

9 June 2021

Dear Sir/Madam,

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

**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 believes that success in the Government’s drive to net carbon by 2050, requires alignment of the various frameworks regulating owners, occupiers, owner occupiers and funders. Also, the frameworks must apply equitably to buildings in both the public and private sectors.

However, this does not appear to be the case with regard to this consultation and the two others published alongside it. While the Performance-based Framework (PBF) proposals encompass all large commercial buildings, the MEES proposals apply only to rented buildings, thereby excluding those in owner occupation.

Also, large public sector offices are omitted from the first phase of the PBF despite there being little or no difference in their operation by public sector owners or occupiers compared with that in large private sector offices, nor is any reason given why large public buildings should not be included now.

**Questions**

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

Whilst the government clarifies that listed buildings and those in conservation areas will require an EPC, this response ignores the time-consuming and expensive process needed to evidence qualification for an exception if they are unable to comply with the MEES. Regarding the former, bearing in mind that listed buildings (a) comprise a very small part of the total non-domestic building stock and (b) consent for significant alterations (the kind of measures needed to comply with an EPC are likely to alter the character and appearance of a building and thereby be significant) is frequently withheld by the relevant statutory authorities, these buildings could be made exempt from the EPC regime with little impact on the achieving of the government’s energy efficiency goals.

Regarding non domestic buildings within conservation areas, these are more common (especially in town centres), but are more likely to be smaller premises occupied by SMEs. These owners are likely to find the exemption process difficult and ultimately unaffordable and such properties also should be exempted albeit subject to a size limitation (250 m2?) designed to catch only SMEs.

**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.**

No. Only a single date of 2030 will give owners certainty and the flexibility to plan for upgrade works within their own renovation and leasing cycles. Also, provided the Government acts early, it will also enable owners to incorporate any changes made to Part L of the Building regulations (e.g. carbon changes); additionally, it will give the supply chains needed to support compliance works enough time to set up deliver services and materials.

The reasoning advanced by the Government in support of a 2027 interim date i.e. that the risk of landlords delaying action until 2029 and 2030 was too high, is not supported. Even if correctly assessed (which is doubted), measured against the loss of the advantages mentioned above, the risk should be discounted as the benefits of a longer planning period ultimately will result in a higher level of compliance secured. Owners who do not take full advantage of this will have to face the consequences of enforcement for non-compliance, an outcome it is believed most will seek to avoid. Moreover, should the government proceed with its proposals for compliance windows in 2025, 2027 and 2028, surely these are in effect interim milestones thus further rendering the proposed interim 2027 threshold unnecessary.

**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.**

In principle, the compliance windows are supported as they give certainty to owners and present an achievable pathway to securing full Level B compliance or to demonstrating the need for an exemption by 2030. However, there are two potential issues.

The first is that at each enforcement date in 2027 and 2030, landlords will need to demonstrate the building has reached the highest EPC band that a cost-effective package of measures can deliver. Unless the imperative the ‘highest EPC band’ a cost-effective package can secure is meant to apply only in the circumstances where such a package cannot secure full compliance, it is difficult to see why the required performance should be any higher than Level C by 2027 or Level B by 2030.

Second, who is to judge whether a package is cost-effective or not? It is doubtful whether public bodies possess the expertise necessary to form such a judgement especially as it will partly depend on assumptions on financial factors. Further, if the judgement is that of a statutory body, can a landlord contest the basis of the decision?

**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.**

It is welcomed that the Government has recognised the difficulties inherent in applying MEES to shell buildings and fitouts. In principle, the solution of deferral is acceptable; however, for some properties fit-outs generally take a year to complete.

**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. -**

It is agreed that there should be no insurmountable difficulties in transitional from EPC E, provided all the issues raised in this response are addressed satisfactorily.

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

Generally, the proposals are supported. However, although the Government says the EPC is not concerned with ‘operational’ energy performance, nevertheless it intends introducing just such a system for buildings over 1000 m2 as these buildings account for over 50% of energy used. That leaves a very significant amount of operational energy used by all other non-domestic buildings. Bearing in mind that measuring operational energy use is not difficult or costly to implement, it is difficult to see the logic in not extending the proposal to all buildings irrespective of size. A significant proportion of these will be smaller premises occupied and/owned by SMEs, but the requirement for an annual return could be relaxed to every other year below a suitable size threshold (200m2). Also, if the performance of other non-domestic buildings is excluded, when the Government uses the scheme to set sector by sector energy reduction targets for 2030 and beyond, the burden of improvement may be unfairly placed on the owners of larger buildings.

**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.**

Yes.

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

Yes.

**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.**

Yes.

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

There is no evidence that the current regulations have proved to be unclear. However, the additional clarity sought by local authorities does not institute any changes, so is not opposed.

**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.**

It is agreed that to introduce powers of entry for the purpose of non-domestic MEES would be disproportionate. The proposal to enable local authorities to give notice to landlords that they wish to carry out an inspection, requesting permission to do so at an agreed time from landlords and any tenants in situ is not opposed provided landlords are served in writing with a summary of what breach(es) the local authority suspects and the evidence for holding that suspicion. .

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

No. Exemptions should be reviewed only if they were granted more than twelve months prior to the start of the compliance window. Exemptions granted within the twelve months prior period should be presumed to be up to date.

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

Yes subject to a short further consultation on the ‘new’ calculator including from what sources and how often industry data will be collected and incorporated.

**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?**

We believe only one quote only is needed in all circumstances provided it is given by a suitably professionally qualified practitioner.

**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?**

Yes, subject to further consultation on the details of the proposed tenant duties.

**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?**

Yes. Any detail on patterns of usage, tariffs and disaggregated costs will be useful is promoting greater energy efficiency.

Yours sincerely



William McKee

Chief Executive

Accessible Retail,

Orb Support Ltd,

PO Box 164,

Saffron Walden, Essex, CB10 9AA

email william.mckee@btclick.com; Mobile 07711 069 140