



Consultation on the Implementation of the EU Third Internal Energy Market Package

A consultation response by the British Property Federation

Background

This response has been produced by the British Property Federation (BPF) in consultation with its membership.

The BPF represents companies owning, managing and investing in property. This includes a broad range of businesses comprising commercial property owners, the financial institutions and pension funds, corporate owners, residential owners, as well as all those professions that support the industry.

Structure of this submission

We have responded to each of the consultation questions in turn. We have also included some general comments concerning wider impacts *Citiworks* may have on the policy landscape affecting buildings at Annex A.

For further information and follow-up

We would be delighted to expand upon any aspect of this response and to provide further supporting information. Please contact [REDACTED] British Property Federation, St Albans House, 5th Floor, 57-59 Haymarket, London, SW1Y 4QX Tel: [REDACTED] Fax: [REDACTED] email: [REDACTED] bpf.org.uk

Our response is not confidential.

Section 1: General Comments

We were pleased to respond to DECC's earlier call for evidence on the subject of *Citiworks*, but remain concerned that the consultation document does not appear to reflect much of the substance of our response.

It appears that there are two headline ways in which the *Citiworks* ruling may affect property ownership and investment:

- In respect of commercial property, where the owner supplies energy to occupiers for use in their demise within a package of services supplied under a lease
- In respect of both residential and commercial property, where a monopoly of supply relationship has been set up with a development and no third party access is present

In respect of commercial property, where the owner supplies energy to occupiers for use in their demise within a package of services supplied under a lease

65% of commercial property is rented overall with 30% owner occupied¹. The proportion of commercial property which is rented is growing. Many corporate owners of commercial property have shied away from the heavy financial investment and management involved in owner-occupation and more owner-occupiers took advantage of high prices in the mid-2000s to separate their property assets and operational business through 'sale and leaseback' arrangements.

The majority of offices and retail units² are multi-let, and therefore have private wire networks within the building used to supply energy to those occupiers.

Occupiers pay rent for permission to occupy a commercial property, but all businesses have to pay for property related overheads, or 'running costs'. Typically, these costs include 'services' such as the provision of energy for heating, lighting, cleaning, security, and so on. Costs may also include 'works' such as maintenance, repair and replacement of any fabric, plant, equipment and materials. An occupier should generally only be asked to pay such costs if they are 'beneficial and relevant to the needs of the property, its owner, its occupiers and their customers'³. Together, these costs make up the 'Service Charge' which is payable alongside, and in addition to, rent.

The advantage of this approach is that occupiers do not need to become experts in facilities management or energy procurement or to deal with issues concerning supply, leaving this to the owner or managing agent to manage and arrange. Most of the costs involved are relatively fixed, budgeted and known in advance – having a fixed 'on-account' overhead helps occupiers to manage cash-flow and budgets.

The industry's Service Charge Code makes provisions governing energy supply. One of the key tenets of the Code is that services should be provided by the owner on a 'not for profit, not for loss' basis. This means that the owner, in providing energy to the occupier, should not seek to profiteer from the provision of energy.

Owners of a significant size are able to make use of bulk purchasing of energy supply contracts, and are able to command lower prices of their suppliers, which are more competitive than those open to occupiers (unless the occupier itself holds equivalent purchasing power).

Patterns of energy procurement, control and use vary by type and class of building. Therefore, we set out below our estimations of the likely effect of *Citiworks* in each type of building.

¹ Property Industry Alliance and Paul Mitchell Real Estate Consultancy (2009), Property Data Report

² According to the Property Industry Alliance and Paul Mitchell Real Estate Consultancy (2009) Property Data Report, at least 18% of total capital value of property in 2008 were shopping centres

