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Private Rented Sector Energy Efficiency Regulations (domestic)

consultation response

London HECA Forum

The London HECA Forum represents local authority energy and fuel poverty officers in Greater London. We have over 60 local authority members from across the 33 London boroughs and over 20 associate members from partner organisations involved in promoting energy efficiency within the capital. We welcome the opportunity to respond to this consultation on the domestic Private Rented Sector Energy Efficiency Regulations.

We fully support the Government's attempt to increase the energy efficiency levels in the private rented sector, as this sector houses a disproportional and rapidly increasing number of fuel poor households. However, we do not agree to put the financial burden of improving the levels of energy efficiency on tenants. Not only would this mean that an even larger proportion of a tenant's income would go to housing, which will increase the number of fuel poor households, but also that tenants will be paying to improve the property at no cost to the landlord.

We would like to point out the obligations that a landlord has under the Housing Health and Safety Rating System (HHSRS). The PRS has the highest incidence of 'excess cold' of all housing tenures: some 15 % of private rental homes are classified as a Category 1 'excess cold' hazard under the HHSRS. Guidance on HHSRS states that homes with a SAP of less than 35 should be classed as 'excessively cold' and therefore a Category 1 hazard. This includes all EPC band G homes and some 80% of EPC band F homes.

Ensuring that a property does not have any Category 1 hazards falls on the landlord. It is to be avoided that tenants having to fund measures to ensure the property does not have an excess cold hazard, which is the (financial) responsibility of the landlord. By introducing a landlord register (see our response to Question 19), combined with easy access to EPC data, a local authority can target F and G rated properties to check whether they have a Category 1 excess cold hazard. The landlords of these identified properties can then be forced to undertake measures to remove the hazard(s).

Should the risk of excess cold not be targeted under the HHSRS, but under the proposed PRS energy efficiency regulations, this would mean that a tenant will be paying to get the property into a reasonable state of repair rather than the landlord. It also means a conflict between the Housing Act 2004, which includes the HHSRS, and the Energy Act 2011, which covers the current proposed PRS Energy efficiency regulations.

Given the high and increasing prevalence of fuel poor households in the private rented sector, we want to urge Government to link the obligations of landlords under the HHSRS and the proposed energy efficiency regulations to avoid that the most vulnerable households will be picking up the tab of measures that landlords are legally required to implement already.

Question 1

Does the proposed scope include all the buildings and tenancies that should be covered by the tenant's improvements regulations? If not, which additional building or tenancy types should be included or excluded?

In general we agree with the proposed scope. However there are circumstances in which social landlords rent out properties to private tenants on the open market with tenancy agreements covered by the Housing Act 1988. Given this, we believe that Registered Social Landlords should be in scope of the regulations in circumstances where they rent properties to private tenants under Tenancy Agreements covered by the Housing Act 1988 and the Rent Act 1977. We acknowledge that this will require an amendment to Section 42 of the Energy Act.

In addition, we believe that church properties should also be brought within scope of the regulations.

Question 2

What, if any, additional funding options could be used by a tenant when seeking consent for energy efficiency improvements in addition to the Green Deal finance arrangements, ECO, grant funding and a tenant's own sources?

In addition to the funding sources mentioned, the landlord could be persuaded to use their own sources to (co-) fund the improvements, as it is likely that these improvements will increase the value of their property. Potentially this could be done under a voluntarily total cost of living deal with the tenant: a reasonable increase in rent in return for the landlord funding the improvements. The tenant will then have higher rent to pay, but will have lower energy bills. This is analogous to the Green Deal, but with the landlord as funder.

It is worth pointing out that the Green Deal golden rule supports very few measures for low-income households where tenants are under-heating. As it are especially these tenants that benefit the most from increased levels of energy efficiency, reliance on them being able to fund the implementation of measures under the golden rule means that very limited numbers will be able to access finance.

Question 3

Do you have any comments on the proposed process for when and how a tenant request for consent for energy efficiency improvements is made?

