



# **THE NON-DOMESTIC PRIVATE RENTED SECTOR MINIMUM ENERGY EFFICIENCY STANDARDS: EPC B FUTURE TRAJECTORY IMPLEMENTATION**

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## Better Buildings Partnership

The Better Buildings Partnership (BBP) is a collaboration of the UK's leading commercial property owners and managers who are working together to improve the sustainability of existing commercial building stock. Our members represent over £270bn of AUM, and via the Managing Agents Partnership, manage over 30,000 buildings.

This year the BBP and the Managing Agents Partnership have continued an extensive programme of work to support our members in line with the objective of improving the sustainability performance of their portfolios. In September 2019 we launched our Member Climate Change Commitment, which now has 26 signatories covering over £350bn AUM commit to delivering net zero carbon buildings by 2050. In November 2020, we launched NABERS UK which focuses on targeting operational energy ratings within new office designs and providing a rating of in-use operational performance. We also continue to gather operational energy, water and waste data from over 1,000 commercial properties via our Real Estate Environmental Benchmark.

## High-level Response

The BBP members welcome the Government's intention to set an ambitious and clear trajectory for MEES. This provides certainty for the market and can enable property owners to plan for and implement the changes required to meet the minimum standards. It is, of course, important that any legislation takes into account the diverse nature of the UK commercial real estate market and the constraints and challenges that organisations may have in compliance. Furthermore, the nature of EPCs mean that MEES alone are not likely to achieve the impact required unless they are accompanied by policy measures that address actual operational energy performance.

The BBP welcomes the consultation on the effective implementation of MEES and the EPC rating B by 2030 trajectory and our high-level response to the consultation is as follows:

- We welcome the Government's ambition and clarity concerning future trajectory and acknowledge that much of the feedback provided by the BBP in the response to the previous consultation has been addressed.
- The BBP does not support the introduction of an interim target of EPC C by 2027. Whilst aware of the drive for this to encourage early action from property owners, the timescales associated with refurbishment and upgrade works, together with the practical considerations concerning leasing models mean that we believe this will not achieve the desired outcome and could potentially result in unintended consequences that are counter to the intention of this and other associated policies designed to improve the energy performance of buildings.
- The enforcement regime is critical and the BBP would support enforcement by a central agency on the basis that this could be ably supported by the proposed central register and address concerns raised about the capacity within local authorities to resource enforcement effectively.
- The BBP welcomes efforts to encourage greater collaboration and cooperation between landlords and tenants in relation to the PRS regulations and, indeed, would strongly assert that this is imperative for the successful implementation of this policy.

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- The utilisation of MEES to deliver better performing buildings is welcomed, but the minimum standards should not ultimately result in buildings becoming unnecessarily ‘stranded assets’. The purpose of the minimum standard should be to ensure that buildings reach the highest EPC possible and facilitate an environment that encourages developers / investors / occupiers to buy and upgrade poor performing buildings in a way that reduces the risk of unintended consequences and, more specifically, the impact of embodied carbon in redevelopment. The approach to exemptions will therefore need to address this.
  - As highlighted above, it is essential that MEES are accompanied by policy measures that address operational energy performance, and we wholeheartedly welcome the parallel consultation on mandatory energy performance in use disclosure for commercial buildings and will be responding to that consultation separately.

We hope the following responses to your queries prove useful. It is worth noting that the BBP has performance data, case studies and market knowledge that could be very helpful to the Government in formulating effective policy in this area and would be happy to provide more details and briefings on this to Government to assist in this process.

Should you require any further information on any aspect of this submission please contact Sophia Tysoe, Stakeholder Engagement and Communications Executive at [s.tysoe@betterbuildingspartnership.co.uk](mailto:s.tysoe@betterbuildingspartnership.co.uk).

# Membership

## BETTER BUILDINGS PARTNERSHIP MEMBERS



## MANAGING AGENTS PARTNERSHIP MEMBERS



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## 1. Should listed buildings and those in conservation areas which are to be rented out be legally required to have an EPC?

