

UKGBC Response to BEIS Consultation on the Non-Domestic Private Rented Sector Minimum Energy Efficiency Standards – Implementation of the EPC B Future Target

June 2021

Introduction

The UK Green Building Council (UKGBC) is an industry network with a mission to radically improve the sustainability of the built environment, by transforming the way it is planned, designed, constructed, maintained and operated. As a charity with over 500 member organisations spanning the entire sector, we represent the voice of the industry's current and future leaders who are striving for transformational change. We welcome the opportunity to respond to this consultation.

Executive Summary

We very much welcome the Government's decision that the future trajectory for the non-domestic MEES will be EPC B by 2030. It is also right to address at this early stage the issues around implementation, compliance and enforcement set out in the consultation.

On balance, however – and despite the pressing need to ensure that landlords act early to improve their properties to Band B – we do not support the EPC C interim milestone in 2027. We believe that it does not act with the grain of refurbishment and leasing cycles and could lead to unintended consequences, for example the need to remove equipment installed to meet Band C in order then to meet Band B. This would be both wasteful and disruptive.

We agree that it makes sense to move away from enforcement at the point of let. Compliance windows therefore make sense in principle as they give landlords flexibility and should also ensure that improvements are well thought out in advance.

We are particularly pleased to see a commitment to mandate packages of measures, where they are cost-effective – something for which we argued strongly in our response to the previous consultation.

Finally, we support the introduction of an enhanced duty of mutual cooperation for landlords and tenants. This is imperative for the successful achievement of the Band B trajectory.

Responses to individual Consultation Questions:

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

Yes. However, as noted in the consultation, it is vital that the recommendations for improving the energy performance of listed buildings are reviewed and updated to make them appropriate for building types whose construction is often very different from that of modern buildings. Requiring listed buildings and those in conservation areas to have an EPC will have a number of benefits:

- Measures which do not adversely affect a building's heritage features will be identified by the EPC and can be undertaken, often at low cost;
- The proposed database of non-domestic properties will be more complete and therefore more useful to local authorities;

- Conservation areas often include numbers of more modern properties, which can be straightforward and relatively inexpensive to improve.

Question 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 consultation accurately reflects the dilemma we have faced in arriving at our response to this question – in other words that an interim milestone would mitigate the risk of landlords delaying action until close to the 2030 deadline, whereas a single backstop date would encourage greater flexibility and allow landlords to plan improvements to fit with their tenancy cycles.

In our response to the previous consultation we decided, on balance, to favour phased milestones to ensure that improvement works – and carbon and energy savings – are not left to the last minute. We took the view that, while there is a slight risk that landlords would undertake staged improvements, the larger asset owners would almost certainly use interim milestones as an opportunity to improve their properties all the way up to Band B – and that smaller landlords could be incentivised to do so by means of attractive financing options, a business rate incentive and the reintroduction of enhanced capital allowances for energy-saving improvements.

It goes without saying that we still wholeheartedly support the Government’s desire to see non-domestic properties improved to Band B as soon as possible. However, following further detailed consultation with members, we have come to the view that introducing an interim Band C milestone could have a number of unintended consequences, including in some cases making Band B less likely to be reached cost-effectively:

- A phased approach could encourage landlords (especially smaller, cash-constrained ones) to make incremental (and disruptive) improvements to reach Band C (e.g. upgrading to more efficient lighting or installing a more efficient fossil fuel heating system), rather than undertaking a whole building retrofit. This in turn could lead to the need to remove equipment and install new measures to meet the Band B target – with adverse consequences in terms of embodied carbon and waste generation. Crucially, it could also lead to a situation where some of the works needed to reach Band B no longer meet the payback test.
- Typical refurbishment cycles (with their associated capital expenditure requirements) are almost invariably longer than 3 years. This would in practice make it both difficult, disruptive and unnecessarily costly to refurbish twice – once between now and 2027 and then again between 2027 and 2030. We have been told by a number of members with significant property portfolios that, while fully committed to the Band B target, they would find it financially challenging to bring all their properties up to Band B by 2027 and would therefore be faced with the need to improve a proportion of their properties in two (disruptive and wasteful) stages. It would make more sense for those with large portfolios to undertake a rolling programme of improvements to Band B over the course of, say, five years.