We agree with the proposed request process, apart from the fact that the tenant would have to provide an EPC report. The landlord is legally required to have this at time of re-let, and it would not be reasonable for the tenant to have to pay for this at an earlier date – especially as in order to comply with the prospective backstop minimum standard regulations, from 2020 all tenancies including longstanding ones will need to be covered by an EPC.

Question 4

Do you agree with the proposed set of circumstances in which a landlord may reasonably refuse consent to improvements, and in addition, do you agree that the regulations should also allow for landlords to make a case for a reasonable refusal on a case by case basis?

Paragraph 72(h) of the consultation rightly enables the landlord to offer a counter-proposal to a tenant's request, which would achieve "the same or improved level of energy efficiency" as that requested by the tenant. However, as currently proposed in paragraph 72(a), there is no such

requirement to achieve the same or an improved level of energy efficiency in circumstances where the landlord "has evidenced plans to develop or undertake refurbishment to a property". It is only logical that in such cases the measures to be installed achieve at least the equivalent level of energy efficiency improvement as those requested by the tenant.

Paragraph 72(f) mentions measures that a change of fuel may not be a cost effective solution. However, we are of the opinion that if fuel switching would decrease energy costs to the tenant, this should not be refused by the landlord. (Also one could wonder why a tenant would want to have a fuel switch if this would not be beneficial to them.)

However, this is on the assumption that, as the consultation currently proposes, the tenant will be paying the costs for this switch. Should the Government change its view on this and the landlord is responsible for this, as per our proposals, there will have to be a cost-effectiveness test. This would probably lead to switches from oil to gas would pass, but electricity to gas would fail considering the investment required versus the benefits gained.

Question 5

Do you agree with the proposed approach for demonstrating an exemption where works would result in a material net decrease in a property's value? What would be the most appropriate way to set the threshold?

We disagree that an exemption should be applied for works which result in a material net decrease in property value.

Circumstances in which measures have a material negative impact on the property value are likely to be rare and do not justify the complications and administrative burden of an exemption. Evidence published by DECC[1] suggests a link between energy efficiency and increased property prices, and this relationship is only likely to be strengthened in the private rented sector with the introduction of these regulations. In addition, a RICS assessor is unlikely to be experienced in valuing a property based on proposed measures, which could lead to inconsistencies in valuations.

Question 6

Do you agree that freeholders should also be under a duty not to unreasonably refuse requests for energy efficiency improvements?

We agree that freeholders should be under a similar duty not to unreasonably refuse requests for energy efficiency improvements. Leaving freeholders without this duty could significantly undermine the regulations in relevant properties. For tenants who have gone to the effort of investigating and assembling a request for a landlord, it would be extremely unfair for that request to then be unreasonably refused by a freeholder.

Including freeholders within scope would provide valuable assistance to leaseholders wishing to undertake energy efficiency works on their property. Leaseholders would be more willing than tenants to invest their own money in improving the property and would therefore be more likely to undertake more significant improvement work. Leaseholder requests for works will also become more prevalent approaching 2018 as they seek to comply with the minimum standard regulations.

[1] https://www.gov.uk/government/news/energy-saving-measures-boost-house-prices

Question 7

Do you agree with the proposed landlord's response criteria and timescales?

We agree with the proposed process for landlord responses.

Question 8

Do you agree that a landlord should be permitted to make a counter-offer to a tenant's request that meets or exceeds the energy efficiency improvements requested by the tenant where there are not increased costs on the tenant?

We agree that landlords should be allowed to propose a counter-offer for improvements.

However, additional guidance is required for tenants in this situation about what should be considered an unreasonable counter-offer. It is inconsistent that there is a proposed list of circumstances in which the tenant request could be considered unreasonable, but nothing equivalent is provided for establishing the reasonableness of the counter-offer. An equivalent list of circumstances outlining unreasonable counter-offers should therefore be included in regulations or guidance.

Also we disagree with the suggestion that a landlord is not bound by the same restrictions on choice of installer as a tenant is. This is not consistent, and could lead to a tenant paying for measures as part of a counter proposal installed by an installer who is not PAS 2030 certified. We therefore propose that restrictions on installer apply to all parties to guarantee quality of work.

