

NON-DOMESTIC PRS MEES IMPLEMENTATION OF EPC B – CONSULTATION RESPONSE



Written Evidence Submitted by the British Property Federation

British Property Federation

The British Property Federation (BPF) represents the real estate sector – an industry which contributed more than £116bn to the economy in 2020 and supported more than 2.4 million jobs. We promote the interests of those with a stake in the UK built environment, and our membership comprises a broad range of owners, managers and developers of real estate as well as those who support them. Their investments help drive the UK's economic success; provide essential infrastructure and create great places where people can live, work and relax.

The BPF has a committee dedicated to sustainability issues, reflecting the priorities that its leading members place upon issues of resource efficiency, environmental enhancement, and climate change. We are committed to the sustainability agenda and have a leading role to play in addressing the impacts of climate change. We also convene 19 other committees touching on real estate sectors and issues spanning commercial property, planning, and finance to name but a few. In response to the Department for Business, Energy & Industrial Strategy consultation on the implementation of an EPC B standard for non-domestic PRS buildings, we have sought views from across disciplines and have sought to respond to a selection of questions for which we are best placed to offer a consolidated view.

Top Line Response

We support the government's overarching policy commitment to mandate an EPC rating of B for all non-domestic privately rented buildings by 2030. However, we have taken the opportunity of responding to this consultation to both reiterate a number of positions relating to the broader policy framework and to directly answer the questions posed within this latest consultation.

Principally we have sought to reiterate our preference for a single backstop date in 2030, having listened to varied perspectives within our membership and balanced the relative benefits and challenges.

With regard to this specific consultation we believe many of the proposed policy options have been well-developed in response to issues previously raised by ourselves and other real estate industry actors. These include but are not limited to: the shift away from compliance at the point of let, a six-month exemption for shell and core let properties, and measures to facilitate better (active) enforcement of the regulations.

There still remain a number of grey areas relating to the obligations associated with listed buildings, the split of responsibilities between building owner and occupier, and the suggested review of exemptions when again considering the implications for historic buildings. Further, the government have made a welcome attempt to address the issues around current requirements to obtain three separate quotes to inform the payback test. Whilst this is a positive step, we believe the implementation of a standardised calculator must be carefully considered to avoid the unintended consequence of simplified or inaccurate outputs.

NON-DOMESTIC PRS MEES IMPLEMENTATION OF EPC B – CONSULTATION RESPONSE



Finally, we would strongly reiterate the need to carefully align the implementation of these proposals with the ongoing development of a performance-based policy framework. Not least of all from the perspective of ensuring clarity, simplicity, and prioritising actions that deliver real reductions in energy use and carbon emissions in the immediate term. The requirements to achieve an EPC B by 2030 will be significantly challenging for many building owners and we would urge government to provide certainty that their endeavours under the MEES framework will be complimentary to reforms elsewhere.

BPF Comments relating to questions posed within the BEIS consultation document (Question numbers directly relate to those within the [consultation document](#))

Chapter 1 – Consultation Feedback on EPC B trajectory

Q1. Should listed buildings and those in conservation areas which are to be rented out be legally required to have an EPC?

1. On balance we believe there may be merit in listed buildings and those in conservations areas that are rented out having EPCs. Data pertaining to the state of our building stock is an important resource.

However, what is also important is clarity and flexibility. There is currently some ambiguity regarding the requirements for historic buildings, leading to very little certainty as to whether a building is in scope and where an exemption may be appropriate. We note that in many cases, should a historic building require improvement works to meet the required standard, the wider planning and regulatory system is structured such that a building owner must enter the design phase and subsequently engage with the planning authority to test the planning regime before registering an exemption. It is widely acknowledged that it remains challenging to secure planning permissions for alterations to listed buildings or buildings in conservation areas, and therefore this process appears to be unnecessarily wasteful of both time and resources for both applicants and the respective planning authorities. We are unclear as to how the proposals will fully address this issue.

