Consultation response

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Response to Consultation on Introducing a Performance-Based Policy Framework in large Commercial and Industrial Buildings (Wales and England)

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energy saving trust

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1. About Energy Saving Trust

Energy Saving Trust is an independent organisation dedicated to promoting energy efficiency, low carbon transport and sustainable energy use to address the climate emergency.

Our work focuses on reaching net zero targets by taking action to reduce energy consumption, installing new infrastructure, and accelerating a move to sustainable, low carbon lifestyles.

A trusted, independent voice, we have over 25 years' sector experience. We provide leadership and expertise to deliver the benefits of achieving carbon reduction targets: warmer homes, cleaner air, healthier populations, a resilient economy and a stable climate.

We empower householders to make better choices, deliver transformative programmes for governments and support businesses and community groups with strategy, research, and assurance – enabling everyone to play their part in building a sustainable future.

2. Overview of consultation

Government are seeking views on proposals to introduce a national performance-based policy framework for rating the energy and carbon performance of large commercial and industrial buildings above 1,000m² in England and Wales, with annual ratings and mandatory disclosure as the first step. These proposals aim to build on international best practice and the consultation documents can be found here.

The consultation is in 2 parts:

- the strategy paper outlines the rationale for the policy
- the consultation on phase one, which sets out proposals for implementing annual performance-based ratings in commercial and industrial offices above 1,000m²

These proposals for a performance-based policy framework are designed to work alongside Non-domestic Private Rented Sector minimum energy efficiency standards for England and Wales (NDPRS). These will require for landlords to improve privately rented non-domestic buildings from the current minimum standard of energy performance certificate (EPC) E to EPC B by 2030, where cost-effective.

A parallel consultation on the implementation of these NDPRS regulations proposes an interim milestone of EPC C by 2027 and the introduction of two-year 'compliance windows' to improve enforcement. Landlords would be required to present valid EPCs at the beginning and end of each compliance window in April 2025 and April 2028. At each enforcement date in 2027 and 2030, landlords will need to demonstrate the building has reached the highest EPC band that a cost-effective package of measures can deliver. Cost-effectiveness will be primarily determined by an on-line 'payback calculator.'

Why are both needed?

The EPC does not measure metered energy consumption so a high EPC score is no guarantee that a building will use less energy and emit less carbon. In large and complex buildings, evidence cited in the consultation suggests almost no correlation between a building's EPC score and its actual energy and carbon performance in practice. In October 2019, the Government told the Climate Change Committee that it would address this by putting in place a policy framework that can measure and assess building performance. This consultation seeks to deliver on that commitment.

3. The problem

The consultation document clearly sets out the problem that it is looking to address:

The UK's 1.66 million non-domestic buildings account for one third of building energy use but CO2 reduction here has been relatively low (14 percent between 2008 to 2018 - half that of the reduction across the whole economy over the same period). Whilst there is a range of (overlapping) policy instruments in this sector[1], the rate of change is not enough. As such, the sector represents a 'structural risk' to the UK's climate targets

To address this, government has updated the non-domestic private rented standards (NDPRS regulations). Whilst the current legislation requires landlords to improve their buildings to Energy Performance Rating (EPC) E (where feasible) by 2021 (new leases) and 2023 (existing leases), the update will require EPC C by 2027 and EPC B by 2030 (with investment capped at measures with a 7-year simple payback).

Whilst this will drive major investment into improving fabric and building services, the government recognises that this will not automatically reduce energy consumption and carbon emissions. In large, complex buildings there is a very weak corelation between the asset rating (as measured by the EPC) and the energy consumed (the consultation cites a survey of 400 large buildings to evidence this). This is because EPCs measure how the building is designed to work rather than how it is used in practice (metered consumption) and exclude unregulated loads (that may vary from occupant to occupant) such as IT equipment and appliances which can account for over half the total consumption in non-domestic buildings.

The consultation recognises that whilst the NDPRS regulations will improve the assets, a focus on metered consumption will be required to drive change.

The proposals:

It proposes to do this by focussing intervention on a subsection of buildings with a floor area over 1000m2 and over. These buildings (only 7 percent of all non-domestic buildings – so around 110,000) consume over half (53 percent) the sector's energy use.