Question 9

What evidence is there that a tenant could be at risk of eviction as a consequence of making a request for consent for energy efficiency measures? If it exists, how could risk of eviction be mitigated?

In June 2007, Citizens Advice published a seminal report, The Tenant's Dilemma[2], which concluded that many tenants are deterred from making requests of their landlords for improvements and maintenance works because they are afraid of being evicted. This is known as 'retaliatory eviction' and is made possible by Section 21 of the Housing Act 1988.

In addition, the Government itself admitted in its Energy Act Impact Assessment that the tenant's request measure would be likely to drive only marginal levels of energy efficiency activity – and they explicitly acknowledged that this would in part be because tenants would be afraid to confront their landlords: "Longer term tenants who may have an incentive to request measures, *may not want to risk losing their tenancy by confronting the landlord*, especially in the case that tribunal is required."[3]

In March this year a report by Shelter, *Can't Complain*[4], concluded that: "There is a significant body of evidence suggesting that the practice and fear of retaliatory eviction is widespread and should be addressed in order to ensure that renters are protected when exercising their basic consumer rights." In particular, the report showed that:

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[2] https://www.citizensadvice.org.uk/tenants_dilema_-_document.pdf

[3] Energy Act 2011: Green Deal Impact Assessment, DECC, October 2011, para. 276

[4] http://england.shelter.org.uk/__data/assets/pdf_file/0006/892482/6430_04_9_Million_Renters_Policy_Report_Proof_10_opt.pdf

- renters fear retaliatory eviction. One in eight renters (12%) have not asked for repairs to be carried out in their home or challenged a rent increase in the last year because they fear eviction.
- renters do suffer retaliatory eviction. One in 33 renters have been evicted, served notice or threatened with eviction in the past five year because they complained to their local council or their landlord about a problem in their home. This is the equivalent of 324,172 renters every year.

During the passage of the Energy Act 2011, amendments to introduce protection from retaliatory eviction were repeatedly tabled, but unaccountably they were not accepted by the Government. This despite the unequivocal statement by the then Housing Minister Grant Shapps MP to the effect that: "Retaliatory evictions are completely unacceptable ... we need sufficient protections in place to make sure retaliatory evictions do not happen."[5]

In light of the clear weight of evidence as to the seriousness of this problem, we believe that the Government should take the earliest possible legislative opportunity to give tenants protection from retaliatory eviction. This could be done quite simply by giving tenants protection from retaliatory eviction in circumstances where they have made a valid request for improvements and until such time as the request has been satisfactorily dealt with. To protect landlords from the actions of unscrupulous tenants, this protection would be invalidated if it could be proved that the tenant had broken the terms of the tenancy agreement prior to submitting an energy efficiency request.

Also if tenants complain to the local authority about a hazard under the HHSRS, such as damp and cold, the use of Section 21s should be limited so landlords are unable to serve these while a complaint is binging investigated and or while there is a live notice/order has been served.

Restrictions should also be in place regarding rent increases: these are to be capped after a request has been submitted and after measures have been installed. In line with the Government's own cancelled fuel poverty programme Warm Front, this period of capped rent increases should be 2 years.

An essential point to make on this topic is that if minimum standards are made compulsory, regardless of whether improvements can be financed through the Green Deal or available grant funding (please see our response to Question 14), tenants will not have to ask for permission and/or improvements and will therefore be protected from retaliatory evictions.

Question 10

Do you have any evidence that shows the scale of the costs (including non-financial costs) and benefits associated with making a tenant request and improving the energy efficiency of a property?

Please see the recent analysis by Parity Projects on the costs and energy bill savings of improving properties rated as EPC F and G rated up to EPC E:

[5] Grant Shapps, Environmental Health News, 10 October 2008, http://www.cieh.org/ehn/ehn3.aspx?id=15408

http://www.ukgbc.org/resources/publication/analysis-wwf-and-uk-gbc-achieving-minimum-epc-standards-housing

On the question of ancillary costs: we agree that the landlord should pay for any ancillary costs arising from a counter proposal.

However we disagree that a tenant should pay for an EPC, as a landlord is legally required to have one, and it would not be prudent to have a tenant pay for it – please see our response to Question 3 on this matter.