For these reasons, we do not support the EPC C interim milestone in 2027. However, mindful of the pressing need to bring about early improvements, we would suggest that the Government consider (a) the introduction of a range of compelling incentives to ensure that as many buildings as possible are improved to Band B as early as possible; and/or (b) bringing forward the 2030 target to an earlier date.

Question 3: The Government recommends respondents read the consultation in full before responding to this question, so that responses can take into account the full suite of changes which the Government suggests should accompany the ‘compliance window’ proposal. 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.

We agree that it makes sense to move away from enforcement at the point of let for the reasons set out in the consultation – notwithstanding that improvement works will *de facto* often take place between lettings, as discussed in our response to Q. 2. Compliance windows therefore make sense in principle, as they give landlords flexibility and should also ensure that improvements are well thought out in advance. They should also result in a better and fuller dataset of non-domestic rented buildings.

However, as already noted, we do not on balance support an interim Band C milestone. If the Government is persuaded to discard this interim milestone, that would likely mean just one compliance window with the Band B target brought forward.

If, on the other hand, the preferred option continues to be two compliance windows, we have to say that we do not understand the value of the 2028 date for presenting a valid EPC. Given that all landlords of rented non-domestic buildings must have an EPC at all times – and that only a year previously they will have had to demonstrate compliance with the Band C milestone – we struggle to see the need for another presentation date in 2028.

The Government must also bring forward proposals for addressing situations in which properties are already let on long-term leases which do not expire till after 2030. We suggest that the way round this problem is to place a duty on tenants to consent to any energy improvement works properly required to comply with the MEES, while the landlord should be under a reciprocal obligation to use all reasonable endeavours to minimise any disruption caused to the tenant’s premises and to make good promptly any damage caused to the tenant’s premises.

Question 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.

It is quite clear that the problem with ‘shell and core’ let properties needs to be resolved, to avoid situations in which, as is currently commonly the case, property owners are effectively required to obtain two EPCs – one to market the property (which is likely to result in a poor EPC rating due to the use of default/worst case values) and another to allow for a lawful lease to be granted once the occupier has completed their bespoke fit-out.

We therefore support the introduction of an exemption, whereby a tenant must have occupied a property for a certain period before a local authority can take action against the landlord for failing to meet the MEES. However, many members have flagged with us that fit-outs, especially of larger properties, commonly take longer than 6 months to complete. It would therefore make sense for the exemption to take effect *after* the fit-out has been completed and the building is fit for occupation. The latter could be evidenced by a building control certificate that signs off the fit-out as being complete.

The proposed exemption must go hand in hand with a fairer division of responsibility between landlord and tenant – a subject to which we will return in our response to Q. 15. The responsibility for MEES compliance rests with the landlord, whereas the responsibility for the fit-out rests with the tenant. This surely points to placing some sort of requirement on the tenant to ensure that the fit-out achieves the required standard. Perhaps a requirement should be placed on the landlord to demonstrate that the shell and core is adequate to achieve Band B with the right fit-out, after which liability would pass to the tenant to deliver a fit-out to that standard? Alternatively, there could be a way of configuring leases to require a tenant to fit out a building in such a way that it will be compliant.

While writing, we would point Government towards the Swedish Building Regulation methodology – Boverket – which has successfully addressed the shell and core issue. We would be glad to share more information about this with BEIS.

Question 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.

It is obvious that the transition should be signalled as early as possible, with clear information and guidance made available to landlords, tenants and local authorities alike. As noted in our previous consultation response, many smaller landlords are either not aware of the MEES or are not sufficiently worried about the consequences of non-compliance. These landlords need better information and guidance, but they would also benefit from incentives and attractive financing options (as per our response to Q. 2).

Question 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.

We support the proposals for strengthening enforcement outlined in the consultation. However, it is vital that early progress is made to ensure that EPCs become a true measure of a building's in-use performance (as promised in the Government's EPC Action Plan). We also think that building renovation passports have a key role to play in creating a long-term renovation plan for properties in order to meet both energy and carbon targets. Over time we believe that EPCs should be amended to become – or be used alongside – live Building Renovation Passports.

