

## Written Evidence Submitted by the British Property Federation

### British Property Federation

The British Property Federation (BPF) represents the real estate sector – an industry which contributed more than £100bn to the economy in 2018 and supported more than 2 million jobs. We promote the interests of those with a stake in the UK built environment, and our membership comprises a broad range of owners, managers and developers of real estate as well as those who support them. Their investments help drive the UK's economic success; provide essential infrastructure and create great places where people can live, work and relax.

The BPF has a committee dedicated to sustainability issues, reflecting the priorities that its leading members place upon issues of resource efficiency, environmental enhancement, and climate change. We also convene 18 more committees touching on real estate sectors and issues spanning Commercial Property, Planning, and Finance to name but a few. In response to the Department for Business, Energy & Industrial Strategy consultation on a future trajectory for minimum energy efficiency standards in non-domestic privately rented properties, we have sought views from across non-domestic sectors, given the scope of these proposals, and the potential impact across building types and leasing arrangements.

### Top Line Response

We support the government's preferred policy option to mandate an EPC rating of B for all non-domestic privately rented buildings by a single backstop date of 2030. However, we would emphasise the need to ensure future alignment between the trajectory for Minimum Energy Efficiency Standards in Privately Rented Properties and commitments to addressing the in-use/operational performance of non-domestic buildings. We have in the past provided views to government questioning the suitability of EPCs as a tool to sufficiently measure the actual energy efficiency of buildings. It is right that the government uses the current mechanisms at its disposal to regulate for improvements in the efficiency of buildings. The introduction of minimum standards has prompted positive change in the market, however, in anticipation of delivering a net zero economy by 2050, we would again emphasise the [disparity](#) that can be found between the EPC ratings of non-domestic buildings, and their actual operational energy performance.

The government's preferred policy option will be a useful signal to the sector to act and to further improve the efficiency of the existing non-domestic building stock. What we suggest within these representations is that a single backstop date is preferred (having extensively discussed the relative merits and challenges associated with a phased milestone approach). A single backstop date will allow landlords and owners of non-domestic PRS properties to plan for upgrade works within their own renovation and leasing cycles. Whilst there may be some danger that upgrades to reach an EPC of B might be delayed until closer to the single backstop date, these risks are outweighed by the benefit of certainty and flexibility afforded to the industry by a single 2030 date.

We have through this submission focussed on the functional issues raised by the respective questions, but we would also take the opportunity to emphasise the need for appropriate central government funding or encouragement of respective loan facilities, where there is an ambition to raise the efficiency levels of buildings that will not meet the seven-year payback test, will not be afforded the capital for improvement measures, and

## A FUTURE TRAJECTORY FOR NON-DOMESTIC PRS MEES – CONSULTATION RESPONSE



would otherwise be stranded outside the regulatory scope. In a similar vein, it is critical that the government provides the necessary level of funding and resource for local authority enforcement activity.

Notwithstanding our support of the government's preferred policy option, we have provided our feedback on this and a number of other important considerations through this submission.

### **BPF Comments relating to questions posed within the BEIS consultation document (Question numbers directly relate to those within the [consultation document](#))**

#### ***Question 1: Do you have any evidence which can improve the Government's understanding of energy use in the non-domestic building stock?***

1. As mentioned in our top line response to this consultation, notwithstanding the very necessary use of the EPCS and MEES regime to encourage energy efficiency measures in existing buildings, there must be a recognition that when seeking to understand the energy use in non-domestic buildings there are limitations to Energy Performance Certificates. As exhibited by the report [A tale of two buildings](#), produced by the BBP and JLL, an EPC rating may not be an accurate indicator of energy efficiency in a commercial building. Operational energy then becomes a significant factor, as does necessary close collaboration and partnership between landlord and occupier.
2. We would also highlight the view that we have received from discussions with numerous real estate practitioners. Principally, it has been stated that larger international firms looking to occupy commercial buildings are increasingly requesting EPC information and considering such ratings when making business decisions. Such considerations are not seen as often in relation to SME occupiers. This would indicate that a proportion of the market has been incentivised to consider energy use, but that the factors driving this behaviour appear to be reputational first and foremost. To this effect the future workings and associated enforcement of the MEES will be crucial to its success.

