

Existing Homes Alliance response – June 2017 Scottish Government consultation on energy efficiency and condition standards in the private rented sector

Summary

The Existing Homes Alliance Scotland is a coalition of housing, environmental, fuel poverty and industry organisations calling for urgent action to transform Scotland's existing housing stock and make it fit for the 21st century. We welcome the opportunity to respond to this consultation.

Improving the energy performance of Scotland's existing homes presents massive opportunities – helping to eradicate fuel poverty and its associated mortality and health problems; stimulating green jobs and reducing greenhouse gas emissions. Similar regulation is in place for England and Wales, and experience from Scotland, Europe and North America show that minimum standards, when combined with incentives and financial support, work well to drive investment for warmer homes – with both landlords and tenants winners.

To realise these benefits, the Scottish Energy Efficiency Programme Scotland (SEEP) must be an ambitious programme for low-carbon refurbishment of Scotland's homes, including a package of measures – attractive finance; the provision of free advice and support; and the introduction of a minimum energy performance standard for all private homes. This consultation on standards for the private rented sector represents an important step towards realising this vision.

These regulations should be taken forward in the wider context of SEEP and the forthcoming Warm Homes Bill, which offers an opportunity to address any barriers there may be for taking forward energy efficiency improvements, thereby facilitating compliance with regulations.

Regulation is necessary, effective and popular

Shelter Scotland recently undertook research on behalf of the Existing Homes Alliance Scotland into the views of private rented sector tenants on regulation of energy efficiency. The research¹ shows that there is very strong support for regulation of energy efficiency in the private rented sector, with 85% of adults in Scotland and 92% of all PRS tenants in favour of regulation of energy efficiency in private rented properties.

The report also found that private tenants:

- Wish their home was more energy efficient
- Struggle to pay their fuel bills and keep their home warm

¹ Scottish Government consultation on energy efficiency: the views of private tenants, June 2017, Shelter Scotland

- Feel powerless to deal with issues of energy inefficiency in their home and fear retaliation or inaction from landlords if they ask for too much
- Are unable to 'vote with their feet' to choose energy efficient housing
- Support the introduction of the minimum energy efficiency standard.

In a recent report from Bright Blue², an independent think tank, a survey of conservative party voters found that “70% of Conservatives support a new rule that all homes being sold must first meet a minimum energy performance rating, with some exemptions, such as for listed buildings or fuel poor households; 80% of Conservatives support introducing new building regulations to ensure people having large home renovations also include measures to improve a home’s energy efficiency.”

We know that good landlords already ensure that the properties they let out are well-insulated and affordable to live in, with many private properties already meeting the same high standards we see in the best of owner-occupied or housing association properties. These landlords know that warmer, drier properties are less likely to suffer from damp and mould. The tenants are more content with the property, and so there is less likely to be a high turnover. It is unfair that these landlords have to compete with a small minority who are less concerned for their tenants' wellbeing.

We expect that few people would have to be regulated because the foreshadowing of regulation will drive a market transformation in energy upgrades. In Boulder, Colorado, where minimum standards were put in place for the private rented sector, compliance took place well in advance of the required date, levels of investment were unprecedented, and many landlords upgraded properties well beyond the standard.³ Regulation of energy performance in the existing stock is working well in the social sector, and is already making an impact in Sweden, Germany, Denmark, and in several states in the US.⁴ In France, the sale of F and G -rated homes will be banned from 2025, with tightening of standards towards an A or B rating by 2050.⁵

Our position

The Alliance, along with many key stakeholders, believe that the Scottish Housing Quality Standard (SHQS) and now the Energy Efficiency Standard for Social Housing (EESH) has shown that energy performance standards can cut fuel poverty and transform cold, damp houses into warm, dry homes. **A minimum standard should be set for both private rented and owner occupied homes so all can share these benefits.**

² *Green Conservatives? Understanding what conservatives think about the environment*, 2017, Bright Blue.

³ Boulder Colorado’s SmartRegs: Minimum Performance Standards for Residential Rental Housing, Lawrence Berkeley National Laboratory, March 2012 <http://emp.lbl.gov/sites/all/files/mi-policybrief-3-16-2012.pdf>

⁴ http://assets.wwf.org.uk/downloads/wwf_policy_update_raising_the_standard.pdf

<https://www.theccc.org.uk/wp-content/uploads/2016/10/Annex-3-Best-practice-in-residential-energy-efficiency-policy-Committee-on-Climate-Change-October-2016.pdf>

⁵ <http://www.ukace.org/wp-content/uploads/2016/09/ACE-RAP-report-2016-10-Buildings-and-the-5th-Carbon-Budget.pdf>

In our view, the regulations should focus on upgrading the worst-performing homes where fuel poverty is concentrated, **setting a *minimum standard* of 'D' band on the Energy Performance Certificate scale at the point of change of lease.** The regulations should provide a lead in period, allowing sufficient time to plan for the improvements and a backstop by which all PRS properties should comply.

Over time, the regulations should work towards parity with the social housing energy efficiency standard, reaching EPC C by 2030. This will establish a clear route map for upgrade, giving landlords and industry the confidence to plan ahead and invest for the future.

We recognise that regulations on their own will not eradicate fuel poverty, nor will they cut sufficient carbon emissions, but they provide a *minimum* standard and landlords should be encouraged to take the opportunity to go further if they can.

Summary of key points:

The scope of regulations should include all privately rented domestic properties, including agricultural tenancies and holiday lets.

Rationale:

- There is no justification for a double standard in the energy performance of domestic housing – all tenants should benefit from warm, dry, and affordable to heat homes.
- For agricultural tenancies, the application of modern standards to these tenancies must be done in such a way that both tenants and landlords are encouraged to take action, and that tenants are not financially disadvantaged.

**The standard should be set at EPC band D at change of lease from 2021.
All PRS properties should meet the EPC band D by 2024 (backstop date).**

Rationale:

- Cost savings: a staged approach, starting with E, is estimated to cost more overall due to repeat interventions.
- Less disruption: a staged approach could cause more disruption for tenants.
- Longer lead-in time: Our proposal provides a lead in time of four years from 2017. This allows more time to prepare the new assessment process, develop the supply chain, put enforcement procedures in place, provide advice and incentives to landlords, raise awareness of tenants, and for landlords to plan the upgrades.

**The standard should rise to EPC band C at change of lease from 2027.
All PRS properties should meet EPC band C by 2030 (backstop date).**

Rationale:

- It is important to set out a long term trajectory to allow owners to plan. This has been the message from social landlords based on their experience with ESSH which set out standards to 2020 (from 2015) and is only now, in 2017, looking further ahead.

- Higher standards need to be set going forward to meet the climate change targets and address fuel poverty
- Future PRS standards need to harmonise with those to be set for the social sector - EESSH 2.
- This regulatory standard will back up the Scottish Government’s policy objective to improve the energy performance of the entire private housing stock. The Alliance is calling for the Scottish Energy Efficiency Programme to have a *policy objective* of raising the standard of *all private housing* to EPC band C or above by 2025.

A significant programme of engagement and support should be developed for landlords, tenants and the supply chain. This should include consumer protection measures.

Rationale:

- The lead in period should be used to engage with landlords and tenants through Home Energy Scotland, landlords’ organisations, tenants’ organisations and other stakeholders to ensure that everyone can comply with the regulation, and there is little or no need for enforcement.
- Many landlords and tenants are not aware of the benefits of good energy performance – for the property and the occupant – nor do they know the most cost-effective ways to comply.
- Landlords vary from large portfolio holders to ‘accidental landlords’ with one property. A range of financial support should be made available to meet different circumstances and encourage early compliance (eg loans and cashback).
- The lead in period is important to develop the skills and capacity in the supply chain throughout Scotland, working with the industry. Consumer protection measures should also be developed as part of the overall SEEP programme.

Enforcement of the regulations needs to be credible and well-resourced.

Rationale

- If regulation is to be effective, landlords and tenants need to believe the regulation is robust and credible.
- The civil fines proposed are probably not high enough to deter those landlords who want to avoid compliance, nor to justify a council taking a landlord to court.
- The use of rent penalty notices should be explored as it protects the tenant and motivates action by the landlord.
- The repairing standard should also be used to enforce the standard. This is an established process which has recently been enhanced through the option of a third party referral.
- Reform of landlord registration is a priority, as this could be a route for enforcement of the standard, as well as serving wider interests in improving the quality of the PRS.
- Adequate resources must be provided to councils to undertake their new duties, including transitional funding to prepare the way and build capacity before the duties are in place.

