



Department
of Energy &
Climate Change

Private Rented Sector Energy Efficiency Regulations (Domestic)

Government response to 22 July 2014 Consultation on the domestic regulations (England and Wales)

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The Consultation and Impact Assessment can be found on DECC's website:

<https://www.gov.uk/government/consultations/private-rented-sector-energy-efficiency-regulations-domestic>

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Executive summary

Introduction and overview

This document sets out the Government's position on the proposals contained within the Private Rented Sector Energy Efficiency Regulations (Domestic) (England and Wales) consultation which was launched on 22 July 2014 and closed on 2 September 2014.

Published on the gov.uk website, the consultation sought views across England and Wales on the Government's proposals regarding the detail of regulations to meet our obligations contained under the Energy Act 2011 to improve the energy efficiency of privately rented property.

We received 107 written responses from a variety of organisations and individuals. We would like to thank all respondents who submitted a formal response.

We have now carefully considered all the views expressed.

Whilst most written responses we received provided views on the specific questions posed in the consultation document, some chose to provide general comments only. We have considered these responses, but as they did not answer specific questions, do not feature in the statistical breakdowns provided within the summary for each consultation question.

Please note that this document does not attempt to respond individually to every comment received during the consultation period, but rather responds to significant issues that respondents raised. However, all points raised during the consultation have been taken into account when considering whether changes to the policy were required.

Key policy decisions – tenant's energy efficiency improvements

The Government has considered the range of responses received and has amended and improved its proposals as a result. Subject to Parliamentary approval, the regulations will be implemented as follows:

Scope: Tenant's right to request energy efficiency improvements

- The regulations apply to the domestic private rented sector in England and Wales. This is defined in section 42 of the Energy Act 2011 as properties let under an assured tenancy for the purposes of the Housing Act 1988, or a tenancy which is a regulated tenancy for the purposes of the Rent Act 1977.
- As discussed in the consultation document, the Government is able to add additional tenancy types. Following the public consultation the Government intends to prescribe the following properties, to bring them within scope of the regulations - properties let (a) on a tenancy which is an assured agricultural occupancy for the purposes of section 24 of the Housing Act 1988, (b) on a protected tenancy within the meaning given in section 3(6) of the Rent (Agriculture) Act 1976, or (c) on a statutory tenancy within the meaning given in section 4(6) of the Rent (Agriculture) Act 1976.
- Any property which falls within the definition of a domestic privately rented property is within scope of the tenant's rights regulations, regardless as to whether the property has

an EPC at the time of the tenant making a request. However where a building would not be in scope of the EPC regulations, a landlord would not be required to provide consent to improvements. Such situations include where the building has the required and evidenced permissions for demolition; or where the building is a temporary structure with an evidenced and planned time of use of two years or less.

The tenant's request process

The Government intends to ensure the tenant's request process is kept as simple and streamlined as possible and therefore has set out the process as follows:

- A tenant will be able to request consent to install energy efficiency measures at a property as long as: (i) the measure is one of the energy efficiency measures listed in the Schedule to the Green Deal (Qualifying Energy Improvements) Order 2012, or is a measure to be installed in order to connect to the gas network; and (ii) the tenant has a way of funding the measure at no cost to the landlord (e.g. by using Green Deal finance, government grants or incentives, ECO, other grant funding from third parties or local authorities, or paying for the measures themselves).
- An EPC, surveyors report or Green Deal Advice Report (GDAR) is not required under these regulations, but may be required should the tenant wish to make use of Government funding, or ECO.
- Where a tenant does not provide an EPC, surveyors report or GDAR as part of the tenant request, the landlord would have grounds for refusing consent if they had advice (e.g. from a surveyors report, or from a GDAR) that the measure was not suitable for the property.
- For a request to be valid, the tenant must specify and provide details of the energy efficiency measure(s) they wish to install, and provide written evidence to the landlord of either (i) any Green Deal Finance Plan, demonstrating that the package is fully funded, through Green Deal finance and/or ECO, grant or tenant funding, or (ii) where works are proposed to be paid for without Green Deal finance, the tenant must provide evidence of quotes for the improvements from an authorised Green Deal Installer or installer who meets relevant installer standards..
- Landlords are able to propose a counter offer where the energy efficiency improvements would deliver the same, or substantially the same, savings on the energy bills as was specified in the tenant's request. In addition, the energy efficiency improvements specified in the counter proposal must not result in an initial, or a continuing, cost to the tenant which exceeds the cost of all the relevant energy efficiency improvements specified in the request.

Funding for energy efficiency measures

- The tenant would seek funding to cover the cost of any relevant energy efficiency improvements through one or more of the following sources: (i) Green Deal Finance Plan; (ii) the Energy Company Obligation or similar future scheme, as provided for by the Energy Act 2011; (iii) grant, for example, from a local authority, devolved administration or national Government; or funding from the tenant's own sources should the tenant choose this option. The landlord may also wish to part fund the measures, but this would be at their discretion. Landlords would not be required to provide consent to improvements that entail an upfront or net cost.

Reasonable refusal

- The regulations will detail specific instances where a landlord could reasonably refuse consent. Landlords may also refuse consent where the particular circumstances of the case mean that it would be reasonable to do so.
- Where a tenant feels that a landlord's reason for refusal was unreasonable, it would be for the tenant to take the landlord to a tribunal which would ultimately rule on a case by case basis.
- The regulations will place both immediate landlords and any superior landlords under a duty not to unreasonably refuse consent to requests for energy efficiency measures. Private rented sector landlords, who are themselves leaseholders, will be empowered to make request for consent to energy efficiency improvements from the freeholder.

HHSRS

- Where a landlord or superior landlord has been served a notice under HHSRS, the landlord will need to notify the tenant of this, and the tenants request cannot proceed until the landlord has dealt with the HHSRS notice. The tenants request ceases to have an effect.

Timing

- Landlords would need to provide a response to a tenant's request within one month. This response would confirm that:
 - Consent is given (where no additional consent is needed or any required third party consent has already been obtained); or
 - Consent is refused and the reason provided; or
 - Consent will be given subject to obtaining third party consent (planning consents, freeholder consents etc.), giving the landlord up to a further two months to obtain the third party consent; or
 - Consent will be given subject to obtaining expert advice about the suitability of the requested measure for the property, or a potential devaluation as a result of installing the measure, giving the landlord up to a further two months to obtain the expert advice; or
 - A counter proposal is to be provided, giving the landlord up to a further three months to provide full details of the counter proposal.

Implementation date for regulations

- A tenant will be able to request consent to energy efficiency measures from their landlord from 1 April 2016. From this date all domestic tenants in scope of the regulations are afforded with this right to request consent for energy efficiency improvements under the regulations.

Enforcement and Applications to the First-tier Tribunal

- The First-tier Tribunal General Regulatory Chamber will hear and determine applications from tenants where the tenant considers that the landlord has not complied with the regulations.

Key policy decisions – minimum energy efficiency standards

The Government has considered the range of responses received and has amended and improved its proposals as a result. Subject to Parliamentary approval, the regulations will be implemented as follows:

Scope: Energy efficiency minimum standards

- The regulations apply to the domestic private rented sector in England and Wales. This is defined in section 42 of the Energy Act 2011 as: properties let under an assured tenancy for the purposes of the Housing Act 1988, or a tenancy which is a regulated tenancy for the purposes of the Rent Act 1977.
- As discussed in the consultation document, the Government is able to add additional tenancy types. Following the public consultation the Government intends to prescribe the following properties, to bring them within scope of the regulations - properties let (a) on a tenancy which is an assured agricultural occupancy for the purposes of section 24 of the Housing Act 1988, (b) on a protected tenancy within the meaning given in section 3(6) of the Rent (Agriculture) Act 1976, or (c) on a statutory tenancy within the meaning given in section 4(6) of the Rent (Agriculture) Act 1976.
- Unlike the scope for the tenant's right to request consent to improvements regulations, properties within scope will include any domestic privately rented property which: has an EPC, and is either (i) required to have an EPC; or (ii) or is within a larger unit which itself is required to have an EPC, either at point of sale, or point of let. No changes will be made to existing regulations regarding the provision of EPCs.

The minimum standard

- The minimum energy efficiency standard will be set at an E Energy Performance Certificate (EPC) rating, in line with the non-domestic sector. This will apply equally to all categories of domestic private rented property.

Restrictions on making improvements

- As explored in the consultation document, the regulations will include a number of safeguards to ensure that only appropriate, permissible and cost effective improvements are required under the regulations. Landlords will be eligible for an exemption from reaching the minimum standard where they can evidence that one of the following applies:
 - They have undertaken those improvements that are cost-effective but remain below an E EPC rating. Cost effective measures are those improvements that are capable of being installed within the Green Deal's Golden Rule. This ensures that landlords will not face upfront or net costs for the improvement works.
 - They are unable to install those improvements that are cost-effective without upfront cost because the funding entails Green Deal finance, and they or their tenant fail the relevant credit checks.
 - The landlord is required by a contractual or legislative obligation to obtain a third party's consent or permission to undertake relevant improvements relating to the minimum standard, and such consent was denied, or was provided with unreasonable conditions.
 - The landlord requires consent, and the occupying tenant withholds that consent.
 - Measures required to improve the property are evidenced by a suitably qualified independent surveyor, for example from the Royal Institution of Chartered Surveyors (RICS), as expected to cause a capital devaluation of the property of

more than 5%. Only those measures that are expected to cause such devaluation would be exempt from installation.

- The regulations will also include specific protections relating to wall insulation improvements as an additional safeguard for the minority of situations where such insulation may not be appropriate. There will be no requirement to install wall insulation under the regulations where the landlord has obtained a written opinion from a suitably qualified person¹ or from the independent installer engaged to install the measure advising that it is not an appropriate improvement due to its potential negative impact on the fabric or structure of the property (or the building of which it is part).

Application

- From 1 April 2018, the regulations will apply upon the granting of:
 - a new tenancy to a new tenant, and,
 - a new tenancy to an existing tenant.
- From 1 April 2020, the regulations will apply to all privately rented property in scope of the regulations.
- Where a lease is granted involuntarily by a landlord, for instance due to operation of law, they may be provided with six months to comply after the tenancy is agreed. Similarly, where a non-compliant property occupied by a tenant is sold, or is transferred to a lender in the case of receivership, the new landlord will have six months to improve the property, or seek to demonstrate an exemption applies.

Enforcement

- Local authorities will be provided with powers to enforce compliance with the regulations.
- Where a landlord considers an exemption applies allowing them to let their property below the minimum energy efficiency standard, the landlord will need to provide such evidence to a centralised register, the “PRS Exemptions Register.” Landlords may be required to submit relevant evidence and details of their exemption to the Register. The Government may use this information to assist local authorities in targeting their enforcement activity.