#### ***Question 2: It has now been over a year since the minimum energy efficiency standards for the non-domestic private rented sector were introduced. What have been the positives and areas for improvement of their introduction?***

3. The introduction of the minimum energy efficiency standards has undoubtedly had an effect on the market. The regulations have fostered a greater willingness to consider and embrace energy saving measures through the construction, refurbishment, and tenant fit-out phases of development.

To this effect, real estate investors are increasingly considering the EPC rating of a given property as a key metric in conducting and assuring due diligence on a given acquisition.

4. We have also received views that landlords and investors are increasingly factoring energy performance improvement measures into their refurbishment and renovation cycles.
5. Whilst the positives are welcome, these have not manifested overnight. The regulations have taken some time (from the point of conception) to truly deliver outcomes within the sector. Some organisations have found it easier than others to adapt to the changes, and therefore for the benefit of those that have taken longer, it is important that any new trajectory is communicated early, widely, and clearly to the relevant stakeholders.
6. A notable area for improvement and that continues to cause some difficulty is within buildings (particularly used for retail activities) delivered as 'shell and core'. In these scenarios the landlord is responsible for

## A FUTURE TRAJECTORY FOR NON-DOMESTIC PRS MEES – CONSULTATION RESPONSE



compliance with MEES, but in order to comply, may need to install energy saving measures that are later removed by a tenant depending on their needs. We welcome the government's acknowledgement of this issue within the consultation document. The solution to this is not clear in the absence of a tried, tested, and widely used approach to avoid such scenarios. Associated with this (although not limited to these circumstances), we suggest within our representations that further thought should be given to placing greater responsibility for compliance on occupants, in circumstances where long leases are in operation and occupants therefore install energy consuming equipment such as heating, cooling, and lighting.

7. We appreciate that the consultation document acknowledges the work that remains to be done around enforcement of these standards, but we would take this opportunity to reiterate the importance of an effective, fair, and well-resourced enforcement regime for MEES. We would consider this a key area for improvement.
8. Whilst this consultation is not concerned with the workings of Energy Performance Certificates (as is the subject of a separate government consultation issued in 2018), we would, given its relation to MEES, highlight the inadequacies associated with the EPC assessment process. Our members have highlighted that EPCs can be procured at low cost and completed without proper knowledge of how buildings work. Additionally, inaccurate modelling can result in an incorrect usable area subsequently skewing the resultant rating. We note that certificates/ratings can be procured at a very low cost from a qualified assessor that may not necessarily have the requisite (accurate) data to hand and therefore may be using default inputs. This would of course limit the potential reliability and accuracy of a given rating. We would suggest that reviewing and tightening the current quality assurance procedures in place for EPC assessors would be of value.
9. There remain some deficiencies in the system of exemptions. This includes a lack of clarity over when listed building exemptions apply; and high costs associated with evidencing exemptions.

***Question 3: Do you agree that 2030 is the appropriate date to set the future trajectory? Does this allow a long enough lead in time for landlords and businesses to plan effectively, as well as providing the energy efficiency market with medium to long-term certainty of demand?***

10. On the assumption that the 2030 trajectory date is applied without any associated earlier milestones, we believe these timescales to be appropriate. The rapid transition over the past decade in the ability to monitor and react to energy efficiency demonstrates that systemic change can be achieved in similar timeframes. What is most important when considering these timescales, is setting them and being clear about them in the first instance. Clarity and certainty about when and to what level improvements will be expected, is what will drive and enable companies to plan for compliance (this includes updates to carbon factors and Part L of the building regulations). Significant adjustment will be required on the part of certain businesses in order to meet these standards, and as such these businesses would face difficulties if the chosen trajectory is altered in the next 10 years. Any changes to these parameters, should they occur, must be communicated effectively.
11. Similarly, a building that is compliant with an EPC B today will not necessarily be compliant with an EPC B rating in 2030. This is due to incremental improvements in Part L of the Building Regulations/changes in carbon factors and as such government must provide transparency and clarity about these improvements to ensure the market factors them in at an early stage.
12. We have provided further information on the impact this will have on suppliers under question 4, however it bears repeating here, that the new trajectory will affect not only landlords and occupiers, but also the respective supply chains. There necessarily needs to be a significant lead in time to allow contractors and suppliers to adjust their methods and understanding of the issues.