- The BBP welcomes government shift and agrees listed buildings should be legally required to obtain an EPC. However, careful consideration is required in relation to the requirements of meeting the Minimum Energy Efficiency Standards and it is felt more analysis is required before determining any minimum requirements for heritage properties.
- Typically, heritage properties are not insulated and have a high rate of air permeability but are built using high-quality construction techniques and heavy thermal mass materials that are designed to breathe. In contrast, modern buildings are very well insulated and use mechanical ventilation to control moisture. This can result in the EPC Recommendations Report suggesting improvement measures for heritage properties that are tailored towards modern construction techniques when in reality, they may be inappropriate and detrimental to the building fabric. The BBP has published the following report that highlights such risks: [Minimum Energy Efficiency Standards and Heritage Properties](#).
- It is important that heritage buildings are updated from an energy efficiency perspective overtime to ensure they do not become stranded assets, however, this must be done in a sensitive and appropriate manor. The BBP therefore welcomes government's acknowledgement that the current EPC recommendations register is not fit-for-purpose for heritage assets and that Government plan to review this and tailor such recommendations in 2021.
- The BBP acknowledges that whilst listed buildings have important heritage characteristics that need to be protected, there are, in many instances, opportunities to improve energy efficiencies without having a detrimental impact to said heritage value. This is likely to be truer in non-domestic properties, in comparison to domestic properties, where historic alterations have included the installation of central HVAC and lift etc. However, this often needs consideration on a building-by-building basis, rather than taking a blanket approach.
- It is recommended that heritage properties are required to get an EPC by 2023, but then Government takes the opportunity to review the population of buildings and undertaken an assessment in terms of the specific types of energy efficiency measure that are possible, taking into account the bespoke nature of heritage properties. This should then inform any decision relating to setting Minimum Energy Efficiency Standards for these properties and the approach to carrying out upgrades and registering exemptions.
- Local authority officers will play a key role in determining what measure will be appropriate for any given property and it is key that Government develop clear guidance and tools to support them in their decision making in this area to both ensure measures installed do not have adverse impacts for the property, as well as ensure measures are not unnecessarily rejected that are appropriate.

## 2. Do you support the Government's proposal to introduce an EPC C interim milestone in 2027? If so, are there any amendments you would make to the proposals? If you disagree with the proposal, please explain why and what your preferred approach would be. Please provide evidence where you can.

- The BBP understands the Government's desire to incentivise early adoption of improvement measures but is concerned that an interim EPC C requirement will have unintended negative consequences:

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- Requiring a C rating by 2027 will trigger improvements, but not the same improvements that would be required for a B rating. Landlords may elect to improve to a B rating by 2027 but many will not, particularly if a building is expected to be traded. If further works are then required to meet a B rating in 2030 this could lead to significant wasted resources, materials and money. This is most likely to impact smaller more cash-constrained landlords who perhaps do not have sufficient upfront capital, undertake works to meet the 2027 interim target, and then need to remove equipment and install new measures to meet the 2030 target. Furthermore, potential exemptions may be sought because the additional works to improve the rating do not meet the payback requirement and/or the building's leasing and occupancy status prevent them from completing the necessary works to improve it to a B.
  - Due to average refurbishment cycles, it is highly unlikely a property owner will have an opportunity to undertake improvement works in between the 2027-2030, if works have been undertaken to meet the 2027 target requirements. If the desired outcome is to achieve significant improvements by 2027, it may be better to simply make that the target date for 2027. To provide some more detail on this point, if a building needs to be vacated or become un-operational to complete upgrade works, this wouldn't be possible if the building is currently leased out and in occupation. Instead, the best point at which to undertake these major works is either at a refurbishment stage or at the end of an equipment's lifecycle, which is unlikely to happen before 2027 and then again before 2030.
  - Leasing models need also be take into consideration, for example with a fully repairing and insuring lease (FRI), a building's utility supplies are under the fiscal control of the tenant, the building's fit out performance is dictated by the tenant and the building is fully under the operational control of the tenant. Therefore, the landlord and their appointed Managing Agent has very little responsibility and power to improve a building to meet the MEES requirements under this kind of arrangement. So, the introduction of an interim EPC C target, could lead to leases containing varying levels of minimum EPC requirements, with certain leases with a minimum EPC C requirement and others with a minimum EPC B requirement. This will then mean that essentially there will be buildings that are unlikely to be improved to a B rating until there is a break in the lease when the building's operational control comes back to the landlord, which is unlikely to be in 3 years' time when the minimum EPC B requirement comes into play.
  - The burden of costs of improvements is also an important consideration here - for a building in operation, lease terms means that it is difficult to fund improvements such as the main HVAC systems through the service charge unless a system is in disrepair, at the end of its service life etc. Improvement costs therefore need to be factored into capital investment programmes and therefore planned refurbishment cycles, corroborating the points above and supporting the case for having one clear, long-term target.
  - The BBP supports the approach of a compliance window, however, it is the view of our members that a single backstop date of 2030 provides the greatest level of flexibility in allowing property owners to factor upgrades into their asset management strategies. It is the simplest option and the one that provides the greatest level of clarity.
  - The compliance window could, however, be useful in providing an opportunity identify what level of improvement a building will be able to achieve and setting a clear timeline to achieve it. Setting a 2027