We acknowledge that the government's proposals are intended to address some of the existing ambiguity. However, if the proposals are enacted there will still need to be clear exemptions for the enforcement of MEES in historic properties where required improvement works are deemed to alter the character and appearance of the building. For example, if consent from local planning authority cannot be obtained in such circumstances, MEES should not be enforced and the building should not be penalised. More broadly many historic buildings have physical characteristics that will make reaching a minimum standard of, for instance, EPC B, very difficult. For this reason we would strongly suggest that whilst requirements to have a valid EPC have merit, the imposition of associated minimum standards must be carefully considered.

Further, we would suggest that whilst non-domestic listed buildings and those in conservation areas make up a small percentage of the overall building stock, it is important that where possible and appropriate, these buildings are improved from an energy efficiency perspective. This is crucial for the long-term sustainability of these valuable buildings, for if they fall far behind the energy efficiency curve their future operational potential may be limited. We would strongly recommend that the government follow through with their commitment in the recent Planning for the Future White Paper to review the interactions between the planning process and listed buildings for the sake of future efficiency improvements. This make take the form of encouraging greater flexibility in decision making by local conservation officers when determining applications.

NON-DOMESTIC PRS MEES IMPLEMENTATION OF EPC B – CONSULTATION RESPONSE



Chapter 2 – Implementation and enforcement

Q2. 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.

2. The issue of a single backstop date or phased milestone has been one of significant debate amongst our membership. Not only through the course of gathering feedback on this consultation but as part of the original 2019 consultation which BEIS ran, culminating in the headline EPC B commitment.

Having balanced the feedback received, we would reiterate our support for the adoption of a single backstop date of 2030 for all buildings to reach an EPC rating of B.

A single backstop date would provide landlords and building owners with the flexibility to consider and action the new trajectory in the context of their own unique business models, tenancy cycles, lease events, and renovation trigger points. Signposting a single target EPC score for all non-domestic PRS buildings provides a level of certainty and clarity that is central to making investment and development decisions.

Further, a single backstop date of 2030 will help to avoid the additional administrative, resource, and time costs that may be created by incremental milestones/compliance with ratings.

An additional concern with an interim milestone is that it may mean some building owners undertake works to be EPC C compliant by 2027 and then need to strip out these works to upgrade the building again by 2030. We understand the rationale is to encourage owners and occupiers to act responsibly and with pace and perhaps targeting a B grade by 2027 is expedient and financially prudent in some cases, in order to avoid undertaking works in advance of both 2027 and 2030. However, some owners may take a view that with the changing policy landscape, it would be safer to target the lower EPC C rating, and thus spend less money on improvement works in anticipation for instance of EPCs being phased out to be replaced by performance ratings. Equally some building owners may target measures to achieve an EPC C rating with a view to transacting on the property before the 2030 B rating backstop date.

A single backstop date with a 10-year forward view will give the respective stakeholders the opportunity to adapt to and overcome some of the challenges discussed within our response. It is likely that those with significant property portfolios wishing to act as market leaders will act as early and decisively as possible. We would note that a significant communications and outreach campaign could be used to warn property owners of the limitations of delaying works until closer to 2030.

3. Whilst we have indicated our support for a single backstop date, we would, given the mix of industry views, like to acknowledge some contrasting views.

Principally, there is a view that a single backstop date may facilitate inactivity in the short term. This is to say that landlords/owners (particularly SMEs) may wait until closer to the 2030 regulatory date before installing improvements. This could occur for a number of reasons including: waiting for installation and technology costs to reduce; waiting for more favourable market conditions; waiting in anticipation of further policy reform; waiting for a tenant to depart (although this is a wider problem for the regulations); or simply because energy efficiency is not first on the respective to do lists.

NON-DOMESTIC PRS MEES IMPLEMENTATION OF EPC B – CONSULTATION RESPONSE



Further, a key benefit of a phased trajectory may be to avoid a resource, capacity, and skills bottleneck in the late 2020s. With 85% of the non-domestic PRS building stock expected to fall within scope of an EPC B trajectory, it is likely that the supplier and materials market for energy saving measures will need to grow accordingly. Should a significant number of actors wait for the late 2020s to deliver upgrades, this may place undue pressure on the supply chain. We would also note that such pressures may result in increased costs for services/energy saving measures, in turn meaning that cost effectiveness exemptions are used to a greater extent.