## A FUTURE TRAJECTORY FOR NON-DOMESTIC PRS MEES – CONSULTATION RESPONSE



**Question 4: To what extent do you think an EPC B trajectory provides sufficient certainty of demand to encourage suppliers in the energy efficiency market to grow, scale and innovate?**

13. A single 2030 backstop date should offer sufficient certainty of demand for the production of required plant, machinery, and relevant energy saving technologies, as suppliers will be clear on when standards will need to be improved and to what approximate proportion of the building stock this will apply.

We note however again, a building that is compliant with an EPC B today will not necessarily be compliant with an EPC B rating in 2030. This is due to incremental improvements in Part L of the Building Regulations/changes in carbon factors and as such government must provide transparency and clarity about these improvements to ensure the market factors them in.

14. What we are unable to say with certainty, is whether the market will have capacity to deliver the required skills and services under a set of regulations that will bring a significantly larger number of buildings under scope. We would strongly encourage the government to look at skills and capacity within this market in greater detail.
15. Further, it is not envisaged that (yet unknown) new technologies/materials will be readily used to comply with the new trajectory and therefore innovation within this space is not a certainty. In addition to this it is likely that in order to meet the UK's broader targets for emissions reductions by 2050, greater emphasis will need to be placed on recycled and the circular use of materials. It is unclear that the widespread use of such materials or processes currently informs the installation of efficiency measures or whether, for instance, the use of recycled materials impacts the rating of an EPC. This is to say that a standard of EPC B by 2030 might be the correct trajectory, but that wider factors will determine whether suppliers can grow and innovate to meet that date.

**Question 5: What do you think are the opportunities and challenges of the Government's preferred 2030 EPC B trajectory?**

16. The government's preferred trajectory is a clear opportunity to enact changes to the UK's building stock that actively contribute to broader national emissions reduction targets. A new trajectory to 2030 will undoubtedly be embraced by market leaders, who will likely innovate and create positive competition along the way. This may even lead to an even more significant proliferation of energy efficiency being priced into property values, transactions, and investments.

Whilst the renewed trajectory will present the aforementioned opportunities, we would again take this opportunity to highlight the limitations of EPCs with regard to measuring the 'real' energy use of a given building. The 2030 trajectory will therefore stimulate a certain level of best practice in this sphere but will not on its own improve the energy performance of non-domestic privately rented buildings to the extent that is required.

17. Further, we would repeat that calculation of the EPC rating involves the use of the Simplified Building Energy Model (SBEM), and one of the key determinants of the rating is the variable carbon factor for certain fuels. Carbon factors are changing rapidly at present, and so a building that is compliant with an EPC B rating today will not necessarily be compliant with an EPC B rating in 2030. This could adversely affect confidence in the EPC rating and therefore in the overall policy. There is therefore a need for a very clear forward trajectory for carbon factors.
18. We envisage that the higher standards will also provide increased employment opportunities within the sector, whether directly through expertise needed for the assessment and installation of energy saving

measures, or indirectly through associated supply chains, maintenance requirements, and service provision. A trajectory of B is likely to require more concerted resource than that of an upgrade to C.

19. If developed, implemented, and enforced correctly the trajectory represents a significant opportunity to increase bill savings for occupants/energy users.
20. The government's preferred option is supported by our membership, however it is done so while recognising that this is a stretching and ultimately ambitious target to move from a statutory requirement for buildings to meet an EPC standard of E by 2023 to a standard of B by 2030. The cost implications for building owners/landlords will be significant in many instances.

