

Insights

COP29 UPDATE – DECARBONISING THE BUILT ENVIRONMENT: THE CHALLENGES AND OPPORTUNITIES

Nov 20, 2024

SUMMARY

The decarbonisation of the built environment is likely to be on the UK Government's agenda as it looks to make good on its commitment at COP29 to cut carbon emissions by 81% from 1990s level by 2035. How will this be achieved? Will Minimum Energy Efficiency Standards play a part, will we see more green leases or more building accreditations and is the UN's Building Breakthrough initiative beginning to make a substantive difference?

Sir Keir Starmer's pledge at COP29 to cut carbon emissions by 81% from 1990s levels by 2035, in line with the Climate Change Committee's recommendations, will have focused minds inside Government as to how it achieves its green agenda. The Government is likely to focus on approaches such as decarbonising the power sector, expanding offshore wind and investing in carbon capture and storage projects.

It's also clear that one of the ways in which this can be achieved is through changes to the built environment, with estimates that buildings are responsible for almost 40% of global energy-related carbon emissions and 50% of all extracted materials.

The UN's Buildings Breakthrough Initiative, launched at COP28, aims to drive global impetus towards making near-zero emissions and climate resilient buildings "the new normal by 2030." The Initiative is supported by the [BuildingToCOP](#) coalition which brings together leaders from across the sector who are promoting the built environment's potential in accelerating the transition to a healthy, safe and resilient net zero future. The coalition's members are united by a single mission "to ensure that the built environment is at the forefront of international climate dialogues and secure its recognition in global decision making as an affordable, achievable, and essential solution."

There is however an acknowledgment across the sector that the built environment is not on track to reach these targets and that greater policy ambition is required. The [World Green Building Council](#),

itself a part of the BuildingToCOP coalition, is calling for more governments at COP29 to commit to the Buildings Breakthrough Initiative, as well as greater commitment in the following areas:

1. Enhanced ambition from parties with NDCs (Nationally Determined Contributions), with too few governments currently having come forward with 1.5°C aligned NDCs. This requires, they argue, integrating building codes and sub-national policies within NDCs, and the development of national decarbonisation roadmaps for the built environment.
2. Enabling action through climate finance, with parties taking into account the mitigation and adaption potential of the built environment in the new climate finance goal.
3. Integrating resilience and adaption into existing building sector policies and programmes.

COP29 has seen the launch of the global “Framework for Action: Harnessing sustainable and circular public procurement to drive demand for near-zero emissions and resilient buildings”, which is intended to complement initiatives such as the Buildings Breakthrough and will encourage governments to lead by example, positioning sustainable public procurement as a “catalyst” in achieving near-zero emissions.

MINIMUM ENERGY EFFICIENCY STANDARDS (“MEES”)

Meanwhile, the UK Government is working with industry groups to develop standards and best practices for decarbonising commercial and industrial buildings, collaborating with bodies such as the UK Green Building Council and the Carbon Trust. Of particular note is the [UK Net Zero Carbon Buildings Standard](#), launched in September 2024 with the pilot due to commence early in 2025. It aims to create a level playing field around net zero claims by offering a free-to-access technical standard with a set of consistent rules.

One of the primary ways the UK Government is likely to encourage a reduction in carbon emissions in the building sector is through an expansion of the Minimum Energy Efficiency Standards (“MEES”). Introduced under the Energy Efficiency (Private Rented Property) (England & Wales) Regulations 2015 (SI 2015/962) (the “**Regulations**”), these standards were phased in from 2016 with the intention of improving the energy efficiency of privately rented buildings in England & Wales.

The Regulations apply to non-domestic (aka commercial) and domestic properties and have been rolled out in stages. In the commercial space, since 1 April 2018, new lettings of properties have triggered a requirement for an Energy Performance Certificate (“**EPC**”) rating of E or higher. This requirement was extended to all existing (bar very short and very long) tenancies on 1 April 2023.