Compliance Notices and Penalties

- Where a local authority suspects that a landlord with a property in scope of the regulations is not compliant, or has not sufficiently proved an exemption, the local authority can serve a compliance notice on the landlord requesting further information it considers necessary to confirm compliance. If it is not provided, or is provided and is not sufficient to prove compliance, the local authority may proceed to issuing a penalty notice.
- Penalties for a single offence may be cumulative, up to a maximum of £5,000. Further penalties may be awarded for non-compliance with the original penalty notice where a landlord continues to rent out a non-compliant property; however penalties would be cumulative up to a maximum of £5,000. The landlord can be awarded a further penalty when one of the following events occurs:

¹ Such as an architect, chartered building surveyor or chartered architectural technologist who has conservation accreditation from a recognised body, such as the Royal Institution of Chartered Surveyors (RICS) Building Conservation Accreditation Register.

- The tenant changes
- The regulatory backstop comes into effect
- The penalty regime for non-compliance with the regulations will be as follows:

Infringement	Penalty	
Providing false or misleading information to the PRS Exemptions Register	£1,000 Publication of non-compliance	
Failure to comply with a compliance notice from a local authority	£2,000 Publication of non-compliance	
Renting out a non-compliant property	Less than 3 months non-compliance £2,000 fixed penalty Publication of non-compliance	3 months or more of non-compliance £4,000 fixed penalty Publication of non-compliance

Reviews

- Upon receiving a penalty notice from a local authority, a landlord may request a review of the local authority's decision to serve the notice. If a landlord requests a review, the local authority must consider any representations made by the landlord and all other circumstances of the case, decide whether to confirm the penalty charge notice, and give notice of their decision to the landlord. If the local authority is not satisfied that the landlord committed the breach specified in the notice, or given the circumstances of the case it was not appropriate for a penalty charge notice to be served, they must withdraw the penalty notice. If the local authority is still satisfied that the landlord committed the breach, but the landlord still believes the penalty notice is incorrect, the landlord may proceed to the appeals process.

Appeals

- Landlords may appeal any penalty notice on the basis that the penalty notice was issued in error (error of law or of fact), the penalty does not comply with the Regulations, or that it was inappropriate in the circumstances for the penalty notice to have been served. The appeal would be heard at the First Tier Tribunal (General Regulatory Chamber).

Next Steps

The Government laid the regulations for parliamentary approval, implementing the policy as described in this consultation response, on 4 February 2015. The Government will work with the sector to develop industry guidance to help landlords, tenants, local authorities and wider sector bodies to understand and prepare for the regulations before they begin to apply from April 2016.

In line with better regulation guidance, the Government has put in place a requirement to review the operation and effect of the regulations at no less than five yearly intervals. The Government intends that the first review would be carried out in 2020, prior to which it will build evidence about the progress and effectiveness of the regulations. The Government recognises the

market's need for investment certainty, and will seek evidence and views from the sector to inform its reviews.

Conducting the consultation process

DECC carried out a public consultation for six weeks over July to September 2014, also notifying those stakeholders that we have been engaging with since February 2013, those who had expressed an interest in the policy, and a range of networks, such as the Green Deal Provider Forum.

DECC also undertook four webinar sessions (two on the domestic, and two on the non-domestic) and hosted a blog. In addition DECC attended a range of stakeholder and trade body events and provided content for others to use in engaging their partners, supporters and members.

Numerical summary of consultation responses

We received 107 responses to the consultation from a wide range of stakeholders across the public, private and third sectors. These included industry representatives, consumer organisations landlord and tenant representatives and local authorities. The table below shows the numerical breakdown and a full list of organisations is at Annex A.

Type of respondent	Number of responses	Percentage
Certification / membership/professional/ trade bodies	15	14.0%
Energy efficiency supply chain	10	9.4%
Energy supplier	4	3.7%
Environmental / fuel poverty organisation /charity	10	9.4%
Government / political other	3	2.8%
Heritage/conservation body	2	1.9%
Individual	13	12.1%
Landlord association	3	2.8%
Lawyer/legal body	2	1.9%
Lobbyist	3	2.8%
Local authority	25	23.4%
Private Sector miscellaneous	2	1.9%
Property owner/landlord	2	1.9%
Student Body	5	4.7%
Tenant/consumer organisation	8	7.5%
Total	107	100.0%

Detailed analysis of consultation responses and the Government's response – tenant's energy efficiency improvements (questions 1-12)

Tenancies and buildings in scope

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?

Summary of Responses

Of the 66 respondents who expressed a view to this question, 73% (48 respondents) argued the scope was too narrow, the majority of whom made suggestions as to how the scope should be broadened.

Respondents were generally keen for as many private rented properties and tenants to be in scope as possible. Some stakeholders suggested that properties should be brought in scope of the regulations where social landlords privately rent properties on the open market. However, respondents acknowledged this would require changes to the primary legislation.

Of the respondents who did not agree the scope was sufficient, 77% (37 respondents) were of the view that HMOs, including individual bedsits, should be within the scope of the regulations. A number of those respondents who provided general summary comments on the consultation also argued HMOs should be included within the scope of the regulations. Respondents generally referenced the often poor quality of housing for this segment of the market, and the increased health risks to many living in such accommodation.

Furthermore, respondents raised concerns relating to HMOs, and their inclusion in the PRS regulations including:

- a lack of a reliable methodology for assessing the energy efficiency of part of a building;
- that tenants are often not responsible for energy bills and so may respond to poor energy efficiency by increasing the heating rather than initiating a tenant request to install measures;
- that tenants will often not know each other so co-ordinating a request and a response will be more difficult;
- that there may not be a separate electricity meter for Green Deal purposes; and
- that some improvements may be impractical to install for part of a building only.

Suggestions were made to make inclusion of HMOs within scope easier, including the requirement for an EPC at point of letting properties rented on a room-by-room basis, a requirement for landlords to consider and facilitate improvements for HMOs including contacting all tenants, a local authority or third party to consult tenants about possible

improvements and facilitate communication with the landlord and/or that energy efficiency improvements confined to the part of the property occupied by the tenant can be installed.

A number of respondents suggested that other tenancies, in addition to those under the Housing Act 1988 and the Rent Act 1977, could be included within the scope of the regulations. In particular, a significant number of respondents suggested the inclusion of agricultural tenancies and church properties. Some stakeholders also considered that properties such as armed forces properties and co-operative housing should be included in scope.

Other buildings mentioned for inclusion included some specific buildings not requiring an EPC such as listed or protected properties, where properties are let under licence arrangements, park homes and small stand-alone buildings. Buildings that respondents suggested should be out of scope included those with an Article 4 Direction, such as where restrictions are placed on buildings in a conservation area.

Government Response

The majority of respondents believed the scope was too narrow, and that scope for the regulations should be wider. Having considered the arguments, the Government believes there is a case to be made for extending the scope of both the tenancy types and buildings types within scope in certain circumstances, as set out below.

Tenancy types

Certain agricultural tenancies will be included within the regulations, these include properties let (a) on a tenancy which is an assured agricultural occupancy for the purposes of section 24 of the Housing Act 1988, (b) on a protected tenancy within the meaning given in section 3(6) of the Rent (Agriculture) Act 1976, or (c) on a statutory tenancy within the meaning given in section 4(6) of the Rent (Agriculture) Act 1976.

Private rented properties owned by the Church will be in scope of the Regulations if they are rented on an assured or a regulated tenancy. However it is not possible to bring those Church-owned properties which are let under licence (such as vicarages) into scope as the powers in the Energy Act 2011 only allow the Government to bring additional tenancy types within scope, and this does not include properties let on licence. This also means that other properties occupied under licence, such as some hostels and armed forces properties, will also be out of scope of the regulations.

The tenant's improvement regulations derive their powers from the Energy Act 2011 and so cannot apply to properties let by social landlords.

Long-lease holders, where they are also a PRS landlord, may make a request for improvements and the superior landlord may not unreasonably refuse this (see the Governments response to Question 6).

Building types

For the purposes of the tenant's right to request consent regulations, the Government will not limit the ability to make a request to situations where the building has an EPC. This is because it may be difficult for a tenant to ascertain this information, and it unnecessarily creates an additional step for the tenant to go through before being able to make a request. However, to ensure that landlords are not compelled to undertake improvements to a property where it may not be appropriate, the regulations will not require landlords to consent to improvements where they can evidence that the property would not be in scope of the EPC regulations if it were let or sold (in whole or part).

These circumstances are in addition to those set out in the consultation document whereby it would be reasonable for the landlord to refuse consent.

Whilst some listed or protected properties may be in scope of the tenant's right to request consent to improvement regulations, a landlord would not be required to consent to wall insulation measures where they would have a detrimental effect on the integrity of a building. For this to apply, a suitably qualified person² would need to provide clear written advice, including detailed rationale and evidence, stating that the requested wall insulation could not be installed without causing a detrimental effect on the integrity of the building. However, other measures that would not detrimentally affect the integrity of the building should still be installed in these properties.

Tenants in HMOs, as with other tenancies in scope, will be able will be able to make requests for consent to energy efficiency improvements. No changes however will be made to existing regulations regarding the provision of EPCs.

Tenant request process

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?

Summary of Responses

Of the 53 respondents who provided a view on this question, 74% (39 respondents) who expressed a view on this question agreed that additional funding options should be available for use by tenants. There was wide concern around the apparent lack of options available to tenants, the complexity and limited availability for funding options for low income and fuel poor households, and difficulties in qualifying for any support.

Amongst the possible funding options suggested by respondents were: further central government incentives/grants, local authority grants/support, access to charitable funds, rents offset by landlords, equity loan products secured against the property, funding options available for connecting properties to the mains gas network, voluntary total cost of living deals between landlord and tenant, allocation of regional funding sources, free or landlord funded energy assessments, a central carbon mitigation fund, low cost loans from local authorities for F/G rated properties, rent rebates and independent funding advice via Citizen's Advice Bureau. A number of respondents raised issues about the process of obtaining Green Deal Finance and its importance to these regulations.

When considering funding options, stakeholders also highlighted three broader issues:

- Where action was being taken by the local authority under the Housing Act 2004 Housing Health and Safety Rating System (HHSRS), stakeholders wished to ensure that HHSRS takes primacy, particularly in situations where a tenant is unaware that their property is in scope and potentially already subject to HHSRS action. In cases such as this, the landlord should be liable to the costs of energy efficiency improvements.
- Emphasis should remain on the landlord making improvements wherever possible, particularly as it is the landlord who realises the greater benefit in any improved asset value of the property.

² Such as an architect, chartered building surveyor or chartered architectural technologist who has conservation accreditation from a recognised body, such as the Royal Institution of Chartered Surveyors (RICS) Building Conservation Accreditation Register.

- The tenant's rights regulations should not be seen as a primary way of funding improvements. It was noted that research carried out by Consumer Focus in 2012 indicated that where '...energy efficiency works were carried out at the request of the tenant, 87 per cent were paid for by the landlord'. Respondents were concerned that the proposed regulations should not have the effect of reducing the landlord's willingness to improve the energy efficiency of their properties.

