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Department for Business, Energy & Industrial Strategy consultation response

The Non-Domestic Private Rented Sector Minimum Energy Efficiency Standards: The future trajectory to 2030

Response from the Mayor of London

Summary

We are in the midst of a climate emergency. We have very few opportunities left to put us on a trajectory to stay within 1.5C of warming. The UK is not on track to meet its fourth and fifth carbon budgets and desperately needs to tackle emissions from buildings. The reframing of these Minimum Energy Efficiency Standards (MEES) presents a unique opportunity to put the UK's rented commercial property on track to becoming net zero carbon buildings, but only if designed and enforced properly.

Industrial and commercial buildings contribute to over a third (36%) of London's emissions and thereby represent a significant target in our efforts to make London zero carbon. MEES have the potential to be one of the best ways of targeting these buildings. We are therefore supportive of the ambition to improve non-domestic rented buildings to EPC B by 2030, as London's zero carbon pathway (outlined in our 1.5 C plan¹) requires that roughly 70% of all buildings achieve at least an EPC C rating by 2030. Fulfilling London's zero carbon pathway will require a significant uplift in the number of non-domestic buildings that are retrofitted, from minimal numbers presently to almost 8,000 non-domestic buildings per year by the mid-2020s.

Analysis² undertaken for London's 1.5C plan shows that regulation of the energy and carbon performance of all buildings is the most effective way to achieve the levels of retrofit required to put London on a zero-carbon trajectory. Stronger regulation of the energy performance of new buildings in London has led to greater private sector investment in the energy efficiency of buildings and low carbon and renewable energy supply. Regulation of all existing buildings is now needed to drive an acceleration in retrofit rates and the current and proposed Private Rented Sector regulations need to be extended to all tenures.

¹ <https://www.london.gov.uk/what-we-do/environment/climate-change/climate-action-plan>

² Arup, (2018) Zero carbon buildings policies. Available online at: https://www.london.gov.uk/sites/default/files/arup_building_energy_efficiency_report.pdf

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However, for MEES to be effective, the following three criteria must be met:

- Adequate funding should be provided to authorities to enforce MEES and EPC regulations.
- Exemptions must only be applicable in a very small proportion of cases.
- Penalties for non-compliance should be more than the cost of action.

For the existing non-domestic MEES regulations, these criteria have not been met and the Mayor remains concerned that these issues will persist in the proposed future regulations.

First and foremost, the existing regulations have not been enforced. Engagement with London boroughs, London Councils, and London Trading Standards has confirmed that the lack of resources and lack of prioritisation of energy issues within Trading Standards bodies has meant that the existing regulations have not been enforced. A search of the Government's register for penalty notices showed no penalties had been issued in London. This is despite the fact that we estimate that 19% of commercial properties in London do not meet EPC F or G. There have been huge cuts in the trading standards provision in the last decade, typically leaving 4-5 officers in most boroughs enforcing the whole range of business and consumer issues. Enforcing MEES is one further burden on top of everything else, and the officers are simply not trained or resourced to do it. To credibly enforce these regulations would require establishment of regional or national enforcement teams, resourced with energy and building specialists to support the enforcement effort.

Furthermore, it is not just the MEES enforcement that is an issue. Trading standards are not proactively enforcing EPC regulations in London either. The EPC scheme is too complicated and too open to interpretation, and as noted above the enforcement bodies do not have the capacity or skills to do so. The lack of EPC regulation is critical to the enforcement of MEES, so a holistic approach to enforcement of both, as proposed above, is essential.

However, the issues with MEES do not stop at the lack of enforcement. Even if enforcement issues were resolved, the range of exemptions still mean the regulations are not fit for purpose. The Mayor is particularly concerned that the continuation of the seven-year payback rule alongside a much more challenging trajectory will only exacerbate the problem. The Government's exemption register shows that there are properties in London with EPC G ratings that are claiming exemption from the existing MEES regulations because measures to get them to EPC E would not meet the seven-year payback rule. These worst-performing buildings will

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continue to remain exempt from the new regulations; if they cannot reach EPC E with a seven-year payback, they will also not be able to meet EPC B with a seven-year payback. Keeping the seven-year payback exemption will result in more buildings being able to claim exemption from the new proposed regulations. This outcome runs contrary to the stated ambition of the policy, which is to drive out the worst-performing buildings. Given the climate emergency and the pace and trajectory of retrofits required, it is no longer appropriate for any building to be exempt from regulations targeting improvement.

