



Investment
Property Forum

Investment Property Forum
Hana Workspaces
70 St. Mary Axe
London EC3A 8BE

email ipfoffice@ipf.org.uk web www.ipf.org.uk

Sue Forster

email sforster@ipf.org.uk tel 07880 729624

By email: businessenergyuse@beis.gov.uk

9 June 2021

Response to: The Non-Domestic Private Rented Sector Minimum Energy Efficiency Standards Implementation of the EPC B Future Target

The Investment Property Forum (IPF) welcomes the opportunity to respond to the above consultation.

IPF is a national membership organisation of senior professionals, all active in the property investment and finance market. The organisation has a diverse membership of around 2,000, which includes fund managers, investment agents, accountants, bankers, lawyers, researchers, academics, actuaries and other related professionals.

The IPF's Mission is to enhance the understanding and efficiency of property as an investment, including public, private, debt, equity and derivatives, for its members and other interested parties, including government. The IPF has a dedicated ESG Special Interest Group (established in 2006), the members of which have engaged in previous government consultations and participated in working groups in relation to the development of guidance, e.g. on the implementation of MEES.

We are not a lobby organisation but one of our key priorities is to identify where legislation or regulation has, or will have, an impact on the market and to alert government and our members to any adverse or beneficial issues.

The IPF has had the benefit of reading the responses to the above consultation submitted by the British Property Federation (BPF) and the Better Building Partnership (BBP). The IPF supports their responses (save where stated below) and, in particular, the points outlined below. The numbering used is by reference to the question numbers in the consultation document.

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.

We strongly agree with the BPF and the BBP that the introduction of an EPC B interim milestone in 2027 is not sensible and may be counter-productive as it is likely to lead to wasted time in the administration of the interim milestone and more importantly possibly to wasted works in advance of 2027, which then need to be stripped out prior to 2030, or alternatively to increased reliance on the consent exemption where works are done to meet a 2027 interim milestone and then the property is let on terms that do not give the landlord rights to carry out energy improvement works during the course of the relevant lease (although if the approach to tenant obligations that we support (see Q15 below) is adopted this last point may not be relevant).

We agree that the most sensible way of avoiding a shortage of materials and resources prior to 2030, and encouraging early adoption of required improvements, is to have a compliance window sufficiently far in advance of 2030 so that required improvements are identified and can be programmed.

We are interested in the BBF's suggestion that a single level B pass/fail point does not incentivise improvements between an EPC E to C grade. We assume regulation 29 of the MEES Regulations 2015 will continue to apply so that the landlord will only be able to register the payback exemption where it has made relevant energy efficiency improvements to the property or there are no relevant energy efficiency improvements that can be made. If this is right, improvements that meet the payback test should be carried out in any event even if this does not lift the property to the required EPC standard.

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.

Assuming a single compliance date of 2030, we agree that the most sensible way of avoiding a shortage of materials and resources prior to 2030, and encouraging early adoption of required improvements, is to have a compliance window sufficiently far in advance of 2030 so that required improvements are identified and can be programmed.

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.

We agree the comments of the BPF on the proposed extension to require a valid EPC in situations where lettings are continuing when an EPC expires or on lease renewals. The latter would remove an area of uncertainty in the existing regulations (between the The EPC Non-Dwelling Guidance (page 12) which says: "*Not all transactions will be considered to be a sale or let. These will include... lease renewals or extensions*" and the Non-domestic MEES Guidance which suggests that if there was no valid EPC for a property, an EPC would be needed on re-letting to the current tenant.

However without the introduction of tenant obligations, we consider that in most cases where energy efficiency improvements by a landlord would require access to demised areas or interruption to the provision of services supplied to the tenant, then in the light of the O' May principles in the case of *O' May v City of London Real Property Company Ltd (1982)*, statutory lease renewals under part 2 of the Landlord and Tenant Act 1954, a consent exemption would frequently be available for renewal leases.

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

We are unable to comment on, or support, the views of the BPF or BBP in this respect as it requires technical expertise outside the remit of the IPF.



Investment
Property Forum

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.

We strongly support the comments of the BPF and IPF on this issue. If widespread use of the consent exemption is to be avoided, we consider some obligations should be imposed on tenants that will enable the carrying out of relevant energy efficiency improvements by landlords. In this regard, we note that in the past where an issue has been considered important enough (e.g. accessibility of premises, digital infrastructure, etc.), the Government has been willing to allow statutory intervention in lease terms. The urgent need to reduce energy use and carbon emissions justifies such intervention.

We agree that the following would be sensible provisions:

- An obligation on tenants to provide data on energy consumption and to allow landlords access to install metering; and
- A requirement on tenants to allow landlords to carry out energy efficiency improvements (whether by way of rights of access to demised areas or interruption in services), subject to the protections suggested by the BBP.

So far as any sharing of the cost of the improvements is concerned, one option might be to allow landlord to recharge to tenant part of the energy cost saving attributable to the works - that part being the proportionate element of that saving from which the tenant will benefit over the residue of its lease.

Please do contact me should you wish to discuss any of the above in further detail.

Sue Forster
Chief Executive, Investment Property Forum