It seeks to drive change by benchmarking energy usage in these buildings (against both peers and good practice) and rating performance with star grading (in which 1 is the lowest and 6 the highest). Owners or sole tenants will receive physical audits every 4 years and will be required to submit annual data on metered consumption. Their performance star rating will be updated each year and be displayed prominently on

[1] Display Energy Certificates, Climate Change Levy, minimum energy performance standards for rented buildings, various levels of corporate climate reporting, voluntary building performance initiatives (including BREEAM in Use, LEED, REEP and NABERs UK) and the Energy Savings Opportunities Scheme (ESOS) which mandates 4 years building audits

site and on-line. This, the government anticipates, will motivate businesses to improve and maintain performance to increase their star rating and create a new market for highly rated commercial space motivating landlord and investors to invest accordingly.

Government proposes to roll the scheme out in 3 phases starting with offices in 2022. No timescales are provided for Phases 2 and 3.

Mandatory reporting in Phase 1 would apply to owner occupiers and sole tenants. Government estimates this will exclude around 38 percentage of energy consumed by offices over 1000m2.

Participants would not be required to display their rating until the end of the second year (2024).

4. Our view

We welcome the consultation and agree with the government's assessment of the problem -asset based instruments will not be sufficient to deliver the change needed.

We like the NABERs-influenced proposals to develop a new market for high-performing commercial space, the annual rating based on metered consumption and the intent to establish robust benchmarks for performance.

We also support the way that these proposals are proposed to work in tandem with the NDPRS regulations – with the NDPRS driving investment into fabric and building systems and these proposals to support occupants to use their equipment and sites more effectively by making usage more visible (via the benchmarking exercise) and rewarding improvement/ good performance (by the annual and public star rating).

However, the proposals do not seem sufficient to drive the scale of change necessary either for the stated ambition of a 30 percent reduction in energy from non-domestic buildings by 2030 (from a 2015 baseline) or to align with the UK's 2030 CO2 target of a 68 percent reduction in CO2 by 2030 (from a 1990 baseline).

There are two issues here – the scope is too narrow and good performance is voluntary.

1. Scope (who will the current proposals affect?)

Of the UK's 1.66m non-domestic buildings, the proposals focus on buildings over 1000m2 in England and Wales (around 110,000). These account for 53 percent of consumption.

Phase 1 will target offices (which account for 16 percent of large building energy use – or 7 percent of non-domestic building energy (our calculation).

Excluding the estimated 3,000 large offices used by the public sector, this gives a Phase 1 scope of around 10,000 private offices.

As the scheme is mandatory only for owner occupiers and sole tenants, which excludes 38 percent of energy from large offices, this suggests Phase 1 may target just 4 percent of non-domestic energy consumption.

2. Mandatory reporting but voluntary performance

As in the Australian NABERs scheme, on which the proposals are based, reporting is mandatory but improvement/ good performance is voluntary. Whilst the NABERs scheme has delivered an average reduction of 34 percent reduction in energy intensity, around half the participants either did not improve (or declined) their performance. The scheme also included an Australian government commitment to lease only buildings scoring 'good' ratings (this threshold increased over time) – something that has not yet been agreed in the UK.

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Our recommendations

We have two high level recommendations here to increase the impact of the scheme

1. **Expand the scope**

We recommend increasing the scope to include all sites and part of sites for which the potential savings are likely to exceed the costs of compliance. The impact assessment includes a 'conservative' estimate that offices could save an average 16 percent of energy via non-capital measures (optimising existing systems, behavioural measures). As opportunities can be lower in outside of offices (Phases 2 and 3), a reasonable approach could be to expand the reporting aspect of the scheme to all sites where a ten percent reduction would outweigh the scheme costs. Smaller sites have been less targeted by policy measures so could be a good source of cost-effective energy savings ('low hanging fruit')

Even with the higher estimate of scheme costs (around £2,000 per year), it should be feasible to include offices of 500m2 (in terms of scale, an average primary school has a floor area of 1,200m2 and energy costs of £63,000).

Outside of large office space , an 'investment grade' rating will be less relevant. Here a lighter touch, lower cost assessment process (desk-based for example) would enable a wider range of sites to be included (including public sector sites).

