

RECAST OF THE ENERGY PERFORMANCE OF BUILDINGS DIRECTIVE - DRAFT RESPONSE TO CLG CONSULTATION FROM NATIONAL ENERGY SERVICES LTD.

1 ABOUT NATIONAL ENERGY SERVICES LTD

National Energy Services (NES) owns and operates both the NHER Accreditation Scheme and the SAVA Certification Scheme.

The NHER was the UK's first energy rating scheme, established in 1990. We provide software, training, accreditation, research and consultancy for organisations and individuals involved with improving the energy efficiency of buildings, particularly dwellings. The NHER Accreditation Scheme currently has over 2,500 members accredited to issue various types of Energy Performance Certificates (EPC) and Display Energy Certificates (DEC).

Through the SAVA Certification Scheme we provide software, training and accreditation for Home Inspectors offering both Home Condition Reports and the SAVA Home Condition Survey developed to provide an independent condition report for prospective buyers. SAVA has operated since 2000 and was the first approved Certification Scheme for Home Inspector; we currently have nearly 600 members.

This response has been prepared on the basis of comments provided by members of the NHER and SAVA schemes. All members were invited to comment on a draft response and this document takes into account the majority view expressed in the comments received.

2 TIMING AND SCOPE OF THE CONSULTATION

The Consultation invites comments on the UK position on the Commission's proposals for the recast of the Energy Performance in Buildings Directive (EPBD). The Commission's proposals were published in November 2008 and the Presidency has indicated that it wishes to conclude the recast by the end of 2009. We feel that this consultation on the UK position in respect of the Commission's proposals could and should have taken place far sooner.

Furthermore, the European Parliament approved extensive proposed amendments to the Commission's proposals in spring 2009. Member States have already commented on these amendments as being "unrealistic and overly-ambitious". However, we understand that approval of the recast requires tri-partite agreement between the Commission, the Parliament and the Member States. As such, the exclusion of information and opportunity to comment on the specific UK position on the Parliament's proposed amendments seriously undermines this consultation exercise.

3 RESPONSES TO CONSULTATION QUESTIONS

Q1: Do you agree that Member States should retain the ability to introduce incentives for the construction and renovation of buildings which do not comply with the proposed minimum energy performance requirements?

Response: No.

Comment: The proposals require that standards be set for both newbuild and refurbished buildings based on “cost optimal” levels of performance. Given the significance attached to the reduction of carbon emissions from buildings in the Government’s Low Carbon Transition Plan, undermining the Directive by allowing Member States to retain the option of actively incentivising the construction or refurbishment of buildings to energy efficiency standards which are less than cost optimal would be perverse.

The assertion that such flexibility may be required to support renovation to lower standards “to stimulate employment” is not substantiated by either evidence or example.

Q2: Do you agree that ... [Article 5] ... needs further consideration?

Response: Yes.

Comment: Without details of the proposed methodology it is inappropriate to seek any formal commitment to change from the methodologies currently in use by Member States. In the event that the Commission develops a methodology, Member States should be required to evaluate it against their existing methodology. Any proposal to standardise the methodology should only follow once the viability of doing so has been demonstrated.

However, we welcome the fact that any Commission proposed methodology would be based on published standards. This is in stark contrast to the “black box” approach currently adopted in the UK for SBEM and ORCALC and which has recently been proposed for SAP. The lack of transparency and multi-party scrutiny resulting from a closed approach is detrimental to the development of a competitive market offering software choice. It also constrains the development of knowledge and expertise across the industry in respect of the underpinning algorithms and therefore the potential implications for data collection and quality assurance.

Q3: Do you agree that alternative energy systems should be considered before construction starts?

Response: Yes.

Comment: Whilst we agree with the proposal, we have concerns about the approach outlined in the Impact Assessment. We believe that the proposal to spend £1m updating existing software (presumably SBEM and cSAP) for this purpose, together with the anticipated £1.5m to be spent upgrading the software to cope with the

strengthened requirement of Article 10 (para. 40 of the Impact Assessment) is inappropriate and potentially counterproductive. Whilst some specialist input may be needed to establish the principles for the more detailed assessments, we believe that the majority of the money would be more appropriately directed towards supporting the cost of existing assessors upgrading their skills to meet the strengthened requirements in the two Articles.

The presumption appears to be that a methodology for evaluating the suitability of all technologies can be expressed in a systematic manner suitable for encoding in software. It is doubtful that this is realistic without severely constraining the options considered. Furthermore, a rigid software approach is unlikely to be able to cope with the relatively rapid changes due to new products and changes in prices, as well as the evolving incentives regime.