In addition, it is vital that local authorities be adequately resourced and have the appropriate skills to start to make enforcement a reality. The penalties for non-compliance are significantly higher than for residential properties, with a maximum fine of £150,000 for a non-compliant property let out for more than three months. It can be anticipated therefore that once weights and measures departments start to see these kinds of sums arriving in their coffers, levels of enforcement will start to increase. However, cash-strapped local authorities are currently facing a 'standing start', as they do not have a pot of funds with which to pump-prime enforcement activity. We therefore believe that some seed-funding for local authorities should be injected by central Government. This should be time-limited, perhaps for one to two years, after which local authorities could reasonably be expected to have raised sufficient funds with which to continue enforcement activity. This in turn would send a clear signal to recalcitrant landlords that non-compliance is no longer an option.

Question 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.

We agree that it is vital to expand the scope of the current PRS Exemptions Register. The proposed compliance and exemptions database is the very minimum that is required to assist local authorities with compliance-monitoring and enforcement. However, we have long argued that a compliance and exemptions database fails to address the bigger – and arguably more important – problem that local authorities currently have no means of knowing who all their local non-domestic landlords are. The consultation acknowledges this in the opening sentence of the relevant section: 'There is currently no simple way for local authorities to identify whether a property is part of the rented sector...' A compliance and exemptions database will go part way to solving this problem – in that it will record landlords who are either MEES-compliant or have registered a valid exemption – but it will not necessarily record *all* privately rented properties, merely those where landlords have been proactive enough to engage with the MEES process by lodging an EPC or a valid exemption. That is why we support a national landlord register, as exists (though for privately rented residential properties only) in Wales.

Question 8: Do you agree with the proposed landlord registration fee for the PRS property compliance and exemptions database? If not, please explain why.

Yes.

Question 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.

Yes, this seems about right. It is also appropriate that the maximum fine for letting a property in breach of the requirements is far higher. It must act as a powerful deterrent to letting out a non-compliant property.

Question 10: We welcome views on the clarity of the current PRS Regulations in relation to enforcement of penalties for non-compliance with MEES.

We have not received any feedback from members to the effect that the Regulations are unclear.

Question 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.

Yes, we believe that this will be an important additional enforcement tool for local authorities. As noted in our response to Q. 6, however, it is vital that local authorities have sufficient resources and expertise to enable them to make proper use of their new power.

Question 12: Do you agree that all exemptions should be reviewed at the start of each compliance window? If not, please explain why.

As noted in our response to Qs. 2 and 3, we do not support an interim Band C milestone and therefore advocate one compliance window only. That said, we agree that all exemptions should be reviewed at the start of that compliance window. However, this should not in our view be the only point at which exemptions are reviewed – in cases where a valid exemption exists due to the inability of the landlord to obtain relevant third party consent, that exemption must be reviewed when the third party changes.

Question 13: Do you support the introduction of a standardised calculator to simplify the requirements for the payback test? If not, please explain why.

In our response to the previous consultation, we noted our members' strong view that the requirement to obtain three quotations from qualified installers for purchasing and installing a measure is unnecessarily cumbersome and not fit for purpose. We therefore recommended that the requirement be changed so that a report by a RICS-accredited professional would be sufficient proof of the cost-effectiveness, or otherwise, of an energy-saving measure for the purposes of the seven-year payback test.

In light of this, we welcome the recognition in the consultation that the process for determining cost-effectiveness needs to be simplified. A standardised calculator seems on the face of it to be a sensible idea, but we have to flag that a number of our members have expressed considerable doubts about whether it could be designed to be sufficiently robust and flexible to accurately reflect changing costs, local supply chain differences and the individual characteristics of different buildings.

If the Government does pursue the idea of a standardised calculator, it will be vital that it is regularly updated to reflect actual market costs, regional differences, changing conditions and the introduction of new technologies. One suggestion is for a blended approach, whereby a standardised calculator is used, as part of an initial inclusion/elimination exercise, to establish whether a measure is likely to be cost-effective, followed by a more bespoke assessment by a RICS-accredited professional.