Consultation questions

Scope

Question 1.1- Do you think that only tenancies covered by the repairing standard should have to meet minimum energy efficiency standards? Yes/no/don't know.

If not, what other privately rented tenancies do you think should be included?

No. We agree that the energy efficiency standard should apply to those tenancies covered by the repairing standard, but that the repairing standard should also apply to agricultural tenancies and holiday lets (part 2 of the consultation).

The Scottish Government proposes to apply the standard only to tenancies covered by the repairing standard because they wish to 'align' the energy efficiency standard with the repairing standard. In their view, this provides clarity for landlords and tenants, as there is already an awareness of what properties are covered by the repairing standard. However, the government does not propose to amend the repairing standard to include energy efficiency, so the repairing standard will not be the mechanism for enforcement.

We think this position is confusing for both landlords and tenants. We also think all possible routes for enforcement should be employed. We provide more detail on this point in our response to question 1.18.

We are very concerned about the energy performance of agricultural tenancies. As noted in the consultation document, 'there is evidence that housing standards in some agricultural tenancies are much lower than in the private rented sector.' It can also be difficult for agricultural tenants to ask for improvements as their work ties them to the property, giving them no possibility of seeking alternative accommodation. Tenants renting crofts are also constrained because of the shortage of affordable housing in rural areas. In short, they become trapped in substandard accommodation that can be bad for their health and expensive to heat.

In our view, there is no reason why a double standard should apply – with tenants in urban areas enjoying better living standards than those in rural areas, where energy costs are already higher. Simple improvements such as loft insulation, hot water tank jackets and draught-proofing can transform the living experience for tenants, and are very cost-effective – paying back in just 2-3 years. These improvements will also protect the property from damage caused by under-heating and damp.

We are aware that the legislation relating to agricultural tenancies is complex, and the application of modern standards to these tenancies must be done in such a way that both tenants and landlords are encouraged to take action, and that tenants are not financially disadvantaged. Please see our answer to question 2.23 for more detail.

Regarding holiday lets, there is no justification to exclude these properties from the repairing standard and an energy efficiency standard should also apply. Landlords should not be able to let properties that are cold and damp just as with any other condition standard. These properties sometimes move in and out of the rented sector, so it makes

sense to set a level playing field so landlords can't move rental properties to the holiday let sector to avoid standards. They also contribute to our overall housing emissions. Finally, energy efficient holiday lets can help promote new technologies and measures, helping to shift the 'norm' of what we expect for a 'good' property.

Question 1.2 - We propose to link the minimum energy efficiency standard to the energy performance certificate as we think this is the most suitable mechanism. Do you agree? Yes/no/don't know.

If you answered no:

(a) please explain why; and

(b) please set out your suggestions for how we could set the standard.

Yes, we agree the standard should be linked to the EPC for the following reasons:

- Landlords, tenants and householders are becoming more familiar with the EPC, and it is already used in the Tenant Information Packs, marketing materials, and required at change of tenancy.
- The A-G scale provides a simple understanding of the energy performance of the property as it compares with other properties in the UK that is readily accessible. A literature review from ClimateXChange⁶ found that members of the public thought the A-G scale was a 'key strength' of the EPC as it is 'easily understandable'. Research on awareness and understanding of EPC's in the UK and/or Scotland appears to be dated, and it would be useful to undertake new analysis to help inform the engagement and advice provided to support compliance.
- The EPC bands are already used for the energy efficiency standard in the social sector, so this would help with alignment and comparison between the two sectors.

We agree that it is important to continue to update and amend the assessment methodology that underpins the EPC to improve its accuracy and quality assurance procedures. We have provided more detail on how it could be improved in our response to the SEEP consultation.

Question 1.3 - (a) Do you think there are elements of the energy performance certificate assessment that would need to be altered to support a minimum energy efficiency standard? Yes/no/don't know.

(b) If so, what areas do you think would need to be changed and what evidence can you offer to support your view?

We agree that the EPC recommendations, on their own, are not sufficient to support compliance with minimum standards. The EPC recommendations provide 'initial advice', as stated in the consultation, and are not tailored to the particular property or how energy is used by the occupant(s). The proposals for a minimum standards assessment can help address these concerns.

⁶ Home Energy Efficiency Review, ClimateXChange
http://www.climateexchange.org.uk/files/6114/0628/6972/CXC_Brief_Home_Energy_Efficiency_Review_-_Full_Report.pdf

We note that there are fewer concerns with the EPC recommendations for the lower bands (E-G) where the recommended measures are relatively straightforward and very cost-effective.

Question 1.4 - Do you think that the minimum energy efficiency standard for private rented properties should be set at an energy efficiency rating of E in the first instance? Yes/no/don't know.

Please explain your answer.

No. We think the minimum energy efficiency standard for the PRS sector should be set at an **energy efficiency rating of D from the outset**, along with a sufficient lead in time. Thus, a minimum standard of D would **apply from 2021 at change of lease**, rather than having an initial requirement to meet E by 2019.

We believe this allows more than adequate lead in time, particularly given the fact the Scottish Government has had the powers to regulate private sector housing for energy performance since the passage of the Climate Change (Scotland) Act in 2009, and considerable research and a stakeholder working group to develop draft proposals for regulation which concluded in 2015.

We believe the standard of EPC band D should be set from the start because an initial stage at band E would:

- Have a relatively small impact – in terms of numbers (30,000) and improvement.
- Require local authorities to invest in enforcement procedures for a low number of properties (less than 1,000 dwellings affected in 19 out of 32 local authorities) as well as the limited impact on fuel poverty and carbon emissions.
- Could be more costly for landlords and more disruptive for tenants if improvements are done in two stages (see below for more detail).
- Not drive sufficient change to meet ambitious targets on fuel poverty and climate change.

The **cost advantages of setting the D standard from the outset** are considerable:

Cost savings

The consultation notes that “the least-cost package of measures in moving directly to a D may be different to the least-cost package of moving first to an E and then to a D.” By setting the standard at D from the outset, this reduces the risk of wasted investment, disruption and possible rent rises (should the landlord choose to increase the rent to recover costs) that might be involved in a staged process.

Assuming zero interest finance is available the extra costs of moving first to a D represents only a very small amount per month. For example an interest free loan of £1,800 paid pack over 5 years would work out as £30.00 per month (or £6.92 per week).

Engagement and support

While we believe it makes sense to set the EPC band D from 2021, we are concerned that this could mean a delay in action over the next four years. Therefore, we recommend that

the introduction of standards be accompanied by a significant engagement and support programme for landlords and tenants, involving relevant stakeholders in the PRS sector such as letting agents, tenants' organisations, etc.

This programme should include incentives and promotions to encourage and reward early adoption of the standard. We also recommend the SEEP programme should include milestones for progress in the PRS, including an objective for a certain percentage of the target stock to be upgraded *before* the compliance date to set the example for others.

Question 1.5 - Do you think that the minimum energy efficiency standard should first of all apply only to those properties where there is a change in tenancy, and after that to all private rented properties? Yes/no/don't know.

Yes, we agree that the standards should take a phased approach, applying first at the change of tenancy. This will allow landlords to take advantage of voids between tenancies to undertake any works. We agree that a backstop date should be applied after a period of 3 years to ensure all rental properties are brought up to standard.

Regulation of the PRS for energy performance has the broad support of the general public, of tenants, and many stakeholder organisations:

- Evidence from recent research by Shelter Scotland indicates that 85% of people in Scotland and 92% of all PRS tenants are in favour of regulation of energy efficiency in all private rented properties.
- When this consultation was launched, 14 organisations signed a letter to the Minister for Housing stating: "We believe energy efficiency regulation in the private rented sector will be a "golden opportunity" to improve tenants' lives – spelling an end to the suffering caused by the most draughty and expensive to heat homes." These organisations included the Existing Homes Alliance members along with Shelter Scotland, Age Scotland, National Insulation Association, National Union of Students Scotland, and the Royal College of Nursing Scotland.

The Shelter Scotland research also shows that just 5% of tenants feel that they had a very broad range of properties to choose from when looking for their current property. This indicates that tenants have little power when seeking a more energy efficient property in this sector and that they have little choice in the market. This suggests that the private rented sector is not functioning as a self-regulating market. The need for regulation is therefore clear in order to support a better functioning housing market as well as achieving better outcomes for tenants.

