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Elmhurst Energy's draft response to:

Regulation of energy efficiency in
existing non-domestic buildings:
call for evidence

Prepared for: Scottish Government



1. Introduction

Elmhurst Energy are pleased that Scottish Government are seeking a call for evidence on 'the regulation of energy efficiency in existing non-domestic buildings' and as such we are delighted to respond to each question in turn.

The Call for Evidence asked 10 questions and we have answered them all below. We hope you find the responses considered and useful for taking Energy Efficient Scotland forward in a progressive manner.

2. Questions and Answers

1. Can you provide examples of existing regulatory frameworks which use any or a combination of these approaches?

There are several existing regulatory frameworks which use these approaches. Firstly in England and Wales, there is the Minimum Energy Efficiency Standards (MEES), which uses the minimum standard approach of an Energy Performance Certificate (EPC) E rating requirement in order for commercial buildings to be legally let. We have seen that by mandating a minimum rating the private rental sector has not only increased compliance with EPC regulations but also seen an improvement and investment in energy efficiency in buildings. We would highly recommend this type of approach. We do however recommend that Scotland adopts a similar approach to England in terms of EPC methodology. We have found that MEES has attracted attention within the finance sector and resulted confusion across borders. For example, we understand that a number of lenders apply this minimum EPC rating as a prerequisite for funding and attempt to apply this same minimum rating to landlords and building owners in Scotland. This does not work with the current difference in rating methods but highlights the impact of the approach with it being almost self-regulated by industry stakeholders rather than local authorities. Having a consistent and simple approach improves awareness and ease of adoption.

The operational ratings approach can be noted in the regulatory framework of Display Energy Certificates (DECs). This assessment produces a rating of the building based on energy usage for a previous 12 month period compared against operating hours and benchmarks of similar buildings. It is widely used with public sector buildings in England, Wales and Northern Ireland. It is also used when deferring improvements as part of the Section 63 regulations in Scotland. The benefits to this



assessment is that it is based on actual energy use and shows actual improvements to the energy consumption of the building. This method is heavily influenced by occupant behaviour rather than the energy efficiency of the building itself. Furthermore, the change to occupancy could result in a variety of different outcomes.

The improvement measures based approach can be seen in the existing Section 63 regulatory framework. Section 63 framework aims to require building owners to improve buildings that fail to meet the 2002 building standards. It provides a number of prescribed measures that can be implemented to meet the minimum stand. The framework also allows for alternative measures to be implemented if needed. This does allow for a flexible approach and ensures the use of qualified competent people that are assessing and advising building owners in how to effectively improve their buildings. The issues that currently occur are around how the process works. Section 63 is currently triggered on sale and rental. When selling the building we believe the framework falls down in that the person selling the building obtains an action plan of improvement measures that is then passed to the new owner. It seems that unless there is real work put into enforcement then there is little incentive for any party to take the measures forward.

In summary, Elmhurst have continually recommended a golden triangle approach to measuring the building. In essence, this is a combination of all of the above. An asset rating in the form of an EPC to identify the efficiency of the building assets. An occupancy assessment of the actual energy use of the building influenced by occupancy behaviours and finally a predicted energy assessment that combine the previous two methods to predict what the energy use of the building should be in the future. Each measurement method providing an output showing the "food label" type approach of metrics; energy, carbon and cost as the main points.

It is critical that we allowing stakeholders to choose the metric they wish to legislate against rather than concentrating on one. For example, the occupier may want to reduce their costs and government may wish to legislate for carbon reduction. Each should be available and it should be clear that they can impact each other.

Using standards such as PAS 2038 to approach this will improve the energy performance of buildings. PAS 2038 is effective as it engages the building stakeholders in the process of improving their building, specifically to helping them to get the improvements out of their building that they desire (such as lower energy bills). However, a flexible approach is required to ensure that building owners make sensible decisions alongside guidance from professional energy assessors to ensure they stick within regulations.

2. Can you provide quantitative evidence of the costs and effects driven by regulatory frameworks in the areas specified above?

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3. Can you provide examples of regulatory frameworks which you consider successful/ unsuccessful in their operation, and the factors responsible for this?