On the subject of the seven-year payback, we note with pleasure that the consultation states that the Government will 'mandate that a package of energy efficiency measures should be installed, where they are cost-effective'. In our response to the previous consultation, we argued strongly that packages of measures that collectively have a payback of less than seven years should be mandated. The two worked examples below illustrate the difference at the same property between selecting (1) a group of measures that all pay back in less than seven years, resulting in the property only achieving a C rating; and (2) a different set of measures, one of

which does not pay back in less than seven years, but which, when installed as a package, result in a B rating at a lower capital cost overall and with a shorter energy payback period.¹

1		All MEES compliant recommendations		
Recommendation Name	Lower Cost	Upper Cost	Affected Area	
Replace local electric, central air distribution, forced-(un)flued heating systems in warehouse/industrial environments and/or existing radiant heating systems with new, radiant systems	£10305.6	£13397.28	687.04m ²	
Replace T8 fluorescent tubes with LEDs (lamp and luminaire)	£1680.7	£2184.01	78.73m ²	
Replace tungsten lamps with LEDs (lamp and luminaire)	£546.48	£710.42	8.28m ²	
Replace high pressure mercury/sodium lamps with T5 fluorescent tubes (lamp and luminaire)	£4493.24	£5853.58	687.04m ²	
Install lighting controls	£280.32	£364.42	93.44m ²	
Cost (£): 17,306 to 22,509		Discounted Payback Period (yrs): 4.1 to 5.4		D 86 → C 53
Energy reduction (kWh/m²/yr): 87.2		Emissions reduction (kgCO₂/m²/yr): 34.1		

2		Maximised EPC rating with longer payback period		
Recommendation Name	Lower Cost	Upper Cost	Affected Area	
Add weather compensation controls to heating system	£1549.0	£2013.7	687.04m ²	
Replace existing local electric heating and/or air source heat pump with a new air source heat pump system	£1390.12	£1807.16	30.22m ²	
Replace tungsten lamps with LEDs (lamp and luminaire)	£546.48	£710.42	8.28m ²	
Replace T8 fluorescent tubes with LEDs (lamp and luminaire)	£1680.7	£2184.01	78.73m ²	
Replace high pressure mercury/sodium lamps with T5 fluorescent tubes (lamp and luminaire)	£4493.24	£5853.58	687.04m ²	
Install lighting controls	£280.32	£364.42	93.44m ²	
Install destratification fans	£979.03	£1288.2	687.04m ²	
Cost (£): 10,918 to 14,221		Discounted Payback Period (yrs): 2.2 to 2.9		D 86 → B 50
Energy reduction (kWh/m²/yr): 96.2		Emissions reduction (kgCO₂/m²/yr): 37.9		

Question 14: What are your views on whether the three quotes requirement should be kept for certain circumstances, where landlords wish to dispute the standardised costs, and how would the requirement work in such circumstances?

We believe that the requirement for three quotes is intrinsically flawed. If the Government goes ahead with its proposals for a standardised calculator, then we would once again suggest that a report by a RICS-accredited professional should constitute sufficient and final proof of cost-effectiveness (or otherwise).

¹ Worked examples by Arbnco. Measures in green have a seven-year payback or less; measures in red have a payback period of longer than seven years.

Question 15: Should the Government seek primary powers to introduce tenant responsibilities duties for MEEES 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 where possible.

We welcome the recognition that greater collaboration and cooperation between landlords and tenants is needed to make the PRS regulations as effective as possible.

In our response to Q. 3, we have already advocated the introduction of an obligation on the tenant to consent to any energy improvement works properly required to comply with the MEEES, with the landlord under a reciprocal obligation to use all reasonable endeavours to minimise any disruption caused to the tenant's premises and to make good promptly any damage caused to the tenant's premises.

This obligation would flow from an enhanced duty of mutual cooperation for landlords and tenants, which we believe must be introduced into the PRS Regulations. The enhanced duty to cooperate should also as a minimum oblige both landlords and tenants to cooperate in collecting and sharing data in relation to energy consumption and to work together to reduce energy consumption. While it is unlikely that any landlord or tenant would ever wish to take steps to enforce such a duty, it would send a clear signal to both parties that energy performance management is an essential component of any landlord/tenant relationship.

Question 16: Do you think that smart meters could play a role in supporting landlords to meet Government energy efficiency requirements such as the PRS Minimum Energy Efficiency Standard under the PRS Regulations? What are the key benefits/barriers of smart meters playing a role?

As per our response to Q. 6, we believe that EPCs must transition to become a true measure of a building's in-use performance. The use of smart meter data will be an important means of achieving that.

**UKGBC
June 2021**

For further information, please contact:

Jenny Holland, Public Affairs & Policy Specialist
jenny.holland@ukgbc.org