

The Advisory Working Group on Non-Domestic Private Rented Sector Regulations (Under The Energy Act 2011)

Date:

Monday 15th April 2013, 2.30pm - 4.30pm

Location:

British Property Federation, St Albans House, 5th Floor, 57-59 Haymarket, London, SW1Y 4QX.

Attendees:

Chair - Miles Keeping (MK) (Deloitte)
Association for the Conservation of Energy – Andrew Warren (AW)
Better Building Partnership - Chris Botten (CBo)
British Land – Justin Snoxall (JS)
British Property Federation - Tom Younespour (TY) and Patrick Brown (PB)
British Retail Consortium – Andrew Bolitho (AB)
British Council of Shopping Centres – Helen Drury (HDr)
Carbon Trust -Katherine Deas (KD)
Country & Land Business Association – Tom Beeley (TB)
Chartered Institution of Building Services Engineers – Hywel Davies (HD)
Department of Energy & Climate Change - Marcia Poletti (MP), Chenab Mangat (CM) and Alison Oliver (AO)
Electrical Contractors Association – Bill Wright (BW)
Friends of the Earth – Dave Timms (DT)
Hendersons – Jenny Pidgeon (JP)
Jones Lang LaSalle - Emma Hoskyn (EH)
Legal and General – Debbie Hobbs (DH)
Royal Institution of Chartered Surveyors – Martin Russell-Croucher (MRC)
Squire Sanders - Christopher Brigstocke (CBr)
Sustainable Investment & Asset Management LLP - Charles Woollam (CW)
Tuffin Ferraby Taylor LLP – Mat Lown (ML)
UK Green Building Council - Richard Griffiths (RG)

Apologies:

See Remainder of Membership List.

Welcome and opening remarks:

1.1 The Chair welcomed attendees to the 3rd meeting of the Working Group on Minimum Energy Performance Standards in the Non Domestic Sector. The chair thanked those that produced or contributed to meeting papers, and underscored the importance of work undertaken between meetings.

Review of feedback on workstream 1 actions:

2.1 The chair went through the actions from the last meeting, with each action lead giving an update on the latest developments (please see action table below for details).

Discussion of proposed workstream 1 recommendations:

2.2 The Chair asked the lead for each workstream 1 question to introduce their paper, highlighting any questions or proposed recommendations for the group to consider.

Action 8: To develop a paper exploring (1) the potential use of Building Regulations as the basis for MEPS, and (2) what changes would need to be made to EPCs, and their underlying methodology, if they were used for MEPS instead (Paper 03-07)

2.3 DH introduced the paper, thanking those that contributed. DH commented that EPCs only provide a notional performance of the building, and take account only of regulated energy use. The EPC's focus on carbon saving, rather than energy saving can also cause it to reward wasteful actions such as installing renewable energy systems on inefficient buildings. DH commented that there were still questions as to exactly how the non-domestic Green Deal will work which further complicates an approach that uses the EPC as its basis.

2.4 DH suggested that EPCs should include an indication as to whether the building has met building regulations, and that where a building is rated F or G, the fit out should meet building regulation minimum specifications. This could exclude fabric standards as this could be too challenging.

2.5 The group debated the challenges that the EPC poses. Some commented that much of the government's policy now stems from the EPC and its approach of notional performance and carbon, rather than energy indicators, and that to change this just for MEPS would be challenging. The chair proposed that the group accept the proposition that EPCs are used as the main tool for MEPS, but that there is to be further work looking at how they could be amended or improved.

2.6 The group discussed concerns about the accuracy and reliability of old EPCs and it was suggested that this causes problems when assessing how many properties would be affected by MEPS, and the level of works that may be required. CW said that it was unlikely that older EPCs would be relied upon and that going forward prospective buyers would commission a new EPC before buying to protect themselves against poor or inaccurate EPCs. PW commented that those who were proactive and undertook EPCs voluntarily could find themselves losing out as old EPCs become irrelevant.

Action 9: To develop a paper detailing the options and implications of applying different economic/commercial feasibility tests (such as a Green Deal assessment and exploring issues around the length of void periods), to properties that fall below the prescribed MEPS threshold (Paper 03-08)

2.7 CW introduced the paper, highlighting that a before and after valuation by an accredited valuer could be used to assess whether required works

would materially harm a property's value. CW said that there may also need to be an allowance for buildings with long voids where Green Deal charges could be a significant issue for the building owner. DT suggested however that this approach would need to consider how long such exemptions would last as the market changes overtime.

Action 10: To develop a paper detailing how exemptions might work where: (1) tenants or other third parties refuse consent, or where (2) improvements are likely to impact negatively on property value. The paper should include what level of engagement landlords would be required to undertake and what proof would need to be shown (Paper: 03-09)

2.8AB introduced the paper and said that a key issue for the group to consider is how MEPS interact with existing policies, and that a general principle ought to be that MEPS does not override existing requirements or legislation. AB said that the legislation must be as simple as possible, and this must be a factor when considering exemptions.

2.9 The group discussed the merits of a "hard start" vs a "soft start". A hard start would mean all leases would be affected from the commencement date for MEPS of April 2018, whereas a soft start would only affect new leases signed after the commencement date. DECC suggested that the hard start approach would not mean that property owners would be required to overrule a tenant refusal to consent to works. This would avoid the situation whereby a property owner is not able to gain access to the property to do the required improvement works.

