



## **The Non-Domestic Private Rented Sector Minimum Energy Efficiency Standards: Implementation of the EPC B Future Target**

Date: 9 June 2021

### **Introduction - the CLA**

1. The Country Land and Business Association (CLA) is the membership organisation for owners and managers of land, property and business in rural England and Wales. Our 28,000 members manage around 10 million acres and operate over 250 different types of businesses.
2. Our members own and manage a wide range of non-domestic buildings, including office, retail, industrial, leisure, workshops, and healthcare buildings.
3. Most of these buildings are of traditional (pre-1919) construction and many are listed or within conservation areas. Because of this, profitability is often low due to high management and maintenance costs of older buildings and cyclical repairs. In addition, our members often charge less than the market rent to support small local businesses.
4. Many of our members are engaging in practices to reduce their emissions, and many are undertaking 'carbon accounts' to measure and then manage their carbon emissions and assess where they can make improvements.
5. The CLA has long been very supportive of measures to mitigate climate change and we support regulation on this, but like all regulation, it should be proportionate, transparent, consistent, properly targeted, and effective.

### **Key Points**

6. Commercial buildings in rural areas are fundamental to the sustainability, cohesion, and vitality of rural communities and economies. The economy in rural areas is as diverse as the urban economy, supporting over 250 different business types. 17% of the population live in rural areas, whereas 24% of all registered businesses operate in rural areas. Commercial buildings in rural locations often do not have the rental growth potential of urban buildings, and also are often let below market rent to support small rural businesses. The proposed tightening measures will result in a significant proportion of rural landlords ceasing to let their properties, which will significantly impact the rural economy, and also lead to more heritage at risk, due to buildings being left empty leading to their deterioration.
7. The simultaneous introduction of tightening minimum requirements for domestic and non-domestic buildings puts further pressure on landlords who have both these property types. This is in terms of availability of capital for investment, and availability (and therefore cost) of suitably qualified labour and of materials. The availability of financing is limited by the returns on the investment (owing to a combination of high cost which cannot be recouped in rents and energy savings accruing to the tenant not the landlord).

Inability to meet the regulation will result in a reduction in the domestic and non-domestic private rented sector, which will be damaging to the rural economy, communities, and social cohesion.

8. *CLA Recommendation: The tightening requirement for non-domestic buildings should not be phased, with no interim milestone of band C by 2027, as this effectively brings the deadline forward three years and puts disproportionate pressure on rural landlords trying to access finance, materials, and labour. Instead, the measures should be introduced in 2030.*
9. Traditional buildings pose a unique challenge for decarbonisation because design, materials and construction methods differ significantly from modern buildings. The current assessment methodology, the Simplified Building Energy Model (SBEM), does not accurately assess a traditional building's energy performance, or recommend the most appropriate improvement measures due to it being designed for modern construction. CLA members are eager to invest in their commercial portfolio in order to improve the carbon impact of their buildings, but they do not have confidence in the existing system, particularly for heritage buildings.
10. *CLA Recommendation: The EPC assessment methodology should be updated so that it accurately assesses all types of buildings, including traditional and converted buildings, and EPCs must recommend only safe, appropriate, and cost-effective measures. In addition, assessors must be upskilled to effectively evaluate traditional and/or heritage buildings.*
11. The proposals to require all listed buildings to require an EPC which would then bring them within scope of the minimum energy efficiency standards could be extremely harmful for heritage buildings, given that the whole EPC system is not designed for older buildings.
12. *CLA Recommendation: Listed buildings and buildings in conservation areas should not be legally required to have an EPC until the whole EPC system has been overhauled. A poor second choice (because of unnecessary burdens) would be to introduce a new exemption from the Minimum Energy Efficiency Standards, mirroring the existing and longstanding exemption for Building Regulations, so that a landlord is not required to install any measures which would "unacceptably alter the character or appearance".*

## Consultation Questions

### **Question 1: Should listed buildings and those in conservation areas which are to be rented out be legally required to have an EPC?**

13. No. Listed buildings and buildings in conservation areas should not be legally required to have an EPC until the whole EPC system has been overhauled. Although the issue is not primarily with listed buildings and buildings in a conservation area having an EPC, but rather that when a property legally requires an EPC, it falls within scope of the Minimum Energy Efficiency Standards, and it is this Regulation and its implications which can be harmful.