Question 1.6 - Do you think that 1 April 2019 is the right date to start applying the minimum standard of E when there is a change in tenancy? Yes/no/don't know.

No. As stated in our answer to question 1.4, **we think a minimum standard of D should be set with a start date of 1 April 2021, without an initial standard of E.** This gives a long lead-in time for:

- Landlords to plan for compliance.
- Local authorities to prepare enforcement and exception procedures.
- Scottish Government to develop the new assessment process, along with any training requirements for assessors.
- Supply chain to develop skills and qualifications.
- Tenants to be made aware of the standard.

The longer lead in period should also lead to fewer exceptions, as there will be more time to plan the upgrade.

Question 1.7 - Do you think that 31 March 2022 is the right date by which all privately rented properties would need to meet the minimum standard? Yes/no/don't know. Please explain your answers.

No, we propose a stopgap date of 31 March 2024 for all PRS properties to be at D or above. This provides more than enough time – seven years, assuming regulations are introduced in 2017 - for landlords to plan and invest in the required energy efficiency upgrades.

At the same time, every attempt should be made through the nationally funded advisory services (Home Energy Scotland), working in partnership with relevant stakeholders (eg letting agents, Scottish Association of Landlords, Shelter Scotland, local energy saving organisations, fuel poverty organisations) to encourage early compliance as noted in our response to question 1.4.

Question 1.8 - Where a property has an EPC of F or G at the point of rental:

(a) do you think that we should require the owner to carry out a minimum standards assessment before renting the property out? Yes/no/don't know.

(b) do you think that we should allow a period of six months from the date of the minimum standards assessment to carry out the improvement identified by the assessment? Yes/no/don't know.

(c) do you think that the owner should have to provide a post-improvement EPC to prove that the necessary improvements have been made? Yes/no/don't know.

Please explain your answers.

a) We support the proposal for a minimum standards assessment which would provide the least cost pathway to meet the minimum standard and the future standard. We think this should be extended to provide the pathway to an EPC band C. We think the assessment will be useful as it can be tailored to the property, includes more measures, and gives confidence to the landlord that if the measures are implemented, the property will comply with the standard.

It is proposed that the assessment will use the average costs for each measure based on the database that supports the EPC process. We know that these costs have a wide range and so the average may not give a good indication of the likely costs of the measures for the particular property. Given that the assessment is tailored to the property, we believe it

should be possible for it to give an estimated cost for that property instead of using the average costs.

b) Yes, we agree it is reasonable to allow six months from date of assessment for carrying out the works. If more time is required, for example, to get a loan approved or because of a shortage of contractors to complete the work, it should be a relatively simple process to seek an exception.

c) Requirement for a post-improvement EPC - yes. We believe this will provide the necessary independent verification that the property meets the standard. Also, it will be necessary for advertising the property, as it is already a requirement to include the EPC rating in any marketing materials. It also provides an up to date assessment to include in the Tenant Information Pack. However, we think it important to minimise bureaucracy and paperwork for all concerned, so perhaps the post-improvement EPC could be wrapped into the package for the minimum standards assessment. We would be interested to understand the ESSH experience on this topic.

Question 1.9 - We think that all privately rented properties should have to meet the minimum standard by 31 March 2022. Where a property does not have an EPC of E: (a) do you think that we should require the owner to carry out a minimum standards assessment by 30 September 2021 (the “backstop assessment” date)?

Yes/no/don't know.

In principle, we agree with the requirement to produce a minimum standards assessment six months prior to the backstop date.

(b) do you think that we should allow a period of six months from the backstop assessment date to carry out the improvement identified by the minimum standards assessment? Yes/no/don't know.

Yes – this is a practical proposal in case there is high demand for rental properties in the area, or to allow time for use of incentives, arranging contractors etc.

(c) do you think that the owner should have to provide a post-improvement EPC to prove that the necessary improvements have been made? Yes/no/don't know.

Please explain your answers.

Yes, but see our answer to question 1.8.

The assessment

Question 1.10 - We are proposing that there should be a new minimum standards assessment based on the EPC methodology that will tell an owner how to bring their property up to standard. Please tell us your views on the following elements of that proposal:

(a) that the assessment would use EPC methodology, since that is how we are proposing the standard is set;

Yes, we agree minimum standards assessment should be based on EPC methodology.

(b) that the assessment would work out the lowest cost technically appropriate package of measures to bring the property up to standard, based on the average of costs used in EPC methodology;

We agree the assessment should work out the least cost and technically appropriate package of measures, but we are concerned that the average costs used in EPC methodology could mistakenly give the impression of very high costs (or very low) for a property. It seems it should be possible for the assessment to give a better idea of costs (still an estimate) for the property as it is a more tailored assessment.

(c) that the assessment would set out the package of measures to meet an energy efficiency rating of E, and separately of D, from the property's current rating;

We think the assessment should give a package of measures to reach the initial standard (we propose D) and the next level of EPC band C. We think this will show how it may be more cost-efficient and practical to upgrade the property to the higher band in one step, rather than an incremental approach.

We think it would also be worthwhile for the assessment to include alternative, more expensive routes so that people are able to make a choice – just as you would with any other purchase. For example, some options might be more expensive but they could:

- Be installed more quickly and with less disruption.
- Make the property more desirable.
- Make economic sense if delivered across a portfolio of properties.
- Meet a particular niche market – eg eco-friendly.
- Encourage pioneering landlords to undertake deep retrofits that would be consistent with SEEP objective for zero carbon homes by 2050.

(d) that the assessment would include a calculation of the property's EPC rating before identifying the appropriate measures, where there is no EPC under the current version of the EPC methodology;

Yes.

e) that the assessment could include measures which are not currently in the EPC assessment, but which can be measured in the RdSAP methodology. If you agree with this proposal, please provide suggestions for what these measures might be, and what costs should be used for these;

Yes. This allows for a much more comprehensive and tailored approach for the property and landlord. As stated in the consultation, this would include connection to district heating, which forms an important part of SEEP's plans going forward to decarbonise the heat network.

(f) that the assessment would cost in the region of £120-£160.

Please explain your answers, and provide alternatives where applicable.

We cannot provide an estimate for costs, but agree it is important to keep the costs at a reasonable level to minimise the financial burden to the landlord. We think the estimated cost is reasonable. This is also why it will be advantageous for the assessment to provide the least cost route up to band C.

Question 1.11 - Do you think that the assessment should only recommend a package of measures which improves both the energy efficiency and environmental impact scores of the property? Yes/no/don't know.

Please explain your answer.

In principle we agree the assessment should only recommend a package of measures which improves both the energy efficiency and environmental impact scores of the property. As a key objective of the regulations and of the wider SEEP programme will be to reduce carbon emissions, it is important that the regulations support carbon reduction, and recognise the value of low carbon heating.

However, there should be allowance for exceptions to this requirement where the property has no fixed heating system. This would permit installing mains gas where there is a very high risk of fuel poverty even if this means a poorer environmental impact score. We note that there would only be a small number – 7% or 2,100 homes – where raising the level to E on the energy efficiency scale would have a negative impact on the environmental impact score, so it would be appropriate to treat these properties through the exceptions policy and design tailored solutions.

Where possible, the exception policy should encourage the installation of low carbon heat technologies where appropriate (eg heat pumps) instead of mains gas connections – as part of the overall transition to decarbonised heat.

While the assessment recommends options for package(s) of measures that will meet the standard, it should not specify which measures should be carried out. Ultimately the landlord should be able to choose. We also believe it is important that landlords should be free to carry out work that isn't specified in the assessment as long as the property meets the minimum (to be determined by the post work assessment).

Minimum standards assessor

Question 1.12 - We propose to develop a new role of minimum standards assessor.

(a) Do you think that a new role of a minimum standards assessor is needed?

Yes/no/don't know.

Yes. This could also be an additional qualification for an existing EPC assessor as opposed to a new role.

Training and standards for the qualification should be of a high standard given the role the assessment will play in guiding compliance with the regulation.

It will also be important to consider any risks that assessors could be influenced by incentives to recommend particular measures. This is another reason why the assessments should offer a range of options rather than specify a particular package.

(b) If so, what additional skills beyond those of an EPC assessor would be needed?

The minimum standards assessment will require a more comprehensive knowledge of possible measures, and an understanding of how different options for packages of measures could provide the most cost-effective package for the particular property.

(c) How long do you think it would take to get this in place?