Question 11

Do you consider that the First-tier Tribunal is the appropriate body to hear and determine appeals about decisions denying a tenant consent for energy efficiency improvements? Do you consider that the General Regulatory Chamber Rules of the First-tier Tribunal will suit the handling of these appeals? If not, what tribunal could be used?

We agree that the First-tier Tribunal is the most appropriate body for handling disputes.

Question 12

Do you have any comments regarding the tenant's improvements regulations, not raised elsewhere in the consultation?

The regulations should include a timeframe in which the works would need to be completed. Without a stated time period in which the works should be completed, it would be possible for a landlord to delay the works indefinitely to avoid having to comply with the request. This is particularly relevant in case of the landlord's counter-proposal.

Without guidance as to a reasonable period in which the works should be undertaken, the onus would be entirely placed on the tenant to take the matter to tribunal and justify why they deem the length of delay to be unreasonable. We propose that one year would be a reasonable period for the works to be undertaken after the tenant's request has been accepted. However, the landlord and tenant should also have the option to agree mutually a longer time-period if this is necessary.

Further we propose that in all Government and Government-supported documentation and guidance for tenants the Domestic Minimum Energy Efficiency Standard Regulations are mentioned, so that a tenant is aware of the obligations that fall on landlords on this subject post 2018.

Question 13

Do you agree with the proposed scope of buildings and tenancies for the minimum standard regulations? If not, what additional building or tenancy types should be included or excluded?

Please see our response to Question 1 above.

We also believe that all Houses in Multiple Occupation should be brought within scope of the regulations. As the legislation stands, the minimum standard will only apply to HMO buildings that are let out as a whole on a single tenancy (to multiple tenants). It will not apply to individual units within an HMO that are let out under separate tenancy agreements. This is because Section 43(1)(b) of the Energy Act 2011 specifies that the regulations will only cover domestic private rented properties "in relation to which there is an energy performance certificate". Meanwhile, Section 5 of

the relevant EPC Regulations[6] states that an EPC is required where a "building" is to be sold or rented out – while Section 2 says that for the purposes of the Regulations "building" means a whole building or a part of a building "which has been designed or altered to be used separately". While this definition clearly covers a whole HMO building, it equally clearly does not cover a single unit within an HMO.

We believe that such individual HMO units should be brought within scope of the regulations. This could be achieved by requiring an EPC for the whole building to be produced whenever a single HMO unit is rented out. On 22 July 2014 Dr Alan Whitehead MP introduced a Bill in Parliament, Clause 1 of which would require the Government to introduce just such a requirement[7]. The previous Labour Government also indicated its intention to introduce this requirement in a consultation published only a few months before the last General Election[8]. Sadly, this requirement was not carried forward by the current Government.

While an EPC for the whole building would clearly stop some way short of providing detailed information to a tenant about the energy efficiency of his/her particular unit, it would nevertheless ensure the applicability of the minimum standard to that unit.

More generally, we propose that all domestic private rented properties should be in scope, not just those with a valid EPC. Applying the minimum standard only to properties with a valid EPC risks severely undermining the regulations. An FOI request from April 2013 highlights that compliance with the EPC regulations for private domestic rentals is only 26 per cent[9]. The current penalty of only £200 for non-compliance with the EPC regulations mean this offers a cheap route for landlords wishing to avoid complying with the minimum standards.

Question 14

Do you agree that where a property falls below an E EPC rating, the landlord would only be required to make those improvements which could be made at no net or upfront costs, i.e. those that meet the "Golden Rule", that the cost of the work, including finance costs, should not exceed the expected savings taking into account any grant funding or ECO? For those properties that do not meet an E EPC rating, do you have any suggestions for how the process could be streamlined?

We strongly disagree that landlords should be exempted from the minimum standard if they have been unable to make the necessary improvements within the Green Deal 'Golden Rule', taking into account any funding that might be available through Green Deal finance, ECO funding, grant funding or a combination of some or all of them.