14. The current EPC assessment methodology, the Simplified Building Energy Model (SBEM), was designed for buildings of modern construction, which are fundamentally different. SBEM does not accurately assess the energy performance and carbon impacts of traditional buildings; it does not accurately assess the performance of EPC-recommended physical measures (which are usually significantly less effective than SBEM/EPCs predict); and it often recommends measures which are ineffective and/or physically harmful (like solid wall insulation which can lead to severe damp problems). Therefore, mandating a minimum EPC rating for traditional buildings would often result in inappropriate measures being installed, causing physical as well as aesthetic harm to heritage. It is therefore vital to improve the accuracy of SBEM and the quality of EPC recommendations, and to ensure that these fully reflect the whole-life carbon impacts both of buildings and of recommendations.
15. The principle that underlies the Building Regulations, i.e., that traditional and heritage buildings should comply, but only up to the point at which compliance would not “unacceptably alter their character or appearance”, must continue to apply.
16. However, if listed buildings and buildings within a conservation area are legally required to have an EPC, there must be a specific exemption from the Minimum Energy Efficiency Standards, mirroring the existing and longstanding exemption for Building Regulations, so that a landlord is not required to install measures which would “unacceptably alter their character or appearance”.

**Question 2: Do you support the Government’s proposal to introduce an EPC C interim milestone in 2027? If so, are there any amendments you would make to the proposals? If you disagree with the proposal, please explain why and what your preferred approach would be. Please provide evidence where you can.**

17. No – we strongly oppose this proposal. In practice, an interim milestone would simply bring the deadline forward three years.
18. Many of the measures required to reduce the carbon impact of buildings will be disruptive to businesses, often requiring them to move out temporarily or permanently. It would therefore not usually make sense for a landlord to undertake partial improvements to reach band C by 2027 but then have to undertake further improvements to reach band B by 2030.
19. Effectively bringing the deadline forward to 2027 is too soon. Many improvements, such as a new heating system or floor or wall insulation, require vacant possession because carrying out such measures with a business in occupation is difficult. Tenancies are often longer in rural areas, meaning there are fewer void periods and opportunities to undertake substantial works. Tightening the measures in 2030 gives landlords more scope to undertake works at the best time, minimising business interruption.
20. In addition, there is concern over the parallel introduction of domestic and non-domestic regulation. Not only will this be difficult to finance, but – as our members have observed in trying to get improvements done under the Green Homes Grant scheme, rural areas do not currently have the skills, labour, or materials to meet this demand.

**Question 3: Do you support the Government's proposal to improve the implementation and enforcement of non-domestic MEES by introducing compliance windows? If so, are there any amendments you would make to the proposals? If not, please outline why, stating what your preferred approach would be. Please provide evidence where you can.**

21. We understand the existing issues around local authority enforcement of the minimum energy efficiency standards and a two-year compliance window before the 2030 introduction would seem a sensible approach.
22. However, it is important to shift the emphasis from enforcement to support. The two years before the Regulations come in but when properties need to register could be a really good opportunity to support and advise landlords and tenants. If these two years are used to their full potential, then enforcement later on will be easier. A significant level of enforcement is usually a sign of poor regulation: policy is only likely to work if those who are regulated are willing to comply because the policy is proportionate, transparent, consistent, properly targeted, and effective.

