

9 June 2021

Dear Sir/Madam,

**Consultation: Introducing a Performance-Based Policy Framework in large Commercial and Industrial Buildings in England and Wales**

**Response from Accessible Retail**

**Introduction**

Accessible Retail (AR) is the trade body which represents the retail parks and warehouses sector of the retail industry. We have over 1000 members comprising retailers, developers, owners/investors and advisers, including most of the major companies active in the sector.

Retail parks and warehouses comprise one of the three major retail sectors. We play a significant role in the economy and many of our members trade across Europe and beyond. The sector accounts for some third of total retail spend and comprises the largest part of investment grade (prime) retail commercial property. Our sector employs some 750,000-800,000 people in the UK.

We welcome the opportunity to respond to this consultation.

**Overarching Comments**

AR shares and supports the Government’s intention to introduce a performance-based framework in large buildings as part of a suite of policies comprising a direction of travel to achieve net zero carbon by 2050.

We have some concerns, but these are regarding implementation and management issues rather than the principles or reducing energy consumption and carbon emissions. In raising them, our aim is to ensure the PBF is a success and is implemented in a fair way to all parties. Satisfying the latter point is particularly important given that the proposals involve balancing the interests of both owner and occupier, an area in which difficulties can and do arise.

Not all our concerns are addressed in the questions asked in the consultation. It is proposed the PBF is operated as digitally as possible – an approach with which we agree. Our concern on this is whether the software needed to support it is ready and reliable given that was not the case with the CRC Energy Efficiency Scheme and some other Government IT initiatives.

Greater clarity is needed on how the Government sees the suite of ‘green’ systems – the PBF, EPCs, MEES, DECs etc – working together to produce a mutually supportive and not overlapping landscape of measures to deliver net zero carbon which includes a consistent methodology employed to measure occupiers’ energy consumption. Is the Government satisfied that there is little or no risk that, having undertaken works to achieve EPC B, the latter will not align with what a PBR requires resulting in abortive work having been undertaken?

There needs to be clear differentiation between these systems – there is evidence already in the market of some confusion between EPCs and DECs.

If the Framework proves successful (assuming it is eventually extended to all relevant buildings), does the Government consider it will be necessary to retain EPCs?

There is no mention made of public buildings of over 1000m2. Will the framework apply to these buildings in the same way and in the same timescale as those in the private sector?

The consultation says achieving the benchmarks proposed for 2025 and 2030 will not deliver net zero carbon by 2050 and will need to be raised in the subsequent twenty years. Regardless of what innovations may be available during that time to help drive further performance, the Government should publish its view of how it sees the trajectory between 2030 and 2050 (in particular the slope), so that owners and occupiers know what likely minimum targets to plan for as the pathway progresses.

The PBF requires that, after a building is on-boarded, it will undergo a physical assessment by a qualified person. We are concerned there will be sufficient trained personnel when the proposals go live. There should be early Government intervention to ensure that the supply of qualified persons is properly resourced.

Lastly, Stage 2 states that benchmarks and any updates will be made ‘with the explicit involvement of sector specific and wider industry experts’. Retail parks and warehouses have approaching 200 million square feet of buildings comprising the largest amount of prime investment grade retail property. These buildings are very different from shopping malls and high street shops and when the involvement of retail industry experts is sought, we believe this should include representation specifically drawn from the out of town sector.

**Responses to Questions**

**Question 1.**

**Do you have any evidence which supports, disputes, or could add to, the evidence presented by the Government in this chapter? In terms of the evidence presented in this chapter, do you support the Government’s analysis?**

AR supports the main thrust of the Government’s proposals. At this stage, we would simply point out that when the scheme is extended in either phase 2 or Phase 3 to retail buildings that, as the Government recognises in its proposals, the operational characteristics of retail buildings are not the same as office buildings.

Retail is a very seasonal industry in terms of staff and customer numbers in store, whereas offices exhibit a uniform pattern throughout the year. In the peak October-December period, numbers in stores could easily be double those of January, hours of opening extended and small teams may be working overnight re-merchandising stores. The public usually circulate much further into large retail buildings and for longer periods of the day than is the case with large HQ offices. Also, build costs and operational costs are possibly more critical to retail viability, than is the case with very high specification office buildings occupied by international and large domestic companies.