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target for identifying the maximum level a building can achieve and having a plan in place to achieve it by 2030 would reveal at an early point, assets where compliance will be challenging and potentially exempted through length of payback. Requiring an improvement plan would then trigger improvements for those buildings rated between E and C. A single level B pass/fail point and exemption if the payback is too long to achieve this, fails to incentivise and actually deters improvements to a lower rating that would nonetheless be beneficial.

- Opportunities for intervention in buildings are relatively infrequent so setting out a window of 3 or 5 years during which improvements are encouraged would enable landlords to plan works most effectively. This could trigger early adoption of measures as they are built into planned maintenance programmes over the 5 years.

3. Do you support the Government's proposal to improve the implementation and enforcement of non-domestic MEES by introducing compliance windows? If so, are there any amendments you would make to the proposals? If not, please outline why, stating what your preferred approach would be. Please provide evidence where you can.

- The BBP agree with the proposed introduction of compliance windows. It simplifies process and allows for more streamlined data collection opportunities for enforcement.
- However, a challenge remains for properties that are already under a long-term lease beyond the 2027 or 2030 target window and currently below the Minimum Energy Efficiency Standard e.g. a property with an EPC of a D with a lease running to 2035. It would be helpful to receive some clarification as to how these assets would be treated and whether specific obligations will need to be applied in these circumstances.
- Tenants should be obliged under the PRS Regulations to permit landlords to carry out energy efficiency improvements to the property, provided that such works cause as little disruption as reasonably possible and when complete do not adversely affect the Tenant's beneficial use and occupation of the property. It is not felt there are sound policy reasons as to why a tenant should be able to prevent the carrying out works where the landlord desires such works to take place, subject to some basic elements of protection being given to them. Accordingly, landlords carrying out works should be obliged to do so in a manner which causes the minimum of disruption to the tenant and such works should not render the premises incapable of occupation and use by the tenant for the tenant's business except outside normal business hours. This could be achieved by a simple amendment to the PRS Regulations. The effect of such an amendment would be to reduce the scope of the consent exemption which could be utilised by the landlord where a tenant's consent to the carrying out of requisite energy efficiency improvement works cannot be obtained.

4. Do you support the introduction of a six-month exemption for shell and core let properties? If so, are there any amendments you would make to the proposals? If you disagree with the proposal, please explain why and what your preferred approach would be. Please provide evidence where you can.

- The BBP supports the exemption proposal outlined in the consultation. However, this is dependent on the definition of "occupied" which is not made clear within Government's proposals.