**Question 4: Do you support the introduction of a six-month exemption for shell and core let properties? If so, are there any amendments you would make to the proposals? If you disagree with the proposal, please explain why and what your preferred approach would be. Please provide evidence where you can.**

23. We support an initial exemption for shell and core let properties. However, we would urge BEIS to consider granting a one-year initial exemption. Building works, especially for older, heritage buildings, can take significantly longer than six months. This is due to listed building consent or planning permission being required, specific materials and techniques being mandated paired with fewer, smaller buildings firms in rural areas, particularly those specialising in heritage buildings.
24. A deadline of six months may result in tenants rushing fit out works, skipping steps, using contractors not experienced in heritage buildings or installing inappropriate measures, all of which would harm heritage buildings.

**Question 5: We welcome views on where improvements could support the transition from the current EPC E requirement to the proposed new implementation and enforcement framework.**

25. As explained above, the current assessment methodology, the Simplified Building Energy Model (SBEM), does not accurately assess the performance of buildings, especially traditional buildings, or recommend the most appropriate improvement measures due to it being designed for modern construction. The minimum energy efficiency standards rely on Energy Performance Certificates, so an EPC must not only give an accurate rating but must also recommend appropriate and cost-effective measures.
26. The most important improvement that could be made to support the transition to the proposed new framework is to ensure that EPCs are accurate and trusted. The *Energy Performance Certificates for Buildings: Call for Evidence Summary of Responses*

highlighted the issues around reliability and accuracy of EPCs. The EPC Action Plan does not go far enough to ensure that EPCs are accurate for traditionally constructed buildings and only recommend safe, cost-effective measures.

27. Another important improvement is the upskilling of assessors. Most notably, this is the option for assessors to be upskilled in traditional, heritage and designated buildings. This is crucial to ensure that correct information is inputted into the software when assessing older buildings, and only appropriate measures are recommended, so our heritage is not harmed.
28. Often, it is not clear what improvements have been made over the years to older buildings and there is rarely a specification of their construction, which often leads to an underassessment of their true energy efficiency. Assessors require evidence of improvements and construction, and things like floor insulation or insulated plaster board are often hidden. There must be more flexibility in providing evidence, such as invoices, photos or a written statutory declaration by the builder or owner. Our members often face situations where they know the construction of their building or the improvements which have been made, but the assessors are not able to include it in their assessment. This often leads to a lower rating and thus artificially higher interventions required under the Regulations.
29. Another important change is a shift in emphasis from enforcement to support. Our members want to reduce the carbon impact of their buildings and meet the Regulations, but are often not aware of the safest, most appropriate, and cost-effective way to do so. Both local authorities and landlords want the same outcome for their buildings, and so there must be a much more supportive and understanding approach, particularly for traditional and/or designated buildings which pose the greatest challenge.
30. Cost will continue to be a barrier for meeting the tightened requirements, especially for rural landlords of traditional, off-gas grid properties which are let at a reduced rent to support small, local businesses. However, planned new government funding schemes for low carbon heating are being designed with system size limits which exclude rural properties and small rural heat networks altogether. The new Clean Heat Grants for households and small non-domestic buildings from April 2022 have a flat £4,000 per property grant for heat pumps or biomass if a heat pump is unsuitable. Heat pumps are unsuitable for many larger off gas 'hard to insulate' rural properties which are ideally suited to biomass – but a £4,000 grant is far too low given the costs of biomass systems.
31. In addition, the system size upper limit of 45kw under the Clean Heat Grants is set far too low, excluding larger properties and small district heating schemes serving the typically clustered pattern of many rural buildings, which could previously get support to decarbonise through the Renewable Heat Incentive. Also, eligibility under the proposed Green Heat Networks Scheme is set at a minimum heat demand of 2GWh/year – equivalent to a system size of 800kW - far too high for typical rural heat networks. Larger rural properties and small rural heat networks – which would typically install systems of 100-250kW in size - are therefore excluded from planned government support schemes. BEIS data to December 2020 for the Non-Domestic Renewable Heat

Incentive shows that the average size of system supported was around 250kW. Yet these are the very sizes of system now excluded from support.

32. Government should urgently review proposed system size limits for both the Clean Heat Grants and the Green Heat Networks schemes to ensure that appropriate support is provided to help decarbonise heat in traditional rural properties and small rural heat networks.

