

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

Date:

Monday 18th July 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 Hospitality Association – Martin Couchman (MC)
British Property Federation - Patrick Brown (PB)
British Council of Shopping Centres – Helen Drury (HDr)
Carbon Trust/Low Carbon Workplace – Katharine Deas (KD)
Chartered Institution of Building Services Engineers – Hywel Davies (HD)
Department of Energy & Climate Change - Marcia Poletti (MP), Tom Younespour (TY) 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)
Kingston University – Sarah Sayce (SS)
Jones Lang LaSalle - Emma Hoskyn (EH)
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 6th 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 PB, PW and members of the editorial committee for their efforts in developing the first draft of the recommendations report.
2. The Chair explained that a view would be taken at the end of the meeting as to whether a further meeting would be required in August. It was anticipated that it would be unlikely such a meeting to be required, however further work outside the meeting would be needed in order to bring the recommendations report to completion.

Updates on outstanding actions and legal questions (Papers 06-01 to 06-04)

3. MP pointed group members to the links provided with the paper for the Green Deal Impact Assessment which contains energy efficiency improvement costs for non-domestic buildings, and said that there was an on-going piece of work to further detail the costs and measures required to improve a property's EPC rating. The remaining actions were picked up later in the meeting.
4. MP introduced the legal question clarifications paper by highlighting that it did not constitute formal legal advice, but rather a policy interpretation. The group discussed the implications of the clarifications. MP said that an alternative cost-effectiveness test to the Green Deal was being considered following concerns from some that a simpler method would be welcomed. The chair commented that the Green Deal cost effectiveness test was of central importance to the whole policy and the group should help government with the detail where it can.

Review of initial draft report and consideration of remaining work (Papers 06-05)

5. The Chair thanked all those that had helped deliver the initial draft report, and commented that due to the size of the document and the time limitations, attendees should raise issues of principle and provide more detailed feedback after the meeting. Before taking each section of the report in turn, the Chair welcomed general comments on the overall structure, content and tone of the report.
6. AW said that some parts of the report had been drafted with a negative tone which suggested that the group was fundamentally opposed to the idea of introducing the regulations, which did not reflect discussions within the group, and risked sending the wrong message to Government and external audiences. The group agreed that the tone needed to be more positive.
7. RG said that there was a need for some of the drafting to be more direct, with a clear explanation provided of the key tensions and issues that were flagged up throughout the group's work. The recommendations and findings could be raised in a hierarchy with the most significant ones listed first.
8. CW said that it was important to flag up the concern that was expressed around the robustness of EPCs, even if specific evidence is not referenced. The industry believes there is a problem and this in itself is an important consideration. CW also said that compliance with the existing EPC regulations is likely to be greater than has been estimated. This is due to a likely overestimate of the number of buildings expected to have required an EPC since EPCs were first introduced, owing to lower than projected levels of transactions.
9. KD said that consideration ought to be made as to the potential for loss of rent and business rate liabilities relating to improvement works required under the regulations. CW said that he had been commissioned to undertake some work to model the impact of MEPS across the country including the costs that may be borne, and would see if it was possible to share the findings.

10. The group agreed that the Green Deal and how it could link with the minimum standard needed to be set out clearly and early on. CBR commented that there would need to be greater clarity as to whether a tenant providing qualified consent to a Green Deal (i.e. consent with conditions) would be deemed to have given consent in terms of the regulations, and said that it was not yet decided what level of proof would be required to demonstrate that a landlord had tried and failed to obtain relevant consents. The group agreed that these issues needed further consideration.
11. SS commented that care would be needed to distinguish between letting, re-letting and renewals, when setting out the triggers for the regulations. The group felt that the regulations ought to be triggered at a renewal, subject to the usual exemptions and consent caveats, to avoid properties staying out of scope for long periods of time.
12. HD said that the group must be realistic about Trading Standard Officers (TSOs) capacity to enforce the regulations. It was therefore important that the regulations are developed in such a way to ensure that monitoring and enforcement is made as easy as possible. MC commented that it may be worth exploring whether the provision of information to HMRC relating to Stamp Duty Land Tax (SDLT) could be used as a trigger point for seeking confirmation of an EPC, and information relating to MEPS compliance.
13. The Chair asked the group to provide comments on the issues raised by PW's paper on the form of commencement for MEPS, and whether it should catch all or just new leases when it is brought in. Following a short discussion of the relative benefits and dis-benefits the Chair said that comments were invited on the paper after the meeting.

4. Consideration of remaining group questions:

a. Are there lessons learnt in other countries or other sectors that could be of use in the development of MEPS?

b. What implications are there that relate to the capacity of the supply chain to support property owners comply with MEPS?

c. How can market drivers be best employed to contribute to the effectiveness of MEPS?

d. How will information about the requirements best be communicated to the sector?

14. The Chair asked the Group to consider the remaining "mop-up" questions that the group had set itself and to provide comments back to the secretariat.

Next steps & any other business

15. TY said that all feedback received would aid the redrafting of the next version of the recommendations report. Group members were encouraged to provide as much feedback as possible after the meeting, especially on significant issues and the recommendations, to avoid major changes being requested just before finalisation of the report.

16. The Chair confirmed that the remaining work of the group would be conducted via email, and that there would not be any further working group meetings scheduled. The Chair thanked the group members for their hard work and input. The secretariat also thanked the Chair for his excellent chairmanship of the working group.

Actions noted:

1. CBr - to assist the secretariat develop proposals on the how landlords could evidence that a building was subject to an exclusion or temporary exemption from MEPS (other group members are welcome to assist)
2. CW – to confirm whether modelling of EPCs and the potential geographical impact of MEPS could be referenced in the MEPS recommendations report
3. All group members - an on-going request to provide DECC any evidence of counterintuitive or misleading EPCs (views on the likely reason for deficiencies e.g. assessor standards, methodology, protocols etc are also welcome)