As the minimum standards assessment is building on the existing EPC assessment, we think it should not take long to develop. A process should be established with the involvement of landlords, assessors, building professionals, and energy advisors (as set out in para 82) to establish the new assessment. The timetable for this process will require the readiness of the sector to develop a new training programme and time for people to go through training. This should be agreed with the sector, and provide ample opportunity to test the assessment prior to implementation of the standard.

It is important to learn lessons from recent efforts to provide training for letting agent regulation. In this case, it is proving unlikely that all relevant staff will have undergone the training before the Scottish Government's deadline – this is due to a lack of capacity rather than a lack of willingness to comply.

As noted earlier, we believe setting the standard at D at change of lease from 2021 allows sufficient time to develop an assessment procedure that is robust and qualified assessors are fully equipped to perform the role.

(d) Who do you think should maintain the register of assessors?

Please explain your answers.

We recommend the register of minimum standards assessors should sit alongside that of existing register of EPC assessors which is maintained by EST Scotland. This register is independent of industry which is important to give consumers confidence.

In addition to the register, we are interested in the monitoring of the register to ensure only qualified and competent assessors remain on the register. This should be part of the quality assurance procedures for assessors in terms of their suitability as the assessments will be used to support compliance with regulation.

This quality assurance aspect is critical to create and sustain consumer confidence in the minimum standards assessments, and more broadly energy efficiency and low carbon heat upgrades.

Question 1.13 - What are your views on the existing advice and information provision provided by Scottish Government for landlords and tenants? What changes, if any do you think are required?

Landlords

Over the last decade, the take up of advice and incentive schemes by landlords has been disappointing. This points to the need for regulation, as the voluntary approach is not working in all cases. It also suggests the need for a more targeted approach with both landlords and tenants to raise awareness of the benefits of energy efficiency, and the range of support that is available to them.

Para 89 in the consultation sets out the range of advice and financial support already available to landlords. The first step should be to evaluate the success of these schemes to better understand what works. This should be done in conjunction with landlords' organisations, letting agents, and contacts made through the advice services.

Tenants

In terms of engaging with tenants, Home Energy Scotland can learn from other advice providers for tenants to better understand where tenants go for what type of advice. Home Energy Scotland should build its partnerships with these and other relevant advice providers and support agencies to foster greater awareness of tenant rights and confidence in what can be expected in terms of the energy performance of their rented property. The Shelter pilot projects in Dundee and the Highlands supporting private landlords are relevant in this regard. The advice should include support on energy saving behaviours, and ensuring tenants understand how to use existing and new equipment such as heating controls, timers, and ventilation systems.

Consideration should be given to a mandatory requirement on landlords to ensure that tenants are provided with advice on home energy use, with pointers to official sources of further advice and information (such as Home Energy Scotland), and tailored towards the particular perspective and needs of tenants. The advice given to tenants should also explain, in clear language, the requirements of the new regulations and what they, as tenants, should have the right to expect, and the responsibilities of their landlords. This could form part of the Tenant Information Pack.

We are aware that Home Energy Scotland is developing its service for landlords to raise awareness during the lead in period to introduction of regulations. This should be extended to services for raising awareness of the regulation with tenants, and also of how to make the most of any improvements through the way they use energy in the home.

Extending services to agricultural tenancies and holiday lets

There should also be a targeted service for agricultural tenants and landlords, with advice and financial support designed for their specific circumstances. This should encourage voluntary action until agricultural tenancies are brought within the scope of the Repairing Standard. For example, provision should be made to ensure agricultural tenants are eligible for receiving loans and grants, and will be compensated by the landlord for any energy efficiency upgrades.

There should also be a targeted service for holiday lets, to make landlords aware of their responsibilities and any support and incentives available to them.

Consumer protection

It will be important to ensure a quality assurance system is in place for advice services and contractors, and landlords are made aware of this. It may also be possible to learn from the Renewables Installer Finder service on the EST Scotland website and develop it for more measures. See also our response to question 1.15.

Question 1.14 - What financial or fiscal incentives support - such as grant and loans, tax or otherwise - would you find most useful to help to accelerate the installation of energy efficiency measures and help landlords meet any proposed standards?

As noted above, the first step is to review and evaluate the range of advice and financial support already available to landlords.

Financial and fiscal incentives have three key roles 1) attract and engage the consumer; 2) enable the investment; and 3) support regulatory compliance. We believe SEEP should include a range of financial and fiscal incentives to reflect the different needs and interests of Scottish households, and that an important objective of the financial incentives should be to support early compliance with regulation. The Alliance produced a report, *Financing Scotland's Energy Efficiency Programme*⁷, which provides a useful discussion of different financial and fiscal incentives, and presents a model of how it could be supported by national and local governments.

For landlords, incentives should be used to encourage early compliance, and once the regulation is implemented, support should be shifted to facilitate and ease the use of private funds (eg helping to overcome any barriers such as lack of upfront capital funds through a low interest loan programme).

Financial incentives: These should include grants, low interest loans, equity release loans, and cashback offers. Grant schemes provide measures at zero or reduced cost and should be targeted at those most in need. Low cost loans would be subsidized by government (national and local) – using public sector funds to ‘buy down’ interest rates rather than fund full capital cost. These could include wider home improvement loans as part of a package of measures.

Some of these products are already on offer by Energy Saving Trust on behalf of the Scottish Government. Indeed, EST Scotland has several years of experience marketing and managing loan and incentive programmes on behalf of the Scottish Government. We strongly recommend that there is a review and evaluation of these programmes to inform the design of SEEP incentives for the future.

⁷ Financing Scotland's Energy Efficiency Programme, Marksman Consulting, 2016, Existing Homes Alliance Scotland.

In addition, the Scottish Government should continue to engage High Street lenders to offer preferential rates on their own products (loans and mortgages) in recognition of the value of energy efficient homes. There are particular opportunities now, with very low interest rates meaning that householders can already access relatively cheap finance. It may be possible to match 'cashback' offers from government with a private sector loan (as has been done in the past with scrappage schemes).

Another possibility is for mortgage offers to take into account the lower running costs of an energy efficient property when determining mortgage affordability. This idea is being researched by the UK Green Building Council.⁸

Fiscal incentives include tax credits, rebates, deductions, feed-in tariffs, or simply lower tax rates. For these incentives, the householder or landlord has to pay up front and then get monetary reward when the work is complete. These can be appealing to those who are not fuel poor and have the upfront capital, but need a sweetener to clinch the deal. These policies tend to be longer-term and provide stability for investment plans.

We understand that recent research from the Consumer Futures Unit (CFU) at Citizens Advice Scotland suggested that a new scheme of Council Tax discounts could be the most promising form of incentive for making energy efficiency upgrades. The Alliance looks forward to studying the report in detail.

Question 1.15 - What impact do you think the introduction of minimum standards would have on local supply chains for energy efficiency works?

We believe that regulation will have a positive impact on the supply chain – creating opportunities for new jobs and businesses. Regulation allows the Scottish Government to provide industry with long term certainty to support their investment and staffing plans. Regulation for minimum standards should be supported with policies, targets, multi-year delivery programmes and multi-year budgets.

The REEPS analysis provides information on the numbers of properties affected, types of properties, and how many are in each local authority area – all of which will help the industry to plan for the future.

While the total number of properties that will be affected by the proposed regulation is relatively small – a total of 95,000 – we believe regulation will drive a wider market transformation in how landlords, tenants and homeowners value energy efficiency. This is why we also support the introduction of standards for the owner occupied sector.

To support the growth in jobs, we have provided recommendations on a SEEP Skills Development Strategy in our response to the SEEP consultation. We also noted the Sustainable Energy Supply Chain Programme delivered by the Energy Saving Trust, which has helped support the supply chain in rural and remote areas over recent years and offers

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www.ukgbc.org/sites/default/files/The%20role%20of%20energy%20bill%20modelling%20in%20mortgage%20affordability%20calculations.pdf

useful insights.⁹ Local contractors believe there are two key needs: 1) long term certainty of government support and consistent policy; and 2) a skills development strategy including training, apprenticeships and work with schools and colleges to promote this area as an attractive career with good job prospects. We recommend the following:

- SEEP delivery programmes in all areas of Scotland should operate on a multi-year basis.
- Support should be provided for meeting accreditation requirements so small rural firms can and will compete.
- Mechanisms to ensure that contracts are awarded on the basis of understanding of the local context and best practice approach for the dwelling type, fabric and climatic conditions.
- The government should put in place a SEEP Skills Development Strategy. It is critical that the industry/supply chain is directly involved in the strategy development to ensure that it and any training schemes meet the needs of industry. For example, the National Insulation Association can provide a conduit for the insulation industry as we represent the vast majority of insulation companies and industry capacity in Scotland.