It is both legally and practically wrong that a regulatory framework should be dependent upon a set of financing mechanisms which may not even exist in 2018. The Energy Company Obligation and Green Deal Home Improvement Fund (currently closed) are due to finish in April 2017, and it is unclear what will replace them. Meanwhile, the improvements that can be financed by the Green Deal will change over time as fuel prices, costs of measures and tenants change. The Labour Party

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[6] The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007

[7] http://www.publications.parliament.uk/pa/bills/cbill/2014-2015/0082/15082.pdf

[8] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8555/1491167.pdf

[9] http://www.1010global.org/sites/default/files/uploads/ckfinder/files/130816%20-%20Final%20response%20letter%20to%20D%20Timms.pdf

have pledged to scrap the Green Deal completely if they take power at the next General Election and replace it with a new energy save scheme, no details of which have yet emerged. They also plan to overhaul the ECO. The events of the last eight months or so have also clearly demonstrated that, even in a so-called stable policy environment, changes can be made overnight which alter the ability of householders or landlords to finance improvements – as evidenced by the reductions in ECO funding announced last December and the overnight closure of the GDHIF only a few weeks ago.

All of this creates a climate of uncertainty that makes it extremely difficult for landlords to make funding plans to ensure compliance. The proposed exemption will also make the minimum standard an administrative nightmare for local authorities, which will in turn make it virtually unenforceable. Tenants will not know whether or not the F or G rated property they are being offered is illegal, or is in fact compliant with the regulations as the landlord has done everything to it that could be funded by the Green Deal, ECO or some (probably fleetingly available) grant. It is also impossible to see how local authorities will be able to police and enforce the minimum standard if they have to try to prove in every instance whether an F or G rated property has been sufficiently improved using the available (or not) funding streams to be legally let or whether in fact the landlord is in breach of the law. Applicable measures would vary from house to house and available funding - particularly through ECO - would be determined by the status of the sitting tenant rather than the state of the property.

It is crucial to remember that there is nothing whatsoever in the Energy Act 2011 which specifies that the minimum standard should entail no upfront cost for landlords. Section 43(2) clearly enables the Government to specify EPC Band E on the fact of the regulations. Section 43(4) meanwhile says that regulations must require landlords to make "relevant energy efficiency improvements" and that these improvements include those that can be financed by the Green Deal and ECO. However, Section 43(4)(b)(iv) gives the Government the clear power to stipulate other financial arrangements or funding mechanisms. The consultation proposals choose to ignore these powers and to opt instead for a system which would be both unworkable and unfair to tenants.

Finally, Green Deal Finance and the Golden Rule are inappropriate for fuel poor households who are overrepresented as residents of the least efficient properties. These properties would be among the most expensive to get up to an E EPC rating, yet the increased likelihood of low income tenants under-heating the property means that fewer measures would meet the Golden Rule. The inconsistent availability of funding through ECO and other grants suggests that these are unlikely to make up the shortfall for many fuel poor tenants.

For all these reasons we propose that all properties in scope of the regulations should be required to meet the minimum standard of EPC E, up to a maximum spend of £6,000 which could be funded by the landlord. This approach would significantly reduce the administrative burden on local authorities and provide clarity to landlords about compliance. It would also offer greater protection to vulnerable households.

Research by Parity Projects[10], commissioned by UK-GBC and WWF-UK, found that bringing F or G rated properties up to an E would cost an average of £1,421 per property. For most properties this

[10] http://www.ukgbc.org/resources/publication/analysis-wwf-and-uk-gbc-achieving-minimum-epc-standards-housing

would be a similar amount to the funding available under the Golden Rule and would therefore not place a significant additional financial burden on landlords.

The research also found that 97 per cent of the F and G rated properties analysed could be brought up to an EPC E for less than £6,000. However, more importantly, it also found that 91 per cent of the G rated properties could achieve the minimum standard for this amount. Setting a spending cap at £6,000 will therefore be vital to protect vulnerable tenants living in the worst performing properties.