Furthermore, the potential for cost-effectively adopting technologies such as district heating schemes, cannot be assessed on a single-building basis (which is all that the software allows). A CHP system may not be cost-effective for a medium sized office or commercial development when considered in isolation, but may be an ideal solution when taking account of the fact that it is located next to a school or leisure facility.

We believe that any approach that is defined sufficiently narrowly to enable it to be incorporated into software as an automated process, risks constraining the technologies considered and is likely to undermine rather than encourage the use of such technologies.

All energy assessments are carried out by qualified and accredited individuals, whose work is subject to quality monitoring and is formally recorded through the EPC and DEC registers. Furthermore, all accredited individuals are also subject to CPD requirements and utilise only Government approved software tools. This provides an ideal environment in which to implement the Directive proposal.

We believe that guidance on the principles to be followed in undertaking such an assessment need to be defined and that this should be adopted by accreditation schemes as part of the competence and QA requirements. The software approval could be extended to include a single page form specifying the various options that had been considered, which would act as a declaration for Building Control purposes.

Over time, individual schemes or technology providers may develop software tools to enable specific technologies to be assessed. If such tools are considered useful, the commercial market will inevitably deliver them without the Government having to pay for them. Moreover, they will be designed to support rather than replace professional judgement and ingenuity.

Q4: Do you agree that ... [Article 9] ... needs further consideration?

Response: Yes.

Comment: We believe that low or zero carbon standards for new and refurbished buildings, with the potential for including offset provision by offsite generation, is essential to achieving the overall carbon emission reduction goal.

However, we are not convinced of the argument for setting arbitrary targets for low or zero carbon buildings in absolute terms or as a percentage of the building stock. As the Government's own Low Carbon Transition Plan makes clear, all buildings will need to be effectively zero or low carbon in the near future if the overall carbon emission reduction goal is to be achieved.

The key issue is how that goal is best achieved. Focusing exclusively on the pursuit of low or zero carbon standards for individual buildings may result in sub-optimal strategies. For example, decarbonising the energy supply may prove to be far more cost-effective than extensively refurbishing the entire existing building stock.

It would be more appropriate to require Member States to set and report progress against targets for the total carbon emissions from buildings, within the context of a diminishing overall carbon budget.

Q5: Do you support widening the scope of the Directive so that DEC's must be displayed in buildings above 250m² which are occupied by public authorities?

Response: Yes.

Comment: We believe that the analysis of the cost effectiveness of extending the requirement for display of certificates to smaller buildings is based on the use of unrealistically high prices for provision of DEC and AR. More realistic assumed prices for both the initial DEC and AR and, particularly, for the annual renewal of the DEC, would dramatically change the assessment.

Q6: Do you support the proposal that property advertisements should include the building's energy performance indicator?

Response: Yes.

Comment: We believe that the proposed requirement needs to be strengthened in two ways.

Firstly, the wording needs to be sufficiently absolute as to preclude the selective interpretation that has arisen with the transposition of the existing Directive requirement for an EPC. The existing Directive was intended to ensure an EPC was available when marketing of a building for sale or let began. This has been widely abused in the UK, particularly in respect of non-dwellings where market research has indicated that 90% of buildings are being marketed for sale or let without an EPC. The UK Government needs to ensure that the wording of the recast Directive is

unambiguous and allows a national enforcement framework to operate such that a high level of compliance can be achieved at low regulatory cost.

Secondly, we believe that the effectiveness of this clause would be substantially improved if the requirement were extended to include both the energy performance indicator and the recommendations included in the EPC. The priority must be that the recommendations and ratings be included in full particulars, on-line and on all estate agency window displays. We believe that this requirement would prompt a useful proportion of vendors to install the recommended measures rather than see them included in the marketing materials, thereby enhancing the positive impact of the Directive.

Given the poor level of compliance with existing requirements for rental of existing dwellings - where non-compliance is estimated at 50% - and the appalling level of compliance for sale and rental of existing non-dwellings - where non-compliance has been observed to be higher than 80% - we strongly urge the UK Government to implement the proposed requirement at the earliest opportunity.

We believe that it is essential that the revised Regulations place a specific statutory liability on the agent or individual marketing the property, over and above the existing duty on the building owner. If the level of fine is set at an appropriately high level and the enforcement mechanism is simple enough, very high levels of compliance will be achieved at little or no regulatory cost.