Q3. 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.

4. Whilst we have provided views under Question 2 in support of a single backstop date, we would nevertheless offer our support for the use of compliance windows, whether this be a single compliance window for a single 2030 backstop date, or in the event that the government carries forward its preferred option of an interim milestone.

Compliance windows will ensure landlords take action early, preventing risk of non-compliance. However, we believe there should be a single compliance window associated with a B rating in 2030. To prevent the risk of landlords taking action too late without having an interim target, one proposition could be to extend the compliance window between 2026-2030.

The compliance window will likely provide building owners with more clarity on what energy efficiency measures need to be implemented within the allotted timeframe and places the onus on building owners to state whether compliance has been met. This could prevent local authorities having to look at an extensive list of individual cases.

5. If the government should however implement the preferred option of an interim milestone, we understand this will in effect start the clock and provide clarity as to which buildings need to be upgraded by the respective milestone dates.

In this regard we would be supportive of 24-month windows. The requirement to register an EPC 24 months before the deadline enables a party to establish what rating they currently have and identify the works required to achieve the necessary improvement within the stipulated timescale, or secure a suitable exemption as required. Further, this would provide enforcement authorities with a valid opportunity to remind building owners of their obligations.

Q4. 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.

6. Yes, we are supportive of exemptions for buildings, across all sectors, that are let on a shell and core basis.

This flexibility will ensure the EPC reflects the actual building fabric and fit-out. Although we would suggest occupiers should be under certain obligations to ensure a suitable EPC rating is achieved, subject to the other standard exemptions. Otherwise there may be an unintended consequence whereby the building is non-compliant post the installation of the tenant’s fit-out, with enforcement mechanisms currently focused towards owners.

NON-DOMESTIC PRS MEES IMPLEMENTATION OF EPC B – CONSULTATION RESPONSE



We would however observe that a number of our members believe 6 months may not be a sufficient time period for large scale, complex fit-outs (for instance in multi-floor office spaces).

Q5. We welcome views on where improvements could support the transition from the current EPC E requirement, to the proposed new implementation and enforcement framework.

7. Widespread engagement and publicity of these changes is essential to ensure all landlords are aware of and prepared for the changes, not just those who are already proactive in this area. Given the scale of the challenge and investment needed, the earlier that requirements can be confirmed the greater the chance that the deadline will be met in the most sensible and efficient manner.
8. Another significant observation is that legislating that exemptions need to be re-applied for at each compliance window may serve to nullify the existing five-year exemption window. It does not appear appropriate that, by example, after significant resources have been expended in connection with an exemption, that work should be repeated in the short term.

Chapter 3 – Supporting amendments to deliver the new framework

Q6. Do you agree with the proposals to strengthen enforcement requirements to support non-domestic MEES under the PRS Regulations? If not, please explain why.

9. We are generally supportive of the proposals to support a more effective enforcement regime. The success of the regulations is ultimately reliant on appropriate enforcement.
10. The continual requirement to ensure all rented buildings have a valid EPC, irrespective of the lease renewal scenario is a positive step. We would note however, the proposed requirement for landlords to also present EPCs at the start of each compliance window under the interim milestone approach, may prove overly burdensome (and potentially costly given the cost of obtaining some complex non-domestic EPCs).

Q7. 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.

11. Yes, we are supportive of a database that allows stakeholders to demonstrate and monitor compliance, highlighting where improvements have been made that result in an improved EPC. This will assist local authorities in streamlining enforcement at a time when local authority resource is under pressure. The database should be transparent, accessible and easy to use.

It will however be important to provide clarity on which stakeholder (occupier/owner) is responsible for maintaining the lodgements and ensuring the responsibilities do not fall solely on the shoulders of owners, particularly as operational fit out is often a major driver of EPC performance.

Q8. Do you agree with the proposed landlord registration fee for the PRS property compliance and exemptions database? If not, please explain why.

12. A registration fee (£30) seems reasonable for each property. However, more clarity needs to be given on the definition of a property. For example, is a registration fee required for each unit of a shopping centre that requires a unique EPC?

