

NEW PERFORMANCE-BASED ENERGY EFFICIENCY RATINGS FOR BUILDINGS AND CHANGES TO MINIMUM ENERGY EFFICIENCY STANDARDS – 10 KEY QUESTIONS

The Department for Business, Energy & Industrial Strategy (BEIS) has launched two new major consultations on building energy performance. The documents represent a step change in action on energy efficiency for buildings aimed at helping to meet the UK's 'net zero by 2050' target. In addition to proposals for a new energy efficiency performance-based ratings system (initially) for offices, there are proposals for implementation of the rise in the non-domestic Minimum Energy Efficiency Standard (MEES) for leasing of buildings, and changes to how the MEES mechanism functions. Responses to the consultations should be received by 9 June 2021. Here we answer 10 key questions on the consultations.

NEW PERFORMANCE-BASED RATINGS FOR OFFICES

1. Why is the Government implementing performance-based ratings

The UK's net zero 2050 commitment has highlighted just how much work is required to improve building energy efficiency. A 30% reduction in energy use by 2030 (compared with 2015 consumption) is anticipated to be needed. Evidence has however shown that having a high EPC rating for large or complex buildings generally bears no correlation to actual in-use energy and carbon performance. The Government has decided to implement a performance-based rating (PBR) framework drawing from the National Australian Built Environment Rating Scheme (NABERS) which reportedly delivered average energy use reductions of 34% over the last ten years.

The Government plans to take a sectoral approach to introducing PBRs starting with commercial offices in 2022/2023. PBRs for other non-domestic real estate sectors would be phased in over the remainder of this decade.

Key issues

- Proposals for mandatory annual energy efficiency Performance Based Ratings (PBR) for commercial office buildings over 1000m² under a regime run by a central ratings administrator
- Obligations to seek PBRs will fall on owner/occupiers, landlords of multi-tenanted buildings and single occupier tenants.
- Minimum Energy Efficiency Standard will rise to EPC 'C' in 2027 before a further rise to EPC 'B' in 2030.
- A new 'compliance window' approach to MEES enforcement will replace the current 'new lettings' trigger.
- Cost-effectiveness exemption will be based on a standardised cost calculator.

2. Which buildings (or parts of buildings) will the new rating requirements apply to?

BEIS proposes taking a sectoral approach to application of PBRs. Initially, in phase 1, all commercial offices above 1000m² will be subject to mandatory rating. BEIS wants ratings to reflect responsibility for energy use. As such:

- Owner / occupiers will require a rating for the whole building (whole building rating);
- Owners of multi-let buildings will require a rating only for the common areas and building services (base building rating); under one option all of the lettable space would need to be for commercial office use before the requirement arises - alternatively in mixed use buildings, the requirement might only apply if, say, more than 50% of the lettable space was being used for commercial office use.
- Single tenants who occupy the whole of a building will require a whole building rating.

BEIS is also looking at possible voluntary rating for smaller buildings or for tenants of over 1000 m² in multi-let buildings.

Unlike the position for EPCs, the only exemption proposed by BEIS is for buildings where disclosure of a rating may pose a risk for national security. In particular, listed buildings will be in scope.

It is not yet clear who would be responsible for the PBRs where there is a holding structure e.g. freehold / long lease and occupational leases, or a sub-lease of the whole building.

3. What will owners / landlords / tenants be required to do?

The ratings will be created centrally by a ratings administrator who would run the new rating framework. The administrator would receive details of buildings and relevant data from owners / landlords / tenants and use it to create the PBRs.

Obligated owners and single tenants will be required to 'on board' their building into the new framework (this process would occur in 2022/2023). During the onboarding process the Government proposes that the building will undergo a physical assessment by a qualified person (it is not clear whether this would be arranged by the owner / single tenant or by the administrator). That person will gather relevant initial information needed for the onboarding process including address details, floor space data, operational hours, building use, on-site renewables and whether the building needs a base building rating or whole building rating. They will also ensure energy meters are set-up correctly. Thereafter desktop updates only are likely to be required.

Owners and single tenants would then need to submit annual energy use data and other relevant information to the ratings administrator and disclose the rating publicly inside the building and online.

BEIS is also contemplating making it a requirement to supply the building's performance rating upon sale or letting alongside the EPC.