Government Response

Under the regulations, a tenant may make a request to the landlord for consent for the installation of energy efficiency improvements where there is no up-front or net cost to the landlord. This could include many of the grant funding options proposed by stakeholders. In addition the tenant may enter into agreement with the landlord for other types of funding arrangement not covered by the regulations.

The regulations will not change existing obligations a landlord may have under HHSRS, including any obligations to improve their property at their own cost to remove hazards, including excess cold. Should HHSRS proceedings be triggered, these obligations will take primacy over any tenant's request for energy efficiency improvements. This is covered in further detail under Question 12.

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?

Summary of responses

Of the 59 respondents who expressed a view on this question, 66% (39 respondents) provided feedback and suggested amendments to the proposed process for when and how a tenant request for consent for energy efficiency improvements is made.

A significant number of respondents emphasised that the process should be as simple as possible for the tenant; however, they were concerned that the current proposals were onerous and created a disincentive due to the level of preparation required for a tenant to make a request of the landlord. In particular, there was concern about the requirement for the tenant to obtain an EPC and to pay for a GDAR; this concern was also expressed by respondents who provided general summary comments on the consultation. Respondents felt that the EPC is the landlord's responsibility and that landlords should also fund a GDAR where it entails a cost.

Several respondents felt that three months for the landlord to respond to a tenant's request was too long and one noted that formal quotations from Green Deal Providers are typically binding for three weeks. Several respondents, including those who provided general summary comments on the consultation, raised the fear amongst some tenants of the possibility of retaliatory eviction or non-renewal of tenancy. Some concern was expressed regarding the need for consistency between the Green Deal Framework and the PRS regulations, as well as the need for the tenant's awareness of other issues such as fire and asbestos which only the landlord may have knowledge of.

There was some support for the use of third parties, such as local authorities, to support tenants making requests for energy efficiency improvements, and respondents suggested that these third parties be provided with clear guidance on the regulations. However, a number of respondents felt that there was the potential for third parties to pressure or provide bad advice to 'vulnerable tenants'; one respondent suggested a form of licensing for these third parties

‘whereby agents and third parties have their license to trade removed if they abuse their position.’

One respondent suggested that the right to request energy efficiency improvements should not apply to short term tenancies or during a tenant’s notice period. Some respondents agreed that while a tenant is subject to court action linked to their tenancy they should not have the right to request improvements, but one respondent disagreed, arguing that this may negatively impact vulnerable tenants with a higher propensity for fuel poverty.

Suggestions for improving the process included the use of a simple template request form for use by the tenant to serve on the landlord and local authority, clarity around the requirement for the tenant to ‘make good’ improvements, protection of tenants’ rights when making a request for improvements, and the importance of minimising barriers in the process.

Government response

The Government has considered feedback received, and is to make a number of changes to the proposed process for a tenant making a request, simplifying the steps for tenants, while maintaining safeguards for landlords.

A tenant will be able to request permission to install an energy efficiency measure at a property as long as:

- a) The measure is one of the energy efficiency measures listed in the Schedule to the Green Deal (Qualifying Energy Improvements) Order 2012, or is a measure required in order to connect the property to the gas network and;
- b) The tenant has a way of funding the measure at no cost to the landlord (e.g. by using the Green Deal, government grants or incentives, ECO, other grant funding from third parties or local authorities)

An EPC, surveyors report or GDAR is not required under our regulations, but may be required should the tenant wish to make use of Government funding, or ECO, and such schemes entail an assessment. Any measures installed by the tenant under the regulations using other funding sources should be installed by an independent installer who meets relevant installer standards of the improvement in question. This should safeguard the landlord against poorly installed measures whilst ensuring that tenants have a wide choice of installers.

The landlord would have grounds for refusing consent if they had advice that wall insulation was not suitable for the property, as described in response question 1.

Landlords would need to provide a response to a tenant’s request within one month. The response would state that:

- Consent is given (where no additional consent is needed or any required third party consent has already been obtained); or
- Consent is refused and the reason provided; or
- Consent will be given subject to obtaining third party consent (planning consents, freeholder consents etc.), giving the landlord up to a further two months to obtain the third party consent; or
- Consent will be given subject to obtaining expert advice about the suitability of the requested measure for the property, or a potential devaluation as a result of installing the measure, giving the landlord up to a further two months to obtain the expert advice; or
- A counter proposal is to be provided, giving the landlord up to a further three months to provide full details of the counter proposal.

The above timetable ensures that tenants receive notification within a reasonable time period as to how their request will be progressed, whilst also ensuring that landlords have sufficient time to develop a counter proposal, seek any third party or superior landlord consents, or obtain advice from relevant experts.

To aid landlords and tenants, the Government intends to provide guidance and support the development of templates for the tenant's request process.

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?

Summary of responses

Of the 62 respondents who expressed a view on this question, 66% (41 respondents) broadly agreed with the proposed set of circumstances in which a landlord may reasonably refuse consent to improvements. Some of these respondents also suggested some minor alterations to the proposed list of circumstances. 34 respondents expressed a view as to whether landlords should be able to make a case for reasonable refusal on a case by case basis, and 74% (25 respondents) of these agreed that they should. However, it was suggested that there needed to be clear guidance, monitoring and enforcement to ensure refusals were made for good reasons, and some expressed concern that the onus may fall too heavily on tenants to challenge refusals through the tribunal process, resulting in a lower uptake of the regulations among tenants.

Of those who suggested minor alterations to the proposed set of circumstances where a tenant request could be reasonably refused, a number of respondents felt landlords should have the right to refuse improvements that would harm the character of, or be inappropriate for, older/traditional buildings, as set out under building regulations. Some respondents also queried the relevance of linking the reasonable refusal of a tenant request to whether the tenant had previously requested, or accepted or rejected a landlord request for Green Deal finance. Suggestions included that tenants should not be punished for seeking further affordable energy efficiency improvements or finding new or better sources of finance within a period shorter than one year. A number of respondents felt that the regulations should be clarified to state that landlords should meet or exceed the level of energy efficiency improvement proposed in a tenant's request when both reasonably refusing the request based on evidenced plans for a larger refurbishment, and offering a counter proposal.

Government response

The Government has reviewed all the suggestions for changes to the list of circumstances for where a landlord might reasonably refuse a tenant's request, and agrees that there is a case for some alteration to the consultation proposals. Under the regulations, a private rented tenant would not be permitted to make a request for consent to improvements where:

- Within the previous six months, they had asked for consent to energy efficiency measures, and the request had been satisfactorily dealt with in accordance with the regulations, or a Green Deal Plan was agreed.
- Within the previous six months, a landlord had sought consent for energy efficiency improvement measures, or tenant consent to Green Deal finance to pay for energy efficiency improvements, and such consent was denied.

- The tenant had notified the landlord of their intent to end the tenancy.
- The landlord has started possession proceedings.

In responding to a request, in addition to where a tenant had not met the relevant requirements to make a request for consent, a landlord's denial of consent would not be considered unreasonable where:

- Within the previous six months, a previous tenant had asked for consent to energy efficiency measures, and the landlord had dealt with the request in accordance to the regulations.
- Despite the landlord's reasonable efforts, they were unable to obtain any required third party consents, including from superior landlords, for the requested improvements.
- The landlord had been served with an HHSRS notice and are undertaking works in relation that notice. In this case, the landlord will be required to inform the tenant of the details of the HHSRS notice and the works planned to meet it, and the tenant's request ceases to have an effect.
- Where neither the property, nor the building the property forms part of is required to have an EPC, for example, the building has the required and evidenced permissions for demolition; or where the building is a temporary structure with an evidenced and planned time of use of two years or less.
- A suitably qualified person had provided written advice that (i) any requested wall insulation could not be installed without causing a detrimental effect on the integrity of the building, or (ii) that the measures requested are not suitable for the property in those cases where the measures are not specified within a GDAR/EPC or surveyors report. Any other measures requested for consent would still need to be considered however.
- An independent surveyor had provided a written assessment stating that the proposed works would materially reduce the property's value (detailed further in response to Question 5). The landlord would need to separately consider consent for any other energy efficiency measures detailed in the tenant's request.

It is not possible for the regulations to specify all situations that may arise where it could be argued that it would be reasonable to refuse consent. Whilst the regulations will provide the key categories, as set out above, landlord will also be able to refuse consent on the grounds that the particular circumstances of the case mean that it would be reasonable to refuse consent. As described in the response to Question 6, the Government agrees with stakeholders that the list of circumstances for reasonable refusal and the opportunity for other situations for reasonable refusal to be decided on a case by case basis should also apply to a freeholder in addition to a leaseholder landlord. The Government agrees with stakeholder suggestions that it would be helpful to provide accompanying guidance on the types of scenarios where a tribunal has or may decide it to be reasonable for a landlord to refuse a tenant request.

In addition to providing or denying consent, a landlord may also propose an alternative package of improvements to the tenants as a counter proposal. The counter proposal must achieve the same or greater levels of energy efficiency as the tenant's request, and must not entail a higher cost for the tenant, than the original request.

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?

Summary of responses

Respondents were broadly split as to whether or not they agreed with the proposed approach for demonstrating an exemption. Of the 58 respondents who provided a view, 43% (25 respondents) agreed with the approach proposed in the consultation document, with 57% (33 respondents) disagreeing.

Of those respondents who disagreed with the approach, a significant number felt this was because the circumstances in which measures have a material negative impact on the value of a given property are likely to be rare and do not justify the complications and administrative burden of such an exemption. Stakeholders also pointed to evidence published by DECC that demonstrated a link between a higher EPC rating and increased property prices. Stakeholders felt that this relationship is likely to be strengthened in the private rented sector with the introduction of the minimum energy efficiency standards. In addition, stakeholders felt that a RICS valuer is unlikely to be experienced in valuing a property based on proposed energy efficiency measures, which could lead to inconsistencies in valuations.

Amongst the stakeholders who agreed with the approach, a small number of respondents argued 'impact on value' could cover broader, partially subjective aspects (such as 'kerb appeal'). Such stakeholders were concerned about impact of some energy efficiency measures on the character of traditional properties. They were also concerned about possibly potential unintended consequences arising from the installation of energy efficiency measures.

Stakeholders in general felt that a single valuation from a 'competent person' such as a RICS valuer, or equivalent should be sufficient to provide an exemption. However, where the tenant disagreed with the landlord's valuation, they should also be able to seek a valuation. Should this still be inconclusive, a third valuation (potentially at an Appeals court – the First-tier Tribunal) could be undertaken.