NON-DOMESTIC PRS MEES IMPLEMENTATION OF EPC B – CONSULTATION RESPONSE



13. We would take this opportunity to highlight that many property owners have been significantly impacted by COVID-19 and the associated restrictions - particularly in the retail, hospitality, and leisure sectors which have experienced structural changes and challenges around income collection. This will be a further financial cost (be it relatively low on an individual property basis) that will apply at an already difficult time.

A cap on the total registration fee for owners with large portfolios would seem appropriate.

Q9. 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.

14. We believe meaningful penalties can play a useful role in helping to drive the ambitions of this regulatory regime. However, we would note that there needs to be very clear and consistently applied guidance, including for the implications of continued or sequential breaches/non-compliance. These should be clearly articulated, as we understand letting a non-compliant property can result in much greater fines.

15. We would also welcome clarity on what the receipts from the fines will be used for. Our preference would be for these to be hypothecated for use by local authorities to implement energy saving measures in hard to treat properties.

Q10. We welcome views on the clarity of the current PRS Regulations in relation to enforcement of penalties for non-compliance with MEES.

16. The clarity around ongoing non-compliance being assessed as if it is a 'new case' is helpful. This should make it clearer that properties are liable for additional penalties in this regard. The framework should however allow some flexibility for large landlords with complex portfolios to react to any respective issues.

17. Further, we would suggest that there should be a clear indication of whether imposed fines/enforcement will be shared publicly.

Q11. 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.

18. We see no immediate issue with granting local authorities such rights.

19. However, as per our submission to the most recent consultation regarding domestic MEES, we would reiterate that we are unsure as to what local authority officers will be able to gain from inspecting properties. We note the suggested benefits within the consultation document, however, it is unlikely a local authority officer would be able to assess the quality of an EPC assessment by inspecting a property. We acknowledge nevertheless that it could be a useful tool to identify whether a property is being rented.

20. For clarity, the framework and any related guidance should list all possible situations when an inspection might be required. Further, some flexibility should be afforded to ensure that buildings that require constant operation are not unduly impeded upon, for instance medical facilities that have very consistent usage patterns.

NON-DOMESTIC PRS MEES IMPLEMENTATION OF EPC B – CONSULTATION RESPONSE



Q12. Do you agree that all exemptions should be reviewed at the start of each compliance window? If not, please explain why.

21. The principles of this proposal are supported, however we would suggest one scenario in which this may prove disproportionately onerous for building owners.

Our understanding of the proposal is that at each compliance window, all exemptions must be reviewed and therefore re-registered or foregone. This could be particularly difficult in instances where planning consent exemptions (for heritage/listed buildings) have been obtained. As explained elsewhere in our submission the process by which such exemptions are obtained is not straightforward. This will have implications not only for building owners but for local authority resources.

22. Whilst not directly answering the question posed, we would take this opportunity to emphasise that any ultimate regulations should not result in buildings under an EPC C at 2027 or EPC B at 2030, becoming 'stranded' (i.e. unable to be let, bought or sold). The regulations should rather facilitate an environment in which developers / investors / occupiers are able to buy and upgrade poor performing buildings in a way that reduces the proliferation of embodied carbon. Exemptions are therefore likely to play a critical role in some circumstances moving forward.

Q13. Do you support the introduction of a standardised calculator to simplify the requirements for the payback test? If not, please explain why.

23. Through engagement with our members on this consultation and the earlier 2019 trajectory consultation, we have received a number of varying views on the issue of obtaining three separate quotes versus a standardised calculator or an alternative route by which a quote is obtained from a RICS or similarly accredited supplier.

Our members are in agreement that the current circumstance in which three separate quotes are required, is overly cumbersome and has a number of perverse outcomes – not least of all undertaking quotes on the understanding that they will not lead to works being undertaken.

Where opinions have varied they relate to the outputs of the standardised calculator. A standardised calculator in principle would simplify the landlord's requirements for a payback test. However, as buildings vary significantly and have many of their own individual characteristics, we are uncertain as to whether a calculator with the inputs populated by the landlord on a pre-selected set of questions will provide an accurate view of the business case for energy efficiency measures across all building types. Equally, any methodology and base assumptions would need to be regularly updated to account for market/technological changes over time.