³ <http://www.servicechargecode.co.uk>

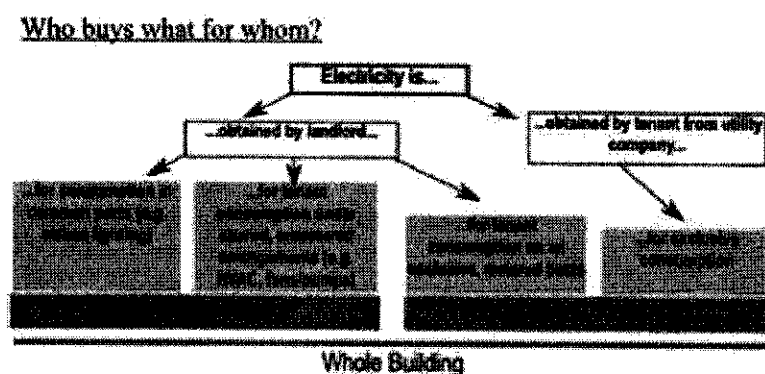
Existing Offices

Multi-occupied offices are complex and it can be difficult to get a clear picture of energy use in the building.

It is helpful to think of energy use in rented buildings as 'shared consumption' and 'exclusive consumption'. Shared consumption energy is obtained by the landlord and may include energy for consumption for common areas of the building (e.g. atrium lighting). Shared consumption may also include electricity for tenant consumption under shared, unmetered arrangements (e.g. ventilation, heating or air conditioning from central plant). It would not be practicable (under current building practice) to open shared consumption for common parts and for centrally supplied heating, ventilation and air conditioning to supplier competition as these services derive from central plant.

Exclusive consumption generally falls into two categories: electricity procured by the landlord and provided for tenant consumption on an exclusive, metered basis and energy procured by the tenant directly from the utility company (often for special uses, such as data centres, for which the tenant may wish to procure and meter energy separately). Figure 1 directly below illustrates these arrangements but it is important to bear in mind that the extent of provision of shared consumption and the degree to which exclusive consumption is procured by the tenant itself can vary significantly between buildings, and indeed within buildings.

FIGURE 1: ENERGY PROCUREMENT, CONTROL AND USE ARRANGEMENTS IN NON-DOMESTIC BUILDINGS (COURTESY UPSTREAM SUSTAINABILITY SERVICES AT JONES LANG LASALLE)



In multi-occupied offices, we would expect the *Citiworks* case to have a bearing on those instances where electricity is supplied to occupiers for use in their own demises ('exclusive consumption'). As Figure 1 explains, it is possible for some tenants to purchase electricity direct from utility companies within rented offices. The adaptational pressure from *Citiworks* will therefore exert itself solely in the instances where landlords supply energy to tenants for their exclusive consumption within their demises.

Given the physical characteristics of existing buildings and their electricity supplies, it will be physically impossible in some cases, and expensive in all cases, to switch 'exclusive consumption' from 'obtained by landlord' to 'obtained by tenant from utility company' in existing multi-occupancy buildings. The level of electricity metering and cabling which is required (under law) by electricity supply companies for billing does not exist in most multi-occupied offices. The physical infrastructure would have to be installed in basements and for the relevant floor areas, and there are knock on negative effects for health and safety and building access in doing so.

We do not expect *Citiworks* to affect the provision of electricity described as 'shared consumption' above, which is a service which is procured from the owner from its central plant. DECC Guidance should make it clear that shared consumption is not affected by *Citiworks*.

Existing Shopping Centres

In the case of shopping centre developments, the majority (and certainly all newly-constructed shopping centres) have separately metered supplies for each occupier demise (i.e. for lighting, small power), and the occupier is able to exercise choice in their energy supplier. Owners may provide central ventilation or heating which may simply condition the common areas of the shopping centre (i.e. the main mall), or may reach through to the occupier demise. In both cases, the cost of energy is passed on to the tenant.

As outlined above in the case of offices, we do not expect *Citiworks* to affect the provision of 'shared services' in the main mall, only to affect the provision of any electricity from landlord to tenant for use within their own demises.

We would not expect the *Citiworks* ruling to affect the provision of services in common parts of a shopping centre, and would like to see that made clear, as huge practical difficulties would otherwise arise.

Existing Warehouses

In industrial warehouses, we would expect that occupiers would be responsible for the procurement of their own power. Accordingly, the *Citiworks* ruling should exert minimal adaptational pressure.