We strongly urge the UK Government to begin work immediately on drafting revisions to the relevant Regulations and to undertake any necessary consultation, so that as soon as the recast comes into force, this element of the recast can be implemented straightaway. Without such action, implementation is unlikely before late 2011 and could even be as late as January 2013. Until then, the levels of compliance in key markets could quite possibly deteriorate further - particularly if changes were made to the HIP Regulations. Furthermore, reductions in energy waste and carbon emissions from buildings will inevitably suffer, compromising the Government's own legal targets.

Q7: Do you agree that for publicly visited buildings above 250m², an EPC should be displayed where it already exists?

Response: Yes.

Comment: Whilst supporting the proposed revision to the Directive, we do not support the selective interpretation of the Directive's requirements expressed in the Consultation.

The arguments over the relative merits of asset and operational ratings do not need to be repeated. However, having accepted the arguments in favour of an operational rating for display purposes in the public sector (in order to demonstrate the effectiveness of the occupiers energy management), it is incongruous to now revert to only requiring the original asset rating be displayed. The distinction between public and private sector is inappropriate and potentially counterproductive.

At the very least, such an approach will undermine the effectiveness of the display requirement, since the public will be exposed to two fundamentally different forms of certificate. This will inevitably result in confusion and reduce impact.

We recommend that the UK require that both public and private sector tenants buying or leasing buildings over 250m² and which are frequently visited by the public, be required to display the asset rating certificate (EPC) during their first year of occupancy. After the first year, the EPC should be supplemented with an operational rating certificate (DEC), which should be updated annually. The requirement for an AR should arise at the first renewal of the DEC (i.e. after two years occupancy).

Q8: Do you support improving the advice given in air-conditioning reports?

Response: Yes.

Comment: In order to improve the advice given in air-conditioning reports, it is essential that a more robust and comprehensive set of technical conventions be developed prescribing the inspection requirements and the formulation of the report. This must be regarded as a priority requirement with or without the recast of the Directive.

We further believe that the effectiveness of the air-conditioning reports can be significantly improved by requiring that reports be lodged, providing direct information on the number of certificates, the types of systems and the advice provided. Lodgement would also improve the scope for quality assurance.

Q9: Do you support the proposal that the Commission should evaluate the effectiveness of the Directive?

Response: Yes.

Comment: Whilst it is clearly important to monitor the effectiveness of the Directive, any evaluation can only be made once the criteria are defined. Currently, there are no explicit goals for the Directive, either in terms of consumer and industry awareness of energy ratings or in terms of energy and/or carbon emission savings.

In addition to the proposed scope for making proposals, the evaluation should also be explicitly required to assess and report on the manner in which the Directive has been transposed, resourced and enforced within individual Member States.

Q10: Do you agree that Member States shall provide information to building occupiers on improving energy efficiency?

Response: Yes.

Comment: No comment.

Q11: Do you agree that the Commission may modify thermal characteristics taken into account in the methodology?

Response: Yes.

Comment: We do not believe that the existing National Calculation Methodology fully complies with the proposed requirements of Annex I. Specifically, clause 3(f) requires that the assessment take account of “the design, positioning and orientation of the building, including outdoor climate”. Given the significant variation in climate across England and Wales and the impact of elevation and site exposure on energy use in individual buildings, we believe that the existing approach is non-compliant.

Development of the methodologies to take full account of these factors would be relatively straightforward whilst improving the accuracy of the EPC and the estimated impact of the recommended measures. The additional data collection requirements and any associated skills development would be minimal and could be delivered through existing CPD requirements.

Q12: Do you agree that the Commission should be assisted by a committee made up from representatives of the Member States?

Response: Yes.

Comment: We believe that it is essential that the committee is constituted from technical experts, with a remit to ensure that the methodologies underpinning the standards and the production of certificates and advice under the Directive are fit for purpose.

Q13: Do you agree that the proposed timetable is unrealistic?

Response: No.

Comment: As the Consultation and impact assessment make clear, the changes required to implement the proposals are minimal. As such, there is no justification for extending the implementation period. Progress on the implementation of the original Directive was driven by the implementation deadline; if the deadline had been later, implementation would also have slipped. There is no reason to anticipate that the same will not happen again, undermining the potential contribution of EPC and DEC to reducing energy waste and carbon emissions.

There are no technical or industry capacity issues to justify any delay in implementation.

As noted in our response to Q6, we support the earliest possible implementation of the requirement for inclusion of information from the EPC in all advertisements and other marketing material. Given the failure of the existing enforcement regime to achieve acceptable levels of compliance, it is inexcusable that there should be any delay in implementing this measure.

