

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

Date:

Monday 10th June 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)
British Retail Consortium – Andrew Bolitho (AB)
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), Mandy Mackenzie (MM) 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 5th meeting of the Working Group on Minimum Energy Performance Standards in the Non Domestic Sector. The Chair thanked those that had provided feedback and offered particular thanks to HD for leading the development of the paper on compliance and enforcement.

Review of feedback on actions Paper 05-01:

2. The action leads/owners updated the group on outstanding actions as follows:

- Action 1- DECC confirmed it was checking the validity of the data and outputs and was awaiting a response from DCLG. The Chair raised a concern about the timescale for receipt of the information.
- Action 2 - The Chair reminded the Group there was an opportunity to provide information and views on the EPC data. Examples of EPCs that had perverse outcomes would also be welcome.
- Action 6 – DECC confirmed that it was looking at work to understand what typical measures were required for buildings rated F or G. The Chair signposted the questions tabled to the DECC legal team (Paper 05-02). DECC confirmed that there were no powers under the Energy Act 2011 to force a property owner to obtain an EPC where they are not required to have one under the existing EPC regulations. The Group voiced concern that a large proportion of buildings have not complied with existing law and that there was a danger that it would be cheaper to pay the fine for non-compliance than pay for energy efficiency measures required under MEPS.
- Action 13 – DECC informed the group that they had spoken with Scottish Government Officials and confirmed that their consultation on regulations planned under the Scottish Climate Change Act 2009 had closed. A short paper was circulated to the Group for information. Continuing, DECC explained that owner occupied and public buildings would be in scope in Scotland but there would be a softer start. The Group requested DECC to investigate why the 7 year pay back had been chosen.
- Action 15 – TY reported on the work that University College London (UCL) was involved with the DECC National Energy Efficiency Data framework. The NEED is bringing together building type and energy use data in England and Wales. The non-domestic NEED is taking longer to develop than the domestic NEED and therefore it is unlikely that it would begin to include EPC data for the near future.
- Action 16 – Nothing was added further to the update provided under Action 13.

Workstream 4 – Compliance and enforcement (Paper 05-03)

3. The Chair formally thanked HD and colleagues for developing the Compliance and Enforcement paper. HD outlined the key themes of Paper 05-03, and highlighted that fewer than 2 in 5 properties that should have an EPC have actually got one, and urged the group to be realistic about Trading Standards' capacity to enforce, due to their limited resources and range of consumer legislation that they have to cover.
4. Members felt it was important that the penalties were appropriate and sufficiently significant. The group discussed views on whether penalties for non-compliance with Minimum Energy Performance Standards (MEPS) could be set in proportion to building size. It was agreed that the mechanism for enforcement was critical to the whole policy. PW commented that it is a civil and not a criminal offence for a building not to have an EPC when it is required.
5. There was debate concerning how far property professionals have a responsibility to ensure a building is in compliance with EPC requirements.

Workstreams 1, 2, & 3 Key Recommendations (Paper 05-04)

6. The Chair asked the Group to consider the update recommendations paper and confirm it captured members' thoughts.
7. Following discussion a number of issues were raised, including:
 - Recommendation 12 – There was some concern around how occupational agreements such as Licences to Occupy would feature in MEPS. It was argued that licence agreements are often, in fact, leases but PW offered to consider the point. It was suggested that organisations such as Network Rail, British Airports Authority and the Church of England may have views on this issue.
 - Recommendation 14 – There was some debate around whether lease renewals ought to trigger a MEPS requirement. DECC highlighted that the requirement would not necessarily contradict existing landlord and tenant law, whereby landlords are obliged to offer a lease to a tenant on the same terms as the expired lease. This is because a tenant refusal to the improvements or the Green Deal charge could be sufficient for a landlord to be in compliance with MEPS.
 - Recommendation 15 – It was agreed that there was a need for a clear trajectory beyond 2018 but that more work would be required before it was possible to set the targets. Members agreed with the principles set out in the paper in setting a trajectory.
 - Recommendation 16 – Some members felt concerned that the recommendation would mean that buildings that would be understood to be in compliance with MEPS before 2018 may not be once the regulations are in place as the EPC or Green Deal methodology will have changed. However it was argued that the evolution of the methodologies ought to be expected, although greater transparency over when and by how far elements may change, ought to be provided. DECC noted that EPCs have a ten year validity period.
8. The Chair asked members to offer further comments to the secretariat to ensure the recommendations, and any dissent from them, has been captured adequately.

Draft Final Report Structure (Paper 05-05)

9. The Chair introduced the draft report structure, thanking the Editorial Committee for assisting the secretariat in its development. The Chair asked members to review and provide feedback on the draft, and said that the group would be working to deliver the report to government by the autumn.
10. DECC suggested that further work may be required on some elements of the report, and in particular on costs, and who bears them.

AOB

11. The next meeting of the non-domestic PRS Working Group was scheduled for Thursday 18 July at 2:30pm.

Actions noted:

1. DECC – Seek to find out the rationale as to why the proposed regulations under the Scottish Climate Change Act 2009 give property owners the option to undertake works with a seven year payback
2. PB – To find out whether there is any information available on the number of EPC regulation breaches that have resulted in penalties being served
3. PW & MRC – To develop a paper considering the scope and implications of property professionals potentially being obliged to aide compliance with MEPS requirements. This should consider whether there are any lessons learnt from other legal obligations placed on property professionals
4. PW – With reference to the powers within the Energy Act 2011, to report back on how the MEPS regulations ought to treat licenses. This should consider how it might be possible to develop the regulations to avoid gaming of the system whereby licenses rather than leases are agreed in order to avoid MEPS requirements
5. Secretariat - To circulate a briefing on the Scottish Climate Change Act 2009 regulations