Whilst floor area is a useful proxy for energy consumption in office buildings, it is less useful for other types of non-domestic buildings (warehouses, hotels etc). Given this, the entry threshold should vary by subsector.

To reduce the administrative and cost burden on participants, we would support a reduction in existing overlapping policy (for example DECs and ESOS)

2. **Mandate good performance**

It is essential that action is taken quickly to address emissions in this sector, so we urge government to mandate performance and drive this at pace. This could be delivered with a minimum standard (as suggested in the consultation) with a penalty where the standard is not met. Participants not achieving the required minimum star performance (for example, 3 or 4 stars) by the 2026 midpoint of the scheme could be required to pay a penalty each year until the standard is reached. To drive further performance, a higher standard could be required at a later stage (for example 4 or 5 stars by 2030).

The penalty would be aligned with the 'polluter pays' principle if based on the site's total energy consumption (and therefore carbon emissions) for that year.

There are several ways that the penalty could be linked to carbon price. The carbon price could be informed by the current market value (the UK Emissions Trading Scheme opening price stabilised at £45/1tCO2); by the Carbon Floor Price (currently frozen at £18/tCO2) or by another means (£18/1tCO2 was latest cost used in the CRC Energy Efficiency Scheme, when it closed in 2018). As with the CRC, there could be a dispensation for consumption already covered by other policy mechanisms (such as Climate Change Agreements).

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5. Consultation questions

1. **Do you have any evidence which supports, disputes, or could add to, the evidence presented by the Government in this chapter?**

We support the objectives and general approach, but the impact of the proposals will be too limited.

We recommend expanding performance-based reporting to all sites where an assumed 10 percent reduction from involvement in the scheme would outweigh the costs of the scheme.

Investment grade assessment is likely to be less relevant outside of large office space, so we would support a 'lighter touch' approach with a desktop audit for smaller sites if this allowed the scheme to be expanded more widely.

We further recommend that *performance* as well as reporting is made mandatory (using a minimum standard as suggested in the consultation document).

We have set out our recommendations to increase the impact of the scheme on p8.

2. **Do you support the rationale set out? If so, are there any changes you would make or considerations you would add to the rationale the Government has set out?**

Please see our response to Q1.

3. **Do you support the Government's proposal to underpin a performance-based policy framework with a rating that looks to modernise the DEC, in the ways set out above? If so, are there any changes you would make or add to the proposal?**

Yes, we support government's proposals for assessment that measures energy performance at a more granular and accurate level (properly accounting for operating hours, location, and occupancy and is introduced on a sector-by-sector basis).

The recommendations in the DECs are often too simple to drive improvement in complex buildings and the standard assumptions can mean that they are not an accurate reflection of performance.

We agree that flexible energy use, storage and low carbon heat should be rewarded through the scheme. We think flexible usage could be incorporated into the ratings scheme if energy suppliers fed back data on the proportion of usage outside of peak times (this could also encourage smaller sites without half hourly meters to install smart meters and submeters).

We would also like to see low carbon heat (including connection to heat networks) rewarded but think that a separate rating for heat would work better than the

composite energy / carbon metric proposed. A separate icon/ symbol on the rating label to indicate low carbon heat (or a series of the symbols where fossil fuels are not used in either heating, hot water, cooling or cooking) would be easier to understand for users (alongside a primary metric of energy intensity [kWh/m2])

A more robust approach to enforcement is needed - potentially in line with the enforcement approach proposed for the NDPRS regulations.

4. **The Government proposes that, as a first step, building owners and single tenants should be required to obtain an annual performance-based rating, and disclose that rating online. Are there any changes or amendments you would?**

We agree that obtaining and displaying a performance rating is a useful first step. However, as highlighted in our response to Q2., we do not think it sufficient and recommend that government sets out clearly, in advance, how it intends to incentivise improvement / penalise low performance.

We agree that the star rating will motivate many organisations but as with NABERs, it will not motivate all. We note that the other key driver in the NABERS scheme, the requirement for the public sector to only lease buildings rating as 'good,' has not yet been secured here.

It is not clear why the public disclosure does not start until the end of year two. Starting it from year one would motivate earlier action.