Government response

Whilst the Government agrees with many respondents in their suggestion that such a valuation exemption would rarely be required, in order to safeguard those minority of situations whereby a real risk to a property's value may be posed, provision of an exemption would be prudent. There was no widespread agreement amongst stakeholders on a particular figure; however, the Government believes that setting the value of material decrease at greater than 5% of the value of the property (excluding the cost of the measures), as calculated by an independent surveyor³ would provide the necessary safeguard to landlords, whilst also ensuring that the exemption is not used erroneously to avoid undertaking improvements. Providing a defined figure in the regulations will also make the exemption clear to understand, easier to enforce, and less likely to lead to appeals to the First-tier Tribunal, than using wording such as a "material decrease" in the regulations, as suggested in the consultation.

The Government expects that the exemption will be used extremely infrequently. Therefore the Government will monitor the use of this negative impact on value exemption through the use of the Private Rented Sector Exemptions Register, and will take action should the evidence point to the need to remove or make changes to the exemption.

³ a surveyor who is on the Royal Institution of Chartered Surveyors' register of valuers

Question 6

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

Summary of responses

100% of the 64 respondents that expressed a view on this question agreed that freeholders should also be under a duty not to unreasonably refuse consent to requests for energy efficiency measures. There was wide recognition that including such a duty on the freeholder would help to make the tenant's request process easier and remove the potential barrier to the uptake of energy efficiency improvements. However, respondents also raised concern about how this duty would be enforced and any non-compliance challenged. Some respondents suggested that the duty on freeholders should mirror that detailed in the regulations for when and how a landlord should respond to a tenant request including when a request may be reasonably refused. Other respondents asked for further clarity on the details of how a duty on the freeholder would be implemented, including what would happen if the freeholder was absent, whether requests can originate from both the landlord and the tenant, and how the duty would work if there is a chain of tenancies and/or leases. One respondent queried whether the duty would also apply to the minimum standard regulations or only the tenant's improvements regulations.

Government response

The Government recognises the significant support from respondents for the proposal to include both immediate and superior landlords (including freeholders) under the duty not to unreasonably refuse consent to requests for energy efficiency measures. The Government has considered the consultation responses and agrees that the tenant's improvement regulations should include a duty on superior landlords not to unreasonably refuse consent to improvements.

This will mean that the obligation not to unreasonably refuse consent applies to the immediate leaseholder landlord and any superior landlord. This duty will apply where a request for measures has originated from a tenant on an eligible private rented sector tenancy (as set in response to Question 1), or where a leasehold tenant is in their own right a landlord of a domestic private rented property wishes to seek consent for energy efficiency improvements from their landlord (the superior landlord). Whilst only immediate landlords will be required to meet minimum energy efficiency standards, requiring that superior landlords do not unreasonably refuse consent to improvements should assist leaseholder-landlords comply with the minimum standard regulations by facilitating consent from the freeholder.

The process and requirements that would apply where a leasehold tenant of a private rented property makes a request for consent to measures from their freeholder, would be similar to those set out under:

- Question 4 - the set of circumstances in which a request for consent for improvements may be reasonably refused.
- Question 7 - the timescales for the providing a response to a request.
- Question 8 – how a counter proposal to a request may be made.

To ensure effective enforcement, in the case of a dispute regarding a freeholder response, or in the event that the freeholder has not provided a response within the required timescale, a leaseholder landlord or tenant will be able to take the matter to the tribunal.

Question 7

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

Summary of responses

Of the 60 respondents who provided a view on this question, 62% (37 respondents) agreed with the proposed landlord's response criteria and timescales for the tenant's request for consent to energy efficiency improvements. There was general concern that if tenants put in a request, landlords may seek to end the tenancy at the earliest opportunity. Concern was also expressed that many tenants may not see value in requesting measures through a lengthy process when they may not see significant benefit from them. A number of those respondents who provided general summary comments on the consultation expressed particular concern about short-term tenants, who might not live in a property long enough to work within a longer timetable for the tenant's request process or see the full benefits of energy efficiency improvements.

A significant number of the respondents (16 respondents) felt that the timescale for a landlord to respond should be reduced, with three respondents suggesting that this and the tenant time for a counter proposal should be the same. There was huge disparity on this issue with five respondents suggesting longer time where freeholder consent is required. It was also suggested that guidance is required on how a tenant's request should be made. Some respondents were of the view that a timescale should be specified for improvements to be installed, suggesting six to twelve months and one respondent suggested a timescale of one month for the landlord's counter proposal.

Government response

As set out in the Government's response to Question 3, the timescales for a landlord to respond to a tenant's request has been tailored to the complexity of the response. An initial communication for a simple agreement or denial of consent is required after one month, with a further two months provided where a landlord needs to take additional steps to obtain advice or third party consents, and a further three months where the landlord intends to provide a counter proposal. This should provide tenants with earlier notification as to how their request is being considered than with the original proposal, whilst also ensuring that landlords have the time necessary where further steps are required to service the request. The Government intends to ensure that the benefits of making a request and assistance in going through the process is provided, so as to encourage tenants to utilise their rights.

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?

Summary of responses

100% of the 71 respondents who responded to this question broadly agreed that a landlord should be permitted to make a counter offer to a tenant's request. Significant numbers of respondents expressed the need for guidance, particularly in relation to what constitutes a counter proposal. There was also significant concern that there should be equivalence in requirements of tenants and landlords such as in the timescales imposed for responses and the standards required of measures installed. With regard to the industry standards, there was some difference in opinion regarding the requirement of PAS2030 approved measures. Some

respondents also emphasised the need to ensure there were no additional costs to tenants resulting from a landlord's counter proposals, that there was a time limit on when the improvements were installed and that the counter proposals should not amount to additional disruption to the tenant.

Government response

There was strong support from stakeholders for landlords to be able to provide a counter proposal to a tenant request that meets or exceeds the energy efficiency improvements requested by the tenant where there are not increased costs on the tenant. The counter proposal may be used where a landlord agrees with the scope of works outlined in the tenant request, but the landlord proposes to carry out the works rather than the tenant.

The Government agrees with stakeholder suggestions about using guidance accompanying the regulations to provide clarity on the types of scenarios where a counter proposal offered by a landlord may be unreasonable. In the case of a dispute between the landlord and tenant, cases could be taken to the tribunal. The regulations and accompanying guidance will provide clarity on the requirements for any counter proposal.

A significant number of stakeholders argued that the timescales under the regulations for a landlord to respond to a tenant request should be amended. This is covered under the response to Question 3. Similar timescales will also apply where a freeholder is required to respond to a landlord request to provide consent for energy efficiency improvements.

Respondents also supported that the installation of measures under the regulations should be carried out to a specified standard. Measures installed under Green Deal or the Energy Company Obligation (ECO) will be installed to the PAS2030 standard or equivalent. Where a tenant accepts a landlord counter proposal the landlord will be able to use an installer of their choice to carry out the works. It will be in the landlord's interest to ensure any measures are installed to a high standard so that the property is not damaged and the property value is not negatively impacted.

The Government concurs with stakeholder views that there should be a maximum timeframe in which energy efficiency improvements in a landlord counter proposal should be installed. Measures will have to be installed within six months unless the landlord can prove this is not practical and a longer timeframe is required, in which case they would need to approach the tenant to explain this, or make the case at a tribunal, should a tenant wish to challenge the landlord. This is the same as the timeframe to install measures should the landlord reasonably refuse the tenant request due to the existence of evidenced plans or planning permission to install energy efficiency improvements.

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?

Summary of responses

Of the 48 respondents who answered this question, 79% (38 respondents) thought that there is a risk of eviction as a consequence of the tenant's right to request improvements under the regulations. Respondents who provided general summary comments on the consultation also agreed with that this was a concern. Of those who felt there was a risk, 66% (25 respondents) offered options for mitigating this perceived risk. There was a feeling that the tenant's request

process will be helped by the introduction of minimum standards in 2018 (and therefore refusing a tenant's request for improvements may simply delay the inevitable need to implement improvements) but concern was expressed about tenants confronting landlords directly as part of the request process. There was also concern that a lack of sufficient protection from retaliatory eviction would be a significant deterrent to the use of the tenant's right. The risk of retaliatory eviction was queried by landlord groups. The range of proposals to mitigate this risk was wide and varied, and included: protection from eviction during the tenant's right request process, introduction of Selective Licensing Schemes, and increasing tenant awareness of relevant legislation, including HHSRS.

Government response

The Government wishes to ensure that tenants are not unfairly penalised in any way, such as through retaliatory eviction, by making legitimate requests. However, the Government considers that there is little in the nature of the tenant's request process that is disadvantageous to the landlord, as the tenant is making the request to improve the landlord's property, ensuring any improvements are funded at no upfront cost to the landlord. Should an HHSRS notice be served on the property, the landlord would have to make the required improvements at their own expense and evicting the tenant would not impact on having to meet this requirement.

The Government agrees with the suggestion in the consultation that the risk of this eventuality is mitigated by the tenant informing the local authority of their request and any subsequent action, and by the provision of information and guidance to tenants and landlords.

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?

Summary of responses

21 respondents referenced the World Wildlife Fund – UK (WWF-UK) and UK Green Building Council (UKGBC) report “Analysis for WWF and UK-GBC: achieving minimum EPC standards in housing⁴” which found that the average cost to improve an F or G rated property to an E EPC level was on average £1345, with an average fuel bill saving of £408 per year.

Evidence produced by the Energy Saving Trust (EST) was also suggested by some respondents, for example the report “F&G banded homes in Great Britain: Research into costs of treatment, EST, June 2010⁵.”

One local authority provided evidence on costs relating to upgrading the private sector in their area, highlighting a condition survey conducted in 2008 which found that the average cost of loft insulation of £200, cavity wall insulation of £400 and replacement boilers of £1,000, meant that carrying out these three measures would cost on average £1,600. Another local authority, found a drop in Excess Winter Mortality coincided with activity to promote energy efficiency in the private rented and owner occupied sectors, as well as with engagement with, what is now, Public Health teams. Another respondent also raised evidence relating to the relationship

⁴ <http://www.ukgbc.org/resources/publication/analysis-wwf-and-uk-gbc-achieving-minimum-epc-standards-housing>

⁵ <http://www.energysavingtrust.org.uk/Publications2/Housing-professionals/Refurbishment/F-G-banded-homes-in-Great-Britain-research-into-costs-of-treatment>

between cardio-vascular and respiratory diseases and the poor energy efficiency of homes, citing “The Health Impacts of Cold Homes and Fuel Poverty” by Friends of the Earth.

One respondent highlighted a research paper undertaken by the Worcester Polytechnic Institute⁶ on attitudes to energy efficiency and consumer behaviour, which found 46.6% of tenants look at the cost as a barrier to energy improving, whilst 22.4% cite too little time.

One heritage charity highlighted a case study involving the upgrade of cottages, raising the standard not only made them more desirable to live in, achieving an above market rent, but also meant that they avoided costly refurbishment to these cottages in the future.