Significantly there is as yet no proposal to require a minimum PBR and BEIS has for the moment rejected use of PBRs in conjunction with the Minimum Energy Efficiency Standard (see also Question 5). BEIS is still considering how breaches of PBR requirements (e.g. failure to onboard a property or submit data) would be enforced.

4. What will the Performance-Based Rating consist of and how will it be determined?

Similarly to existing Display Energy Certificates for public buildings, a performance-based rating would rate the building based on its operation (as opposed to the EPC approach which is based on the theoretical performance of the building fabric and services). Based on actual energy consumption data, the rating would set out the energy intensity of the building on a 'per m²' basis. Although there are different fuel-weighting options, BEIS' preference is for energy intensity to be expressed in 'Kilowatt hours electricity equivalent' (kWh_e). The resulting intensity figure would then be benchmarked against other similar buildings to create a rating of between 1 and 6 stars.

The rating will be based on 12 months of energy consumption data. For a base building rating, in addition to consumption from common areas and building services, the rating will cover services provided directly to a tenant such as heating, cooling and hot water and potentially even consumption from some services added by tenants. In addition, the rating will factor in the building's floor area, relevant data such as annual operation hours for the building (based on lease provisions or tenants' survey where no specific provisions are included), location, and level of building occupancy. It is not clear at this stage exactly how factors such as location would be taken into account in the rating, and how the boundary for energy use allocation between landlord and tenant might work in complex cases. There is certainly room for disputes.

BEIS is also considering whether benchmarks should be applied to the entire building, only to areas used as office space, or separately. Each option could have a different impact on the resulting rating for any particular building.

5. Will Landlords with a PBR for a building still need to comply with MEES?

BEIS sees the value of landlords obtaining both PBRs and EPCs (in particular as EPCs are useful for prospective buyers and new tenants). However, it acknowledges the additional burden of having to obtain both PBRs and EPCs, and also having to comply with the current MEES regime. While that remains a potential option, BEIS would prefer a hybrid approach: Under this approach a landlord would not need to use an EPC to demonstrate compliance with MEES, but it would, however, be subject to the same level of obligation as MEES compliance. In order to achieve this, Landlords would need to:

- present a valid EPC to the scheme administrator when 'onboarding' to the PBR framework and agree, at that time, a set

of cost-effective measures to be installed (presumably based on the new payback calculator - see further Question 9 below).

- Obtain the annual PBR as described above (although if it was a single tenanted building, this would be the tenant's responsibility); and
- Provide proof of installation of the agreed set of measures by 2030 (it is not clear whether a post-improvement EPC would be required).

Landlords who fail to install the agreed measures would be subject to a fine up to £150,000 (commensurate) with penalties under the MEES. Commercial office buildings up to 1000 m² (and it seems sub-letting of part of a building) would continue to be regulated under the MEES as reformed (see below).

Changes to the Minimum Energy Efficiency Standard rules

6. What trajectory is proposed for MEES to 2030?

The Government announced in last year's Energy White paper that the MEES would increase to EPC 'B' rating (from the current EPC 'E' rating) in 2030. Now BEIS has decided that there will be an interim milestone of EPC 'C' in 2027 to encourage owners not to wait to make energy performance improvements until just before the 2030 deadline.

7. Will MEES obligations still be triggered / enforced at point of letting?

No, a new mechanism will be introduced involving 2 year 'compliance windows' which would apply to all buildings governed by MEES (but now excluding commercial office buildings required to have a PBR). It would work as set out in the table below.

First Compliance Window: EPC C (2025-2027)	Second Compliance Window: EPC B (2028 – 2030)
<ul style="list-style-type: none"> • 1 April 2025: Landlords have to present a valid EPC*. • 1 April 2027: Landlord must have improved the building to EPC 'C' or higher or register a valid exemption. 	<ul style="list-style-type: none"> • 1 April 2028: Landlords have to present a valid EPC*. • 1 April 2030: Landlord must have improved the building to EPC 'B' or higher or register a valid exemption.
<p><i>* current or new EPC would be sent to an online MEES compliance and exemptions database</i></p>	

While removing the 'new lettings' trigger does represent a simplification of the current MEES regime, it would not necessarily make it easier for landlords to comply as they still have the issue of identifying a suitable opportunity for implementing an improvement programme.