These differences will influence all aspects of the design and operation of the retail building with regard to its energy use. This underlines the importance of separating the main commercial sectors. Further, as we comment later, within commercial sectors (retail is one case) there are often subsectors with different building typologies which need to be recognised as well.

**Question 2.**

**Do you support the rationale set out in this chapter? If so, are there any changes you would make or considerations you would add to the rationale the Government has set out? If not, could you please explain why, providing evidence where possible.**

See answer to question 1.

**Question 3.**

**Do you support the Government’s proposal to underpin a performance-based policy framework with a rating that looks to modernise the DEC, in the ways set out above? If so, are there any changes you would make or considerations you would add to the proposal? If not, could you please explain why, providing evidence where possible.**

Yes, provided with the Government’s intention to tailor the scheme to the needs of each sector or specific building type is maintained. It will not be sufficient to stop granularity at the level of broad sectors of the economy. Within the retail industry, only two of the major sectors typically have large buildings - shopping centres and retail parks – and each has a very different typology of building from the other. It would be unhelpful and verging on the meaningless, therefore, to have a single benchmark covering both. Each sector needs its own benchmarking system.

**Question 4.**

**The Government proposes that, as a first step, building owners and single tenants should be required to obtain an annual performance-based rating, and disclose that rating online. Do you support this proposition? If so, are there any changes or amendments you would make to the proposal? If not, could you please explain why, providing evidence where possible.**

Yes, subject to the concern expressed immediately below being allayed.

The rationale behind the introduction of the PBF system is that the theoretical energy and emissions rating given by a building’s EPC conflicts with its actual use and we agree this justifies the requirement to submit annually measured data on actual usage and emissions. However, alongside this data, the proposals refer to the collection also of ‘other relevant information’. It is not clear what comprises this latter data. Is it the data collected on the first PBF visit i.e. floorspace, subdivisions etc., data collected as part of acquiring an EPC rating i.e. the fabric and services or something else?

Clarity is needed so that owners do not have to collect data on an annual basis which is either irrelevant or is on aspects of performance which are unlikely to vary significantly over time (a principle recognised in granting EPCs for ten years). The energy efficiency characteristics of a building’s fabric and services will be established on construction and only vary significantly thereafter if a major refurbishment is carried out in which the fabric and/or the services are upgraded. Unless either of the latter occurs, it should not be necessary to submit annual data on these aspects of performance if it is proposed to include them within ‘other relevant data’.

It is noted that the office consultation states the EPC system will continue alongside the PBF as it ‘serves a different purpose and measures different things’ and that the introduction of PBF will not remove the need for landlords of rented buildings to make improvements required under the Non-Domestic PRS MEES Regulations. As we stated earlier, the suite of policies and systems supporting the drive to net zero carbon should be aligned and mutually supportive and for this reason we support the Hybrid solution proposed in the Offices consultation to remove the overlap between PBR and Mon-Domestic PRS MEES. It is helpful under this proposal that landlords of rented buildings would no longer be required to get EPCs to demonstrate compliance against Non-Domestic PRS MEES (but still be subject to the same level of regulatory obligation to invest in their building). By continuing with two separate regimes, the Do-Nothing option fails to take the opportunity to integrate the two systems in a cost-effective and useful way.

**Question 5.**

**What is the best way to support Small and Medium Enterprises in obtaining annual performance based ratings, where the owner of the building or the single tenant is an SME?**

No comment (there are few, if any, SMEs in our sector of the retail industry).