We would note in relation to the significant uplift in standards proposed in this consultation, that we have received representations highlighting the current state of play and the subsequent 'jump' that building standards will need to make. This is to say that even commercial property investors (principally within the office, retail, and logistics sectors) with some of the highest rated (BREEAM and other) existing buildings have identified that a significant proportion of their wider assets would not currently meet the proposed standard. Whilst we acknowledge that the amended regulations are intended to drive improvements, it is significant that some of today's 'best in class' investors would fail to meet the EPC B target in many of their buildings.

21. There will be circumstances in which a building will not be able to achieve an EPC rating of B no matter what energy efficiency measures are installed. There is a danger that these buildings become too expensive to operate, too expensive to renovate/retrofit, unable to ultimately reduce energy consumption in, and in a changing market, unable to find occupants for. The likely outcome is for a given building to be demolished and rebuilt which is contrary to any crucial attempts to retain so far as practicable existing embodied carbon in the built environment. We would note that in this scenario a workable payback exemption, perhaps on a temporary basis could help a landlord or building owner to delay action for a period that allows them to obtain further rental income until such time as the improvements works do become viable.
22. Whilst the standards are likely to be well understood and actively pursued amongst leading industry organisations, there may be a risk of smaller landlords and owners lacking the appropriate awareness or skills to comply with any ultimate trajectory. It is therefore important that the eventual regulations are communicated to SMEs in a concerted fashion.

***Question 6: We estimate an EPC C trajectory will only bring 42% of the non-domestic PRS building stock into scope of the regulation. Are there any alternative approaches that could complement an EPC C trajectory that would guarantee the necessary action across the remaining stock to drive clean growth and deliver sufficient energy and carbon reductions?***

23. Whilst we support the preferred trajectory of EPC B by 2030, should the government decide to pursue an EPC C trajectory we would emphasise the importance of moving from a system by which organisations are required to 'comply' with as-designed, theoretical energy performance ratings to a system that encourages the measurement, disclosure, and monitoring of operational energy performance in non-domestic buildings. Perhaps in instances where an EPC C or lower is the cost-effective ceiling for a given building, the regulations could require operational energy certification in parallel as a means to incentivise action.
24. Another avenue for the exploration, to run alongside an EPC C trajectory, would be for guidance on, regulation of, or mandates for, energy saving plant and machinery. This is to say that whilst the installation of regulated technologies may not lift certain properties above the EPC C rating as they would not ensure fabric efficiency, it could certainly incentivise lower levels of energy use.

***Question 7: Can you identify any issues regarding the current administration of the seven-year payback test which could be improved to support the goals that a tightened regulatory trajectory to 2030 aims to deliver?***

25. Our principal recommendation in relation to the workings and administration of the seven-year payback test is to rationalise the process for exhibiting and lodging an associated exemption. The current regulations require a landlord seeking to lodge an exemption - on the basis of a building not meeting the test - to obtain three separate quotations for the installation of each given energy saving measure recommended for a given property. This requirement is paradoxical and has created a potential undue burden on both those seeking to register an exemption and suppliers within the market. Suppliers are aware that quotations being requested ultimately won't be installed and therefore the quotations are abortive work. In some scenarios this has led to suppliers requesting high fees for quotations, which is an unfair and unsustainable requirement placed on the landlord/building owner.

Whilst we appreciate that the intent of this policy is to minimise the gaming of the exemptions process, we believe that a system by which one quotation is required from a certified or accredited (perhaps RICS or other) supplier or cost consultant would serve the desired purpose. This is further justified by representations we have received indicating that even when three quotes are obtained, there is rarely a great deal of variation between them.

26. Should the government be unsure about amending the regulations to only require a single quote, another option could be to have a tiered approach, meaning that if a building is deemed to be within a certain margin of error around the seven year mark, they are required to provide three quotes. Allowing buildings that are more certain to fail the seven-year payback test to require just one.