Evidence was also provided on measures that would be beneficial for tenants, and would not entail significant cost for property owners. The evidence provided related to a tool developed to make an assessment of costs and savings for a standardised package of measures to be installed in three property types known (based on English Housing Survey data) to be prone to fuel poverty.

One landlord body suggested that where solid wall insulation is required and funding is available, there remains a cost shortfall, averaging £1,500 – £2,000.

Some respondents provided wider views on the costs and benefits relating to energy efficiency improvements, but did not submit evidence.

Government response

The Government thanks stakeholders for the provision of evidence and information. Such evidence and information has helped in the development of the final policy’s design, and enabled the Government to enhance and sense check assumptions used in the IA’s modelling and associated analysis for the policy’s Final Stage Impact Assessment. The information will also be used to inform wider policy on household energy efficiency.

Appeals

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?

Summary of responses

Of the 51 respondents who expressed a view on this question, 94% (48 respondents) agreed that the First-tier Tribunal is the appropriate body to hear these appeals. Only three respondents disagreed. Of the 22 respondents who expressed a view about the use of the General Regulatory Chamber Rules for handling appeals, 88% agreed with this approach. It was suggested that the local authority would review any case prior to recourse to tribunal and that the process should not hold up measures being put in place. There was also a wish for guidance, both for the staff of the First-tier Tribunals to ensure they have the appropriate knowledge and skills to handle these appeals, and for tenants who might not be familiar with the tribunal process.

⁶ <http://wp.wpi.edu/london/files/2014/06/Analyis-of-consumer-energy-behavior-in-the-Arboretum.pdf>

Government response

The Government is of the view that the First-tier Tribunal is the appropriate body to hear and determine applications relating to tenant's requests for consent to energy efficiency improvements and that the General Regulatory Chamber Rules of the First-tier Tribunal are appropriate for the handling these appeals. This is consistent with other schemes and retains the focus on energy efficiency and the associated uptake of measures. There is also the advantage that this tribunal will 'travel' and be available at different locations and the person making the application can represent themselves. This makes the process more accessible and less costly. The Government will not require local authorities to review each appeal before it goes to tribunal, but the Government intends to provide detailed guidance supporting the regulations to local authorities, tenants and landlords which will fully cover any potential issues.

Miscellaneous questions

Question 12

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

Summary of responses

48 respondents made additional comments regarding tenant's improvements regulations. The comments fell into several key themes:

- Timeframes – a significant number of respondents expressed the view that the regulations should include a stated timeframe in which the works would need to be completed. To not do so would mean a landlord could delay indefinitely to avoid having to comply with the request. Some felt that a lack of timeframe would leave tenants seeking recourse via tribunal; these respondents felt that one year would be reasonable for installation to have taken place but that the option of a mutually agreed timeframe should be specified.
- HHSRS – respondents supported HHSRS having primacy and that this route would require funding by the landlord. Respondents felt that the original tenant's request should remain in force once the HHSRS notice is complied with and that local authorities should have a duty to consider tenants' requests and incorporate them into HHSRS enforcement schedules.

A further issue raised was around the need for local authorities to support tenants, particularly vulnerable tenants, who make requests for improvements and that this should be funded.

Government response

As detailed in the response to Question 8, the Government agrees that there should be a maximum timeframe in which energy efficiency measures in a landlord counter proposal should be installed. Improvements will have to be installed within six months unless the landlord can prove this is not practical and a longer timeframe is required, in which case they would need to approach the tenant to explain this, or make the case at a tribunal, should a tenant wish to challenge the landlord.

The Government will also amend the regulations so that where a landlord has been served a notice under HHSRS, the landlord would need to notify the tenant and specify the works which they intend to carry out to comply with the improvement notice, as well as the date by which

they propose to carry out those works. In order to ensure that the improvements required by the HHSRS notice take primacy, once a landlord notifies the tenant that they are in the process of complying with HHSRS, the tenant's request ceases to have effect. Once HHSRS is completed, the tenant would be able to make a new request, as long as it was six months after the date of their previous request.

In light of stakeholders' responses, the Government will consider, in conjunction with local authorities and other relevant parties, to what extent local authorities might support tenants' requests. The Government will also work to ensure the regulations are adequately publicised and provide clear guidance, to help increase the understanding of the regulations. The Government will also help support any local authority interventions, for example through guidance.

The Government recognises that for various reasons some tenants may not wish to make a request to landlords to make energy efficiency improvements. However, it is important to put in place appropriate regulations in order to empower those that do.

Detailed analysis of consultation responses and the Government's response - minimum energy efficiency standard (questions 13 -28)

Scope of regulations

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?

Summary of responses

Of the 68 respondents who answered this question, 79% (54 respondents) made suggestions for the proposed scope for the tenant's improvements regulations to include or exclude additional building or tenancy types. Generally, respondents wished to include as many private rented properties and tenants in the scope as possible.

68% (46 respondents) stated that HMOs, including individual bedsits, should be in scope of the regulations. Respondents who wished to include HMOs within the scope of the PRS regulations argued that their inclusion was particularly important because HMOs house some of the most vulnerable tenants, either because they are disadvantaged or at risk, in fuel poverty, have short term tenancies, are on low incomes, or are transient in nature. Furthermore HMOs are often larger properties with higher than average energy use and so the benefits from installing measures may be greater. Suggestions were made to make inclusion of HMOs within scope easier, including by requiring an EPC at point of letting properties rented on a room-by-room basis.

32% (22 respondents) stated that properties should be included in scope where social landlords (Registered Social Landlords) rent out properties to private tenants on the open market with tenancy agreements covered by the Housing Act 1988 and the Rent Act 1977. However, it was acknowledged that this will require an amendment to Section 42 of the Energy Act 2011.

31% (21 respondents) felt that all domestic private rented properties should be in scope, not just those with a valid EPC. These respondents also felt that the requirement to obtain an EPC under EPBD should be more rigorously enforced to ensure all properties that should have an EPC actually do have one.

19% of stakeholders (13 respondents) wanted agricultural properties in scope of the regulations although with some caveats, and 16% (11 respondents) believed that church properties should be in scope.

There were a further range of individual suggestions which have been taken into account in the Government response below.

Government response

The regulations apply to the domestic rented sector in England and Wales. This is defined in section 42 of the Energy Act 2011 as properties let under an assured tenancy for the purposes

of the Housing Act 1988, or a tenancy which is a regulated tenancy for the purposes of the Rent Act 1977.

As was found in responses provided to Question 1, the majority of respondents believed the scope was too narrow, and should be widened; both to include additional tenancy types, and a wider range of buildings (e.g. listed buildings where energy efficiency improvements would not harm the character or the fabric of the building).

Having considered the arguments, the Government believes there is a case to be made for extending the scope of both the tenancy types and buildings types.

In line with the expansion of scope under the tenant's right to request consent regulations, properties let (a) on a tenancy which is an assured agricultural occupancy for the purposes of section 24 of the Housing Act 1988, (b) on a protected tenancy within the meaning given in section 3(6) of the Rent (Agriculture) Act 1976, or (c) on a statutory tenancy within the meaning given in section 4(6) of the Rent (Agriculture) Act 1976 will be included, as will church properties where they are let on private tenancies. Properties occupied under licence will not be in scope of the regulations, nor will properties rented by social landlords.

Properties within scope will include any domestic privately rented property which: has an EPC, and is either (i) required to have an EPC; or (ii) or is within a larger unit which itself is required to have an EPC, either at point of sale, or point of let. No changes will be made to existing regulations regarding the provision of EPCs. The Government has considered stakeholder views regarding situations where a landlord has no choice whether a tenancy is granted or not, and where the landlord does not have an opportunity to improve the property before the regulations apply. Where a tenancy is granted involuntarily – for instance by order of a court – the property will still be in scope of the regulations; however, landlords will be provided with six months after the tenancy is granted in order to comply, or demonstrate an exemption. Similarly, where a non-compliant property occupied by a tenant is sold, or is transferred to a lender in the case of receivership, the property will be in scope and the new landlord will have six months to improve the property, or seek to demonstrate an exemption applies.

Should six months not be considered sufficient, a landlord may make the case to the enforcement body, seeking more time, and the enforcement body may use their discretion as to provide more time if necessary. A landlord may make an appeal to the Upper Tribunal if they wish to challenge a penalty on the grounds it was not reasonable for them to comply within the prescribed time period.

The required improvements

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?

Summary of responses

72 respondents expressed a view on this question, with 18% (13 respondents) agreeing that landlords should only be required to install measures that meet the Golden Rule, taking account of available Green Deal finance and funding support, and 82% (59 respondents) disagreeing.

Respondents who opposed the proposal argued that many landlords would receive benefits from investing in energy efficiency improvements, such as a potential increase in value/rental price of their property, and should invest in ensuring that tenants do not have to live in conditions which may endanger their health and safety. These arguments were echoed by those who provided general summary comments on the consultation. A significant number of respondents who held this opinion stated that the regulations could be streamlined by requiring landlords with properties within the scope of the legislation to meet the minimum standard of an E EPC rating up to a maximum spend of £6,000, which would place a limit on the amount landlords need to spend.

A significant number of respondents, including a number who provided general summary comments on the consultation, also expressed concerns about the funding streams that landlords would be using to meet an E EPC rating or claim an exemption, such as the Green Deal finance and ECO. Respondents mainly cited concerns that the funding streams would: a) not be guaranteed to exist in the future; b) make enforcement of the regulations difficult due to their diversity and complexity; and c) be inaccessible or unsuitable for lower income tenants with a higher propensity for fuel poverty and the most 'expensive to treat homes'.

Government response

The vast majority of properties falling below an E rating can be improved at no upfront or net costs to the landlord – the accompanying Impact Assessment for the policy shows that 83% of F or G EPC rated PRS properties can be improved within the Green Deal's Golden Rule. The Government wishes to encourage all property owners, including landlords, to improve the energy efficiency of their properties as far as possible. However ensuring that landlords are able to comply at no upfront or net costs for capital works is important, as any disproportionate costs that fall on a landlord could be passed through to tenants in the form of higher rents.

The Government agrees with respondents that it will be important to ensure that there is adequate funding support available to the sector for the regulations to have the most impact. As part of the Autumn Statement 2013 announcements, the Government committed to three years of incentive funding being made available across the UK, including to private rented sector landlords. On 8 October an additional £100m of incentive funding was also announced. The Government is committed to ensuring that the sector is able to access such funding and make improvements ahead of the regulations applying.

The Government considers it unacceptable for any landlord to let a property that is in hazardously poor condition, and existing powers under the Housing Health and Safety Rating System (HHSRS) are available to local authorities to deal with excess cold and hazardous conditions in the private rented sector. HHSRS powers enable local authorities to require, in certain circumstances, that housing condition improvements are made by the landlord, regardless of cost. The PRS regulations are intended to compliment these provisions by requiring energy efficiency improvements where cost effective solutions are available – the regulations do not, however, supplant or take precedence over existing HHSRS protections. This is discussed further in the response to Question 12.