Existing Housing

According to Communities and Local Government data for 2008, 68.3% of households were owner occupied⁴. The vast majority of these would be responsible for procuring their own energy supplies (with exceptions where embedded generation arrangements are in place). Our members would be among the owners of the 17.7% and 13.9% of domestic properties respectively which are occupied by social and private renters.

The majority of social occupiers and private renters would be able to choose their energy supplier as energy costs are not usually included in rents paid to owners. In mansion blocks, where heating and hot water is provided centrally, occupiers would nevertheless be able to choose their direct energy supplier for power within their residence and fuels for cooking purposes.

In the majority of cases, tenants are able to exercise choice in the electricity supplies they receive for use in their own residences. In some domestic buildings, services such as heating and/or ventilation may be provided centrally but these are common services with embedded infrastructure which it would be immensely impractical to dismantle or alter in order to accommodate the *Citiworks* ruling.

Gas: The use of private wire networks in the property industry

In relation to the owners that we represent, such exemptions are rarely used since there is likely to be only a single supply to an office, shopping centre or industrial building. On rare occasions, a retailer or office occupier with, for example, a catering kitchen may require a separate supply.

In the case of domestic buildings which are served by a decentralised energy scheme, most technologies require domestic customers to have a gas connection if using gas for domestic purposes.

We do not expect that many of our members make use of gas licence exemptions.

⁴<http://www.communities.gov.uk/documents/statistics/pdf/1400509.pdf>

In respect of both residential and commercial property, where a monopoly of supply relationship has been set up with a development and no third party access is present

As BPF, we do not hold data on the number of embedded generation or decentralised energy facilities in the UK. However, as part of planning permissions, many new residential and commercial developments, and particularly those of a significant size, will have renewable energy targets attached to them.

In the case of non-domestic buildings, decentralised schemes often provide a proportion of the energy demand of the building. Heating or cooling demand for common services may be provided by a combined heat and power scheme, but other gas uses (such as catering kitchens in occupier demises) would be served by a gas supply contract taken directly by the occupier.

Section 2: Do you have any views or concerns on how Government intends to apply third party access requirements to licence exempt distribution networks?

Further to our comments in Section 1 of this consultation response, our main concerns with compliance with *Citiworks* relate to the supply of energy from landlord to tenant within existing non-domestic buildings, with some additional concerns in relation to the practicalities of permitting compliance in developments containing embedded generation.

Lack of legal certainty

Paragraph 2.9 of the consultation document suggests that it is for individual companies to determine whether the Directive (as refined by *Citiworks*) applies to them, hinging on a legal view as to whether their private wire network constitutes a distribution network under the Directive. This is a dissatisfactory outcome, since it will require in-depth legal scrutiny of arrangements at significant expense. The UK has one of the most mature leasing environments in the world and therefore there is a myriad forms of lease (although the industry Lease and Service Charge Codes encourage certain standards of behaviour in their application). Scrutinising each lease to determine whether it constitutes a distribution network will be immensely costly for the industry and could leave landlords open to challenge from their tenants.

The Government should make clear in the guidance it refers to on page 4 of the consultation document the features of private wire networks it expects to be covered by *Citiworks*. We believe, however, that this guidance should have a statutory footing, contrary to the status which it is suggested that it will be accorded in the consultation document, so that landlords who have followed it are not open to litigation. The BPF would be pleased to assist in drafting the relevant section of the guidance for DECC approval.

Closed distribution systems

Paragraph 2.28 of the consultation document suggests that member states may provide for the national regulatory authority to classify certain non-domestic distribution systems as 'Closed Distribution Systems'. A closed distribution system can then be exempted from the requirement under Article 32 that the tariffs for third party access to the system, or the methodologies which underpin their calculation, are approved by the authority prior to their entry into force; and the obligation to procure electricity to cover energy losses and reserve capacity in the system according to transparent, non-discriminatory and market-based procedures.

Subject to *Citiworks* applying in a given building, we believe it possible that many of our members' buildings could conform with the qualifying criteria for classification as a closed distribution system as:

- Larger building distribution systems are designed to act as efficient flexible networks in their own right with levels of redundancy, alternative switching arrangements and life-safety/full generator backup.
- Buildings constitute confined commercial or industrial sites and the majority of the energy is either supplied to the operator of the system or there must be technical or safety reasons why the operations processes of the users must be integrated.