The new compliance window approach should largely resolve the well-known problems around MEES compliance for shell and core lettings (EPC ratings at point of letting not being reflective of the actual energy performance possible once the fitting out works are complete). However, to ensure that landlords are not caught out by shell and core leases entered into shortly before the hard 2027 / 2030 deadlines, BEIS proposes a new temporary exemption so that no enforcement action can be taken under MEES until a tenant has been in occupation for at least 6 months.

Landlords will also have to hold a valid EPC at all times and will have to update it after energy performance improvement works are carried out. They will in all cases have to provide a valid EPC to letting agents before the property is marketed – the 7 and 21 day grace periods will be removed.

8. What penalties will apply?

The penalty for failure of a property to meet the MEES when required remains a civil penalty based on the rateable value of the property up to a maximum of £150,000. BEIS has indicated that it believes that it should be possible for penalties to be applied on more than one occasion. Given that, as from 1 April 2023, landlords will be in breach of MEES continuously if their EPC does not meet the MEES, this will be of concern to landlords.

New penalties of up to £5000 will be implemented for failure to register a property on the proposed exemptions and compliance database, or failure to present a valid EPC when required, or to present a post-improvement EPC to demonstrate compliance.

9. Will there still be a cost-effectiveness exemption?

Yes, but the MEES regime will remove the onerous obligation to seek three quotes to demonstrate that a measure or package of measures are not cost-effective. Instead BEIS will commission a cost-effectiveness calculator. The intention is that Landlords will input building characteristics into the calculator and it would determine which of them are cost-effective on the basis of standardised purchase and installation costs. Clearly this will not take into account individual characteristics of any particular building or situation, so while simpler for a landlord, it could potentially result in varied results. Therefore, landlords will be able to revert to seeking three quotes if they wish to dispute the results.

Landlords would have to implement packages of measures where they are found to be cost-effective, although it is not clear whether this is an independent obligation or simply a direction that packages of measures should be implemented in place of individual measures where they are cost-effective as part of the obligation to meet the MEES by the relevant deadline.

10. Are other significant changes envisaged?

There are a number of other relevant changes to the MEES regime being considered by BEIS:

- Letting agents and online property platforms will be prohibited from advertising and letting properties unless they comply with the MEES.
- Landlords will have to update their exemptions at the 2027 and 2030 compliance deadlines to demonstrate that they are still valid.
- Landlords and Tenants will be required to co-operate together to reach compliance. Given that other exemptions appear to be remaining unchanged (e.g. lack of tenant's or third-party consent), it is not clear how that requirement to co-operate would work in practice.

In addition, the age old uncertainty regarding whether listed buildings require EPCs and are subject to MEES will be removed: Listed Buildings will require EPCs; and MEES requirements will apply to listed buildings unless an exemption applies (e.g. in relation to cost-effectiveness).

Final comments – Next steps

The proposed PBR framework looks set to apply additional pressure on landlords, owner-occupiers and single tenants to take greater steps to make relevant energy efficiency improvements and otherwise reduce energy usage. Since landlord ratings are likely to be affected to a greater or lesser degree by tenant activity, it remains to be seen whether leases seek to impose greater responsibility on tenant behaviour in this regard and require them to obtain PBRs.

Given that the MEES is ramping up to EPC 'C' and then 'B' in a short space of time, landlords or prospective landlords should quickly work to consider which buildings in their portfolio might need improvements and how they can be programmed. It seems unlikely to be worthwhile improving a property to EPC 'C', only to then have to improve it to EPC 'B' just a few years later. While landlords may be able to delay the requirement to improve properties, ultimately, they are likely to have to carry them out. Landlords should, therefore in any event, consider when leases in their buildings are coming to an end and where there are voids in order to establish a sensible improvement programme for buildings currently below EPC 'B'. In that regard, it is also worth reiterating that from 1 April 2023, MEES will apply to existing lettings below EPC 'E'. The proposals do not alter this so landlords planning work to comply with this initial deadline should have an eye on the broader MEES trajectory.

Consultation web pages:

[Introducing a performance-based policy framework in large commercial and industrial buildings](#)

[Non-domestic Private Rented Sector minimum energy efficiency standards: EPC B implementation](#)

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