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- It should be noted that fit-out works can, and do, take longer than 6 months to install. Therefore, a 6-month window from the point of leasing would not be appropriate. It is recommended that the start of the 6-month exemption should be at the point of occupancy i.e. when the space is suitable and safe for use. It is recommended that the issuing of the practical completion certificate of the fit-out is used as a point of evidence for the start date.
  - Whilst outside the scope of the PRS Regulations, it should also be noted that there is a potential conflict with the current EPC regulations that should be rectified. Within the Consultation document, Government outlines its desire to amend the EPC regulations to that a property will be required to have a legal EPC at all times. It should be noted that under Building Regulations, a shell and core space is required to undertake an EPC assessment with the assumption that the fit-out will be the worst-case scenario. This process is a tick-box compliance that services no benefit to the owner or prospective occupier. If amendments to the EPC regulations are being made, it is asked whether the requirement for a shell and core EPC is removed and the same exemption is applied, therefore allowing the owner to produce one EPC once the property has completed its fit-out. This would reduce unnecessary regulatory burden that provides no clear benefit from a policy or user perspective.

5. We welcome views on where improvements could support the transition from the current EPC E requirement, to the proposed new implementation and enforcement framework.

- A critical point concerning the transition from the current requirement to EPC B will be the extent to which the new implementation and enforcement framework incorporates a consideration of the co-operation required between landlord and tenant. This is addressed in question 15 below.
- Comments on the transition also relate to the response to Question 2 above concerning interim targets.

6. Do you agree with the proposals to strengthen enforcement requirements to support non-domestic MEES under the PRS Regulations? If not, please explain why.

- The BBP agrees with the proposals laid out to strengthen enforcement requirements. Many points covered follow recommendations BBP has raised in the last consultation on the PRS Regulations. However, in addition, it is questioned whether local authorities are the most appropriate enforcement body.
- The consultation makes clear central resources are required to develop and house a central database that will be used to monitor compliance and enforcement requirements. It is the view of the BBP that, at a time that Local Authority funding is being reduced by Central Government and resources significantly stretched, that Local Authorities may not be the most appropriate enforcement body. Given that an EPC and exemptions register database needs to be run centrally, it is felt that a central government agency would be more suited to managing compliance of the policy. This model has been used successfully for ESOS (Environment Agency) and Heat Network Regulations (Office for Product Safety and Standards), and it is felt that the PRS Regulations would also benefit from this approach.



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7. Do you support the introduction of a PRS property compliance and exemptions database to support enforcement of the PRS Regulations under the new EPC B framework? If not, please explain why.
- The BBP welcomes the approach proposed within the consultation document. A compliance and exemptions database is a key requirement for effective enforcement is access to data to streamline the enforcement process.
  - The BBP would again like to raise the point raised in Question 6, in its view that a central government agency would be more suited to managing compliance and enforcement of the policy.
8. Do you agree with the proposed landlord registration fee for the PRS property compliance and exemptions database? If not, please explain why.
- It is the view of the BBP that the registration fees are reasonable.
9. Do you agree that £5,000 is a suitable maximum limit to set as the penalty for non-compliance with the new framework requirements? If not, please explain why.
- No response
10. We welcome views on the clarity of the current PRS Regulations in relation to enforcement of penalties for non-compliance with MEES.
- The consultation provides greater clarity on enforcement, some flexibility may need to be incorporated where landlords have large complex portfolios where the opportunity to respond to any non-compliance issues is afforded. The BBP would also welcome clarification on whether non-compliance and imposed fines/enforcement will be made publicly.
11. Should the Government allow local authorities to issue a request to landlords and tenants to inspect properties for compliance under the PRS Regulations? If not, please explain why.
- The BBP does not foresee any significant issues here, other than those highlighted in our response to Question 6 and the need for Local Authorities to have the appropriate resources and expertise available to carry out inspections. However, the purpose of these inspections should be clarified as it is unlikely that Local Authority officers will be able to assess the quality of the EPC through a physical inspection of the asset.
12. Do you agree that all exemptions should be reviewed at the start of each compliance window? If not, please explain why.
- This seems sensible, but may perhaps present challenges for some specific assets e.g. heritage buildings.