In light of the comments and suggestions mentioned here and as stated in our introduction, it is important to link to the obligations that a landlord has under the HHSRS. The PRS has the highest incidence of 'excess cold' of all housing tenures: some 15 % of private rental homes are classified as a Category 1 'excess cold' hazard under the HHSRS. Guidance on HHSRS states that homes with a SAP of less than 35 should be classed as 'excessively cold' and therefore a Category 1 hazard. This includes all EPC band G homes and most EPC band F homes.

Ensuring that a property does not have any Category 1 hazards falls on the landlord. It is to be avoided that tenants having to fund measures to ensure the property does not have an excess cold hazard, which is the (financial) responsibility of the landlord. By introducing a landlord register (see our response to Question 19), combined with easy access to EPC data, a local authority can target F and G rated properties to check whether they have a Category 1 excess cold hazard. The landlords of these identified properties can then be forced to undertake measures to remove the hazard. Legislation should be altered to force landlords required to undertake action under HHSRS to bring the property up to an EPC E minimum.

Question 15

How should the principle of 'no upfront costs' apply to Green Deal Assessments?

As per our answer to Question 14, we do not agree that the principle of "no upfront costs" should be applied to the regulations. But in the undesirable situation that this principle is retained then it should not apply to Green Deal Assessments.

The majority view of the Advisory Working Group convened by DECC in February 2013 was that ancillary costs relating to the installation of measures required by the regulations should be borne by the landlord. The Group went on to itemise specific ancillary costs that they expected landlords to pay. These included the costs of:

- the Green Deal assessment;
- planning permission;
- "making good", e.g. decorating costs;
- housing the tenant while works are being carried out.

The Group's view was that such costs should be regarded as forming part of a landlord's normal business costs. It was further argued that the benefits of improvements to a property's energy efficiency can be expected to outweigh any ancillary cost burdens.

Given this clear conclusion on the part of the Group, we are amazed that the question of the Green Deal Assessment cost has been opened up all over again. After all, as the consultation makes clear,

the average cost of a domestic Green Deal Assessment is a mere £112.50, and could up until recently be compensated by the GDHIF cash back of £100 for assessments once measures are installed.

Question 16

Do you have any evidence that shows the scale of the costs and benefits (including non-financial costs and benefits) associated with improving the energy efficiency of a property, for example, time taken to undertake cost effective improvements?

Please see the recent analysis by Parity Projects on the costs and energy bill savings of improving properties rated as EPC F and G rated up to EPC E:

http://www.ukgbc.org/resources/publication/analysis-wwf-and-uk-gbc-achieving-minimum-epc-standards-housing

Question 17

Do you agree with the proposed method for demonstrating an exemption where works would result in a material net decrease in a property's value? What would be the most appropriate way to set the threshold?

As per our answer to Question 5, we disagree that an exemption should be granted for a net material decrease in property value.

Circumstances where measures have a material negative impact on the property value are likely to be rare and do not justify the complications and administrative burden of an exemption. Evidence published by DECC[11] suggests a link between energy efficiency and increased property prices, and this relationship is only likely to be strengthened in the private rented sector with the introduction of these regulations.

Such an exemption would also create significant practical issues. A RICS assessor is unlikely to be experienced in valuing a property based on proposed measures, which could lead to inconsistencies in valuations. It is also unclear how a Local Authority would be able to verify this exemption and test compliance - it is likely to involve a complicated re-valuation by another RICS assessor including associated costs.

Question 18

Does the proposed consents exemption strike the right balance between recognising existing landlord obligations, whilst also ensuring that the allowance is not used as a loophole to avoid undertaking improvements? Do you have any views on how beneficial owner consents should be taken into account?

As per our answer to Question 6, freeholders should not be allowed unreasonably to deny consent for energy efficiency improvements. This should help to minimise exemptions for measures which require the consent of the freeholder. The same principle should also be applied to beneficial owners, to provide certainty to the legal owners about their responsibilities for compliance.

Question 19

[11] https://www.gov.uk/government/news/energy-saving-measures-boost-house-prices

Do you think that the regulations should have a phased introduction applying only to new tenancies from 1 April 2018? Do you agree the regulations should also have a backstop, applying to all tenancies from 1 April 2020? If not, what alternatives do you suggest?

