



Hewitsons' Agriculture, Food & Rural Business Legal update

December 2017

In this issue:

- Deliberate concealment and enforcement
- How will Brexit affect your workforce?
- Implied Overage terms and Option Agreements
- Four months to go - Are you EPC ready?

Deliberate concealment and enforcement



Emma Bowman
Solicitor

A recent appeal decision is a reminder that the time limits for enforcement action against a breach of the planning rules will not apply if the breach is deliberately concealed.

Section 171B of the Town and Country Planning Act 1990 sets out the time limits for enforcement of a breach of planning control. However the time limits do not apply if the breach has been deliberately concealed. There must be positive deception rather than just omission and concealment.

An agricultural barn had been converted to residential use more than four years earlier and would normally have been immune from enforcement action. However the appellant repeatedly told the local authority that there was no dwelling on the land and that he lived elsewhere. The inspector found that this amounted to deliberate concealment and that the barn should be returned to agricultural use.

For more information, please contact Emma Bowman on 01223 532717 or [click here](#) to email Emma.

How will Brexit affect your workforce?



Gemma Hill
Solicitor

For many years farmers and growers have relied on EU workers to work in their businesses, particularly in seasonal work. An estimated 90% of seasonal workers employed in agriculture and horticulture are from Europe. So, what will happen when we leave the EU?

Whilst there will be no change to EU workers' rights in the UK until we leave the EU, those who have been here for at least five years, may want to apply for permanent residency in order to have certainty.

For those EU workers in the UK who are not currently eligible for permanent residency, the following is proposed:

Those who have five years residency before the "specified date" will need to apply for a new "settled status". The "specified date" has not yet been confirmed but will be between 29 March 2017 and when we leave the EU.

Those who arrived in the UK before the "specified date" but do not have five years residency can stay until they complete five years and then apply for "settled status".

Those who arrived in the UK after the "specified date" but before we leave the EU will have two years to apply to remain under the new immigration system.

We do not currently know what immigration system will apply once we leave the EU. A Home Office document leaked in September suggested that the Points Based System, currently used to enable employers to hire migrant workers from outside the EU, could also cover EU recruits. However, this system only allows employers to recruit migrant workers into skilled roles. This will not help farmers and growers recruit low skilled workers to fill the jobs that they will need going forward and could cause a shortage of unskilled labour.

We will have to wait and see how the Government will address these concerns. For the time being all employers can do is support their current workforce in this uncertain time.

For more information, please contact Gemma Hill on 01604 463309 or [click here](#) to email Gemma.

Implied Overage terms and Option Agreements



Amanda O'Mahony
Solicitor

The court has recently decided that a term requiring the sale of dwellings which were to be subject to overage should be implied into an option agreement. The buyer had argued there was no obligation to sell, avoiding the overage. The buyer chose to let them instead. However, the court applied the principle of business efficacy to the case and determined that without the implied term the agreement would lack "practical or commercial coherence". In other words there would be no purpose to the other buyers obligations to get planning consent and build out as soon as possible.

Please see [this page](#) for a full article on the case or contact Amanda O'Mahony on 01604 463115, or [click here](#) to email Amanda for more details.

Four months to go - Are you EPC ready?



Sarah Aylward
Senior Solicitor

From **1st April 2018**, the basic rule is that you must not grant a new tenancy, or renew or extend an existing tenancy, if your building has an Energy Performance Certificate with lower than an E rating ie. an F or G rating.

From 1st April 2020 for a residential building and 1st April 2023 for a commercial building, you will not be allowed to continue to let the building (even on an existing tenancy) with lower than an E rating.

There are some exceptions and exemptions to this as discussed further below.

You should be making a final check as to whether any of your buildings need works done to them now to be brought up to standard.

The Minimum Energy Efficiency Standards (MEES) regulations (Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015) apply to both residential and commercial properties.

Aren't most farm buildings outside these rules?

The MEES regulations only apply to buildings, which are defined as "a roofed construction having walls, for which energy is used to condition the indoor climate". An unheated barn would therefore not be caught. At the other end of the spectrum, residential dwellings on a farm will be clearly within the scope of regulation, as will many commercial buildings where a farmer has diversified. Some buildings are expressly excluded from the requirement to have an EPC. These include workshops and non-residential agricultural buildings with a low energy demand (for example greenhouses that have a heating system that is only switched on for a few days to encourage germination). Also excluded are temporary properties (intended to last up to 2 years), standalone buildings with a total use floor area of less than

50sqm, and some types of holiday lets (where the property is only used for a limited time each year).