The government should work with CITB, Energy Skills Scotland, Skills Development Scotland, industry representatives and HES to develop and deliver bespoke training courses for companies wishing to undertake SEEP work. This would also build confidence in smaller companies with regard to bidding for SEEP work.

Question 1.16 - Do you think it would be helpful for assessors and installers to have a traditional buildings qualification that raises awareness and understanding of energy efficiency measures for older, traditional or vulnerable buildings built prior to 1919?

Yes/no/don't know.

Please explain your answer.

This qualification would be useful to provide the best information for traditional properties, and should be optional for minimum standards assessors. There may be other qualifications for such properties that should be considered, as well as the assessor's track record in working with such properties.

We do not think it should be obligatory to have the qualification as the assessor may not work with traditional buildings, which represent 20% of the housing stock. The Scottish Government should take steps to monitor the number of assessors with such qualifications and assess whether this number meets the demand from landlords in this type of property, and to ensure they are not charging an unfair premium for the assessments.

⁹ <http://www.energysavingtrust.org.uk/scotland/businesses-organisations/supply-chain/research>

Question 1.17 - Do you think there are additional consumer protection safeguards the Scottish Government should consider for the private rented sector? Yes/no/don't know. Please explain your answer.

There is a need for consumer protection measures as part of the SEEP programme, and these should apply to both the private rented and owner-occupied sectors, whether they are taking forward voluntary upgrades or complying with regulations.

Consumers in the private rented sector are both the landlord who commissions an assessment and any consequential fabric improvement; and tenants who have a contractual relationship with the landlord and who will be directly affected by any improvements.

Landlords need to be protected from unfair trading and poor quality installation and they need to be given confidence in the reliability of any central accreditation system for both installers and assessors. This is particularly important for rebuilding trust and confidence in the industry following problems experienced through Green Deal and lessons must be learnt from previous schemes.

It should be noted that consumer protection in the form of guarantees for insulation measures and the National Insulation Association code of professional practice, complaints and disciplinary procedures already exist and it is important that the best of these and other industry standards inform the consumer protection framework as opposed to introducing duplication.

The current capacity of local authorities in general, and Trading Standards Services across Scotland in particular, may not be substantial enough to adequately protect landlords given the scale of SEEP. Therefore consideration should be given to whether funding for additional capacity may be required.

Tenants need to understand their rights when a landlord undertakes fabric improvements to the property, including their rights in relation to:

- Requesting energy efficiency upgrades from their landlord, particularly before any backstop date.
- Vacating the property.
- Rent increases.
- Installations which are of poor quality.

Tenants and landlords should receive impartial advice and support from a trusted provider and that advice should be consistent, regardless of which advice provider they go to. At the same time, installation companies can play a part in providing advice, but there needs to be a standard approach, clear guidelines and rules on the delivery of advice by installers and other relevant 3rd parties to ensure the delivery of quality advice and avoid speculative door knocking and/or cold calling. One option could be an accredited advice provider scheme or industry bodies could develop guidelines in their codes of practice for members.

Finally, tenants and landlords should be informed about the safe operation of any newly installed heating system.

Question 1.18 - Do you think that local authorities should be responsible for enforcing the standard? Yes/no/don't know.

If not, why not, and what alternative would you suggest?

We agree that local authorities should play an important role in enforcement. Local authorities already have the powers to regulate the private rented sector, and this is an opportunity to consolidate and give greater profile to this role. Local authorities will require dedicated resource for this role, and more generally to support enforcement of housing legislation governing landlord registration and property repairs and improvements. Local authorities will need to work with other bodies such as:

- The tribunal system (as with the Repairing Standard).
- A national SEEP delivery body which could support enforcement, eg through setting common guidance, monitoring national registers.

Repairing Standard:

We understand that the consultation does not propose using the Repairing Standard as a route for enforcement because it is introducing regulation through Section 64 of the Climate Change Act. However, we think it would be worthwhile considering how the Repairing Standard could be used as an additional enforcement tool at a later date through amendment to the Housing (Scotland) Act. This could be done through the forthcoming Warm Homes Bill.

The process for enforcing the Repairing Standard has recently been amended, and is understood by landlords and tenants. We think this could be an effective mechanism for enforcement of the minimum energy efficiency regulations rather than introducing a separate process. In the case of non-compliance, the tribunal can issue an enforcement order for breach of standards. Non-compliance with the order is a criminal offence and the tribunal can also allow rent relief for tenant. This would be much more compelling than a fine.

In the meantime, third party reporting in case of breach of repairing standard can be used as a trigger to see if the energy efficiency standard has been met.

National SEEP Delivery Body:

In our response to the SEEP consultation, we recommended the establishment of an independent body with the remit for delivery of SEEP. The body would be charged with strategic oversight and delivery of any national programmes, though the majority of SEEP would still be designed and delivered at local level. The national body would report to Ministers and the Parliament against the SEEP strategic plan. It would also have a board with external stakeholders. The independent body and its remit should be set out in the forthcoming Warm Homes Bill.

This body could support enforcement by setting common guidelines to ensure consistent implementation of the regulations; supporting the monitoring of national registers of EPCs; and setting quality standards for the minimum standards assessment.

Rent penalty notices

We recommend the consideration of rent penalty notices as an enforcement route. The rent penalty notice prevents a landlord from charging rent to a tenant or a prospective tenant for a property while the rent penalty notice is in force. This has the advantage of protecting the tenant while incentivising the landlord to comply. These are known to work well and efficiently.

Landlord registration:

We also recommend that the landlord registration system should be amended to include information on the property and evidence that it meets required standards. In essence, we think to be considered 'fit and proper'; the landlord should be meeting all legally required standards. We understand that this will have to form part of a wider reform of landlord registration, which is needed for a variety of other reasons.

However, safeguards will be needed for tenants as the removal of landlord registration could force tenants to find somewhere else to live when there are few properties available.

Marketing of property

There is already a requirement to display the EPC banding in any materials advertising the property. This requirement should be extended to include information on if the property is compliant with the regulations or not.

As part of this requirement, it may be appropriate for the minimum assessment to get a number when registered (EPCs already have this) which would have to be provided when advertising the property. The letting agent registration number already has to be included in advertisements allowing tenants to check that the prospective landlord is registered, so this could be a similar system for energy efficiency assessments.

Letting Agents – code of practice

A new code of practice has been established for letting agents, which all letting agents will be legally obliged to follow as of 31st January 2018. The code of practice states in section 31: "If you know that a client is not meeting their legal obligations as a landlord and is refusing or unreasonably delaying complying with the law, you must not act on their behalf. In these circumstances, you must inform the appropriate authorities, such as the local authority, that the landlord is failing to meet their obligations."¹⁰ This should include any energy efficiency requirement on landlords.

¹⁰ <http://www.legislation.gov.uk/ssi/2016/133/schedule/made>

Tenant Information Pack

The recently established Tenant Information Pack must include the EPC rating for the property. As with the marketing materials, we recommend this also state whether or not the property is compliant with the regulations on minimum energy efficiency standards.

Question 1.19 - Do you think that the penalty for not complying with the standard should be a civil fine against the owner? Yes/no/don't know.

If not, why not, and what alternative would you suggest?

As noted above, we think there are other enforcement routes that would be more effective, particularly the rent penalty notices. Rent penalty notices benefit the tenant while incentivising the landlord to take action.

We are concerned that the civil fine will not necessarily lead to compliance if the landlord opts to pay a one-off fine to avoid having to upgrade the property. Therefore, the fine must be accompanied by additional enforcement mechanisms if the improvements are not made.

Question 1.20 - We have proposed the following fines:

- **£500 for failing to have a minimum standards assessment**
- **£1000 for failing to carry out the works within six months of the assessment.**

Do you think these proposed fines are appropriate and proportionate? Yes/no/don't know.

Please explain your answer.

It appears the level of fines have been chosen to align with fines for not having an EPC and for not complying with the Repairing Standard.