In terms of relevant technical/health and safety issues, the level of electricity metering and cabling which is required (under law) by electricity supply companies for separate billing of tenants does not exist in most multi-occupied offices. The physical infrastructure would have to be installed in basements and for the relevant floor areas, and there are knock on negative effects for health and safety and building access in doing so.

Metering for third party supplies in more complicated buildings is likely to be frustrated by such physical infrastructure, and thus come under the closed distribution systems definition. This will become a topic of debate between landlords operating networks, on the one hand, and tenants seeking to change supplier on the other.

We believe that there will be a further lack of clarity concerning the remaining test for whether a non-domestic building would constitute a closed distribution system; many landlords would suggest that the majority of the energy which they procure is supplied to the tenant (i.e. either via landlord services or for exclusive use within tenant demises). Others might argue that, as under Defra's carbon reporting guidance and also under the Carbon Reduction Commitment Energy Efficiency Scheme, the purchaser of energy is deemed responsible/the customer.

Given the lack of assurance concerning the concept of 'supply to owner' and the definition of 'health and safety and/or technical reasons' which would prevent disaggregation of energy supplies, we think that guidance will be required to interpret the closed distribution system classification in non-domestic buildings. We would be delighted to work with Ofgem and/or DECC to determine this guidance.

It is also unclear from the consultation documents what the associated costs and timings would be in relation to obtaining a decision from Ofgem as to whether a non-domestic building was in compliance with the criteria for a closed distribution network. We would be grateful for DECC's provision of a schedule of costs within the guidance we refer to above, or in any other guidance it intends to issue (referenced in page 2 of the consultation document).

We would expect many of our members' office and shopping centre properties potentially to qualify as closed distribution networks, however, guidance which interprets requirements in the context of non-domestic buildings would be welcome.

Network access and requirements for reinforcement

Paragraph 2.15 of the consultation document suggests that 'In many cases, providing third party access will require work on the distribution network. Most commonly this will include installing a full settlement or secondary meter in order to ensure that energy consumption is properly measured and that appropriate changes are made. It could also include reinforcement of the existing network infrastructure.'

Our members have confirmed that in existing buildings with private wires where owners purchase energy and sell on to occupiers, the commercial agreement, opt in/opt out and full settlement metering models proposed all run the risk of energy supply companies being able to dictate their preferred wiring structures to property owners. This has the potential to compromise the owner's efficient management of the building, entail significant costs and adaptational pressure and possible disruption to any other occupiers in the building who have a legal right to quiet enjoyment of the premises under their lease.

The deemed metering proposed solution (Annex A of the consultation document) should avoid the issues outlined in the preceding paragraph, minimising disruption. It is important to note that in relation to power supplied by the landlord, tenants commonly pay for two components through the service charge: 1) a reasonable contribution toward maintenance associated with the building (to include upkeep of the distribution network within the building); and 2) the cost of purchasing the electricity at the boundary of the building.

It would be important to ensure that, under a deemed metering solution, the occupier would still contribute toward the cost of maintaining the distribution network within the building. The cost of the electricity the tenant purchases from a supplier other than the landlord would clearly be paid direct to the utility company responsible.

We note that permitting the occupier to exercise their right to change supplier could be potentially disadvantageous to other occupiers within a building. This is because the owner may have purchased an energy supply contract for a given capacity with a commensurate price. If the volume of supply procured decreases, the price payable under the electricity contract may increase imposing higher costs on the occupiers who have remained on the owner's supply. Please see our additional points on this issue under Supplier Switching below.

Embedded generation

A common stratagem among developers to repay the cost of the initial investment in renewable energy provision on developments has been to set up a private wire monopoly of supply to the development to recoup the initial investment. It seems that such approaches will no longer be appropriate in the wake of *Citiworks*. It seems likely that local authorities will continue to mandate renewable energy delivery targets, particularly in view of the localism agenda, and central Government will promote adoption through zero carbon policies, so developers will have to find alternative ways to make decentralised energy schemes viable. In both new and existing renewable energy developments, owners will have to find alternative customers for the power that is generated, which may be the grid.