5. **What is the best way to support Small and Medium Enterprises, where the building owner /single tenant is an SME?**

SMEs may need additional support to realise potential savings - both in terms of access to relevant expertise and access to capital funding.

On access to capital funding, we have recommended that the scheme incorporates a carbon tax penalty. This revenue could be used to provide interest-free capital loans for relevant equipment through the government's established Salix Finance scheme.

On expertise, SMEs may need support navigating specialist services. Government could reduce the risk of participants investing in inappropriate support by supporting a framework of approved providers to deliver relevant support. It could also look at whether the support delivered by the public sector procurement initiative RE:FIT, could be adapted for this purpose. RE:FIT was set up by the Greater London Authority and now supports retrofit across the public estate using an Energy Performance Contracting approach which contractually agrees the energy saving (kWh). Whilst this approach (which shifts the risk to the contractor) would be too expensive to operate for single sites, a 'shared savings' approach could be used where delivered bill savings are

contractually shared between the client and supplier. This would incentivise support services that deliver metered bill reduction rather than recommendations.

6. Should the Government:

i) Allow owners of buildings above 1,000m² to use their performance-based rating to satisfy their regulatory obligation to present an EPC before a building is sold or let.

ii) Continue to require building owners to present an EPC where building is sold or let.

We do not agree that participants should be excluded from the requirement to present a valid EPC when a building is sold or let.

The EPC is an asset rating, setting out how the fabric and building services are likely to perform under a set of standard assumptions. The performance rating instead uses metered energy consumption data to show how the current occupant (s) have been operating the building and includes both regulated and unregulated sources.

EPCs are a relatively low-cost, widely understood metric that, whilst too simple for some purposes, has value both for users and at a macro level.

We support the continued use of EPCs when a building is let or sold and the evolution of EPCs into more comprehensive Green Building Passports.

7. Recognising that the Government has committed to review the threshold for each sector, do you consider 1,000m² to be a sensible starting position for determining which buildings should be required to obtain annual performance-based ratings?

No.

As highlighted previously, whilst floor area is a good proxy for energy consumption in the office sector, this does not hold true for other build types (warehouses, supermarkets, hotels for example).

We would prefer an approach based around energy spend (or assumed spend) with the threshold set at a level whereby a ten percent energy bill saving would more than outweigh the cost of compliance. It is likely that offices of 500m2 and above would benefit. We would support a lower-cost desktop-based approach for smaller sites.

8. Should the Government consider expanding the performance-based rating to cover factors such as water, waste and indoor air quality?

The scheme would be well suited to water - we would strongly support this.

We are not familiar enough with how the NABERs scheme works in terms of waste and indoor air quality to comment fully here. Whilst we agree that waste and indoor air

quality are important considerations, there may be questions about whether this is the best lever to use.

In the UK, the landfill tax escalator has been an effective in diverting waste from landfill so a better approach might be to extend the tax to incineration. There is currently an anomaly whereby power stations and landfill site operators are required to pay tax on their respective pollution (CO2 emissions and landfilled waste) whilst incinerator operators are not taxed on either waste or CO2 emissions. United Kingdom without Incineration Network (UKWIN), a campaign group estimates, that the UK's 48 waste incinerators were responsible for 6.6million tonnes of CO2 emissions from fossil fuel sources.

On indoor air quality, a mix of regulation (via the building regulations) and reputational drivers (such as inclusion in an expanded version of this scheme) may be effective.

9. **Has the Government identified the right objectives for a successful delivery model?**

Yes, we support the delivery model proposed. It looks very comprehensive.

Given the interaction with energy suppliers, there is an opportunity to incorporate flexible energy usage into the rating by requiring energy suppliers to feedback information (for example, on the proportion of energy used outside of peak times)

10. **Do you support the Government's proposal that the annual rating should not be accompanied by recommendations for improving the rating? If so, are there any changes you would make or considerations you would add to the proposal?**

We agree that standard recommendations (for example, those on DECs) are often too generic to drive effective action. We also support the intent to drive organisations (where appropriate) to expertise within the existing energy management sector.

However, as the scheme includes desktop analysis to establish the benchmark (which the participant is paying for), it would be relatively straightforward to provide data-driven analysis / recommendations as part of this (for example, flagging higher than average lighting consumption). Whilst the participant may still need further support to identify how to address this, this information would help them to do this.