We agree that the regulations should have a phased introduction, applying to new tenancies from 2018 and extending to all tenancies from 2020. A soft start from 2018 will help to spread understanding about the regulations among landlords, tenants and agents. It will also provide an extended period for landlords to prepare for the 2020 backstop date.

We are, however, concerned about how in practice the 2020 backstop will be policed and enforced. In the absence of a local landlords' register, how are local authorities to know who the landlords are in their area and how will they be able to check compliance with the standard? During the passage of the Energy Act 2011, it was repeatedly suggested to Government by various groups to introduce a landlords' register with a view to its being an effective means for distributing information to landlords – not just about their duties, but also about the various financial incentives and help that are available to them. It was also pointed out that such a register would make it much easier and cheaper for local authorities to enforce and police the minimum energy efficiency standard. Reputable landlords have no reason to fear such a register, and it would enable local authorities to track down and deal with less reputable ones.

Question 20

Should the minimum standard regulations apply upon tenancy renewals where a valid EPC exists for the property?

The regulations should also apply to tenancy renewals from the soft start in 2018. Renewals would provide landlords with a valuable opportunity to discuss the regulations with the tenant and seek to undertake improvements in advance of the 2020 backstop. A sitting tenant would still be able to decline consent and gain an exemption for the property if they wanted to avoid the potential disruption of the works.

Question 21

Do you agree that an exemption for properties below an E rating should last for five years, apart from where it relates to tenant consent not being given, where it should expire at the end of a tenancy if before five years?

We believe that an exemption period of five years is completely unwarranted - except in circumstances where the exemption relates to tenant consent (especially as under the current proposals in some of the suggested funding streams the tenant has to pay for installing the measures). We propose that exemptions should last for one year only.

An exemption of five years would allow a property to miss both the proposed soft start and backstop dates with just a single exemption. It would also present an unreasonable amount of time for a vulnerable tenant to continue to live in an inefficient home, potentially maintaining them in fuel poverty for the period.

Exemptions should only be granted for a length of one year. The current levels of annual energy inflation change the Golden Rule calculation year on year, therefore opening up the possibility that previously exempt measures can be funded only 12 months later. Short term offers of energy efficiency grants, such as GDHIF and Green Deal Cashback, will also have an impact on eligible

measures and, as we have already noted, these can change rapidly in terms of their overall availability and the amount able to be claimed for the various different measures.

In order to minimise the hassle to landlords of obtaining repeat energy assessments, we propose that the underlying EPC assessment data (the XML file) should be made available to the landlord as standard practice. This can then be handed over to subsequent assessors. Second, in order to drive down the cost of measures and installations, local authorities could be encouraged to set up local framework agreements for the delivery of energy efficiency works. Through these frameworks local authorities could also stimulate the local economy by including local SMEs and supply chains.

Question 22

Do you agree that landlords would need to attempt to meet the minimum standard or retain evidence of an exemption before a hard start or a backstop applies?

We agree that landlords should be required to meet the minimum standard before the backstop date. We also believe that any previous exemption should be deemed to have lapsed on 1 April 2020. Using the backstop as a deadline for compliance would provide a clear signal to both landlords and tenants and provide the greatest possible clarity about compliance.

Question 23

Do you agree that the Government should set a trajectory of standards beyond 2018, and if so, how and when should this be done?

We agree that the Government should set a trajectory of tightening standards beyond 2018. This is the only way to provide much-needed certainty to landlords, tenants and the industry. It is also vital that the trajectory be set out in advance of April 2018, to allow landlords to make informed decisions about the most cost-effective ways to comply with increasing standards.

We propose a predictable timetable of increasing standards four years apart – rising to D in 2022 and to C in 2026. Such an ambitious trajectory will not only be vital to meeting the UK's carbon reduction targets, but it will also provide an additional incentive to landlords to make significant upgrades to their property instead of piecemeal incremental improvements.