While these levels would be uncontroversial, it would make sense to do some analysis first to make sure the fines will achieve their purpose of supporting compliance:

- Is the level of fine sufficient to deter non-compliance? Some works may cost more than £1000, particularly as the standard rises over time. This means it could be cheaper to pay the fine than upgrade the property.
- Do these fines work in the case of compliance with EPCs and the Repairing Standard? What is the experience to date?
- What happens after the fine is paid? The flowchart 5 indicates that there is no further action. Should the landlord be removed from landlord registration? Not allowed to rent that property? Put in place a rent penalty notice?
- Does the level of fine need to cover the costs of enforcement?

Our view is that the fines should be set at a level that incentivises compliance and encourages fabric improvements and mean that it is in the owner's best (financial) interests to comply with the standard. We think the fines proposed are too low to meet this test.

We note that the fines set for the regulations in England and Wales are higher: “equivalent to 10% of the property’s rateable value, subject to a minimum penalty of £5,000 and a maximum of £50,000. After three months, the penalty rises to 20% of the rateable value, with a minimum penalty of £10,000 and a maximum of £150,000. Where a property is let in breach of the MEES Regulations or where a penalty is imposed, the lease as between the landlord and the tenant remains valid and in force.”¹¹

**Question 1.21 - We have proposed some specific situations where owners should have longer than six months to bring their properties up to the minimum standard. Do you have any comments on these proposed situations in relation to:
(a) the proposed reasons?**

The first two reasons set out in para 100 are reasonable (tenant refuses permission, delay to take part in SEEP scheme), but there must be a system in place to ensure a sensible deadline is set and adhered to and upgrades take place (as per para 101).

The lack of capacity in workforce does not seem a reasonable excuse, given the long lead in time for standards coming into force, and the simple measures that will be needed to reach the minimum standard.

However, we acknowledge there may be limited capacity in rural areas and/or for addressing hard to treat properties (including, but not limited to traditional buildings). These issues should be overcome by the long lead in time and a SEEP Programme which includes a skills development strategy and is designed to maximise the creation of local jobs.

Nevertheless, there may need to be some exceptions allowing some delay for landlords whose properties require specific skills or products which are in short supply.

(b) what evidence you think the landlord would need to provide for each?

The landlord would need to show evidence demonstrating:

- The local authority planned (firm) area-based scheme that would include the property and his/her commitment to participate.
- Delays/measures recommended by SNH or other authority needed to protect wildlife and how improvements will be made and when.
- That the tenant has refused permission, and measures taken to overcome this situation.
- The lack of required skills or products.

In all cases, the landlord should provide detailed information on how the issue will be overcome so a reasonable timetable for the upgrade can be agreed.

¹¹ <https://www.burges-salmon.com/news-and-insight/legal-updates/a-guide-to-the-minimum-energy-efficiency-standard-for-commercial-buildings/>

(c) should there be other situations, such as the completion of condition works?

No, we think the lead-in period is sufficient to allow for the planning and completion of condition works as well as the energy efficiency measures. This will be an important aspect to raise with landlords during the lead in period.

One exception could be if, when undertaking energy efficiency measures, unforeseen condition problems were found and must be addressed – for example if dry rot or roof leaks were found when installing loft insulation. Evidence would need to be provided to the local authority, and a new deadline agreed.

Question 1.22 - We have proposed some situations where we think owners should not be penalised for not carrying out the full improvement identified by the minimum standards assessment. Do you have any comments on these in relation to:

(a) technical reasons

We agree there should be some situations where landlords should not be expected to meet the minimum standard, but the principle should be that all properties are improved. Therefore, we welcome the proposals for exceptions – allowing for some relaxation of the standard or a delay in meeting the standard rather than exemptions. However, as this is a minimum standard which can be met with simple and cost-effective measures, we would expect these exceptions to be very small in number and that the property is upgraded as far as possible within those constraints.

In terms of technical reasons, the presence of bats is provided as an example in the consultation document. Guidance from the Bat Conservation Trust¹² does not say that loft insulation cannot be installed, but rather talks about timing of installation and types of insulation that should be used. Therefore, this seems to be more an issue of timing rather than a change in the standard.

(b) legal reasons

We agree there may be legal reasons why the landlord is not permitted to undertake the works required to meet the standard. However, we would expect this to be a minor issue as the measures required to meet the minimum standard are likely to be simple measures that would not affect the appearance of the property or require the permission from other owners. However, this will not necessarily be the case as standards rise over time.

The Scottish Government should work with Historic Environment Scotland and local authority planning departments to minimise any listed building consents related to energy improvement works. It is also necessary to work with local authority planning departments that are often lagging behind the latest guidance from Historic Environment Scotland.

We recommend a review is taken of barriers to energy improvement works from planning and listed building consents and how they can be removed, perhaps using the opportunity

¹² http://www.bats.org.uk/data/files/BatsandBuildings_2012.pdf

of the Warm Homes Bill to make any changes to legislation. As well as exploring potential barriers in older buildings, the review should also examine any barriers to meeting minimum standards in rural and remote rural areas. This is an important exercise for the entire SEEP programme, not just related to compliance with minimum standards.

(c) excessive cost reasons

We agree that there is a need for a cap on the costs that owners should be expected to pay to ensure that the regulations do not put an undue burden on landlords – we have provided our views on the proposed cap in our response to question 1.27.

In all cases the upgrade should be taken as far as possible within the cost cap even if doesn't get up to minimum standard.

(d) the proposal that this would remain valid for a period of not more than 5 years?

We agree the exception should be valid for not more than five years and a new assessment required at that time.

Question 1.23 - For local authorities to be able to enforce and monitor the proposed minimum standards:

(a) what processes do you think local authorities will need to have in place for

(i) normal compliance

(ii) monitoring extended periods for compliance

(iii) monitoring situations where not all of the improvements are made?

Representatives of local authorities, working with Scottish Government, should develop standardised processes and national databases to be used wherever possible. We have suggested that a national SEEP delivery body could help here, saving time and resources for local authorities as it will avoid having to develop processes and databases from scratch in each of Scotland's 32 local authorities. A common approach will also ensure that landlords who have properties in more than one area of Scotland are guaranteed a consistent approach in exceptions, enforcement, etc. National databases can also help target enforcement activity.

We think it would be useful to set out a table of what information is needed, alongside what mechanism(s) are available to obtain that information. There should also be an assessment of resources needed to deploy/access that mechanism. The following table is a start in this direction, but would best be prepared by local authority representatives.

Information needed	Mechanism to obtain information
Normal compliance	
What properties are affected by the regulation	Landlord registration EPC register
When a tenancy changes hands/stop gap date	Council tax records
	Trading standards – advertising of property
	Enforcement of repairing standard

	Tenant complaint
	Letting agent notification
	Third party notification
Extended period of compliance	
Evidence for delay.	EPC register – agree para 108 proposal for field to show if property is compliant and date for review. Need trigger to take action when review date or deadline for compliance has passed.
Exceptions	
Evidence for exception.	EPC register

(b) what implications would this have for local authorities?

We have already noted our concerns that local authorities do not have the capacity to undertake the enforcement role, nor the mechanisms for monitoring and enforcement.

We believe these problems can be overcome by:

- Resourcing local authorities to fulfil an engagement, monitoring and enforcement role in relation to the regulations.
- Creating a national SEEP delivery body which could support this role through the creation and maintenance of guidance, databases, monitoring and reporting. This would be a more efficient use of time and resources because there are likely to be relatively few non-compliant properties per local authority area.
- Using additional enforcement routes as suggested previously. Note that local authority existing enforcement powers relate to the repairing standard and discretionary powers to cover the cost of a missing share where the majority of owners want to carry out work but one can't or won't pay. This latter power would only come into play for bigger pieces of work that require upgrade to communal areas and agreement from other owners.

We want to reiterate that it is critical that enforcement roles are adequately resourced or the regulations risk being ineffective and losing credibility amongst landlords and tenants. We are concerned that local authorities are unlikely to make use of these powers on a routine basis as it requires cash up front which can be difficult to recover.

Question 1.24 - What opportunities do you think there are to combine enforcement of minimum energy efficiency standards with other action in the private rented sector? Please explain your answers.

We think minimum energy efficiency standards could be used as an opportunity for local authorities to be more proactive in raising standards in the private rented sector. Of course, this depends on capacity and resources being made available. The information is at hand through the EPC register, and other mechanisms such as Landlord Registration could be made more meaningful. Local authorities could work with landlord associations, letting agents and stakeholder groups such as Shelter to encourage early compliance.