27. In consideration of other means by which the seven-year payback exemption process could operate, we would encourage the government to evaluate the relative merits and challenges associated with the Scottish energy performance regulations. The regulations make use of 'Action Plans' to identify carbon and energy performance improvements to target for a given building. The building owner/landlord can then choose to enact the improvements or defer them (likely because of capital costs) by reporting the operational energy use of the building through a Display Energy Certificate (DEC).

28. Notwithstanding the representations above, we believe consideration should be given to the introduction of a longer payback test to take account of increasing costs of measures and longer payback periods as the Band B target draws nearer.

29. An issue on which we would request further clarification from government in its response to this consultation and through future guidance is the treatment of buildings that are intended for demolition. There is a plausible scenario in which a building meets the seven-year payback test and efficiency measures are therefore required and installed, only for the building to be marked for demolition within seven years. We acknowledge that in any scenario in which such a building is exempt from the MEES, there would need to be a mechanism by which demolition is assured, however this is a significant issue to consider given the UK's need to avoid unnecessary additions to embodied carbon.

***Question 8: Would a single backstop date in 2030 or phased milestones to 2030 be the more effective method for implementing the trajectory options? Does it depend on the trajectory option? If a single backstop were favoured by the Government, what type of financial and non-financial incentives could encourage landlords to install measures earlier than the 2030 deadline?***

30. The issue of a single backstop date or phased milestone was perhaps the topic on which we received the greatest range of feedback and opinion from the industry. Notwithstanding this and having balanced the

feedback received, we support the adoption of a single backstop date of 2030 for all buildings to reach an EPC rating of B.

31. The rationale behind a single backstop date of 2030 is clearly articulated within the consultation document. The single backstop would provide landlords and building owners with the flexibility to consider and action the new trajectory in the context of their own unique business models, tenancy cycles, and renovation trigger points. Signposting a single target EPC score for all non-domestic PRS buildings provides a level of certainty and clarity that is central to making investment and development decisions.
32. Further, a single backstop date of 2030 will help to avoid the additional administrative, resource, and time costs that may be created by incremental milestones/compliance with ratings.
33. A single backstop date with a 10-year forward view will give the respective stakeholders the opportunity to adapt to and overcome some of the challenges discussed within our response. It is likely that those with significant property portfolios wishing to act as market leaders will act as early and decisively as possible.
34. Whilst we have indicated our support for the single backstop date, we would, given the mix of industry views, like to raise some opposing thoughts for consideration.

Principally, there is a view that a single backstop date may facilitate inactivity in the short term. This is to say that landlords/owners (particularly SMEs) may wait until closer to the 2030 regulatory date before installing improvements. This could occur for a number of reasons including: waiting for installation and technology costs to reduce; waiting for more favourable market conditions; waiting in anticipation of further policy reform; waiting for a tenant to depart; or simply because energy efficiency is not first on respective to do lists. There is a perception that in relation to the existing non-domestic PRS MEES backstop date of 2023, there is a significant level of inertia, for some or all of the reasons listed above.

Further, a key benefit of a phased trajectory may be to avoid a resource, capacity, and skills bottleneck in the late 2020s. With 85% of the non-domestic PRS building stock expected to fall within scope of an EPC B trajectory, it is likely that the supplier and materials market for energy saving measures will need to grow accordingly. Should a significant number of actors wait for the late 2020s to deliver upgrades, this may place undue pressure on the supply chain. We would also note that such pressures may result in increased costs for services/energy saving measures, in turn meaning that cost effectiveness exemptions are used to a greater extent.

35. A number of measures could be explored with regard to incentivising early action. These include:
  - 35.1. Alignment of business rates with energy performance – Occupiers could be incentivised to look and call for higher rated premises if they were afforded business rates reductions based on the energy performance rating of their premises. We would note that in the context of increased pressures on the UK's high streets and retailers, such a policy could provide wider regenerative benefits.
  - 35.2. Grants or low interest loans – Landlords/owners/occupants with long leases could be incentivised to install energy saving measures earlier than 2030 if the government offers a route to low cost capital up to a certain deadline in advance of 2030.
36. Importantly, any future trajectory for the MEES must be considered within the context of wider government and sectoral ambition, as well as longer term trajectories beyond 2030. Should the trajectory adopted through this consultation ultimately change within the next 10 years, this could be to the detriment of industry and to the UK's wider decarbonisation objectives.