11. **Do you support the Government's proposal that exemptions should be limited to a relatively few buildings? Are there any grounds for an exemption that you feel are appropriate, which the Government has not considered?**

Yes, we agree that exemptions should be limited.

We also think that as much energy consumption should be included as multi-tenanted buildings or it will reduce the impact of the proposals (the impact assessment suggests around 38 percentage of large office energy usage is from multi-tenanted buildings).

On enforcement, we would support financial penalties for non-compliance (as happens in related legislation such as the ESOS scheme). We do not think publishing a list of non-compliant organisations will be a sufficient deterrent.

The consultation document lists BEIS, the ratings administrator and a government agency as options for enforcement. Since local authorities are the nominated enforcement body for the NDPRS regulations, we would support their involvement here.

12. **Are there any considerations you would like to add to the Government's analysis of the factors that are likely to drive improvements in ratings? Do you support the Government's proposals to improve ratings from day one?**

We certainly support improvement from day one but it is not clear that this is what has been proposed.

Whilst we agree that many (NABERS suggests around 50 percent) will voluntarily seek improvement to improve their star rating for reputational reasons, many others will not.

We would support a financial penalty where performance has not improved. We have explained this in more detail on p8.

13. **Do you consider that linking a clear financial incentive, or disincentive, to annual performance-based ratings would be an effective way to drive improvements?**

We support the proposal for minimum standards along with a financial penalty for non-compliance.

It is essential that action is taken quickly to address emissions in this sector. We therefore urge the government to mandate performance and drive this at pace. This could be delivered with a minimum standard with a penalty where minimum standards are not met. Participants not achieving the required minimum star performance (for example, 3 or 4 stars) by the 2026 midpoint of the scheme could be required to pay a penalty each year until the standard is reached. To drive further performance, a higher standard could be required at a later stage (for example 4 or 5 stars by 2030).

The penalty would be aligned with the 'polluter pays' principle if based on the site's total energy consumption, and therefore carbon emissions for that year. There are a number of ways that the penalty could be linked to carbon price. The carbon price could be informed by the current market value (the UK Emissions Trading Scheme opening price stabilised at £45/1tCO2); by the Carbon Floor Price (currently frozen at £18/tCO2) or by

another means (£18/1tCO2 was latest cost used in the CRC Energy Efficiency Scheme, when it closed in 2018). As with the CRC, there could be a dispensation for consumption already covered by other policy mechanisms (such as Climate Change Agreements).

Revenue used by the scheme could be used to support SMEs with interest-free loans for relevant measures (via the existing government-backed Salix Finance scheme)

In terms of rewarding heat, we would prefer a separate rating scheme for low carbon heat. For example, the rating label could incorporate an appropriate symbol (or a series of symbols – parallel to the stars for energy usage) to indicate that the building no longer burns fossil fuels for heat, hot water, cooling, and cooling. This would help employers promote their environmental credentials to employees and clients.

We also support the softer measures as additional proposals.

14. **What do you consider would be the impact of the incentives and interventions that have been suggested? Are there ways you think those incentives or interventions could be made more effective?**

As in the Australian NABERs scheme, a requirement for the public sector to only lease buildings rated as 'rated' would be effective.

15. **Do you agree with the Government's assessment and preferred approach? Please provide evidence or case studies, where possible, in your response.**

Throughout the consultation, the scheme refers to energy and energy intensity. Given this we would prefer a metric based on this (kWh/ m2). The advantage of this is that it is a stable metric and would better allow building owners and users to track and compare buildings over time.

Of the 3 metrics suggested, we prefer the kilowatt hour electricity equivalent. We note however that as gas has a lower weighting this metric will continue to support gas heating until factors are updated.

On tenant ratings, we support these being mandatory where the leased floor area is over the threshold and where the tenant is contractually responsible for energy usage (rather than paying as part of a service charge).

16. **Do you agree that flexible energy use should be a core component of the rating? What is the best way, to reflect flexible energy use in the rating structure?**

Yes - we would strongly support this. We think this could be incorporated into the ratings scheme if energy suppliers fed back data on the proportion of usage outside of peak times (this could also encourage smaller sites without half hourly meters to install smart meters and submeters).