This is likely to increase the financial risk for developers associated with such schemes in the future. At this point, this seems a significant setback, but we cannot see how the arrangements widely used today can be reconciled with *Citiworks*. Government should be flexible and sensitive while business adapts.

As officials are aware, many developers have sought to finance the capital cost of decentralised renewable energy schemes through monopoly of supply relationships with developments. Permitting third party access to developments would clearly undermine this model and other financing models would have to be adopted.

Section 3: Do you have any views on how Government intends to apply third party access requirements to licence exempt distribution networks?

Network operators and network suppliers definitions

In keeping with points we have made in Section 1 of our response, we do not expect *Citiworks* to have a significant effect upon our members in existing domestic buildings, since the vast majority of domestic customers procure their own energy directly from suppliers rather than from their landlords. Issues will arise, however, where a decentralised energy scheme is in place or where energy is provided by landlords to tenants in some types of non-domestic buildings (particularly in offices).

In Annex B of the consultation document a number of third package requirements are set out for operators of licence exempt private networks and licence exempt suppliers.

We would be grateful for clarification as to whether landlords who purchase energy on tenants' behalf within existing non-domestic buildings will be classed as licence exempt suppliers as well as licence exempt network operators under the Directive.

Supplier switching

Licence Exempt Suppliers (Existing Non-Domestic Buildings)

We do not expect Article 3(6) of the Gas Directive to have a significant effect upon our members (see our points under Section 1).

We would expect that under Article 3(5) of the Electricity Directive, landlords would find difficulty in complying with a three week timeline for changing suppliers. This is because the landlord will have to respond subject to reasonable notice to the request by the tenant to transfer from the landlord's supply and then apply to a licenced supplier to supply the tenant instead (if acting under our preferred deemed metering option for compliance purposes). It is unclear to us how quickly a licenced supplier would be expected to respond to the request and with whom liabilities would rest if delays occurred. The consultation document makes provision for an extension to the three week period if both supplier and customer agree, but we do not think that a tenant (customer) who was motivated to move to a new supplier would be likely to agree to an extension of the deadline.

We have already highlighted our deep reservations with the prospect of energy suppliers being able to dictate wiring structures within non-domestic buildings as a result of *Citiworks*, articulated elsewhere in the consultation document. However, if landlords were to be expected nonetheless to undertake network reinforcement prior to a new connection being set in place, three weeks is an unrealistic timescale.

The Electricity Directive's objective to ensure that all consumers have full access to the electricity market may have unintended consequences within certain types of non-domestic buildings (see Section 1). Where individual customers decide to select their own supply mid-term through an existing contract – assuming that it is technically possible to do so – the reduction in supply on the main (existing) contract for the building will potentially cause problems for the incumbent supplier – leading to higher prices applied in the form of a margin to cover volume uncertainty. This could have a negative knock-on effect on the prices paid by other tenants in the building. Electricity contracts have already begun to include maximum/minimum clauses (in line with gas contracts). Landlords should therefore be able to pass on any penalties or margins applied to customers who swap supplier during an existing contract.

Landlords with an exempt supply should be able to designate a time window to opt in or opt out of a contract renewal, say 4-6 months in advance of contract renewal. The reason for this specified timescale is that, although it can take less than a month to swap energy suppliers, discussions over credit conditions under which supplies are granted can take much longer.

Though landlords signing new leases with tenants may be able to institute 'cooling off periods' as detailed on page 23 of the consultation document, existing leases are unlikely to contain such conditions and therefore landlords would be expected to comply with a three week timeline unless agreement had been reached with the tenant seeking a change in supplier. It seems to us, therefore, that six weeks would be a more realistic timescale for a change in supplier, with three weeks as a guide rather than a right.

We ask that the Government considers a six week period for changing suppliers unless otherwise specified in the lease.

Customer information

Instruments such as the Carbon Reduction Commitment have led to broader take-up of metering in non-domestic buildings. However, it is important to note that depending upon the age of the building, advanced sub-metering may not be possible due to wiring structures or the structure of the building itself.