***Question 9: Are there any reasons why any of the current exemptions will be less effective under a tightened trajectory?***

37. We would repeat our comments provided above in relation to the workings and administration of the seven-year payback test and exhibiting and lodging an associated exemption. The current regulations require a landlord seeking to lodge an exemption - on the basis of a building not meeting the test - to obtain three separate quotations for the installation of each given energy saving measure recommended for a given property. This requirement is paradoxical and has created a potential undue burden on both those seeking to register an exemption and suppliers within the market. Suppliers are aware that quotations being requested ultimately won't be installed and therefore the quotations are abortive work. In some scenarios this has led to suppliers requesting high fees for quotations, which is an unfair and unsustainable requirement placed on the landlord/building owner. Whilst we appreciate that the intent of this policy is to minimise the gaming of the exemptions process, we believe that a system by which one quotation is required from a certified or accredited (perhaps RICS or other) supplier or cost consultant would serve the desired purpose. This is further justified by representations we have received indicating that even when three quotes are obtained, there is rarely a great deal of variation between them.

Further, it is likely that significant fabric improvements will be required to certain buildings to achieve an EPC B rating – such as predominantly glazed office buildings, which would likely require re-cladding. Working out the cost of such improvements will involve various specialists' advice and not something that three quotes from contractors would readily provide.

38. As mentioned previously within this submission, the issue of sufficient resources, skills, and capacity in the energy efficiency market could have an impact on the greater use of exemptions. Should the relevant skills and capacity within the sector be limited, this may lead to higher costs for the installation of measures, ultimately leading to cost-effectiveness exemptions being used more readily.

39. Whilst not an example of exemptions being less effective under the tightened trajectory, we would suggest that the exemptions process could be made more efficient and less resource intensive if the relevant authorities provided templates for use when lodging evidence for exemptions. This would help ensure consistency, minimise costs, and simplify the process.

***Question 10: Are there any ways in which the market can overcome situations where the tenant has fit-out requirements and is willing to fund the improvement of the building at the start of the tenancy?***

40. Please see our response to question 11 of this consultation, under paragraph 42.

***Question 11: Are there any unique challenges that the tightened trajectory will pose to SMEs or any individual sector? How could the sector look to overcome that challenge?***

41. With regard to SMEs it is likely that the most significant challenge will be access to funding to install improvement measures, particularly for those with numerous sub-standard properties. This is to say that whilst one or some of a given SME's buildings might meet the seven-year payback test, the capital expenditure needed to install energy saving measures to achieve a rating of B on all or numerous buildings within their portfolio may be too high to be viable. This effect would likely be exacerbated in a scenario where phased milestones to 2030 are introduced.

This may be a circumstance in which banks and lenders can play a greater role. Banks could help by providing finance on more attractive terms (under the banner of 'green finance') where the energy performance of a property can be improved. A recent example of this is the revolving green credit facility that [Derwent](#) has



obtained. We would encourage the government (or perhaps the Green Finance Institute) to explore ways in which to promote such activity.

As mentioned previously within this submission the communication of amended regulations will be a critical element of their success. SMEs are likely to operate in a greater vacuum of information than larger actors. The government should therefore ensure that the appropriate level of communication is targeted at SMEs.

42. With regard to individual sectors, we would anticipate that continued difficulties surrounding the application of MEES on buildings developed in a 'shell' state will unduly affect the retail sector and to some extent the industrial and office sectors. The reasoning for this is clearly outlined in the consultation document and we have therefore not sought to repeat it. In terms of solutions we have heard representations on a number of fronts:

42.1. Altering the EPC assessment process for shell and core building – A distinct EPC module could be created for the treatment of shell and core buildings. Assessment could then take place on the fabric elements of the building that the landlord or owner has the ability to affect. The building could then be issued with a 'shell and core' EPC B rating under which the property can be let. It is however acknowledged that the available fabric efficiency measures for a shell property (defined as those delivered with no services at all) are unlikely to achieve high efficiency standards.