Given the considerations outlined above, it is the Government's intention to retain within the regulations a temporary exemption to the minimum standard for landlords where they can demonstrate that they have undertaken those improvements that may be funded within the Green Deal's Golden Rule, achieving the Government's objective of ensuring landlords can comply without upfront or net costs for improvement works. The Government recognises the need to ensure that this exemption is simple for all to understand and implement, and to ensure this provision is not used by a minority of unscrupulous landlords to avoid taking action. The regulations will clearly set out that only those costs directly related to the physical installation of the improvement, and the cost of purchasing the improvement measures, can be included

within the cost calculation. These regulations will not change existing obligations a landlord may have under HHSRS, including any obligations to improve their property at their own cost to remove hazards, including excess cold.

Question 15

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

Summary of responses

68 respondents provided views in response to this question, with the majority disagreeing (45 respondents, or 66%) that the principle should apply at all to Green Deal Assessments, and thought that landlords should be expected to manage Green Deal Assessment costs where they arise. Of these, 24 also expressed opposition to the principle of ‘no upfront costs’ applying to any aspect of the regulations, and not just assessments. Of those who disagreed with applying the principle of ‘no upfront costs’ to assessments, 11 pointed out that there was consensus within the Government’s advisory working group⁷ that assessment costs should not be considered part of the ‘no upfront cost’ policy objective.

The vast majority of the remaining respondents provided no view on the principle of no upfront cost, and instead commented on how a no upfront cost principle could be met. Suggestions included that: GDARs should be offered free of charge, the cost should be absorbed into any finance plan, the tenant should pay any cost, an EPC ought to set out the measures that a landlord must consider to comply with the regulations, and one suggested there should be a specific funding scheme for the PRS.

The remainder of respondents raised a range of points, including that GDAR costs are low and likely to go down over time and are largely inconsequential, and that landlords ought to be informed of suppliers offering free assessments.

Government response

The Government recognises the concern regarding applying the principle of ‘no upfront cost’ to assessments and will continue to monitor the market for assessments in the run up to the regulations applying. The regulations will not, however, seek to provide an exemption for landlords where a cost may arise in relation to Green Deal Assessments. Where they do arise, in many cases it may be possible for such costs to be deducted for income tax purposes.

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?

Summary of responses

Of the 47 respondents who stated that they have evidence of the scale of costs and benefits of improving energy efficiency, 43% (20 respondents) named a study conducted by Parity Projects

⁷ <https://www.gov.uk/government/publications/domestic-private-rented-sector-regulations-working-group-report-report-to-government>

for WWF and UK-GBC⁸, which examined properties with F or G EPC ratings and modelled the average cost of the improvements that would be needed to reach an E EPC rating. A number of respondents also named a 2010 Energy Saving Trust study⁹ on measures and costs of bringing all F and G EPC rated homes up to an E EPC rating. Respondents also cited their own evidence of the savings provided by energy efficiency, the extent of the “ancillary costs” that might be involved in increasing energy efficiency in properties, and the health benefits of improving energy efficiency in homes.

Government response

The Government thanks stakeholders for the provision of evidence and information. Such evidence and information has helped in the development of the final policy’s design, and enabled the Government to enhance and verify assumptions used in the IA’s modelling and associated analysis for the policy’s Final Stage Impact Assessment. The information will also be used to inform wider household energy efficiency policy.

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?

Summary of responses

Respondents were almost evenly split as to whether or not they agreed with the proposed approach for demonstrating an exemption on the basis of a negative impact on value. Of the 51 who responded, 45% (23 respondents) agreed with the approach proposed in the consultation document, with 55% (28 respondents) disagreeing.

Respondents in general provided the same views as to Question 5. Of those respondents who disagreed with the approach, a significant number felt this was because the circumstances in which measures might have a material negative impact on the value of a given property are likely to be rare, and do not justify the complications and administrative burden of such an exemption. Stakeholders also pointed to evidence published by DECC that demonstrated a link between higher energy EPC rating and increased property prices. Stakeholders felt that this relationship is only likely to be strengthened in the private rented sector with the introduction of the minimum energy efficiency standards as outlined in the Private Rental Sector regulations. In addition, some stakeholders felt that a RICS valuer would be unlikely to have significant experience in valuing a property based on the proposed energy efficiency measures, which could lead to inconsistencies in valuations.

Amongst the stakeholders who agreed with the approach, a small number wished ‘impact on value’ could cover broader, partially subjective aspects (such as ‘kerb appeal’). Such stakeholders were concerned about impact of some energy efficiency measures on the traditional character of the property. They were also concerned about possible unintended consequences arising from the installation of energy efficiency measures.

Stakeholders in general felt that a single valuation from a ‘competent person’, such as a RICS valuer should be sufficient to provide an exemption. However, where the tenant disagreed, they

⁸ <http://www.ukgbc.org/resources/publication/analysis-wwf-and-uk-gbc-achieving-minimum-epc-standards-housing>

⁹ <http://www.energysavingtrust.org.uk/Publications2/Housing-professionals/Refurbishment/F-G-banded-homes-in-Great-Britain-research-into-costs-of-treatment>

should also be able to seek a valuation. Should this still be inconclusive, a third valuation (potentially at an Appeals court – the First-tier Tribunal) could be undertaken.

Government response

The Government believes that setting the value of material decrease at greater than 5% of the value of the property (excluding the cost of the measures), as calculated for example by an independent RICS surveyor would provide the necessary safeguard to landlords. This would mean the regulations would exempt landlords from installing energy efficiency measures where material decrease in property value as a result is greater than 5% of the value (excluding the cost of the measures themselves and their installation cost).

While there was no widespread agreement amongst stakeholders on a particular figure, a level of 5% provides protection for landlords in situations where energy efficiency measures might significantly impact the property's commercial value.

Providing a defined figure in the regulations will make this exemption much clearer to understand, easier to enforce, and less likely to lead to appeals to the First-tier Tribunal, than using the more ambiguous wording "material decrease" in the regulations.

The Government expects that the exemption will be used extremely infrequently. Therefore the Government will monitor the use of this negative impact on commercial value exemption through the use of the notification database, and will take action should the evidence point to improper use of the exemption.

Exemptions from the requirement to undertake improvements

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?

Summary of responses

Of the 52 respondents who expressed a view on this question, 77% (40 respondents) felt that the proposed consents exemptions did not strike the right balance with existing landlord obligations, with stakeholders mostly concerned about consent required from freeholders. Stakeholders felt that the same principles regarding consents exemptions for landlords should apply to freeholders and beneficial owners. Respondents agreed that freeholders and beneficial owners should be contacted to obtain consent when appropriate, but some respondents felt that there should be time limits on freeholders providing a response to landlords, proposing that if a response is not received within a certain time frame this should be taken as consent given.

A considerable number of respondents felt that in order to ensure the consents exemption is not used as a loophole by landlords to avoid undertaking energy efficiency improvements, guidance would need to be provided to local authorities to allow them to understand when a landlord would be legitimately exempt from complying with the minimum standards. Many respondents felt it was important to provide particular guidance on when landlords may have a valid consent exemption based on conditions set by a third party, and how far the landlord has to go to obtain consent from third parties; for example, whether they need to appeal against planning permission refusal or when the process may incur any costs. Finally, some respondents expressed concern that the landlords may be allowed exemptions based on a tenant not

accepting Green Deal finance where tenants may be in financial difficulty or unable to pass the Green Deal credit check.

Government response

The Government believes that it is important to ensure the right balance is achieved between existing landlord obligations and permissions, whilst also ensuring that the proposed consents exemptions is not used as a loophole to avoid undertaking improvements.

While freeholder consent may be covered by the terms of any contract already in place between the freeholder and landlord, as discussed in the Governments response to Question 6, the Government intends that the tenant's improvement regulations should also include a duty on the freeholder not to unreasonably refuse consent to improvements, and assist landlords (who might also be leaseholders) in seeking compliance for the installation of energy efficiency regulations. In such cases, freeholders would need to respond to a landlord request for consent for improvements within a set timeframe.

To ensure landlords do not actively seek refusal to a consent request, landlords will need to demonstrate reasonable endeavours in seeking consent.

The PRS regulations and accompanying guidance will provide more detail as to the precise circumstances where a consent exemption may be considered valid. In situations where a landlord has not been able to secure tenant consent for a Green Deal, the landlord would not automatically have a valid consent exemption unless all other funding options had also been explored.

When and how the regulations apply

Question 19

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?

Summary of responses

73 respondents expressed a view on this question, with 75% (55 respondents) agreeing that the regulations should apply in a phased manner, applying to new tenancies from April 2018, with a backstop at a later date. 25% (18 respondents) did not agree with a phased introduction and called for a hard start, applying the regulations to all tenancies in scope from April 2018 (although one of these respondents suggested there should be an exemption for large portfolio owners).

Over 61% (44 respondents) agreed with the proposed backstop date of April 2020, at which point all tenancies would be required to comply with the minimum energy efficiency standard. Three respondents (4%) expressed a preference for an earlier start to the regulations, and one further respondent sought an earlier backstop date. These respondents felt there was sufficient time for landlords to act, and the Government's proposed phased introduction risked slower levels of improvement. Some respondents, however, argued that more time was needed, with 10% (7 respondents) proposing later backstops of 2023 or 2025, with particular concerns raised around application of the regulations to traditional buildings.

Some respondents highlighted the importance of tough enforcement activity to ensure the backstop is effective in driving improvements. Others commented that they were concerned that the regulations could only apply to those properties with an EPC.

Government response

The Government proposes to apply the regulations in a phased manner. The minimum standards regime will come into force in October 2016, to allow landlords who wish to claim an exemption to the regulations to do so before the prohibition on renting out a sub-standard property comes into force. The regulations will then apply to new tenancies and renewals from April 2018 and from April 2020 to new and existing tenancies (inside the scope of the PRS as explored earlier in the consultation).

A phased introduction will provide sufficient time for the market to prepare and adapt, as was argued in the responses we received, whilst also ensuring that a clear end point is in place. This will facilitate compliance and enforcement action. However, to ensure that opportunities where landlord and tenant are in negotiation are capitalised upon, the Government intends to apply the regulations on tenancy renewals from April 2018 where there is an EPC (explained in more detail under Question 20) as well. As with the provisions allowing for a third party consent exemption, if the tenant refuses consent to the improvements, the landlord will be eligible for an exemption.

Question 20

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

Summary of responses

Of the 70 respondents who expressed a view on this question, 87% (61 respondents) agreed that the minimum standard regulations should apply upon tenancy renewals and new tenancies from April 2018 where a valid EPC exists for the property. Many respondents recognised that tenancy negotiations provided a good opportunity for tenants and landlords to discuss possible energy efficiency improvements, whilst still enabling tenants to decline consent for the improvements should they so wish. However, respondents expressed concern that where a tenant declined consent for improvements this should not be allowed to influence the landlord's decision to renew the tenancy.