The EU Presidency has indicated that they expect the recast to be approved in December 2009 and to come into force in January 2010. The UK Government should be aiming to use the flexibility it provides to introduce the obligation on anyone marketing the building by no later than March 2010 – preferably sooner.

4 ADDITIONAL COMMENTS

In addition to the comments provided on the specific questions in the Consultation, the following issues have been raised as relevant to the effective implementation of the Directive in the UK.

VALIDITY PERIOD OF EPC

The current implementation of the Directive applies a variety of validity periods from a requirement for the annual update of DEC, to a maximum age of three years for dwelling marketed sales to the full ten years allowed under the Directive for non-dwelling EPC and rental dwellings.

We believe that the extended validity period allowed in some circumstances risks undermines the EPC. This is particularly apparent when significant changes are made to the underpinning calculation methodology, such as the change from SAP 2005 to SAP 2009 that will take place next year.

Over a full ten-year validity period, it can be anticipated that at least two potentially significant revisions will be made to the calculation methodology. There may be additional changes that arise due to changes in the relative costs of fuel and their relative carbon intensities. The effectiveness of the EPC to influence behaviour will be compromised if they cannot compare the EPC on a like for like basis.

One cause for concern is that the three-year validity period for EPC for dwelling marketed sales is enshrined in the HIP Regulations, rather than the EPC Regulations. Therefore if a change were made to the HIP Regulations, the validity period of the EPC for dwelling marketed sales would revert to ten years.

We believe that a three-year validity period would be appropriate for all dwelling EPC, whilst for non-dwellings a five-year validity period is appropriate for the asset rating EPC and the operational rating DEC should continue to be updated annually. The UK should seek the agreement of other Member States, the Commission and the Parliament to these validity periods being specified in the Directive. In the absence of such agreement, the UK should implement them directly in its own Regulations.

THE ROLE OF ENERGY ASSESSORS

There are concerns that the interpretation of the requirement for energy assessors to operate in an “independent” manner constrains the effectiveness of the role. Specifically, the current situation means that a DEA providing an EPC for a prospective landlord cannot be paid for supporting the landlord in identifying potential suppliers or coordinating the installation of the measures. However, if the landlord appoints a letting agent, they can offer the service, despite potentially having little or no knowledge or expertise of energy efficiency.

Given that all energy assessors are regulated through their membership of one of a number of independent accreditation schemes, it is surely more appropriate for them to be allowed to offer a service in a regulated manner, within a robust consumer protection framework. Given the relationship assessors have with the building owner, they could potentially significantly boost the take up of recommended measures.

The Government's proposals in the Heat and Energy Savings Strategy recognise the need for independent advice for homeowners on both physical and behavioural measures. It also recognises the need for support to enable the homeowner to access relevant grants and to identify, appoint and manage installers.

The same logic applies equally in the non-dwellings sector, where the scope for improvement is great but the barriers to the take up of measures are also very significant.

We believe that the UK Government needs to recognise that accredited energy assessors are ideally placed to support the ambitious goals that have been set for reducing energy waste and cutting carbon emissions from buildings. Rather than undermining the industry (as with the recent development of unaccredited Home Energy Advisors competent only to provide behavioural advice), the Government needs to work closely with the industry to identify how it can make the maximum contribution.

REGISTERS AND DATA ACCESS

There is a strong perception that the lack of registers for air-conditioning inspection certificates and for commercial EPC in Scotland contributes to non-compliance. The lack of a simple means of checking whether a building has an appropriate certificate just makes enforcement more difficult and encourages building owners to ignore the regulations. As such, the potential savings that would arise from the effective implementation of the Directive are lost.

The potential savings are further compromised by excessive restrictions on access to the EPC data. Clearly building owners – particularly vulnerable householders – should not be subjected to a barrage of salesmen with access to their names and contact details as a result of complying with their legal duty to acquire an EPC when marketing their building for sale or to let. However, the existing regulations are excessive and significantly undermine the potential for promoting the take-up of measures.

The existing constraints are a particular problem for local authorities, CERT obligation holders, EST and CT all of whom could improve their effectiveness if they had proper access to relevant data. Improved effectiveness will reduce waste and increase the take-up of measures – exactly what the Directive aims to achieve.

We believe that normal data protection provisions would provide a more appropriate framework. The proposed inclusion of the rating in advertisements puts key information in the public domain anyway. We suggest that all the anonymous (but property specific) data in the EPC should be accessible. A default “opt-in” backed up with a selective “opt-out” would provide a more appropriate balance between protecting individuals and improving the take-up of measures.