17. Do you agree with the Government's preferred option to use a star rating format? Are there any formats which the Government has not considered that you believe could be more effective?

Yes. We support the star-rating format. More information on how the government intends to implement this would be useful though.

Just as the rainbow A-G white goods labelling scheme is recalibrated periodically though to incentivise further action, we would welcome periodic recalibration here too.

18. The Government welcomes feedback on the considerations outlined above. What are the key factors that the Government should consider in determining fair and effective rating benchmarks and a fair and effective rating scale? Where possible, please provide evidence, or case studies, to support your feedback.

There is significant relevant experience in benchmarking energy consumption in non-domestic buildings from CIBSE, BRE's BREEAM-in-Use and the Better Buildings Partnership.

19. Subject to the outcome of this consultation, the government will work with the ratings administrator, and with industry experts, to tailor the framework appropriately to each sector. At this stage, Government welcomes any additional feedback on the high-level technical considerations outlined in this chapter

Please see our recommendations on p8.

20.The Government's approach for implementing annual performance-based ratings in commercial offices over 1,000m² follows the approach outlined in the strategy paper. Are there any considerations specific to the office sector, that the Government should be taking into account? Please provide evidence where possible.

No comment

21. To resolve instances where the Private Rented Sector (PRS) Minimum Energy Efficiency Standards (MEES) overlap with requirement to obtain and disclose annual performance-based ratings, do you favour: • the 'hybrid option' • the 'hybrid option' with amendments • the 'do nothing' option • a different option to resolve this issue

We support the 'no nothing' option here

22. Do you consider that there should be any other exemptions?

No

23. The Government's objective is to deliver an investment grade performance-based rating at the lowest possible cost.

We think the right balance has been struck for the proposals as they stand.

However, we think that performance-based reporting needs to be extended to a far wider range of non-domestic buildings. 'Investment-grade' assessment will be less important outside the office sector and for smaller sites so wider performance reporting could be achieved at a lower cost by avoiding/ reducing the need for physical assessments.

24. Do you consider the estimated cost of the rating to be realistic?

Yes

25. Do you consider the estimated cost of the rating to be affordable? Do you favour:

- **Option one as set out by the Government, or option one with amendments.**
- **Option two as set out by the Government, or option two with amendments.**
- **A different option to resolve this issue.**

We consider it affordable as it should drive energy bill savings which will outweigh scheme costs. As these proposals overlap with other policy instruments such as DECs and ESOS, we would support work to review and rationalise these to reduce the cost and administrative burden on businesses.

27. Is the approach taken to define the energy associated with a base building rating, including the interpretation of additional services added by a tenant, suitable to achieve an accurate and fair base rating?

Where the tenant is contractually responsible for the energy bill (rather than paying for energy as part of a service charge) and lease an area above the scheme entry threshold, they should be required to report as a tenant. Where submeters are not in place, we support a conservative methodology to apportioning consumption (as proposed) as a means of incentivising sub-metering.

28. Is the approach taken to define the energy associated with a whole building rating suitable to achieve an accurate and fair rating?

Yes (though our preference here is that as much energy consumption as possible is reported on, whether allocated to tenant or landlord)

29. Do you support the Government's proposal for resolving boundary disputes? If so, are there any additional considerations or amendments you would make to the proposal? If not, do you consider that a different approach would be more effective?

Where the tenant is contractually responsible for the energy bill (rather than paying for energy as part of a service charge) and lease an area above the scheme entry threshold they should be required to report as a tenant.

30. At this stage the Government welcomes views on how to deal fairly with situations where metering arrangements in offices are not ideal, and how to incentivise upgrades in the metering arrangements where that is the case.

Where submeters are not in place, we support a conservative methodology to apportioning consumption (as proposed) as a means of incentivising sub-metering.

31. Which of the options above is your preferred option for addressing situations where offices are in buildings with non-office areas?

Our preferred option here is Option 3: Capture all energy data for the building but apply separate and appropriate benchmarks to the different areas

32. **The Government welcomes any additional feedback on the high-level technical considerations outlined in this chapter.**

We have set out our high-level views on how the proposals could have more impact at the beginning our response.