**Question 6: Do you agree with the proposals to amend EPC requirements to support non-domestic MEES under the PRS Regulations? If not, please explain why.**

33. We oppose the proposal which requires landlords to provide a valid EPC to letting agents prior to a property being put on the market. The existing seven-to-twenty-one-day exemption is important for properties which have had to undergo substantial refurbishment works to help reach the minimum energy efficiency standards. It allows such properties to be marketed before the completion of works and before an EPC can be undertaken which minimises the void period. The exemption is particularly important in rural areas, where landlords may struggle to find an available assessor within the required timeframe.
34. The proposal for non-domestic buildings to have a valid EPC at all times and for buildings to have a post-improvement EPC may be unviable for lower rental properties. The cost of obtaining a non-domestic EPC usually starts at around £350, but it is not uncommon for some rural buildings, such as a sports pavilion, a scouts hut, or a community meeting space, to have an annual rent of less than £350. Mandating a continual EPC may jeopardise the ability for landlords to continue to let these important community buildings. We therefore oppose the proposal for non-domestic buildings to require a valid EPC at all times and seek assurance that the cost of a post-improvement EPC will be significantly lower than the initial EPC.

**Question 7: Do you support the introduction of a PRS property compliance and exemptions database to support enforcement of the PRS Regulations under the new EPC B framework? If not, please explain why.**

35. The emphasis should be on supporting landlords to comply rather than enforcing compliance. Rather than creating a new exemptions database, it would be more effective, and probably faster and cheaper to adapt the existing EPC Register so that it can be used by local authorities to identify and track compliance.
36. This could be done by the assessor when registering the EPC. It would include identifying if the property is privately let and if it needs to comply with MEES. This would require additional training for the assessors but would streamline the process and negate the need for supplementary, costly databases.
37. If a new PRS property compliance and exemptions database were to be created, then the same principle should be applied as above: when an EPC is uploaded to the EPC Register, the assessor must confirm whether it needs to be simultaneously uploaded to the new PRS property compliance and exemptions database. This would negate the need for an additional upload and additional fee to the landlord.

**Question 8: Do you agree with the proposed landlord registration fee for the PRS property compliance and exemptions database? If not, please explain why.**

38. We do not agree that there should be a registration fee because we think that either of the two existing databases should be improved and used for compliance purposes. The improved database could then continue to be free of charge rather than passing it to a third party at an additional cost. This would seem the most cost-effective route for everybody.
39. There must be genuine justifications for doing something different, which consider the management time of using something different, the cost incurred to administer it and cost incurred for people who register the properties, compared to what could be achieved using the existing system.

**Question 9: Do you agree that £5,000 is a suitable maximum limit to set as the penalty for noncompliance with the new framework requirements? If not, please explain why.**

40. Yes – that maximum level seems proportionate.

**Question 10: We welcome views on the clarity of the current PRS Regulations in relation to enforcement of penalties for non-compliance with MEES.**

41. The PRS guidance could be clearer that authorities can issue fines and penalty notices to landlords for each property per each case of confirmed breach.

**Question 11: Should the Government allow local authorities to issue a request to landlords and tenants to inspect properties for compliance under the PRS Regulations? If not, please explain why.**

42. Only as a last resort - this is not considered to be the most effective use of time or resources by local authorities and could be quite intrusive and erode the landlord/tenant relationship. EPC assessments are carried out by qualified assessors who are regulated by their certification body and so there needs to be a level of acceptance that what is on an EPC is correct at time of assessment. However, in cases where an inspection is considered necessary, local authorities should be given the option to inspect a property.
43. Rather than resources going into property inspections, resources must be focused on supporting and helping landlords meet the requirements.

**Question 12: Do you agree that all exemptions should be reviewed at the start of each compliance window? If not, please explain why.**

44. No – this seems unnecessary and not the best use of a landlord or local authority's time and resources. Exemptions last for only five years, at which point they must be reviewed, and we consider this sufficient and proportionate.