My building is listed – I've heard that listed buildings don't have to have an EPC?

This has been a matter of debate! The short answer is that listed buildings are not automatically exempt and require assessment on a case by case basis. The regulations provide that listed buildings are exempt "in so far as compliance with certain minimum energy performance requirements would unacceptably alter their character or appearance". It is not clear which the "certain" minimum energy performance requirements are. However, it would seem to mean that firstly consideration must be given to what could be done to improve the energy performance of a listed building to achieve a rating of E or better, and then secondly a decision has to be made on whether such changes would unacceptably change the character or appearance of the building.

Do the rules apply to all types of tenancies?

Not to tenancies of commercial buildings of 6 months or less with no right to renew (unless the tenant has already been in occupation for 12 months), or to tenancies of commercial buildings of over 99 years.

Tenancies of individual rooms within a dwelling, where there is a shared bathroom/kitchen are not caught either.

My tenant's lease is going to expire in April 2018. Should I just let it run on and not grant a new lease to avoid the MEES requirements?

When a fixed term tenancy comes to an end but the tenant stays in occupation, a statutory periodic tenancy may arise in these circumstances. This would be treated as you having granted a new lease and you would then be obliged to comply with MEES.

Is there any way out of these requirements?

There are some exemptions from the rules.

1. If you have an independent surveyor's report confirming that the work required would result in more than a 5% decrease in the value of the property
2. If you can't obtain third party consents to carry out the works despite reasonable efforts (such as the consent of your bank under your mortgage or a planning consent)
3. If you have carried out all relevant energy efficiency improvements required but the property remains below an E rating. (Generally, the intention was not that a property should be improved at any cost to achieve an E rating - the predicted savings from improvements were meant to repay the cost of the improvements over their lifetime. However, the ending of the Green Deal scheme has caused some tension with the MEES requirements).

You must register the exemption on the central government Private Rented Sector Exemptions Register and it will be valid for 5 years only. If you sell the building the exemption can't be transferred to the buyer – they would have to qualify for and register their own exemption.

Guidance suggests that permitting occupation of a sub-standard property under a genuine licence arrangement or an agreement for lease may avoid the need to comply with MEES. However, such arrangements may not suit your scenario and might give rise to other difficulties.

My house has solid walls which has contributed to it having an F rating – aren't lots of older rural properties going to have this issue?

It is believed by some that the Government has made errors in assessing the energy efficiency of traditional solid wall buildings. It is possible that in the future the method of assessment will change so that your house may have a better rating without you carrying out works. However, this is perhaps unlikely to happen in time for April 2018.

What happens if I don't comply with these regulations and just go ahead and grant a lease anyway?

The lease would still be valid, but you may be subject to enforcement action from the local authority for residential property and from the local weights and measures authority for commercial property.

Various fines may be payable – for example, if you let a sub-standard property for more than 3 months in breach of MEES, there can be a fine of up to £4000 for residential property, and for commercial property a fine equivalent to 20% of rateable value (with a minimum of £10,000 and maximum of £150,000). There may also be a publication or "embarrassment" penalty with your breach appearing on the PRS Exemptions register for at least 12 months.

For more information on MEES and your obligations, please contact Sarah Aylward on 01223 532769 or [click here](#) to email Sarah.

This Bulletin is produced by Hewitsons for clients and contacts of the firm to provide them with a useful summary of recent cases, journal reports, developments in the law and dates to be aware of. It is not a definitive statement of the law in any area.

Advice should be sought from a solicitor in the Agriculture, Food & Rural Team at Hewitsons in respect of any information contained in this Bulletin that affects any matter with which you may be concerned. Hewitsons offers a full agricultural, food and rural service. This Bulletin will help to keep those involved up to date with the latest developments.

Hewitsons LLP is authorised and regulated by the Solicitors Regulation Authority. While the articles and opinions expressed in this publication are summations of current general legal matters the firm can take no responsibility for their application to specific situations in which specialist advice is required.

Hewitsons LLP is a limited liability partnership. Hewitsons LLP Reg Office: Shakespeare House, 42 Newmarket Rd, Cambridge, CB5 8EP.
Reg No: OC334689