Properties that do not satisfy these Regulations are termed “sub-standard” and are required to undertake energy efficiency improvements, unless they qualify for one of the specified exceptions or

exemptions, which are set out in more detail in [MEES, the next chapter: plotting commercial real estate's route to net zero](#).

In its 2020 energy white paper “Powering our Net Zero Future”, the Government first suggested raising the minimum standard for commercial buildings to an EPC rating of B by 2030, with consultations on this both in 2019 and 2021. The 2021 consultation discussed proposals including an intermediate target of an EPC rating of C by 2027, and a requirement for all let buildings to have an EPC at all times creating a database that could more easily be scrutinised. However, there has been no formal response to the consultation results nor draft legislation to boot.

Bodies such as the British Property Federation, itself on the cusp of a huge change in its merger ambitions with the Investment Property Forum and Association of Real Estate Funds, have been calling for urgent action on this ever since, arguing that the industry needs detail on EPC targets and timelines, as well as clarity on the rules around exemptions and enforcement. They have suggested measures such as targeted financial incentives to aid the cost of retrofitting buildings, and encouraging it to become standard practice for energy consumption data to be shared between owners and occupiers.

Under the Labour government, the Department of Energy Security and Net Zero has acknowledged the need for action, promising it will publish a full response to the outstanding consultations in 2025. It has also committed to consult, by the end of this year, on raising the bar on domestic lettings to an EPC C (or equivalent – there is due to be an EPC consultation too) by 2030. Given that commercial MEES has tracked domestic MEES through the last decade, albeit on a time lag, a prediction that we will see an EPC rating of C by 2032/2033 for commercial buildings would be well founded.

GREEN LEASES & ACCREDITATIONS

Meanwhile, there are those in the market who have forged ahead with their own green agendas. Increasingly, we are seeing market leading standards such as BREEAM and NABERS UK being the benchmark for new, particularly office led, schemes, where a high EPC rating is a given. Green lease provisions go hand in hand with this – documenting expectations of both the landlord and tenant in the sustainability story of the building.

BCLP has been closely involved with the latest revision of the Better Building Partnership’s Green Lease Toolkit which has seen great traction in the market. Whilst it is easier with new stock and new leases, retrofitting older stock, where tenants may have the benefit of security of tenure, is a different challenge not acknowledged to date by the legislature or the courts. There has been a single Landlord & Tenant Act 1954 renewal case on green clauses – 2022’s *Thames Clipper Logistics v Scottish Equitable Plc* where the Sheffield County Court suggested that MEES concerns could be reasonably taken into account through consent mechanisms in the existing drafting rather than requiring explicit new green riders. However, County Court judgments are non-binding and now

that the Law Commission is [actively consulting](#) on the future of the 1954 Act – we could see security of tenure turned on its head or abandoned completely.

OPPORTUNITIES

Our [global real estate research conducted in 2023](#) revealed that 71% of investors expect a property with strong energy performance standards to have a higher resale value than an equivalent property with weak energy standards, and also that this 'green premium' reaches beyond resale value - encompassing increased occupier demand, reduced void periods, and higher-quality tenants.

Our research found that 98% of corporate tenants currently consider sustainability factors when making property rental decisions, with 79% of business leaders saying that the sustainability of a building will be the most important factor in the rental decision making process for their organisation by 2030.

This race to quality can be seen in many real estate markets not least in the UK, where in most sectors the gap between prime assets and the rest of the market is widening in terms of asset prices, rent and vacancy rates.

The Government's implementation of its green policies will undoubtedly be a challenge, particularly given the global political backdrop. However, there is a clear and urgent need for change. It will be interesting to see whether this change is brought about by new regulation, market forces or, most likely, a combination of both.

RELATED PRACTICE AREAS

- Real Estate
- Real Estate Sector
- Sustainable Real Estate
- ESG & Energy Transition

MEET THE TEAM



William Rowell

Co-Author, London

william.rowell@bclplaw.com

[+44 \(0\) 20 3400 3059](tel:+442034003059)



Victoria Duxbury

Co-Author, London

victoria.duxbury@bclplaw.com

[+44 \(0\) 20 3400 3190](tel:+442034003190)

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.