Applying the minimum standard upon tenancy renewals was also seen by respondents as a way to help tackle fuel poverty. Some respondents suggested that the minimum standard should apply to tenancy renewals for properties without an existing EPC, whilst a couple of respondents considered that a tenancy renewal should trigger the requirement to obtain an EPC for the property.

Some respondents (10%; 7 respondents) argued the minimum standard should only apply to new tenancies and raised concerns that applying the regulations to renewals may be difficult to enforce, may have a negative impact on the tenant-landlord relationship, and may create challenging timescales for landlords with traditional buildings or large property portfolios. In addition, one respondent asked for clarity on whether statutory periodic tenancies would be classified as tenancy renewals for the purposes of the regulations.

Government response

The Government agrees with the view expressed by the majority of stakeholders that the minimum standard regulations should apply to both new tenancies and tenancy renewals where a valid EPC exists from April 2018.

On balance, the Government believes that opportunity to realise the benefits from installing energy efficiency measures should be provided to tenants at tenancy renewal given that, where the tenant is in occupation, the tenants is able to refuse consent for the improvements and the landlord will not be required to carry out the works. The minimum standard regulations derive their powers from the Energy Act 2011 and so can only apply to properties with an EPC. However, the Government recognises that the number of properties with an EPC will increase over time.

The consideration that a tenancy renewal should trigger the requirement to obtain an EPC for the property was suggested by some stakeholders. However, this aspect is covered by the Energy Performance of Buildings (England and Wales) Regulations 2012 and so is outside the scope of this consultation.

The Government acknowledges that there are challenges to enforcing the minimum standard regulations which apply to both new tenancies and tenancy renewals. However, the Government is committed to ensuring the enforcement process is as simple and effective as possible. This will include raising awareness with tenants, landlords and third parties such as letting agents and local authorities that the minimum standards apply to new tenancies and tenancy renewals; use of available datasets to identify properties in scope of the regulations; and identifying non-compliance through the collection of evidence.

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?

Summary of responses

Of the 71 respondents that expressed a view on this question, 27% (19 respondents) were in favour of exemptions lasting five years and 73% were not (52 respondents). The alternatives offered for the length of exemptions for landlords varied between one year (34% of those who responded to the question; 24 respondents), two years (13%; 9 respondents), and three years (10%; 7 respondents).

There were also views expressed that exemptions, if any, should be at a minimum and that they should be registered. One of the main concerns from those who disagreed with the proposal was changes in fuel prices, other funding mechanisms and the development of new products and solutions would make achieving an E rating possible in a much shorter time frame than five years. Another common concern was that five years was 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.”

Only one respondent disagreed that when an exemption relates to tenant consent, it should expire at the end of that tenancy if it is before five years, stating that the exemption should last for five years irrespectively.

Government response

The Government believes that there needs to be a balance between driving cost effective energy efficiency improvements and placing unreasonable burdens on landlords. Where a

vulnerable tenant is living in poor conditions that give rise to a cold health hazard, local authorities have powers under the Housing Act 2004 (HHSRS) to take action, irrespective of any exemption under the PRS regulations.

Furthermore, the Government does not anticipate large numbers of claims for exemptions, which will require evidence and registration. We will monitor the use of exemptions, and the regulations will provide for a penalty notice to be issued in the event of fraudulent use.

In order to allow for adequate planning to install the most appropriate measures, for necessary assessments, permissions and consents to be gained, for evidence to be gathered to support exemptions and for local authorities to make informed decisions on the use of their discretion, we propose that five years is a reasonable timeframe for the expiry of an exemption. A five year exemption period allows for a realistic chance that circumstances, such as fuel prices, other funding mechanisms, and the cost of improvements, may have changed enough for improvements to be undertaken. Additionally, the registration of an exemption does not prevent the landlord from installing energy efficiency measures themselves at any time. Shortening the exemption expiry period does not guarantee improved measures in a shorter time frame, as the landlord may seek a further exemption or sell the property.

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?

N.B. The catalogue of questions in the first version of the consultation document showed the question as:

'What would be a reasonable timescale for a landlord to seek to meet the standard or demonstrate an exemption when the backstop applies to all tenancies?'

The question was printed correctly within the body of the document and it is the responses to the question "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?" which have been collated.

Summary of responses

Of the 58 who expressed a view on the question, 93% (54 respondents) agreed that landlords must meet the minimum standard or retain evidence of an exemption before a hard stop or backstop applies. A substantial number of the respondents felt that the hard start or backstop should be the deadline for compliance; they felt that all exemptions should lapse on 1 April 2020. Some respondents felt that in certain circumstances the landlord should be given more time to comply with the regulations.

Government response

The Government is keen to encourage landlords not to delay the installation of energy efficiency improvements and considers that many landlords will seek to achieve minimum standards or apply for an exemption before 2018, so they are prepared should they grant a tenancy from April 2018 onwards. The Government is of the view that requiring landlords to meet the minimum standard or provide evidence of, and register, an exemption prior to the 2020 backstop is reasonable. Landlords are still able to voluntarily meet the minimum standards at any time following the registration of an exemption.

The Government has considered stakeholder views regarding situations where a landlord has no choice as to whether a tenancy is granted or not, and where the landlord does not have an

opportunity to improve the property before the regulations apply. To ensure that the regulations always provide a genuine opportunity for the landlord to comply, where a tenancy is granted in certain circumstances – for instance by order of a court - landlords will be given an extension of six months after the tenancy is granted before they are required to comply with the regulations. Similarly, where a non-compliant property occupied by a tenant is sold, or is transferred to a lender in the case of receivership, the new landlord will have six months to improve the property, or seek to demonstrate an exemption applies.

Should six months not be considered sufficient, a landlord may make the case to the enforcement body, seeking more time, and the enforcement body may use their discretion as to provide more time if necessary. A landlord may make an appeal to the First-tier Tribunal if they wish to challenge a penalty on the grounds it was not reasonable for them to comply within the prescribed time period.

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?

Consultation response

Of the 67 respondents who expressed a view on this question, 88%, or 59 respondents, agreed that the Government should set a trajectory of standards. Respondents argued that a trajectory would provide industry with investment certainty, move more people out of fuel poverty and result in lower overall costs of installation for the carbon saved. A number of respondents commented that any minimum energy efficiency standard should cover the whole domestic sector, not just the private rental sector (which only represents 18% of total housing stock). These stakeholders argued that it would be disproportionate to require higher standards in the PRS than elsewhere.

Where a trajectory was proposed, the most common approach was a predictable timetable of increasing standards four years apart – rising to D EPC rating in 2022 and to C EPC rating in 2026. The second most common response was to align the regulations with the proposed interim Fuel Poverty milestones and 2030 target (as many fuel poor homes as reasonably practicable to Band D by 2025 and as many fuel poor homes as reasonably practicable to Band C by 2030).¹⁰

While there was strong agreement with the implementation of a trajectory, stakeholders also wished also to ensure that: the PRS stock was not singled out; a trajectory should not result in additional burdens for landlords; and DECC would need to consider unintended impacts on traditional buildings.

For the minority of respondents who disagreed (12%; 8 respondents), this was primarily due to concerns over the appropriateness of installing energy efficiency improvements in traditional buildings, and the possible impact of the unintended consequences of retro-fitting older buildings.

¹⁰ While respondents suggested the trajectory should align with the Fuel Poverty Bands, it should be noted that the energy efficiency of fuel poor households is measured using the Fuel Poverty Energy Efficiency Rating (FPEER),* which is similar but distinct from the EPC methodology and therefore does not wholly align with the standard EPC bands.

*Reference:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332236/fpeer_methodology.pdf

Government response

The Government acknowledges that a trajectory would provide longer term investment certainty. However the Government also considers it important to learn from the experience of implementing these regulations, as well as any improvements in energy efficiency across all of the UK's building stock. This is why we have included a provision in the regulations requiring the Government to review the regulations. In light of this, the Government is not including a trajectory for the minimum energy standard in these regulations.

Respondents' have raised concerns about the potential negative impact from the installation of particular insulation measures in older, traditional buildings, and how this might be exacerbated by a trajectory. This was also raised in response to other questions in the consultation document. As set out earlier in this document, the Government intends to provide an exemption so that a landlord would not be required to install wall insulation measures where it would have a detrimental effect on the integrity of the building.

Enforcement, penalties and appeals

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?

Summary of responses

Of the 64 respondents who answered this question, 95% (61 respondents) felt that a certificate of exemption would be helpful. 60 respondents commented on whether the certificate should be mandatory or voluntary, with a high proportion (85%; 51 respondents) stating that such certification should be mandatory. A variety of suggestions were offered to support local authorities in enforcing the proposed regulations including the use of enforcement notices to encourage compliance, the involvement of letting agents, and the use of current registers to identify landlords, e.g. Council Tax records and tenancy deposit databases.

Government response

The Government acknowledges the views of respondents, which highlight the importance of a certificate of exemption, and is of the view that evidence of exemption would be helpful to tenants, landlords and local authorities. However, the Government is keen to introduce measures which place the least burden on those involved. Instead of requiring local authorities to certify exemptions, the Government intends to establish an online "PRS Exemptions Register", which will be run by DECC, and will act as a centralised database of exemptions relating to the regulations. Where a landlord considers that a property is eligible for a prescribed exemption, they will be required to notify this exemption on the PRS Exemptions Register. The provision of the relevant information should not entail any additional burden as it would simply involve lodging evidence that the landlord will have gathered in the process of establishing the exemption. There will be no fee to the landlord for notification and lodgement. Having lodged the details of their exemption, landlords will be provided with confirmation that their information had been logged. Landlords may wish to provide this to prospective tenants or other parties to access, and review the relevant information.

Landlords will be required to provide details of their exemption, including any evidence that may be relevant to local authorities (or their delegated representatives) on demand. Registration of

an exemption will be mandatory for those landlords in scope of the regulations wishing to rent a property below an E EPC rating. Failure to register any exemption that a landlord believes applies will amount to non-compliance with regulations. This may result in a financial penalty being issued to the landlord. DECC may use the information, alongside any other relevant data, such information held by tenancy deposit operators, to assist local authorities in targeting their enforcement activities.

The Government does not intend to prescribe the function within a local authority responsible for enforcing the regulations, but will instead allow local authorities the discretion to determine which is most appropriate for them. In practice, local authorities might determine that Trading Standards or Housing Teams would be the most appropriate function to enforce the regulations.

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?

Summary of responses

52 respondents expressed a view regarding the proposed approach to setting penalties for non-compliance with the minimum standard regulations; 46% (24 respondents) of these thought that penalties should be proportionate to the rent and length of time the property is in non-compliance, with 54% (28 respondents) disagreeing.