A different approach should be taken to improve the energy performance of buildings expected to be exempt from the MEES regulations. This should either take the form of strong incentives that boost compliance, or a requirement that MEES-exempt buildings participate in an alternative Government-led programme of installing measures that ensures the building is put on a zero-carbon trajectory. The regulations should also be accompanied by fiscal policies to help landlords invest in their properties and grants for deeper measures.

Finally, it is crucial that this policy is coherent with a broader and longer-term aim for commercial buildings to be both energy efficient and zero carbon by 2050, if not sooner.

Consultation response

1. Do you have any evidence which can improve the Government's understanding of energy use in the non-domestic building stock?

The effectiveness of the Minimum Energy Efficiency Standard (MEES) regulation is only as good as the EPCs that underpin it, and there is very patchy coverage and quality of EPCs, as the regulations requiring that EPCs are in place are poorly enforced themselves. We are developing a London Building Stock model³, which maps existing EPCs and models typical EPCs for the remaining buildings. This will soon be made publicly available on our website and will be shared with BEIS as soon as it is available. This model shows that only 24% of commercial properties in London have an EPC. The Government should undertake a similar modelling approach for the rest of the UK, assigning estimated EPCs to buildings using benchmarks so that there are no buildings that are exempt from this policy because they do not have an EPC.

³ <https://www.london.gov.uk/what-we-do/environment/energy/energy-buildings/london-building-stock-model>

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However, EPC ratings only give a theoretical energy performance of buildings, and it is widely known that the actual energy use of building varies significantly depending on how well they are maintained and operated and the behaviour of occupants. The best way the Government can improve its understanding of energy use in the non-domestic building stock is by requiring reporting of in-use energy consumption at a building level. This is the approach that is being taken for new builds in our new London Plan.

However, the focus should not just be energy use but also GHG emissions. The ultimate objective of this policy needs to be to drive down GHG emissions and therefore understanding in-use GHG emissions is crucial. Through the Mayor's London Plan policies for new buildings, commercial buildings will – for the first time - be obliged to monitor and report publicly on the in-use energy consumption of their building via the GLA's online platform. The intention is to compare expected performance at design with actual performance, to inform our policy and approach to monitoring compliance with our net zero carbon target. Public reporting will also serve to raise awareness of these issues. This information on energy consumption will be combined with further reported data on grid electricity consumption, onsite renewable generation and onsite fossil fuel consumption to calculate GHG emissions for the building. This is an approach that could be replicated for existing commercial buildings across the UK to help the Government monitor actual GHG emissions from commercial buildings and level the playing field in terms of monitoring and reporting for new and existing buildings.

Reported in-use building emissions should help drive awareness of emissions amongst personnel at all levels of buildings management and would help act as an incentive to landlords to work more closely with their tenants to improve performance. There are several existing commercial sector initiatives that the Government should be learning from, e.g. the Better Building Partnerships Design for Performance scheme⁴, which is intended to ensure office developments perform as designed, and the NABERS scheme in Australia⁵.

2. It has now been over a year since the minimum energy efficiency standards for the non-domestic private rented sector were introduced. What have been the positives and areas for improvement of their introduction?

⁴ <http://www.betterbuildingspartnership.co.uk/node/360>

⁵ <https://www.nabers.gov.au/>

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Due to the lack of enforcement of the MEES regulations, it is hard to quantify whether there have been any real benefits as a result of the regulations. The significant financial pressures placed upon local authorities has limited their ability to properly resource the enforcement of the policy. Engagement with London boroughs, London Councils, and London Trading Standards has confirmed that there has been no enforcement of non-domestic PRS regulations in London for a number of reasons:

- London boroughs have had an extra responsibility placed upon them against a backdrop of cuts in funding and reduction in staff, and therefore they do not have the resources or skills to enforce these regulations.
- The bar for compliance (EPC E) is currently low, reducing the number of likely non-compliant buildings.
- The existing exemptions have enabled many buildings to be exempt from the regulations, making enforcement efforts much less profitable.

The proposed policy must be designed to address this lack of enforcement. It can do this by establishing regional or national enforcement teams resourced with energy and building specialists to support the enforcement effort. Non-domestic MEES regulations in London are enforced by weights and measures authorities (trading standards) within the boroughs. There have been huge cuts in the trading standards provision in the last decade, typically leaving 4-5 officers in most boroughs enforcing the whole range of business and consumer crime issues. Enforcing MEES is one further burden on top of everything else that the officers are not trained or resourced to do. For these regulations to have a chance of being enforced, a new approach is needed, and this will require funding for a skilled workforce.