**Question 13: Do you support the introduction of a standardised calculator to simplify the requirements for the payback test? If not, please explain why.**

45. Yes – we support the introduction of a standardised calculator. However, the standardised calculator must take into account the higher cost of installing measures in older, heritage buildings. The standardised costs must therefore differentiate between a building of modern construction and a building of traditional construction, along with many other variables, including geographical variations .
46. Without differentiating between the different types of construction, older buildings will be hugely disadvantaged. This may lead to a landlord not letting out their property as it is not viable to install the required measure or package of measures, as the standardised costs underestimate the actual cost. Conversely, it may lead to a landlord needing to obtain actual quotes to dispute the standardised costs, which is fraught with issues, and again may result in a landlord deciding not to let out their building.
47. Commercial buildings are integral to the sustainability of rural communities and the economy in rural areas. This regulation must support the decarbonisation of buildings without jeopardising their viability.

**Question 14: What are your views on whether the three quotes requirement should be kept for certain circumstances, for example where landlords wish to dispute the standardised costs, and how would the requirement work in such circumstances?**

48. The requirement to obtain three quotes is very problematic and impractical and must not be retained. Requesting quotes, especially from small businesses, with little chance of them being instructed is wasteful and morally questionable. It can also lead to perverse outcomes, such as businesses giving standardised quotes not based on the actual property, or businesses charging to provide quotes, which may lead to inaccurate quotes being provided.
49. We strongly support the ability for a landlord to dispute the standardised costs, which is particularly important for designated buildings due to additional requirements and costs. However, the requirement must be to obtain one quote, or at least, no more than two quotes. Many of our members have contractors which they regularly use and particularly for older, heritage buildings, the cheapest quote is often not the best. It is more important to use a trusted contractor, who has a proven track record with heritage buildings to ensure the job is done to a high standard, which enhances heritage significance, rather than damages it.
50. The standardised costs must not be based on the indicative costs shown on EPCs. This is because the indicative costs on EPCs are often highly misleading, because (a) actual prices for the suggested work are often significantly higher, (b) other works are often required (for example wall insulation would often require dampness works costing more than the insulation), and (c) the EPC figures exclude fees and management and other costs, which will often add 30%-100%.

**Question 15: Should the Government seek primary powers to introduce tenant responsibilities duties for MEES compliance under the PRS Regulations for non-domestic properties, and to introduce duties of mutual cooperation for landlord and tenant? If not, please explain why. If so, what do you think these duties should consist of? Please explain your reasons and give examples.**



51. We support the principle of mutual cooperation for landlord and tenant, but note that in practice, a shared legal obligation may be difficult to manage and enforce, particularly for existing arrangements.
52. For new tenancy agreements, it should be relatively straight forward if the obligation on the tenant and landlord is clear from the outset. It would be useful for BEIS to publish model clauses which could be included within a new commercial lease which places an obligation to meet the minimum energy efficiency standards on the landlord, tenant, or both.
53. Issues are likely to arise for existing tenancy agreements, where the landlord and tenant obligations around meeting the minimum energy efficiency standards are ambiguous or absent. Guidance on what a landlord and tenant can do in this situation would be helpful, which may include a rental holiday, temporary rent reduction or lease extension if the tenant invests in measures, or an increased rent or stepped rent if the landlord invests in measures.

**Question 16: Do you think that smart meters could play a role in supporting landlords to meet Government energy efficiency requirements such as the non-domestic MEES under the PRS Regulations? What are the key benefits/barriers of smart meters playing a role?**

54. Smart meters have a role to play in energy efficiency, however, it is important to understand their limitations. For example, thick solid walls of traditional properties can often disrupt a signal to a smart meter. Some of our members have told us that when they have sought to have smart meters installed, they have been told by energy providers it was not possible. If smart meters play a greater role in energy efficiency, it is important that older properties are not disadvantaged because the technology is best suited to modern buildings. In addition, smart meters are often not suitable for individual units heated by a heat network, which is relatively common in rural areas.

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