

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

Date:

Monday 13th May 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 Property Federation - Tom Younespour (TY) and Patrick Brown (PB)
British Council of Shopping Centres – Helen Drury (HDr)
British Land – Justin Snoxall (JS)
Carbon Trust - Katherine Deas (KD)
Confederation of British Industry (CBI) – Dave McLaughlin (DML)
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)
Department for Communities and Local Government (DCLG) – Sheldon Ferguson (SF)
Electrical Contractors' Association (ECA) – 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)
[Formerly of Eversheds] - Peter Williams (PW)

Apologies:

See Remainder of Membership List.

Welcome and opening remarks:

1. The Chair welcomed attendees to the 4th meeting of the Working Group on Minimum Energy Performance Standards in the Non Domestic Sector. The Chair expressed his appreciation to members who had either produced or contributed to the meeting papers, and stressed the need to carry on the momentum established so far.

Review of feedback on actions:

2. DECC provided an update on the actions, commenting that further work is being undertaken to deliver the data and outputs requested by the group (please see action table below for details).

Discussion of proposed workstream 1 & 2 recommendations:

3. The Chair invited the Members to discuss the initial proposals in Paper 04-02. The chair highlighted that the draft recommendations had been produced with reference to the papers produced under workstreams 1 and 2 and the subsequent feedback received inside and outside of group meetings. Members were invited to provide an honest appraisal of the recommendations and to offer alternatives where appropriate.
4. There was broad agreement from the group to the draft recommendations, although further actions were noted to refine much of the detail that underpins them. There was particular concern about the Green Deal and its link to MEPS, with some arguing that there is still little known about how the Green Deal will work in practice, making it hard to assess how it should support the MEPS policy. DT put forward the proposal that MEPS should not necessarily be linked to just the Green Deal and the secondary legislation should reference other financial options.
5. There was broad consensus amongst the group that higher EPC assessor and assessment standards were needed. It was also raised that there was a risk that assessors with a reputation for granting higher EPC ratings would be approached instead of more reliable assessors. DB suggested Part L of the Building Regulations could assist MEPS as it already has an economic test included. JP noted however that it would be difficult to reflect all the possible building scenarios.
6. There was widespread agreement from the bulk of members that there should be safeguards to avoid a diminution in a property's value that would reasonably be expected to arise due to MEPS requirements. KD suggested that internal insulation measures that would materially reduce the internal floor area of a property would only apply in a small number of cases, though JP noted that for some properties, in particular retail properties, it may be more likely.
7. There was discussion about the parameters for the secondary legislation and what may be permitted by the Energy Act. DECC confirmed that their legal team would be providing greater clarity to aid the group in its considerations.

Review of feedback on workstream 3 questions

8. The Chair thanked those who led the development of papers under workstream 3 and opened discussions on Papers 04-03 to 04-06.

Q 12. At what point in the letting of property should the standard apply (for example pre-marketing, marketing, post-marketing/lease agreement, pre-occupancy, post occupancy)?

9. There was some agreement to the paper proposals that compliance should be demonstrated after agreement to a lease. This should encourage improvements to be installed to the configuration of the tenant's needs. The group agreed that MEPS should not require improvements that would likely

be removed or changed upon occupancy. CW noted however that the proposals may cause difficulties for enforcement, as it would not be illegal to market properties falling below a certain performance level.

Q 13: DECC plans to introduce MEPS from April 2018: Should this require all existing leases to comply with the agreed standard from April 2018, or just new leases agreed after this date? If it is the former, how might this work where properties do not have an existing EPC?

10. PW highlighted that it is recognised that in the property industry, once a tenant has signed a lease it is considered their property, and the landlord will generally have few powers to come back to the tenant to do works. Members noted that there could be capacity issues with the supply chain that will need to be taken into account in considering MEPS. The group agreed that the particular issue of how the regulations apply in 2018 was critical, and careful consideration of the paper after the meeting, with feedback provided to the secretariat, would be necessary.

Q 14: How might the regulations be designed to ensure that early action is not penalised or undermined (for example by requiring multiple Green Deals)? And:

Q 15: What is the minimum period in which Minimum Energy Performance Standards (MEPS) will be in place before they are reviewed or changed? & Q16: How should plans for MEPS beyond 2018 be developed and communicated?

11. Due to extensive discussions on the previous items, the Chair deferred consideration of questions 14 and 15 to after the meeting. The chair encouraged members to send comments on the papers to TY & CM. Feedback would be used in the refinement and development of group recommendations.

Division of work for workstream 4 questions

12. The Chair encouraged members to volunteer to develop a paper on workstream 4 regarding enforcement. A note would be circulated after the meeting indicating who had come forward to develop the paper.

Volunteers for final recommendations report editorial committee

13. The Chair asked for volunteers to join an editorial committee to help guide the Secretariat in putting together a final report to government. The initial task will be to advise on the report's structure, map out the main issues that need to be tackled, and identify how best to link them together.

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14. The Chair thanked attendees for their input and highlighted the date for the next meeting of 10th June 2013. The Chair said that a list of follow up work including action leads and supporters would be circulated after the meeting, and encouraged members to offer their advice and input into the next stage of the process. He further noted the hard work thus far and that progress was being made, but this will increasingly need Members to ensure time is made between meetings to read and respond to papers.

15. DECC outlined that as per existing procedures for legislative working groups it was noted that actions may not be completed as the evidence may be incomplete, expensive or difficult to obtain, but the attempt would still be considered valuable as the Groups needs to map out if information is available or not, and make efforts to map out which areas may need further research, and the Group's best endeavours are sought by the Chair and Secretariat.

Actions noted:

- HD to ask Scottish Government to pass on relevant information from the proposed changes to Scottish energy efficiency regulations planned under the Scottish Climate Change Act 2009