To help to negotiate this issue, the BPF teamed with the Carbon Trust and Usable Buildings Trust to create a tool – the Landlord's Energy Statement and Tenant's Energy Review⁵ – to permit data to be passed between landlord and tenant on the energy they procured, used and controlled. The Landlord Energy Statement makes use of sub-metering data where possible, but where such data is not available on personal consumption, the tool defaults to reapportionment by floor area. The Tenant's Energy Review helps to refine the Landlord Energy Statement data by asking the tenant to tell the landlord what 'special uses' (e.g. trading floors, call centres, data centres) are installed within the tenant's demise. The advantage of LES-TER is that it also produces the associated carbon tonnage, which is in keeping with the acceleration of climate change up the corporate agenda.

As we have mentioned elsewhere in our response, landlords supply energy on a not-for-profit, not-for-loss basis to tenants. If additional requirements for information on personal consumption incur cost to the landlord, we would expect them to be able to pass it through to tenants, just as suppliers pass on administration costs to their customers.

We would like LES-TER to be approved as a valid methodology for the supply of energy information from landlord to tenant, where required.

Fuel mix information

Licence Exempt Suppliers (Existing Non-Domestic Buildings)

We would expect landlords to be able to comply with Article 3(9) by taking information from the supplier and passing that information onto their tenants, as the consultation document suggests. However, where sub-metering is not in place, the energy supplied to tenants within multi-let buildings for use within their demises and from common services may have to be reapportioned on a floor area basis. The Government should not need to regulate larger players in this area, however, as the Carbon Reduction Commitment Energy Efficiency Scheme (CRC) is encouraging a widespread roll-out of sub-metering in landlord participants in the Scheme.

In situations where tenants have traded out of the landlord's supply, then we would expect the supplier to communicate directly with the tenant.

⁵ www.les-ter.org.uk

Licence Exempt Suppliers (Embedded Generation)

We would not expect there to be a significant issue in providing the information required in respect of embedded generation.

We do not expect this requirement to cause significant issues.

Consumer rights, complaints and standards of service

Licence Exempt Suppliers (Existing Non-Domestic Buildings)

Energy is typically provided from landlord to tenant under the lease (see our comments in Section 1). Where landlords or tenants feel that the other party has not abided by the terms of the lease, they can make use of the Royal Institution of Chartered Surveyors (RICS) dispute resolution service. This is generally seen as a quicker, cheaper way to resolve disputes than going via the courts and is supplemented by a helpline for those who are not professionally represented.

We are concerned that, as energy is provided by landlords to tenants under the lease, the lines of accountability between Ofgem and RICS may be blurred, particularly as energy costs are often bound up in the service charge. We would be grateful for some clarity on where the Government envisages the responsibility lying for such supplies.

It would be helpful for the Government to work with industry to set out the parameters of the type of cases which it would expect Ofgem to arbitrate and where RICS would preserve its role in dispute resolution under *Citiworks*.

Licence Exempt Suppliers (Embedded Generation)

We agree that the right of redress via Ofgem would be helpful in the case of decentralised energy schemes which operate via private wire networks at present.

Protection of commercially confidential information

Licence Exempt Operators (Existing Non-Domestic Buildings)

Our concern with the requirement upon all distribution system operators to protect commercially confidential information is that landlords under the Carbon Reduction Commitment hold duties to report and to purchase allowances in relation to the energy they buy on tenant's behalf (though the CRC is currently undergoing a review process). It is unclear from the consultation document what is to be classed as 'confidential' in relation to the property. Similarly, whole building energy performance certificates may be procured by the landlord and which may take account of the tenant's fit out, whereas display energy certificates may go further and contain data on actual energy usage.

Both landlords and developers who have installed embedded generation to supply assets may also hold responsibilities to report on the energy and carbon associated with those installations under the Operating and Financial Review and/or mandatory carbon reporting, which are expected to be brought forth by the Government within the next few years.