While the Energy Act does not place a duty upon Government to set a trajectory beyond 2018, it is worth recalling that the then Minister Greg Barker made clear during the Committee stages of the Act that it was the Government's intention to ratchet up standards progressively over time. During the relevant session, he said:

"That intent [to improve homes beyond Band E] certainly lies behind the Government's programme... It is clearly our ambition to go much beyond that."[12]

Question 24

Do you consider where a property has a valid exemption for letting below an E EPC rating that certification of compliance would be helpful? If so, should this be voluntary or mandatory? Do you have any other comments regarding compliance and how local authorities could be supported with enforcement, for example identifying landlords?

[12] Energy Bill, Public Bill Committee, Tuesday 14 June 2011 (Morning), Column 189

As per our answer to Question 14, we believe that all properties should be brought up to EPC Band E, except in circumstances where to do so would cost in excess of £6,000. However, even with such a cost cap there will be a few landlords who will not be able to bring their property up to Band E. In these circumstances retaining evidence of an exemption is in our view not enough. It will certainly be nowhere near enough if the current consultation proposal goes ahead – this would mean that a landlord would be able to hand over a sheaf of quotes to a hapless prospective tenant, who would then have to try to deduce whether the landlord had done everything he/she could do to reach EPC Band E but failed. This is totally unfair to a tenant, particularly one faced with making a snap decision.

A mandatory certificate of compliance should therefore be issued for any property below EPC Band E that has a valid exemption. This would provide clear and accessible information to landlords, tenants and agents about the compliance of a property. Without such documentation, the compliance process would be less visible, potentially undermining the validity of the regulations.

It is vital that these certificates are made mandatory, with landlords applying directly to the local authority for certification. Not only would this avoid inconsistency in the market, but it would also significantly reduce the administrative burden of enforcement. It would also offer clarity to landlords that a property could legally be let only if it meets the minimum standard or has a valid exemption certificate.

Regarding how this certification process is funded, we propose adhering to the suggestion of the Advisory Working Group: local authorities could charge a fee, whereby the fee covers the cost of administering the process.

On a related enforcement issue, the consultation highlights the important role that letting and managing agents will play in alerting landlords and tenants as to whether a property has met its obligations under the regulations. In this regard it is important to note that the Consumer Protection from Unfair Trading Regulations 2008 mean that letting and managing agents are to be prevented from marketing a property that does not meet the minimum standard.

Question 25

Do you agree that the penalty for non-compliance should be linked to the rent level for the property and the time period of non-compliance? Should there be a minimum penalty for all cases of non-compliance? Should a maximum penalty be applied where the amount of rent is not evidenced? If not, what alternatives do you suggest?

We propose that the penalty for non-compliance should be a fixed fine of £8,000. The Government's proposal for a maximum fine of £5,000 is set too low, especially in London's housing market. Also it would specifically disadvantage tenants living in the worst performing properties. Research by Parity Projects[13] shows that only 72% of G rated properties would be able to reach an E for less than £5,000. The remaining 28% are likely to be the worst performing and most dangerous for residents, yet landlords of these properties would be incentivised to take no action and accept a fine for non-compliance.

[13] http://www.ukgbc.org/resources/publication/analysis-wwf-and-uk-gbc-achieving-minimum-epc-standards-housing

Introducing a fixed fine of £8,000 would provide a clear message that compliance with the regulations is more cost-effective than non-compliance. This level of fixed fine is specifically set at £2,000 above the cost cap for compliance as outlined in Question 14.

In line with our proposals in Question 13 that all properties - not just those with an EPC - should be within scope, we also propose that properties without a valid EPC should be deemed to be non-compliant and issued with the fixed fine (instead of the current £200 fine for failing to have a valid EPC). This would help to encourage compliance with the EPC regulations and increase the robustness of the minimum standards.

Question 26

Do you consider that the First-tier Tribunal is the appropriate body to hear and determine appeals about decisions regarding non-compliance with the minimum standard regulations? Do you consider that the General Regulatory Chamber Rules of the First-tier Tribunal will suit the handling of these appeals? If not, what tribunal could be used?

We agree that the First-tier Tribunal is the most appropriate body for the appeals process.

Question 27

Do you have any comments not raised under any of the above questions?

No additional comments.

Question 28

Do you have any comments or evidence regarding the consultation impact assessment that could inform the final impact assessment, for example the average length of void periods?

No comments.