The wider range of asset types included in the non-domestic PRS and the variation of cost and effectiveness of the same intervention across different asset types, presents a risk that the calculator could provide inaccurate or unrealistic estimates of cost and benefits in some cases. In for instance the Purpose Built Student Accommodation (PBSA) sector where building profiles and structures are somewhat unique.

There appears to be a preference amongst industry actors to move to a system by which a single quote from a suitably accredited professional (RICS/CIBSE) is acceptable.

NON-DOMESTIC PRS MEES IMPLEMENTATION OF EPC B – CONSULTATION RESPONSE



24. Should the government move forward with the implementation of a standardised calculator we suggest that the proposal to retain the three quotes route in certain circumstances may provide necessary flexibility to dispute the results provided by a standardised calculator.

Further, relevant industry stakeholders and experts should be engaged in the development of the calculator and government should make use of existing cost data from RICS and other recognised providers to inform its development.

Q14. 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?

25. We refer to our answer under question 13.

Q15. 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.

26. The fundamental nature of a many commercial leases is such that the landlord passes control and occupation of the property to the tenant. This is particularly relevant for instances where long leases (and FRI leases) are in place. Responsibilities placed on tenants through primary legislation could be a suitable way to address some of the challenges that currently exist as a result of the current focus on holding building owners solely responsible. Whilst it is correct that occupants should have the right to withhold consent for works if they deem them to be disruptive to their business, some thought must be given to the ultimate intention to drive behaviours that deliver carbon emissions reductions. We understand that there are examples of for instance building owners who want to install smart meters (at their own expense) so that they can monitor energy consumption but have not been granted access by occupants. The occupants have subsequently refused to provide energy consumption data because it is deemed burdensome or impractical. The question of imposing tenant obligations therefore requires a delicate balance, but having the obligations rest solely with a building owner/landlord conversely minimises their power to act in certain circumstances.

27. With regard to implementing new obligations on tenants we would suggest that the following might be required as a minimum:

- An obligation to use reasonable endeavours to collect data around their energy consumption and to provide that data to their landlord;
- An obligation to act reasonably when considering an application by a landlord for access to carry out work to improve the energy efficiency of the premises or to collect or facilitate the collection of data about energy consumption;
- An obligation to consider the impact of any changes they make to the premises on the energy efficiency of the building and take reasonable steps to maximise the positive impact on energy efficiency of any changes.

28. It may be appropriate to differentiate between the structure/fabric (owner) and fit-out (occupier) of a building when attributing responsibilities.

NON-DOMESTIC PRS MEES IMPLEMENTATION OF EPC B – CONSULTATION RESPONSE



29. Duties of mutual cooperation can be hard to enforce and arguably too vague to be meaningful. Further, whilst many owners have sought to introduce cooperation and compliance clauses within leases, it is not preferable for owners to have to enforce these obligations which may give rise to extra costs, delays and may cause friction in the relationship with an occupant. We would also observe in some cases occupiers have sought to find loopholes in legal drafting, or to negotiate respective clauses out through legal negotiations.
30. Any proposed tenant responsibilities should be subject to further consultation before implementation.

Chapter 4 – Supporting smart meter rollout

Q16. 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?

31. Yes, the collection of accurate energy consumption data is essential to driving down energy consumption. In a multi-let building smart meters would allow landlord's to easily collect data from different tenants in the building. This would help share best practice across a building. Equally occupiers would have data from across their portfolio and this might encourage tenants to suggest to, and work with, the landlord to implement changes in poorly performing buildings.
32. Further, on the understanding that the government are set to implement a performance-based rating system, smart meters could play an additionally crucial role in facilitating this shift to measuring operational energy use.
33. A requirement to share information would also assist in identifying areas for improvement. Smart meters could have a part to play in allowing owners/occupiers to access data in real time to drive energy savings and efficiencies in a collaborative manner.
34. We would suggest that in instances where a building owner will need to install multiple smart meters to multiple leased areas, there should be some form of financial or resource support, perhaps provided through the relevant energy provider.