The other key area for improvement is in relation to the exemptions which exist. At present, they are too broad which reduces the pool of buildings the standards relate to, diluting the positives and diminishing their effectiveness. Further suggestions on this issue are provided in the response to question 12.

3. Do you agree that 2030 is the appropriate date to set the future trajectory? Does this allow a long enough lead in time for landlords and businesses to plan effectively, as well as providing the energy efficiency market with medium to long-term certainty of demand?

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A 2030 energy efficiency target is helpful, but this needs to be put clearly in the context of the intentions of the Government beyond 2030. For example, the expectation should be set that buildings will need to be zero carbon by 2050, and ideally earlier. Without this longer-term context for the regulation, our concern is that businesses will focus on the most cost-effective measures to comply with the 2030 date; focusing only on energy efficiency without considering the most logical and effective sequence of measures to deliver zero carbon buildings by 2050.

The ultimate objective of this policy must be for commercial buildings to be zero carbon by 2050, or earlier if feasible, and use energy in a smart and efficient way in order to fulfil the Government's 2050 zero carbon target. If businesses focus on cost effective measures to 2030, at which point the target changes and becomes zero carbon by 2050, businesses may end up ripping out measures in the 2030s that they had installed in the 2020s. If the long-term objective of making these buildings zero carbon by 2050 was set out up front, this would help landlords to think longer term and start installing the measures in a logical order to set them on the right trajectory for zero carbon by 2050. We need to shift businesses away from thinking about short term compliance with energy efficiency targets only and start to align with the long-term objectives around zero carbon, by ensuring there are long term GHG targets for all building tenures and that businesses and landlords have the guidance and direction they need to achieve this.

Directing the policy to deliver GHG emissions reductions as well as improvements in energy performance, would help drive integrated action on energy efficiency and decarbonised heat, whilst supporting ambitions to make our buildings more flexible and smarter in the way they use energy.

4. To what extent do you think an EPC B trajectory provides sufficient certainty of demand to encourage suppliers in the energy efficiency market to grow, scale and innovate?

Whilst we welcome a more ambitious energy efficiency target, an EPC B trajectory will only drive action if:

- Adequate funding is provided to authorities to enforce the regulations.
- Exemptions are only applicable in a very small proportion of cases.
- The penalties for non-compliance outweigh the cost of taking action.

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We are not convinced these proposals will provide that certainty of demand as there will be significant doubts about the extent of enforcement, the large number of buildings that might be exempt and the level of penalties. We are particularly worried that the investment required to get many buildings to an EPC B may be too high to give a seven-year payback and would urge Government to revisit its cost assumptions (see our response to question 13) and re-evaluate the percentage that would likely be exempt due to the seven-year payback rule.

By underestimating the costs of the measures, the payback periods assumed in the consultation documents are too short. Consequently, more buildings will be exempt from the regulation and fewer undergo retrofit than if a longer payback period was considered. This is a perverse outcome, given that the intention is to target EPC B in order that more buildings are brought up to a higher performing standard.

As the regulation is currently proposed, it doesn't provide sufficient signalling to businesses that they will need to get to zero carbon in the future, or how they will achieve this. As outlined in the response to question 3, the regulation should be signalling to businesses that they will ultimately need to get to both energy efficient and zero carbon emissions buildings and that they may have to invest in a broader range of measures to get there than the measures that would be needed to get to EPC B by 2030.

5. What do you think are the opportunities and challenges of the Government's preferred 2030 EPC B trajectory?

Potential opportunities associated with the Government's 2030 EPC B trajectory will only be realised if the number of possible exemptions is minimised by increasing the payback period to at least 12 years and providing the necessary funds and skills to trading standards for effective enforcement. If this is done, opportunities would include:

- An increased demand for retrofit services, helping the supply chain to develop to meet needs, both in terms of cost and quality.
- The potential to develop this approach with a view to rolling it out across other tenures.

A key challenge to the proposed regulation as it stands is that the exemptions will substantially water down what could be achieved. One of the most concerning exemptions is the proposed continuation of the seven-year payback rule.