We agree that the costs for condition repairs should not be included in the cost cap as they are already required under the Repairing Standard. However, consideration should be given as to how these costs could be included in financial support mechanisms (eg loans). This is being trialled through the equity loan scheme at present.

Question 1.25 - Do you think that we should set out now the minimum energy efficiency standard after 2022? Yes/no/don't know.

Please explain your answer.

Yes, the minimum energy efficiency standard should be **raised to band C at change of lease at 2027 and for all private rented sector properties by 2030.**

It is important to set out a long term trajectory to allow landlords to plan and the supply chain to develop. There has been a similar message from social landlords based on their experience with EESSH which set out standards to 2020 (from 2015) and is only now, in 2017, looking further ahead.

Therefore, higher standards need to be set going forward to meet the climate change targets and address fuel poverty, and that future PRS standards need to harmonise with those to be set for EESSH 2.

Given the expectations set out in the Climate Change Plan, we think a minimum standard of all PRS properties at EPC C by 2030 is reasonable. This gives adequate time to take account of low carbon heating solutions as they evolve over the next 5 years, as well as encouraging some to undertake deep retrofits now.

Finally, as noted in our argument for setting the standard at band D at the outset of the regulations, landlords need to understand what future standards will look like in order to plan the most cost effective and least disruptive route to comply with the regulations.

Question 1.26 - Do you think that the next standard should be to meet an EPC of D at point of rental from 1 April 2022, and in all privately rented properties by 31 March 2025? Yes/no/don't know.

Please explain your answer.

As noted in previous answers, we support the minimum standard should be set at EPC D at change of lease from 1 April 2021 from the outset, without an interim standard of E.

Question 1.27 - When increasing the standard to EPC D, we propose that the cost cap will be £5000 for properties with an EPC of E, and £10,000 for properties with an EPC of F or G (which would include any spend made to improve the property previously following a minimum standards assessment). Please tell us your views about this proposed cap.

What should the cap include?

The cap should pertain to what the landlord is expected to pay and not include any funding (eg grants) provided. As part of SEEP, financial support and incentives may be available, and

it should be a requirement for landlords to inquire with Home Energy Scotland about any support (national and local) that may be available to help with compliance.

The cap should include the cost of the measures identified by the assessment and the cost of the assessment but not of gaining planning permission or any incidental work.

What level of cost cap?

As noted in previous questions, we recommend the minimum standard should be set at EPC band D at the outset. We agree with the consultation's proposal that for properties with an EPC of E a cost cap £5,000 to bring them up to a D is appropriate and that for properties with an EPC of F or G (which would include any spend made to improve the property previously following a minimum standards assessment) a cost cap of £10,000 to bring them up to a D is appropriate.

The consultation's modelling suggests that approximately 6% of properties currently rated EPC bands E, F, or G would cost more than the proposed cap to upgrade. We recommend that the Scottish Government consider providing the additional finance required to top up the landlords' investment up to the cap to help these properties meet the standards that the rest of the housing stock will enjoy. This will ensure tenants' benefit from warm and dry homes, and that efforts to eliminate poor energy performance as a driver of fuel poverty are successful.

Question 1.28 - What are your views on the provisions in general for exceptions to the D standard, including that a property which has an exception from meeting E should not automatically be excepted from meeting D?

Yes, we agree that properties with an exception from meeting E should not automatically have an exception from meeting D, as the package of measures will be different. It is also reasonable to expect that the owner would have taken action to overcome the reasons for the exception during that period before the band D standard came into place.

Question 1.29 - What do you think the main benefits would be of introducing a minimum standard higher than D?

As noted in question 1.25, we think a longer term trajectory will:

- Provide landlords with the certainty to plan and invest in their properties.
- Create the big scale retrofit opportunities the market requires to provide energy upgrades at attractive prices.
- Save money and disruption to tenants by avoiding repeat interventions.
- Help local authorities and the SEEP programme to plan its support for landlords to comply with regulation through participation in area-based schemes involving energy efficiency and heat.
- Gradually bring private sector housing in line with social housing standards.
- Make a bigger impact on efforts to eliminate poor energy performance as a cause of fuel poverty and reduce climate emissions.

Question 1.30 - We think that any increase in the standard beyond D would bring new challenges in the form of cost, technical considerations and alignment with the Climate Change Plan.

(a) Are there other new challenges you are aware of?

Given that the Climate Change Plan sets out a target for 75% reduction in emissions from the housing sector, and 80% of homes heated by low carbon heating technologies, we think that an increase in the regulatory standard beyond D will be necessary to achieve this goal. We also think it is necessary to help eradicate fuel poverty, and thus welcome the consultation document's support for the Scottish Fuel Poverty Strategic Working Group's "aspiration to eliminate poor energy performance of a property as a driver of fuel poverty." (para 128).

We agree that there are some uncertainties regarding decarbonisation of the heat supply (para 131), which is why we have recommended the backstop standard beyond D to be set for 2030, which allows time for a clearer understanding of the best improvements for low carbon heating measures.

We think the following steps could be put in place to give sufficient confidence in setting a standard beyond EPC band D:

1) We agree the trajectory of standards needs to be designed in such a way that owners are given a clear route map for improvements that will be required to their property over time. The route map will need to be updated as new technologies come on stream, but the destination will not change in terms of the climate change and fuel poverty targets. For example, SEEP could promote the use of Building Passports¹³ which provide a tailored pathway for deep renovation in existing homes.

2) The Scottish Government could do more to remove current uncertainties about the future heat energy mix by giving indicative milestones (eg at 2020, 2025 and 2030) for the likely mix of heat pumps (household and larger scale), district and communal heating, biomass, and electric heat. We have also recommended in our response to the SEEP consultation that much more effort should be made on fabric efficiency measures to reduce heat demand.

3) The Scottish Government should continue to work with the UK process to improve the methodology and assessment process that underpins EPCs. This should narrow the gap between EPC projections for energy use and what a building consumes in reality. This would include amendments to recognise the value of low carbon heating. The likely changes for SAP 2016 are a step in this direction. The minimum standards assessment proposed in this consultation is also an example of how the EPC process can be adapted to meet the needs of regulation.

4) The standard beyond EPC D should be set, but a review process should be undertaken in 2021, the date from which EPC band D applies (ExHA recommendation), to fine tune the

¹³ <http://bpie.eu/publication/renovation-passports/>

detail on the standard based on the latest information on technologies and assessment methods.

(b) How do you think we could address these challenges if we raised the minimum standard beyond energy efficiency rating of D?

Please explain your answers.

Please see answer to (a).

Question 1.31 - Please tell us about any potential economic or regulatory impacts, either positive or negative, that you feel the legislative proposals in Part 1 of this consultation document may have, particularly on businesses (including landlords).

Positive impacts on landlords:

- Increase the value of the property.
- Reduce problems of mould and damp from under-heating.
- Reduce turnover and voids as tenants satisfied with the property.
- Enhance reputation of the private rented sector.
- Bring the private sector in line with standards in the social sector - everyone has a right to a home that is affordable to heat.

Positive wider impacts:

- Create and sustain jobs in the local economy, all over Scotland.
- Reduce fuel poverty, improving health and well-being of tenants.
- Improve quality of private rented properties more generally (as enforcement can also be linked with enforcement of the repairing standard and other regulatory requirements on the PRS).
- Reduce climate emissions.
- Lever private investment into upgrading Scotland’s housing stock.

The BRIA provides strong evidence of the wider impacts: over a 40 year horizon just the fuel bill savings of an EPC band E standard provide an average net benefit of £5,200 or £155m in total (present value terms). This does not take into account the other ‘co-benefits’ listed above.

The regulation and implementation plans should be designed to remove or minimise negative impacts – see table below.

Landlords Potential negative impacts	How to minimise, overcome
Split benefit – landlord does not benefit from energy savings	There may be rent increases to reflect the increased value of the property. However, we believe such increases should not exceed the projected savings in fuel bills or the impact of

	<p>the regulation on alleviating fuel poverty would be negated.</p> <p>We recommend that if a landlord has received significant public support to meet the standard, there should not be an increase in the rent. This is similar to the policy used in the Empty Homes initiative.</p> <p>We recommend that the Scottish Government monitor rental rates in the PRS to ensure that they are not increasing excessively as a result of minimum standards and that any increases are not outweighing the benefits to tenants.</p>
	Value of property increased.
	Advice, incentives and loans available through SEEP programme should allow for easy compliance at no up- front cost.
Properties taken off rental market to avoid regulation.	Regulation should apply to holiday lets and owner occupiers to provide a level playing field.
	Work with Empty Homes Partnership to engage with landlords who might otherwise take properties off the market and allow them to go into disrepair.

