Warm Homes Bill briefing series- Autumn 2017

This is one of a series of briefings proposing measures for inclusion in the forthcoming Warm Homes Bill. We wish to ensure the Bill addresses barriers and creates opportunities to bring low-carbon and affordable warmth to all households in Scotland.

Legislative proposals – Regulations

The Warm Homes Bill should place a duty on Ministers to:

- *Review the barriers to energy performance improvements within tenements and, within a specified time, bring forward proposals for reforms of the laws governing tenements.*
- *Ensure a review of building regulations considers methods for applying current regulations to existing homes, and tackles barriers to use of zero and low-carbon heating systems.*
- *Review relevant planning guidance and its operation to ensure consistency across authorities.*
- *Review the range of regulatory frameworks which impact on investment decisions with a view to improving the integration of their operations.*

Rationale

Regulation has a crucial role to play in transforming the energy performance of homes, and helping deliver fuel poverty and climate change targets, by creating incentives and overcoming barriers to improvements.

The Scottish Government recently consulted on the regulation of energy efficiency standards in the private rented sector. It has also stated its intent to consult on standards and incentives in the owner occupier sector, and is bringing forward legislation to regulate District Heating. We welcome such moves and will work with the Government to help progress these areas.

However, the Warm Homes Bill provides the opportunity to review regulations to address other barriers, such as difficulties in implementing energy efficiency measures in mixed tenure tenements, and to apply building standards at points of transition when home owners and landlords are most likely to undertake upgrades. Additionally, there is the opportunity to tackle inconsistency across planning authorities which acts as a barrier to investment decisions.

The Scottish Government has already stated its intent to review building standards and methods for dealing with issues in tenements. However, given the ambitious targets laid out in the draft Climate Change Plan it is vital that this works starts as soon as is possible. The Warm Homes Bill should set out a timetable and shape the remit for these reviews.

Additionally, as such a wide range of regulatory frameworks impact upon decisions surrounding energy performance investments, we believe there is a role for Ministers to act to improve the integration of such frameworks to help householders, industry and local authority officers to navigate them.

Details of proposals

Tenements and flats

Ministers should review barriers to energy performance works within flats and tenements, and within a specified time bring forward proposals for reforms of the laws governing tenements.

In its consultation on standards in the private rented sector, the Scottish Government indicates it will consult on how to address issues affecting common parts of flats and tenements. However, as this

represents such a significant barrier to the delivery of fuel poverty and climate change policy, there is a compelling case for an urgent review to be required and timetabled as part of the Warm Homes Bill

In order to deliver legislative targets on fuel poverty and climate change it is vital that energy performance is improved across all types of housing stock. As flats and tenements make up 37% of Scotland's housing stock,[1] these represent a significant issue for the delivery of national policy objectives.

However, there are four main barriers which hamper work in common areas of flats and tenements.

"Blocking"

The law is complex but generally requires all owners in a shared tenement or block of flats to agree to 'improvements' in the property. While some insulation measures have been reclassified as 'maintenance',[2] thereby allowing for majority decision making, other energy works remain classified as 'improvements' and require unanimity.[3] In effect any one owner in a block of flats can veto works being carried out to improve the energy performance of common areas.

Management and communications

Various barriers to improvements in common areas in Scotland were identified in a recent study.[4] These included:

- A lack of formal management/decision making structure,
- A lack of a framework for communicating with residents or decision-makers,
- In the private rented sector, obtaining details of the landlords and communicating with tenants.

Another study found that in some cases, '*… the absence of any necessary, formalised corporate structure prevents Scottish flat owners jointly accessing loans or grants to pay for energy improvements.'*[5]

This leads to significant difficulties in planning, agreeing, financing and carrying out works.

Tenement Management Act

The Tenement Management Act (TMA) only applies where the title deeds of the owners of individual flats make no provisions as to the maintenance of shared parts of the building. While there is no data available on the number of tenements that have title deeds in which real burdens disapply the TMS, it is likely to be the case for significant numbers of tenements, and there will be a huge variety as to the precise requirements in different deeds. This is a significant governance issue in relation to improving the energy performance of tenements.

Information

EPC assessments have also been identified as problematic in that they do not provide information on common areas. This means the impacts of stairwells, the building envelope and potential common heating systems may go unassessed and unconsidered. This is unusual in that across Europe 74% of member states require EPCs based on an assessment of the whole building.[6] This issue should form part of the review into barriers proposed above.

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[1] [1] The Scottish Government, *Scottish House Condition Survey: 2015 Key Findings,(2016)* table 1.

[2] Via an amendment to the Tenements (Scotland) Act 2004

[3] Weatherall, McCarthy & Bright *Governance barriers to energy upgrades in apartment blocks: insights from a study of England and Scotland (2016) paper to 4th European Conference on Behaviour and Energy Efficiency* pp 6-7

[4] Low Energy Apartment Futures, *Improving the energy efficiency of apartment blocks LEAF Final Report, (LEAF, 2016)* at www.lowenergyapartments.eu

[5] Weatherall, et al op. cit.

[6] Weatherall, et al op. cit.