42.2. Regulation of energy saving measures, materials and machinery; or the reintroduction of Enhanced Capital Allowances – The energy intensive installations typically undertaken by retail occupants could be regulated to provide greater clarity on acceptable measures (i.e. types of acceptable lighting) and to place a greater emphasis on the occupier to undertake energy efficient fit-outs. Similarly, those responsible for the commissioning and installation of plant and machinery could be incentivised to do so through supply side incentives such as Enhanced Capital Allowances (ECAs).

42.3. Shift the responsibility of compliance – The responsibility for compliance with the MEES regulations in shell and core scenarios could be transferred onto the occupant (more effective in long-lease scenarios and where tenants are responsible for fit out). Landlords would however be mindful of not having control over the commissioning and subsequent quality of an EPC assessment. A remedy to this may be for the landlord to retain control over the choice of assessor.

42.4. A draft EPC for leasing; or a new time limited exemption – Given that shell and core units appear to be somewhat of an outlier, perhaps a draft EPC could be created, produced based on the projected fit-out details issued by the occupant, and subsequently used to complete a lease transaction. Or in a similar vein the government could introduce an additional category of exemption. This could apply where under the terms of an agreement for lease, lease, or other contractual arrangement a prospective tenant has agreed to be responsible for carrying out certain energy efficiency works to the property. The exemption would allow a certain period following lease grant in order for the property to be brought up to the minimum standard (as evidenced by a new EPC), or a different exemption claimed (e.g. where all cost-effective measures have been taken). By analogy with existing exemptions, a period of six months could be permitted.

Whilst we have outlined some ideas for discussion based on regulatory measures, we would also take this opportunity to highlight the impact that retailer/occupier behaviour may have on energy use. We suggest that the government may wish to look at the impacts of behaviours such as leaving shop doors open or running lights/machinery overnight. We are unaware of the proportionate impact of such behaviours and would welcome such insights.

**Question 12: At this stage we welcome views on how the Government could most effectively improve enforcement of minimum energy efficiency standards under an EPC B or C by 2030 trajectory.**

43. It is difficult to provide perspectives on how to improve enforcement processes without first seeing enforcement in action. We are aware that the government are currently carrying out respective pilots, but without sight of the outcomes from these pilots, it is difficult to provide informed views. We would however emphasise the importance of robust, fair, and consistent enforcement action.
44. While the Trading Standards bodies of Local Weights and Measures Authorities are tasked with enforcing the regulations, we would raise the concern of how they will be resourced to do so and whether or not the eventual enforcement is carried out fairly and on an even basis. As far as we have been informed to date, we understand that the resources gathered from penalties will be retained at a local level but will not be hypothecated for the purposes of enforcement. Given the wider narrowing of local government funding across the country, questions may arise around the incentives for enforcement across the board. Future enforcement action must ensure that enforcement bodies are not disincentivised to chase resource-intensive but low-yield enforcement action, instead prioritising fewer but more lucrative examples of non-compliance.
45. We see the issue of enforcement as circular. In the context of broader reductions in local government funding, it is highly doubtful (particularly in a tightened regulatory regime bringing 85% of properties into scope) that local weights and measures authorities will have the capacity to effectively enforce the regulations as it stands. Increased funding (perhaps seed funding) is therefore needed to support enforcement activities. In the absence of any additional funding provided by central government, local authorities will presumably need to use proceeds from enforcement to fund enforcement activity. These two circumstances are however reliant on each coming before the other. Significant thought must be given to resolving this paradox if the tightened regulations are to succeed in their objectives.
46. We would also suggest – in a single backstop scenario - that some form of soft check or assessment is done approximately two years prior to the 2030 date in order to evaluate the state of play. Based on the results of such an assessment, communications to landlords and building owners can either be increased to warn of the impending backstop date or maintained if concerted action has been taken across the industry to that point.