We believe that Minimum Energy Efficiency Standards (MEES) in England and Wales has been very successful. Please refer to answer in question one for further details of how MEES applies. We would highly recommend this type of approach. We do however recommend that Scotland adopts a similar approach to England in terms of EPC methodology. We have found that MEES has attracted attention within the finance sector and resulted confusion across borders. For example, we understand that a number of lenders apply this minimum EPC rating as a prerequisite for funding and attempt to apply this same minimum rating to landlords and building owners in Scotland. This does not work with the current difference in rating methods but highlights the impact of the approach with it being almost self-regulated by industry stakeholders rather than local authorities. Having a consistent and simple approach improves awareness and ease of adoption. This approach could be improved with better enforcement. We understand BEIS are working with local authorities to streamline the investigation and enforcement process. Incentives should be used to encourage early adopters. We have seen that the majority of landlords leave improvements to the last minute.

Please refer to the consultation referenced: "[The Non-domestic Private Rented Sector Minimum Energy Efficiency Standards - EPC B Future Trajectory Implementation](#)" published by BEIS in March 2021 which details some of the issues within the MEES regulation and how they propose to resolve them. It is critical that we learn from previous schemes and do not reinvent the wheel.

4. Can you provide evidence of regulatory frameworks which use these, or any other units, to identify or define buildings?

The regulatory frameworks that help to identify and define buildings are EPCs, DEC's & ESOS reports. Whilst all of these frameworks are successful in their own right in defining the energy efficiency of a building or business, they are currently somewhat isolated. In order to maximise the effectiveness of these frameworks, they should be used in conjunction with each other to improve the energy efficiency of a building. Please refer to our answer in question one.



5. Can you provide evidence of frameworks which have used these, or any other events, to trigger regulatory actions?

The requirement for an EPC is triggered when a building (or building part) is constructed, sold or let. Using the letting trigger of a building results in a call to action for landlords when applying regulations such as MEES. MEES has ensured improvements are made to improve the energy efficiency of buildings, as financial lending can be affected depending on the EPC rating of a building, thus driving compliance to regulations and improvements being carried out on buildings.

We believe there should be flexibility in the way measures are determined. Ensuring competency, qualified and accredited energy assessors are used. Further development of the PAS 2038 standards could be a vital part of ensuring a whole building approach.

6. Can you provide evidence of frameworks which use these, or any other categories, to vary the form of regulations?

There are several frameworks that use these categories to vary the form of regulations. For example, a DEC requirement for a public building is only triggered once the useful floor area of the building (or part of a building) exceeds 250m². ESOS assessments are also only triggered based on the number of employees a business has, as well as its turnover.

Whilst both of these frameworks are successful in improving energy efficiency of buildings, we feel that size should not be a trigger for energy assessments, as it does not encompass all commercial buildings nor address all of the factors that negatively impact their energy efficiency.

7. Can you provide evidence of how and to what extent regulations are varied by category?

There are several frameworks that use these categories to vary the form of regulations. For example, a DEC requirement for a public building is only triggered once the useful floor area of the building (or part of a building) exceeds 250m². ESOS assessments are also only triggered based on the number of employees a business has, as well as its turnover.

Air Conditioning Inspections are also only undertaken where a building has units with over 12kW effective output combined within the building.

Whilst these frameworks are successful in improving energy efficiency of buildings, we feel that size should not be a trigger for energy assessments, as it does not encompass all commercial buildings nor address all of the factors that negatively impact their energy efficiency.

8. Can you provide evidence of the use of exemptions within regulatory frameworks?

The PRS exemptions register is an example of the use of exemptions in the EPC framework. Building owners can register exemptions for their buildings for a variety of scenarios, on a building by building basis. However, with an exemptions register it is important to ensure that there is regulatory enforcement, which could be aided by the difficulty in securing lending against a poorly performing building that hasn't been registered as exempt. Exemptions should also be able to be registered by competent individuals (such as energy assessors) who are accountable and able to self-certify for the exemption that can then also be audited. We also feel that exemptions should be registered to a public facing database which should be reviewed regularly in line with changes in industry and prices.

9. Can you provide evidence of enforcement methods used to drive compliance within a regulatory framework?

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10. Can you provide evidence of measurements used by regulatory frameworks?

The EPC framework measures the energy performance of buildings, based on the constructions of the building and what heating and/ or cooling equipment there is present in the building. It is important that EPCs are used during the PAS2038 process, ensuring that the assets, occupation of the building and operational usage is accounted for when aiding building owners to develop a plan to improve the energy efficiency of their buildings. The PAS2038 approach will also take into consideration other factors of improving the energy performance of buildings, such as fuel poverty and comfort heating requirements.



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