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For many buildings with lower existing EPC ratings, it will be challenging to undertake the measures required and achieve a seven-year payback. The experience from the Mayor's programmes in undertaking retrofits in the domestic and public sector is that the kind of deep retrofit that will be needed to get lower performing buildings to an EPC B will often require a longer payback than seven years.

Amber Infrastructure, which manages the London Energy Efficiency Fund (LEEF) and the Mayor of London's Energy Efficiency Fund (MEEF), has advised that the paybacks outlined in the BEIS consultation are not in line with a whole house or building systems approach, which is what would be required under the MEES objectives. When compared with previous energy efficiency improvements undertaken as part of MEEF and LEEF, the proposed paybacks are too short. The new trajectory to get to an EPC rating of B will more than likely include the introduction of external fabric and/or replacement glazing and complete heating systems replacements. Suppliers and Technical Advisors to MEEF and LEEF have all suggested that 12 years and up would be a more reasonable payback period given the capex required. The GLA would be happy to facilitate a conversation with BEIS officers and the GLA's Technical Advisors to talk through real life examples of retrofit costs.

Furthermore, leaving it open to businesses whether they take a "package of measures" approach to the seven-year payback rule or an "individual measure approach" is not helpful. Savings from shorter payback measures should be used to finance longer payback measures. As pointed out in the response to question 3, if businesses only focus on individual cost-effective measures to 2030, and then the target changes to zero carbon by 2050, businesses may end up ripping out measures in the 2030s that they had installed in the 2020s. If the long-term objective of making these buildings zero carbon by 2050 was put up front, and landlords knew that they would ultimately have to achieve this and would not be exempt, they would start thinking longer term and start installing the measures in a logical order to set them on the right trajectory for zero carbon by 2050.

In addition, many businesses already use a seven-year payback to assess their investments. If the deep energy efficiency measures that are required to achieve EPC B already had a seven-year payback then one would expect to see many more of these deep retrofits already taking place. In many cases a seven-year payback is not even facilitating a "light" retrofit, as the Government's exemption register for the existing MEES shows landlords in London already claiming exemptions under the seven-year payback clause. In order to go beyond business as

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usual and start seeing businesses undertaking deep retrofits, the payback will also need to be longer than the current seven years.

6. We estimate an EPC C trajectory will only bring 42% of the non-domestic PRS building stock into scope of the regulation. Are there any alternative approaches that could complement an EPC C trajectory that would guarantee the necessary action across the remaining stock to drive clean growth and deliver sufficient energy and carbon reductions?

The vast majority of the UK's buildings are going to need to be operating at zero carbon emissions by 2050. Minimum energy efficiency standards are the best way to ensure we bring our buildings up to the required standards. It is essential that we set high standards for our buildings in the short to medium term and set them on the right trajectory towards zero carbon.

An EPC C trajectory for MEES would need to be positioned within a broader set of regulations that require all non-domestic buildings to achieve zero carbon emissions by 2050, or sooner if possible. This would ensure that those buildings already achieving EPC C or above are still improving their performance and achieving energy and carbon emission reductions by also starting to transition their energy supply away from fossil-based systems.

Any regulations that require existing buildings to achieve zero carbon emissions would need to be supported by incentives and grants for landlords to decarbonise their heating systems and transition to heat pumps and heat networks in large numbers. In particular, Government urgently needs to put in place a successor to the Renewable Heat Incentive to help landlords pay for higher upfront heating system costs. The Government would also need to ensure there was a much more supportive framework for generating and trading decentralised energy generation.

7. Can you identify any issues regarding the current administration of the seven-year payback test which could be improved to support the goals that a tightened regulatory trajectory to 2030 aims to deliver?

A seven-year payback will likely not be long enough without other public interventions (such as grants or subsidies). As outlined in the response to question 5, a minimum 12-year payback

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would be much more realistic for delivering the level of deep retrofit that is likely to be required for improving commercial buildings to an EPC B.

There should be guidance for landlords on energy efficiency measures required with technical options and associated costs listed out including approximate paybacks/m² for certain measures, including the less popular but necessary measures like building fabric and whole heating/cooling systems.

Readiness levels of older properties prior to any energy efficiency measures being installed is also an issue. Many will have to undergo structural, mechanical and electrical upgrades before the new energy efficiency measures can operate in the most energy efficient manner. These costs are called enabling works and often are part of the preparation prior to the actual energy efficiency measures being installed. However, these enabling works will increase the payback period and allowance should be made for this in the design of the policy, perhaps by requiring that the costs associated with these enabling works are considered outside the payback period.