**Question 13: As illustrative examples, do the costs, bill savings and private payback periods that our modelling assumes for these building types approximate your experience?**

47. We have received a range of representations indicating that in particular, the costs assumed within the modelling appear lower than those typically experienced by the industry. The building types assessed as part of the consultation modelling appear to be on the smaller side, and as such some members have suggested that cost figures will vary for larger buildings. Additionally, the costings may not take into consideration other related costs such as having to provide alternative accommodation/premises for occupants during given works etc. We would suggest that the government look to add to its evidence base prior to finalising the new regulations.

**Question 14: The table lists the costs and benefits we have identified as a result of the proposals. Are there any impacts relevant to your sector or organisation/business (e.g. SME, Civil society organisations) that are missing? If so, can you provide us with any supporting evidence?**

48. It is unclear whether the costs of instructing EPC assessors are factored into the 'Compliance Costs' section of the table. We have received examples of likely costs as follows. If 100 properties within a portfolio were to require new EPC ratings/assessments and these properties were of a small size (50m<sup>2</sup>) the likely cost would

be £11,400 (equating to £114 per property). It is however rare, particularly amongst our members, that properties would be as small as this. Consequently, it is likely that the costs will be higher for many.

***Question 15: We understand that there are natural void periods when leasing a property, due to finding a tenant and refurbishing a building. Is there any evidence to suggest the proposals are likely to increase void periods and by how long? Please provide as much detail as you can.***

49. Whilst we do not have evidence of whether void periods would increase, and if so, how long void periods might be increased by, we would highlight that the extent of required improvement works will be a key factor. If only minor works are required, this could even decrease void periods as improvement contributions could in some circumstances be offered to tenants as an incentive to extend a lease. However, if significant works are needed to improve the rating to an EPC B for instance, the likelihood is that void periods would be increased in length. Again, this presents a slight paradox in that buildings requiring the most work and therefore the greatest investment may be impacted more by way of decreased income as a product of increased voids.
50. We would again highlight the difficulties that the MEES regulations pose for buildings delivered in a shell and core state. The retail sector is currently facing a number of well-documented difficulties including significant voids in some geographical areas. To continue requiring MEES compliance in scenarios where split responsibilities between landlord and tenant create additional burdens could exacerbate these difficulties.

***Question 16: Under both trajectory options, landlords of buildings below EPC B or C will be required to invest money upfront to improve the energy efficiency of their building. If you are a landlord, what are the key factors that would determine the pass-on cost to the tenant, and the length of time under which you would seek a return on your investment? We anticipate key factors could include: investment cost, bill savings delivered by the measure, payback period of the measure, lifetime of the measure, maintenance costs and market forces.***

51. In terms of passing on costs to tenants, this to some extent would be dependent on individual lease terms. In some instances, there would be an assessment of whether the respective service charge budget for a property has the capacity to take on the extra costs. However, from our discussions with members across non-domestic sectors it is most common that investment costs will be absorbed by the landlord/building owner as they are ultimately held accountable for compliance.
52. It should also be noted that in some sectors the average lease length is becoming shorter as occupants and business models become more flexible. This will likely limit the return on investment in many instances.

***Question 17: Is there a possibility that under certain types of lease arrangements (for example green leases) the costs of improvements might be shared between landlords and tenants?***

53. From representations we have received, it appears that green leases are not currently operating in a way that would serve as an effective method for sharing costs between landlords and tenants. Where green leases are used currently, the respective clauses are rarely, if ever, legally binding, and operate as informal agreements. It is still likely that in the vast majority of circumstances the landlord/building owner will absorb the costs of energy saving measures.

A more likely scenario would be one in which the landlord/building owner absorbs the upfront costs of improvement measures to reach a compliant level, whilst the tenant is then responsible for any costs related to maintenance or up-keep, typically paying these costs through the building's service charge.

## A FUTURE TRAJECTORY FOR NON-DOMESTIC PRS MEES – CONSULTATION RESPONSE



Should you require any further information on any aspect of this submission please contact Alex Green (Assistant Director), on either [agreen@bpf.org.uk](mailto:agreen@bpf.org.uk), or 020 7802 0107