2.10 There was concern from some group members that there would be little incentive for property owners to convince tenants to agree to works, however some suggested that this would not be the case as property owners are likely to want to safeguard the value of their asset and undertake the works as soon as possible.

Review of feedback on workstream 2 questions

2.11 Due to time constraints the chair asked that group members read the papers and recommendations under workstream 2 and provide feedback to the secretariat before the next meeting.

AOB

3.1 The chair thanked attendees for their input and highlighted the date for the next meeting of 13th May 2013. The chair said that a list of follow up work including action leads and supporters would be circulated after the meeting, and urged group members to offer their support and input.

Actions noted:

1. DECC to continue to work with DCLG to obtain and report back useful and relevant information from the EPC register
2. Secretariat to share Scottish Consultation on its plans for regulation under the Scottish Climate Change Act 2009 (please see link to documents [here](#))

3. DECC and the Secretariat to ask Scottish Government officials to share relevant findings from its work in developing its proposals under the Scottish Climate Change Act
4. DCLG to obtain relevant information from the EPC accreditation bodies about levels of non-compliance with EPC regulations and guidance (drawn from their auditing processes)
5. Secretariat to enquire as to what work is being done by University College London regarding EPCs and the Land Registry

Relevant websites:

<https://www.gov.uk/government/policy-advisory-groups/133>

(Along with a link to the separate Domestic Group)

<https://www.gov.uk/government/policy-advisory-groups/130>

They have also been linked to the Green Deal householders/landlords page.

<https://www.gov.uk/getting-a-green-deal-information-for-householders-and-landlords>

Annex A - 15th April Meeting: Summary of Actions Outstanding

No	Action	Lead/Owner	Contributors	Status	Comment
1.	To gather data on the breakdown of existing EPCs by building type, size, age, region and any other factor that may be of use to the group	<u>DECC & DCLG</u>	-	Outstanding	Initial data set provided with the papers. Further work to be undertaken to provide greater granularity, including rating split and energy use.
2.	To provide views to the secretariat on additional factors that ought to be considered in gathering data on existing EPCs (in support of action 1)	-	All	Outstanding	Attendees invited to continue to provide suggestions
3.	To enquire as to what information on EPCs can be provided by IPD	<u>Patrick Brown</u>	-	Complete	IPD slide pack provided showing publically available information on EPC grades. However such information should be used with caution – not all IPD respondents provide EPC information and not all buildings have an EPC
4.	To find out what types of energy efficiency improvement measures can feasibly be installed whilst tenants are in situ	<u>Patrick Brown</u>	Bill Wright (ECA)	Complete	Provided with the meeting papers. PB summarised the paper, commenting that it shows that whilst some interventions may be possible to occupied property, limitations within leases guarantying occupier levels of service are likely to cause barriers.
5.	To report back on Scottish proposals for MEPS under the Scottish Climate Change Act	<u>Patrick Brown</u>	-	Complete	Secretariat provided oral update explaining that the Scottish government plans to implement regulations next year for sale and letting of commercial property, but also to allow for compliance to be met with operational improvements or Green Deal works. Works are not required to buildings meeting 2002 building regulations or later.
6.	To provide examples of Green Deal improvement packages for different property types falling below an E EPC rating	<u>DECC</u>	Debbie Hobbs (Legal & General) Chris Brigstocke (Squire Sanders)	Outstanding	Further work by DECC to be undertaken.

			DCLG		
7.	To check whether the PRS regulation timescales would allow existing or planned future legislation to be adjusted to permit MEPS to be based on Building Regulations and whether there are implications for listed/historical buildings relating to MEPS	<u>DECC & DCLG</u>	-	Complete	DECC confirm there is little scope for amendments or changes to building regulation plans or timescales to support MEPS
8.	To develop a paper exploring (1) the potential use of Building Regulations as the basis for MEPS, and (2) what changes would need to be made to EPCs, and their underlying methodology, if they were used for MEPS instead	<u>Debbie Hobbs</u> (Legal & General)	Emma Hoskyn (JLL), Andrew Cooper (Deloitte), Ant Wilson (AECOM) Patrick Brown (BPF)	Complete	Provided with meeting papers
9.	To develop a paper detailing the options and implications of applying different economic/commercial feasibility tests (such as a Green Deal assessment and exploring issues around the length of void periods), to properties that fall below the prescribed MEPS threshold	<u>Charles Woollam</u> (SIAM)	Katherine Deas (Carbon Trust/Low Carbon Work Place), Mat Lown (Tuffin Ferraby Taylor), Chris Brigstocke (Squire Sanders)	Complete	Provided with meeting papers
10.	To develop a paper detailing how exemptions might work where: (1) tenants or other third parties refuse consent, or where (2) improvements are likely to impact negatively on property value. The paper should include what level of engagement landlords would be required to undertake and what proof would need to be shown	<u>Andrew Bolitho</u> (BRC),	Chris Botten (BBP), Emma Hoskyn (JLL) Sheldon Ferguson (DCLG) Patrick Brown (BPF) Chris Brigstocke (Squire Sanders) Helen Drury (BCSC)	Complete	Provided with meeting papers