique property reference number; the standard, typical and potential emission rates; any recommended improvements and the description of the building environment.

If you wish to opt out in relation to your building, you may do so online here by 30 June 2016.