It is clear that a whole building system approach will be required for a deep retrofit in order to achieve the desired EPC rating. This in turn means some of the measures required will be more extensive and associated with higher capital costs. These are the measures that will have the longest paybacks and may require public subsidies or grants in order for them to fall back into the shorter payback periods, or there is risk that the deep retrofit measures will be excluded.

9. Are there any reasons why any of the current exemptions will be less effective under a tightened trajectory?

We are concerned too many buildings will be exempt under any trajectory to deliver the desired aims of the Government, unless these exemptions are reformed and minimised.

11. Are there any unique challenges that the tightened trajectory will pose to SMEs or any individual sector? How could the sector look to overcome that challenge?

SMEs are usually tenants and rarely own the freehold of a building, therefore there is a conflict between the incentives of the landlord and tenant, in terms of who pays for the works and who benefits from resulting reduced energy costs. Our experience of delivering energy efficiency and retrofit programmes to SMEs suggests that they are not prioritising energy efficiency

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measures in a challenging and uncertain economic climate, even though they would save money in the long run. They have limited capacity to arrange the works and therefore wait until the issue is urgent, for example not replacing an inefficient boiler until it is broken. There is also a mistrust of the rate of return from energy efficiency works.

Voluntary approaches undertaken to date have proven are far more challenging than regulated obligations and therefore the introduction of tighter standards is welcome. However, this needs to be balanced with support for SMEs, in the form of grant funding and technical support.

12. At this stage we welcome views on how the Government could most effectively improve enforcement of minimum energy efficiency standards under an EPC B or C by 2030 trajectory.

If the objective is to get as many buildings as possible to EPC B by 2030, the Government must set much more limited exemptions or consider that no building should be exempt from some level of improvement. As the exemptions are currently set (with the seven-year payback), the worst performing buildings are the ones that will end up exempt and not coming up to standard, with the better performing buildings only getting slightly better. This runs contrary to the objective of this policy, which is to drive up the performance of the worst buildings. The Government should urgently consider whether it is appropriate for any building to be exempt from regulations targeting improvement, and whether a mandatory approach is now required given the climate emergency and pace and trajectory of retrofit required.

Reducing the number of non-compliant buildings could be achieved by the Government assessing which buildings should be exempt from the MEES regulations (e.g. through its own modelling of EPCs of all buildings – see response to question 1) and requiring compliance from all other buildings. However, as noted above, no buildings should be exempt from some level of improvement and long-term targets should be set for all PRS buildings, in line with a 2050 zero carbon objective. Those that are exempt from achieving EPC B by 2030 should either be:

- Required to participate in an alternative Government-led programme of measures that supports measurable emissions reductions – potentially providing a priced outline of actions that need to be taken with specific contractors and a timeline for undertaking actions and delivering them by 2030;
- Or provided with strong incentives to drive down emissions.

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Taking an alternative approach to non-compliant buildings will demonstrate to landlords that action will need to be taken on all buildings

More broadly, enforcement of MEES and EPC regulations should be improved by establishing regional or national enforcement teams and sufficiently resourcing them with the energy and building specialists required to support the enforcement effort (as discussed in more detail in the response to question 2).

13. As illustrative examples, do the costs, bill savings and private payback periods that our modelling assumes for these building types approximate your experience?

As outlined in our response to question 5, Amber Infrastructure, which manages the London Energy Efficiency Fund (LEEF) and the Mayor of London's Energy Efficiency Fund (MEEF), has advised us that the paybacks outlined in the BEIS consultation are not in line with a whole house or building systems approach, which is what would be required under the MEES objectives.

When compared with previous energy efficiency improvements undertaken as part of MEEF and LEEF, the proposed paybacks are too short. The new trajectory to get to an EPC rating of B will more than likely include the introduction of external fabric and/or replacement glazing and complete heating systems replacements. Suppliers and Technical Advisors to MEEF and LEEF have all suggested that 12+ years would be a more reasonable payback period, given the capital expenditure required.

By underestimating the costs of the measures, the payback periods assumed in the consultation documents are too short. Consequently, more buildings will be exempt from the regulation and fewer undergo retrofit. This is a totally unacceptable outcome, given that this regulation is targeting EPC B so that more buildings are brought up to a higher-performing standard.