Question 1.32 - In relation to the interim Equality Impact Assessment, please tell us about any potential impacts, either positive or negative, that you feel the proposals in Part 1 of this consultation document may have on any groups of people with protected characteristics. We would particularly welcome comments from representative organisations and charities that work with groups of people with protected characteristics.

We believe the regulations will have a positive impact on groups of people with protected characteristics. The regulations will improve the comfort and warmth of people’s homes, and make them more affordable to heat. This will have particular benefits for people on low incomes, older people and people who are vulnerable due to illness, disability or caring responsibilities. Warm, dry homes are also healthier homes, therefore regulation will not only reduce harm associated with high costs of heating, but will improve people’s health

The regulations suggest local authorities should be pro-active in enforcement – identifying properties that are non-compliant and working with the owners to achieve the necessary standard. As noted earlier in this response, this will require additional resource for local authorities and other organisations supporting tenants. This is particularly important given the new opportunity for a third party acting on behalf of the tenant, to raise concerns about non-compliance.

Question 1.33 - To help inform the development of the Child Rights and Wellbeing Impact Assessment, please tell us about any potential impacts, either positive or negative, that you feel the proposals in Part 1 of this consultation document may have on children’s rights and welfare. We would particularly welcome comments from groups or charities that work with young people.

There is useful information in the Scottish Fuel Poverty Strategic Working Group report regarding the health and well-being impacts of cold and draughty homes that these regulations will help to address (excerpt from p 22 of the report):

“We know that people who live in the coldest homes are three times more likely to die from cold related illnesses. Health data shows us that living in cold housing is associated with a range of ill effects from poor infant weight gain, to more frequent and severe asthmatic symptoms, and increased depression and anxiety. Small children, people with disability and frail older people are those most at risk.

Beyond physical health effects, recent longitudinal evidence from Scotland is also beginning to show how fuel poverty is a major contributor to household financial difficulties that impact on mental health and wellbeing.”¹⁴

Question 1.34 - Do you have any suggestions for the monitoring and review framework?

We strongly support a monitoring and review framework for the regulations, and this should be set within the context of the wider SEEP programme monitoring framework.

We agree the SHCS and the EPC register will be key sources of information.

We recommend that local authorities should be required to provide annual reports on levels of compliance. These reports should be made using a common template, and include information on efforts to promote compliance; taking enforcement action, and additional needs for data or other support. The monitoring framework should also ensure feedback and suggestions from tenants, tenants groups and residents’ associations in a structured way.

As noted earlier, a national SEEP delivery body could provide a role in compiling the local authority reports and providing a national picture on the impact of regulation and any implications for the SEEP programme.

Question 1.35 - Do you have any other comments on the proposals set out in Part 1 of this consultation?

We would like to highlight the recent report from Shelter Scotland¹⁵ which provides the views on private renters on the proposed regulations. The research included a YouGov survey which shows that 71% of Scottish adults and 79% of private renters wish their home was more energy efficient. Yet tenants often feel powerless to make their homes warmer.

The research found that two thirds of private tenants (66%) said they would not know what to do if they asked their landlord to improve the energy efficiency of their home, but the

¹⁴ Scottish Fuel Poverty Strategic Working Group

¹⁵ Shelter

landlord didn't want to. Just over 60% of tenants said they would not feel confident asking their landlord to make changes to their home to improve its energy efficiency.

Tenants fear eviction, rent increases or other reprisals if they ask for too much, and feel even when they do ask for improvements, their landlords don't do anything or are very slow to act. By introducing strong energy efficiency regulations, combined with effective enforcement, advice and redress and comprehensive skills development for the energy efficiency sector, the Scottish Government can make the private rented sector work better for tenants and landlords alike.

Part 2 – Condition Standards

Question 2.1 - Do you think that ensuring a house complies with the tolerable standard should be part of a private landlord's duties under the repairing standard?

Yes/no/don't know.

Please explain your answer.

We agree the tolerable standard should be included as part of the repairing standard. This will clarify the landlord's responsibilities. However, it is important that if there is any overlap, the higher standard should apply. We also believe that the minimum energy efficiency standards should form part of the repairing standard.

The consultation suggests that this will 1) make it clearer for landlords to understand their obligations; and 2) improve consumer rights and access to redress. In order to meet these objectives, we propose the following criteria for this change:

- Tenant rights and access to redress should be improved by any changes.
- No groups of tenants should be disadvantaged by such a change.
- The repairing standard should apply to agricultural tenancies.

Question 2.6 - Do you think that private rented housing should have a fixed heating system? Yes/no/don't know.

Yes, we think it is appropriate that a fixed heating system is seen as a basic requirement.

However, the term 'fixed heating system' must allow for properties that are highly insulated (eg Passivhaus – see para 168) that may not require a traditional fixed heating system such as a boiler. This is particularly important in the context of ambitions to decarbonise heat and achieve a housing stock that is near zero carbon by 2050.

Question 2.7 - If this is introduced, what exceptions (if any) do you think would be needed?

See above regarding properties that are highly insulated.

Question 2.19 - Do you think that the repairing standard should be amended to include a specific reference to safety of heating systems using other fuels in addition to gas and electricity? Yes/no/don't know.

Yes. In the interests of consumer confidence, we should ensure that all systems are certified safe, with installers accredited to install them safely. Consumers (landlords and tenants) should be given demonstrations and clear documentation on how to use any new system. Landlords should have a requirement to inform tenants about how to use the system safely and efficiently.

Data from Citizens Advice Scotland show that uncertainty over how a system works can lead to a great deal of confusion and stress, particularly where systems are actually faulty. It is vital that consumers know who to turn to if something doesn't work – this is just as important as knowing how the system is supposed to work in the first place. There is a risk that if the tenant does not understand how best to manage their energy system, they may face unexpected high energy bills – rather than the savings promised.

The repairing standard should ensure that any installed heating system is safe, including carrying out regular safety checks. In this way the standard captures any emerging technology.

Question 2.20 - Do you think that the repairing standard should be amended to include flooring materials to reduce sound transmitted to other homes? Yes/no/don't know.

Perhaps this requirement could be amended to address both sound and thermal improvements. It would be unfortunate if flooring was improved without insulating it at the same time.

Question 2.23 - Do you think that agricultural tenancies, rented crofts and small landholdings should be subject to the repairing standard? Yes/no/don't know.

Yes. We have made clear our strong support for agricultural tenancies, rented crofts and small landholdings to be subject to the repairing standard in our response to question 1.1. In our view there is no justification for a double standard to apply in Scottish housing – particularly if a lower standard applies to those properties that are most expensive to heat.

However, care must be taken to ensure agricultural tenants are not disadvantaged. Where people's livelihoods are tied in with their homes, we need to be very careful about any knock on effects on rent prices which could have major implications for the rural economy. There may be a case to explore particular finance/tax measures for this sector to incentivise action and minimise any negative consequences.

One step is to require landlords to compensate tenants for the value of improvements that they undertake. This is already possible for other improvements, and energy efficiency could be added to the list of what tenants can be compensated for.

If the landlord undertakes the improvement, and receives public support to do so, the impact should be rent neutral. Agricultural tenants should be made eligible to receive funding support from Home Energy Scotland – grants, loans, and in-depth advice.

Given the poor state of some agricultural tenancies, support for maintenance and improvement works that are a prerequisite for the energy efficiency measures should be provided.

Question 2.24 - Do you think that we need to clarify whether holiday lets (or certain types of holiday lets) should be subject to the repairing standard? Yes/no/don't know.

Yes, as above, we recommend holiday lets should be subject to the repairing standard in our response to question 1.1. We think standards must apply across the housing sector for the following reasons:

- Level playing field so no incentive to move rental properties to holiday lets.
- Emissions reduction.
- Norming high energy standards.

Question 2.27 - Do you think that the timetable for changes should be linked to wider government milestones on climate change? Yes/no/don't know.

Yes, the timetable for changes to standards should be linked to wider government milestones on climate change, but also to milestones related to the eradication of fuel poverty. This will allow for a coherent approach to SEEP and the Local Heat and Energy Efficiency Strategies, putting in place the right incentives and support, targeting for greatest impact, and maximising the resources of local and national government to support the transition of Scotland's housing stock to become zero carbon by 2050.