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13. Do you support the introduction of a standardised calculator to simplify the requirements for the payback test? If not, please explain why.
- The BBP welcomes approach to simplify the process. In addition, the BBP recommends that standard calculator costs are market tested to ensure it is accurate and robust to avoid having the need of getting three quotes in every instance as the tool is inaccurate.
14. What are your views on whether the three quotes requirement should be kept for certain circumstances, for example where landlords wish to dispute the standardised costs, and how would the requirement work in such circumstances?
- The BBP agrees that this is a reasonable position if a landlord wishes to dispute the standardised calculator costs.
  - As highlighted in previous consultation responses, the BBP considers the requirement for 3 quotes in all circumstances overly onerous and as having negative unintended consequences particularly on potential service providers.
15. Should the Government seek primary powers to introduce tenant responsibilities duties for MEES compliance under the PRS Regulations for non-domestic properties, and to introduce duties of mutual cooperation for landlord and tenant? If not, please explain why. If so, what do you think these duties should consist of? Please explain your reasons and give examples
- The BBP welcomes efforts to encourage greater collaboration and cooperation between landlords and tenants in relation to the PRS regulations and, indeed, would strongly assert that this is imperative for the successful implementation of this policy. The introduction of an enhanced duty of mutual co-operation for landlords and tenants into the PRS Regulations is an essential pre-requisite to achieving the ambitious trajectory of an EPC B for non-domestic properties by 2030.
  - The consultation does not provide detailed proposals, however, some suggestions for consideration are provided below.
  - The requirement for data sharing and collaboration would be a useful principle to include within the regulations. In particular, requirements for tenants to provide fit-out specifications to landlords to assess potential EPC impacts when reviewing fit-out proposals / alteration requests, as well as provide evidence to EPC Assessors.
  - The ability for tenants to reject upgrade works at a project, therefore resulting in an exemption to the policy requirements, appears to go against the spirit and aims of the policy. The BBP is of the view that tenants should be obliged under the PRS Regulations to permit landlords to carry out energy efficiency improvements to the property, provided that such works cause as little disruption as reasonably possible and when complete do not adversely affect the Tenant's beneficial use and occupation of the property.

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- It is not felt that there are sound policy reasons as to why a tenant should be able to prevent the carrying out works where the landlord desires such works to take place, subject to some basic elements of protection being given to them. Accordingly, landlords carrying out works should be obliged to do so in a manner which causes the minimum of disruption to the tenant and such works should not render the premises incapable of occupation and use by the tenant for the tenant's business except outside normal business hours. This could be achieved by a simple amendment to the PRS Regulations. The effect of such an amendment would be to reduce the scope of the consent exemption which could be utilised by the landlord where a tenant's consent to the carrying out of requisite energy efficiency improvement works cannot be obtained.
  - In relation to the PRS Regulations, the burden falls entirely on the landlord. As a landlord-based membership organisation, it's natural that our members would like some form of cost-sharing mechanism associated with the costs of upgrade works. However, it is unclear how such requirements could be practically and fairly drafted as legal regulatory requirements. However, one area in which Government may fairly view the responsibility for upgrade costs should be borne by the tenant is for long-lease FRI leases. In such instances, one occupier is the sole beneficiary of the property and could have a tenancy for +10 years, and significantly longer in the extreme. In such instances, where leases are already in place, it is recommended that the Government explore how the tenant can contribute to the costs of compliance.

16. Do you think that smart meters could play a role in supporting landlords to meet Government energy efficiency requirements such as the non-domestic MEES under the PRS Regulations? What are the key benefits/barriers of smart meters playing a role?

- Smart meters will not play a role in supporting compliance with the PRS Regulations; however, they are important in relation to the Government's aspirations of introducing operational energy ratings. There is an opportunity to ensure the required metering is in place to allow buildings to get operational ratings as part of any upgrade works undertaken to comply with the PRS Regulations. However, this is currently out of scope of the Regulations as well as the EPB Regulations for EPCs and would require such requirements to be added.