We hold concerns that data protection requirements may cut across corporate social responsibility priorities, particularly if there is a lack of specific reference to the sort of data which is intended to be kept as confidential and what is deemed unsensitive data for the purpose of the directive. Corporate social responsibility can play a key role in helping to deliver upon the mandatory emissions reduction targets set out under the Climate Change Act, and can be an effective alternative to regulation and which is relatively inexpensive to the Exchequer.

It would be appreciated if the Government could clarify what is meant by 'confidential data'.

Annex A - Citiworks and its implications for UK Government policy to promote sustainable buildings

We are concerned that the approach toward *Citiworks* implementation still does not appear to consider the wider policy landscape which has been set up to improve the energy efficiency of buildings and to regulate the level of carbon in their energy supplies.

The Carbon Reduction Commitment Energy Efficiency Scheme (CRC)

The CRC was introduced in 2010 for large energy users in the non- industrial sectors. The CRC attributes responsibility for emissions based on an organisation being the counterparty to an energy supply contract. Owners who supply energy to their occupiers, and bill via the service charge or via direct recovery, will typically hold the energy contract with the supplier and will therefore be responsible for both the emissions associated with the owner's own operations and any occupier emissions in respect of energy supplied to them by the owner.

The CRC's inclusion criteria do not marry well with the vision of energy provision which is mapped out in the document. If property owners are required to permit occupiers to access the full electricity market, then occupiers would be able to transfer in and out of the owner's CRC Scheme at will. This will make it very difficult for the owner to administer participation in the CRC effectively, as the landlord will be unable to forecast emissions with any certainty. The way in which the *Citiworks* ruling is implemented is therefore of critical importance to the property sector and has the potential to involve significant administrative and financial costs for the sector.

The *Citiworks* ruling must be implemented in a way that does not cut across the CRC.

Local and National Planning Policy

In recent years, the planning system has been increasingly used to address climate change. This has often been reflected in detailed design specifications for the performance of new developments, and the implementation of renewable energy targets as part of planning consents. This trend is becoming more pronounced as the policy agenda on climate change becomes ever more pervasive. As a result, the planning system has been obliged to factor in more and more matters that realistically fit into later stages of project design. For example, local planning authority application validation lists can include structural surveys, sound insulation, Code for Sustainable Homes ratings and even BREEAM evaluation.

As officials are aware, many developers have sought to finance the capital cost of decentralised renewable energy schemes through monopoly of supply relationships with developments. Permitting third party access to developments would clearly undermine this model and other financing models would have to be adopted.

Zero Carbon Development

The future performance of buildings is currently addressed by zero carbon policies, with a Code for Sustainable Homes setting out a pathway to 2016 and aspirations for new non-domestic buildings to be zero carbon by 2019. These policies are likely to be formalised in the forthcoming EU Energy Performance of Buildings Directive Recast, with requirements for all new buildings to be zero energy by 2020. In both the national and the European categorisations of highly efficient buildings, minimum levels of energy efficiency are required and significant levels of renewable or low carbon energy sources, including near and on-site sources, tackle the remaining energy demand.

The conventional model for financing the near and on-site renewable components of anticipated zero carbon definitions are unlikely to be permissible under the *Citiworks* ruling since they often involve a monopoly of supply to the development in order to repay the initial capital cost of the energy scheme.

Improving the performance of new builds to reduce energy demand for key services and then ensuring that buildings are operated efficiently, will serve to reduce the energy demand to its practical minimum. In order to make the building zero carbon a substantial amount of the remaining energy demand will have to be produced from renewable sources, often on-site or near-site, which will have to be financed in a practical and affordable way. The *Citiworks* ruling suggests that on-site and near-site renewable energy projects will no longer be able to rely on on-site and near-site customers to pay for the energy which is generated. Feed-in tariffs and the renewable heat incentive are likely to assist in making other business models financially viable. However, there is an accompanying need, if claiming a feed-in tariff is to be worthwhile, for grid access to be made easier for generators. We urge the Government to monitor closely the roll-out of the new grid access regime for generators and to ensure that developers are able to connect to the grid easily in order to sell power from decentralised energy schemes.

<p>The adaptation necessary to take account of the <i>Citiworks</i> ruling will have an affect on the viability of zero carbon development.</p>
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