**Question 6.**

**Should the Government:**

**(a) Allow owners of buildings above 1,000m² to use their annual performance-based rating to satisfy their existing regulatory obligation to present a valid EPC before a building is sold or let. As set out above, under this option the Government would continue to collect data about fabric and service improvements. Where prospective buyers or tenants want information about the building fabric and services, EPCs can be obtained on a voluntary basis.**

Yes. The cost on owners of reaching zero carbon for their buildings is going to be considerable and will impact on occupiers also as these costs are absorbed into rental levels. Therefore, the costs of complying with the scheme should be kept as low as possible (consistent with delivering the scheme’s objectives). If a prospective buyer or tenant wants information on the building fabric and services, as is suggested, this can be provided on a voluntary basis (a landlord is unlikely to prejudice a sale or letting by refusing).

**(b) Continue to require owners of buildings above 1,000m² to present a valid EPC where the building is sold or let, recognising that the EPC and a performance-based rating assess different things, and can collectively provide a better level of information about the building than either rating would in isolation.**

**Please outline your preferred option and your reasoning, providing evidence where possible. Please set out any changes or amendments you would make to the options, or if you would favour a different option. An appraisal of the benefits and risks of both options, providing evidence where possible, would help inform the Government’s decision making.**

See answer to part (a).

**Question 7.**

**Recognising that the Government has committed to review the threshold for each sector, do you consider 1,000m² to be a sensible starting position for determining which buildings should be required to obtain annual performance-based ratings?**

Yes. In our sector of retailing it is a fair threshold with which to define large buildings.

Although it is not an issue in our sector, it is not uncommon for office and/or residential to sit on top of ground/first floor retail use. Clarity is need on how the PBF would deal with such a single building which in total exceeds 1000m2, but each of the separate land use components do not.

**Question 8.**

**Should the Government consider expanding the performance-based rating to cover factors such as water, waste and indoor air quality? What do you consider would be the benefits of this approach? Would there be any drawbacks?**

We support this being considered now, but any proposals which follow should not be implemented before 2030. For landlords with large portfolios (most landlords in the retail parks and warehouses sector of retail), delivering the current proposals for all their properties will require significant cost and work and any further concurrent statutory requirements will detract from achieving the Government’s present aims.

**Question 9.**

**Has the Government identified what you consider to be the right objectives for a successful delivery model?**

Yes.

**Question 10.**

**Do you support the Government’s proposal that the annual rating should not be accompanied by recommendations for improving the rating? If so, are there any changes you would make or considerations you would add to the proposal? If not, could you please explain why, providing evidence where possible.**

Yes.

**Question 11.**

**(a) Do you support the Government’s proposal that exemptions should be limited to a relatively few buildings? Are there any grounds for an exemption that you feel are appropriate, which the Government has not considered?**

Yes. However, we refer you back to our comments in answer to Question 4.

**(b) Ahead of the findings from the Government’s research project we also welcome views on how the requirement to obtain and disclose an annual rating could be enforced most effectively.**

We agree with the Government’s view that the companies operating the larger buildings may well be ones embracing ESC aims and conscious of their public reputation. In our view, these companies are likely to include most of the larger buildings, so we would support the publicity option. Only if this proved ineffective, should financial penalties be levied. In the event of the latter being implemented, we would support modest penalties for first failures with escalating ones for repeated breaches.

**Question 12.**

**(a) Are there any considerations you would like to add to the Government’s analysis of the factors that are likely to drive improvements in ratings?**

No.

**(b) Do you support the Government’s proposals to improve ratings from day one?**

Yes. However, there should be recognition for occupiers or landlords who make significant improvements in the run up to the scheme being implemented otherwise companies might halt improvements. For example, a LED retrofit programme might be halted if it would only “count as progress” after the scheme starts; this would result in a couple of years of underinvestment when important energy reduction initiatives should be progressed now. Companies who have invested in the two or three years prior to the start of the scheme should get some ratings improvement in the first two to three years of the scheme to reflect their investment (i.e. a benefit which goes beyond achieving a better rating to begin with).

**Question 13.**

**Do you consider that linking a clear financial incentive, or disincentive, to annual performance based ratings would be an effective way to drive improvements in those ratings?**

No. If the incentives proposed are essentially tax set-offs, it is only worthwhile if a company is actually paying tax. A fairer system would be to relate it to rateable value or the multiplier so that lower rates would be paid for either having a lower rating or by reducing your rating.