It should also be noted that these barriers also create detriment beyond energy performance, and that some Housing Associations have been forced to sell properties where they have been unable to get agreement to carry out works to raise them to the quality standards required of social housing providers. [7]

A review is therefore urgent and should consider recommendations from LEAF for: [8]

- The development of mandatory management structures in multi-occupancy buildings (such as factoring organisations or resident associations).
- Requirements to have long-term building maintenance and energy savings plans.
- Changes to the format and content of EPC reports

In another recent paper, legal experts argue that, '*The law is complex, and making the changes necessary to address the decision-making barriers to energy efficiency is challenging, but reform is possible.*' [9]

They go on to note in relation to considering the balance of individual homeowners' rights against the need for improvements to common areas, '*The consideration … moves beyond the narrowly legal. Regulation … will reflect the strength of society's view that there is a real need to tackle carbon emissions and remove the misery of energy poverty.*'

Building regulations

We propose a review of building regulations to consider methods for applying current regulations to existing homes at specific points as listed below, and to consider barriers to the use of zero and low-carbon heating systems

Extend to existing buildings

According to the Scottish Government, homes built under current building standards produce, on aggregate, 75% lower emission than those built in 1990. [10]

However, around 85% of housing stock we have today will still be with us in 2050. Therefore, there is an urgent need to tackle its energy performance and to apply improved standards to existing homes.

We therefore propose regulations related to energy performance apply to existing homes as follows:

- Standards should be introduced as consequential improvements. This is a common approach in the construction sector, under which significant improvement works, such as those requiring planning permission, would also trigger a need to assess and if necessary upgrade energy efficiency.
- Similarly, standards should be introduced as a condition of accessing public funding to upgrade a house, whether or not planning permission is required.
- The introduction of standards should be accompanied by appropriate advice and incentives.

Heating systems

Building regulations may also be hampering the installation of zero and low-carbon heating systems such as biomass boilers and other technologies.

Scottish Renewables note that '*In some circumstances, a building warrant is required for installing renewable technologies in a home…. obtaining a warrant could take as long as 30 weeks. This is particularly*

[7] 'SFHA News' 4th August 2017 https://www.sfha.co.uk/news/news-category/sfha-news/news-article/looking-after-our-tenements--is-it-time-for-a-common-quality-standard-for-all-scottish-housing
[8] LEAF 2016 op. cit.
[9] Weatherall, et al op. cit.
[10] Scottish Government, *Draft Climate Change Plan (2016)* pg. 56

problematic for householders looking to replace an existing heating/hot water system who may be left without these services for a considerable length of time.' [11]

This view was echoed in a recent EST workshop which produced a recommendation that, '*The Scottish Government through its powers over building control may want to consider shortening the timescales for obtaining a warrant in relation to biomass boilers (and other technologies if deemed necessary).'* [12]

We welcome the fact that the draft Climate Change Plan includes a commitment to a, '*Review of energy standards within building regulations – to investigate topics that offer the potential for abatement from new homes and where work is undertaken on existing homes*.' However, we believe the Warm Homes Bill represents an opportunity to lay out the time frame and remit of such a review.

Planning

We are aware of long standing tensions between the need to conserve Scotland's architectural heritage, while at the same time improve the energy efficiency of historic buildings in sympathetic ways.

We agree with the approach outlined by LEAF: '*The sensitive retrofitting of energy efficiency measures and the appropriate use of micro-renewables in historic buildings should be encouraged, including retrofitting of listed buildings, buildings of solid wall or traditional construction and buildings in conservation areas, whilst safeguarding the special characteristics of these heritage assets for the future.'* [13]

While Historic Environment Scotland (HES) has made a useful contribution in this area through research and guidance, feedback from stakeholders suggests that some local authority planning decisions are lagging behind, and there is gap between what HES says is possible and what homeowners are experiencing on the ground with planners.

An EST workshop with the energy efficiency industry found, '*Building standards and planning officers knowledge and understanding should be improved with regards to energy efficiency, particularly with regards to new product innovations',* it went on to note that, '*There are consistency issues in terms of the level of service and requirements across local authorities.'* [14]

Given such concerns, and the importance of removing barriers, we believe a review of relevant planning policy and its operation is justified to ensure clarity and consistency across planning authorities.

Integration

The LEAF research found that, *'The overall regulatory framework … is very complicated, involving national and local policies, regulations, subsidies and support across different sectors (for example building control, housing, energy, environment and fuel poverty) which overlap considerably and often contradict each other. It is hard for professionals, let alone householders, to navigate the system. This needs to be addressed by national and local policy makers, and supported with training for professionals in the different sectors.*'

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[11] Scottish Renewables, *SEEP consultation response 2016* at http://www.scottishrenewables.com/publications/scottish-renewables-response-consultation-scotland/

[12] Energy Saving Trust, *Microgeneration industry workshop feedback, 2016* at http://www.energysavingtrust.org.uk/sites/default/files/reports/Microgeneration%20workshop%20feedback%20report%20September%202016%20FINAL.pdf

[13] LEAF op. cit.

[14] Energy Saving Trust, *Energy Efficiency Workshop, 2016* at http://www.energysavingtrust.org.uk/sites/default/files/reports/Energy%20efficiency%20workshop%20feedback%20report%20September%202016%20FINAL.pdf

In order to smooth the intended transition to highly energy efficient homes and heating systems across Scotland it is vital that such regulatory framework help rather than hinder progress.

We therefore propose that Ministers review to operation of such frameworks with a view to improving the integration of their aims and operations.

Further information:
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ExHA is a coalition of housing, environmental, fuel poverty and industry organisations calling for urgent action to transform Scotland's existing housing stock.