Some occupiers may not have the capital available to invest in new systems. In these circumstances, the landlord could make the investment for the tenant and take some of the ratings benefit.

Also: there needs to be some legislation to cover yielding up obligations in leases. At present almost all leases include covenants requiring the tenant to remove their fixtures and alterations at the end of the lease unless the landlord specifically waives the requirement (they are under no obligation to do so). It would be illogical for a tenant to spend £100k on a new super-efficient HVAC system and then be obliged to strip it out when they vacate and awfully wasteful in carbon terms. Energy efficient improvements should be ring-fenced in some way.

**Question 14**

Yes. The softer approach would possibly place non conforming owners/single occupiers in an unfair competitive advantage over those willing to invest in reaching the required standards. The softer approach can always be run alongside financial incentives by progressive owners/single tenants.

There is a further justification for the softer approach. Shorter leases and the fragile nature of retail means that profits from bricks and mortar retailing is at an all-time low for – hence the raft of retailer insolvencies. Tenants on retail parks often have FRI leases so are responsible for the whole building envelope and the main drivers of energy usage are heating/cooling systems, lighting and roof/cladding insulation. Each of these is high-cost and the latter is extremely difficult to install while a tenant is trading. This means issues could well arise in terms of disruption and very high Net Book Values due to capital investment being amortised over short lease terms. These issues make penalties a heavy stick to use.

**(b) Are there other incentives or interventions that the Government has not considered here, which you believe would be more effective at ensuring ratings improve over time?**

No comment.

**Question 15.**

**Do you agree with the Government’s assessment and preferred approach? Please provide evidence or case studies, where possible, in your response.**

Yes.

**Question 16.**

**(a) Do you agree that flexible energy use should be a core component of the rating?**

Yes. Most occupiers in the out of town sector already have half hour energy meters. Whilst occupiers should not be required to install for some years, if they are in use this data should be captured.

**(b) What is the best way, technically, to reflect flexible energy use in the rating structure?**

It would seem the only option available at present is to change the meters in all non domestic buildings to ones which measure use on an half hourly basis. The advantage of this approach is that the technology already exists and prices should come down with substantial increase in demand. Improvements in the means of storing electricity will also be important.

**Question 17**

**(a) Do you agree with the Government’s preferred option to use a star rating format?**

Yes, stars are an internationally recognised means of conveying performance. However, it should be coupled with a precise numerical expression of performance which will be helpful in indicating to all interested parties where performance is on the boundary between stars.

**(b) Are there any formats which the Government has not considered that you believe could be more effective?**

No.

**Question 18.**

**The Government welcomes feedback on the considerations outlined above. What are the key factors that the Government should consider in determining fair and effective rating benchmarks and a fair and effective rating scale? Where possible, please provide evidence, or case studies, to support your feedback.**

Given the NABERS scheme exists, is proven, and is capable of successful adaption in response to increasing demands on performance, the working group should first consider whether it meets all the Government’s aims. Only if this is not the case should other schemes be considered.

**Question 19.**

**Subject to the outcome of this consultation, the government will work with the ratings administrator, and with industry experts, to tailor the framework appropriately to each sector. At this stage, the Government welcomes any additional feedback on the high-level technical considerations outlined in this chapter, especially where there may be key considerations that we may have not addressed, or not been able to cover. Where possible, it would be helpful if you could provide evidence and case studies to support your response.**

One component which is often associated with KPI benchmarking systems is an ability to access information on best practice undertaken by the highest performers on the data base. This important aspect of improvement is not considered in the consultation. Recommendations for needed improvement will satisfy improvement at an individual building level but will not indicate how it compares with the best performers (who may well be exceeding the Government’s threshold benchmarks).

It is sometimes argued that, for competitive advantage reasons, the best practitioners are unwilling to disclose information about the improvements they have made but experience in other industries (e.g. construction) does not support this fear. The better performers are keen for their whole industry to improve and in any case, individually are already planning their next tranche of industry leading improvement.

If we can be of any further assistance, please contact me,

Yours sincerely



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