75% (21 respondents) of those who disagreed with the proposal to link penalties to rent and length of non-compliance proposed instead to have a fixed penalty for non-compliance, with the majority proposing a fixed penalty of £8,000 (14 respondents). Many respondents who argued for a fixed penalty highlighted that the rationale for their proposed penalty level was that it needed to send a clear message, and that it should be more than the typical cost of undertaking improvements, highlighting research by Parity Projects showing 72% of G EPC rated properties would be able to reach an E EPC rating for less than £5,000. Many of the respondents who made this argument highlighted that they had called for a landlord contribution under the minimum standard, and therefore the penalty needed to be higher than this. Some respondents highlighted challenges around linking penalty levels to property rental values. Respondents felt that properties in rural areas and poorer quality accommodation for example may have comparably lower rents meaning these landlords would face lower fines than for other property types.

Two respondents opposed fixed penalties or a fixed methodology for calculating penalties, but instead felt that individual circumstances should determine the level of breach and corresponding size of penalty.

21 respondents expressed a view as to whether a maximum penalty should apply where it was not possible to evidence the rent for a property (should the regulations use this method), with 19 respondents agreeing that in such a situation a maximum penalty should apply. Of those who disagreed (two respondents), one suggested a third party expert should be appointed to assess the rental value, and another suggested that the median rent in the Broad Rental Market Area for a unit of this size should be used to estimate the rental value.

Government response

The Government believes that a clear and dissuasive penalty regime is essential to ensure that the regulations deliver the improvements that are required. We recognise the challenges to

linking penalties to rent levels, and agree with the importance of setting a simpler, clearer penalty regime that all parties can understand, and can be easily implement by local authorities.

The Government has therefore decided to amend its original suggested method for calculating penalties, and does not propose to use rental values as a factor in the calculation. However, the Government still believes it is important to ensure some degree of proportionately to the extent of non-compliance. The Government therefore intends to implement the following simplified penalty regime:

Infringement	Penalty	
Providing false or misleading information to the PRS Exemptions Register	£1,000 Publication of non-compliance	
Failure to comply with a compliance notice from a local authority	£2,000 Publication of non-compliance	
Renting out a non-compliant property	Less than 3 months non-compliance £2,000 fixed penalty Publication of non-compliance	3 months or more of non-compliance £4,000 fixed penalty Publication of non-compliance

Penalties for a single offence may be cumulative, up to a maximum of £5,000. Further penalties may be awarded for non-compliance with the original penalty notice where a landlord continues to rent out a non-compliant property, however these penalties are cumulative up to a maximum of £5,000. The landlord can be awarded additional penalties when one of the following situations events occurs:

- The tenant changes
- The regulatory backstop comes into effect

Local authorities will also have flexibility to withdraw a penalty notice at their discretion where they feel individual circumstances merit such action. Landlords that have been served a penalty notice will be able to request a review of the local authority's decision to serve the notice. If a landlord requests a review, the local authority must consider any representations made by the landlord and all other circumstances of the case, decide whether to confirm the penalty charge notice, and give notice of their decision to the landlord. If the local authority is not satisfied that the landlord committed the breach specified in the notice, or given the circumstances of the case it was appropriate for a penalty charge notice to be served, they must withdraw the penalty notice.

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?

Summary of responses

47 respondents expressed a view on this question, with 98% (46 respondents) agreeing with the proposal that the First-tier Tribunal is the appropriate body to hear and determine appeals relating to the minimum standards regulations. Only one respondent suggested that appeals against penalties relating to the minimum standard should be heard at a magistrate's court or county court, and not a tribunal.

24 respondents provided a view as the appropriate Chamber to hear appeals, with 88% (21 respondents) agreeing that appeals should be heard at the General Regulatory Chamber, with 13% (3 respondents) disagreeing and instead suggesting the Residential Property Tribunal. The remainder of respondents did not express a view.

Government response

In line with the responses received, the Government intends to place responsibility for handling of appeals relating to the imposition of penalties for non-compliance with the minimum standard regulations with the First-tier Tribunal, General Regulatory Chamber. This will align with the forum for hearing applications relating to the 2016 tenant's right to request energy efficiency improvement regulations, explored earlier in the consultation.

Miscellaneous questions

Question 27

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

Summary of responses

35 respondents provided comments in response to this question, touching on a broad range of issues. Some issues related to the specifics of the PRS regulations, and others concerned wider Government policy or energy efficiency matters. Some of the key themes highlighted by stakeholder comments are detailed below.

Several respondents suggested that despite the low levels of take up, the Landlords' Energy Saving Allowance (LESA) ought to be extended beyond 2015 to support landlords undertake improvements where Green Deal finance is not appropriate.

A few respondents raised issues around how the regulations will work alongside HHSRS. They argued it will be important to review the links between HHSRS and the PRS regulations to ensure the PRS regulations are compatible and workable alongside HHSRS. Furthermore they argued that detailed guidance was required to ensure clarity and avoid confusion due to policy overlaps. One respondent commented that it was important that local authorities meet their duties under HHSRS and the Home Energy Conservation Act 1995 (HECA), and that it may be advisable to encourage tenants to inform their local authority before making a request for consent to improvements. This would ensure that if the landlord had already been served a notice for an HHSRS cold health hazard, the tenant would not be forced to provide funding towards the works.

A few respondents raised issues relating to the alignment of the existing EPC regulations and the proposed PRS regulations. Concerns included the perceived low quality of EPC

assessments, and low levels of landlord compliance with the requirements to obtain an EPC on letting a property.

Some respondents commented that whilst they were supportive of the regulations, they wanted to see 'more ambition.' Two of these respondents also pointed out that research found a high level of public support for a minimum standard in the PRS.

Two respondents set out issues relating to landlord and tenant law, emphasising the need to ensure that the regulations are well drafted and work with the grain of existing legislation. Three respondents suggested that the Government organise a national awareness campaign to raise tenants', landlords' and lettings agents' awareness, as well as that of local authorities of the new requirements and the penalties for non-compliance. Respondents who provided general summary comments on the consultation echoed this, stating that they felt the regulations lacked a clear outline of activities to raise awareness and communicate changes to tenants and landlords, which they felt necessary to ensure high levels of uptake of the regulations.

Government response

The Government welcomes the broad range of comments received.

The Government recognises that support for landlords to improve their property is important. However, the Landlord Energy Saving Allowance (LESA), which some respondents argued should be extended beyond 2015, has had very low levels of uptake, suggesting that other methods of support for landlords may be more effective. At Autumn Statement 2013, funding for household energy efficiency across the UK was announced, worth £450m over three years. On 8 October 2014 an additional £100m of funding for household energy efficiency was also announced. In England and Wales this funding is currently used for the Green Deal Home Improvement Fund (GDHIF). Landlords can apply to the GDHIF for support in improving the energy efficiency of their property.

The Government agrees with respondents' view that it is important the regulations work alongside existing requirements and legislation, and in particular HHSRS. The Government also recognises that DECC and DCLG will need to continue to work together to ensure harmonisation between existing EPC requirements and the effectiveness of the PRS requirements.

The Government agrees that ensuring the regulations are well drafted and their implications for landlords, tenant, local authorities and the wider sector are well communicated will be important to the success of the policy. Through engagement with legal experts in the sector, we have gathered views and input on the legal background to the regulations, helping to ensure the regulations are as effective and clear as possible. Once the regulations have made, Government intends to issue guidance and information to the sector well ahead of the regulations coming into force, ensuring that there is sufficient understanding and awareness to drive early action.

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?

Summary of responses

Only a small number of respondents (13 respondents, 12% of total consultation respondents) provided comments or evidence on this question. Evidence received included a quarterly survey of landlords on the length of void periods and comments from respondents regarding their view

of the likely impact of the regulations, with one respondent stating that void periods will likely vary based on rental price, location and condition of the property. One respondent stated that demand was very high in London for rental accommodation and the regulations were unlikely to affect void periods.

One respondent suggested that further analysis on how far landlords would pass through costs to tenants in the form of higher rents was important. One respondent suggested that the cost of publicising the regulations and the cost of evidencing an exemption needed to be more clearly set out.

Government response

The Government thanks stakeholders for providing comments and evidence in relation to the consultation Impact Assessment (IA). This evidence and information has helped the Government to enhance and verify assumptions used in the modelling for the IA modelling and associated analysis for the policy's Final Stage IA. The information will also be used to inform wider household energy efficiency policy.

Annex A: List of Respondents to the Consultation on the implementation of the Energy Act 2011 provision for energy efficiency regulation of the domestic private rented sector

The following table lists all non-confidential organisations which have responded to the consultation. In addition we have withheld details of 15 responses in line with our policy not to publish personal names.

ACE
Advice4Renters
Baxi
Blackburn with Darwen Borough Council
Boston Borough Council
British Gas
British Property Federation
Calderdale MBC
Cambridge City Council
Centre for Sustainable Energy
Chartered Institute of Building
Chartered Institute of Environmental Health
Citizens Advice
City of Bradford Metropolitan District Council
Council of Mortgage Lenders
Country Land and Business Association (CLA)
Coventry City Council/ Urban Renewal Officers' Group
Eastbourne Borough Council
Electrical Safety First
Elmhurst Energy
Energy Saving Trust
Energy Solutions
Energy UK
English Heritage
EON
Friends of the Earth

Fuel Poverty Advisory Group (FPAG)
Future Climate
Generation Rent
Glass & Glazing Federation
Grainger plc.
Greater London Authority
Greater Manchester Energy Advice
Green Deal Together Community Interest Company
Green Light Energy Solutions
Heating and Hot water Industry Council (HHIC)
Herefordshire Council
Institute of Historic Building Conservation
Islington Borough Council
Kingspan Insulation Ltd
Leeds City Council
Lincolnshire County Council
Local Government Association
London Borough of Lambeth
London Borough of Southwark
London HECA Forum
NAPIT Trade Association
National Carbon Action Network (CAN)
National Energy Action (NEA)
National Landlords Association (NLA)
National Trust
National Union of Students
Network Rail
Oil Firing Technical Association
ORB Provider Strategy Group
Osborne Clark
Oxford City Council
Property Energy Professionals Association
Public Health England
Quodox Energy
Regen SW
Residential Landlords Association
Richmond upon Thames
Rockwool Ltd
Royal Institution of Chartered Surveyors (RICS)
Rushmoor BC
RWE nPower
Salford City Council

Savills UK
Shelter
South Gloucestershire, North Somerset, Bristol City & Bath & North
East Councils
Southend on Sea Borough Council
SSE
Staffordshire University Students' Union
Sustainable Energy Association
The Central Association of Agricultural Valuers
The Green Deal Finance Company
Tonbridge & Malling Borough Council
Trading Standards Institute
UKGBC
University of Leeds
University of Sheffield Students' Union
University of Westminster Students' Union
Wandsworth Council
Warmer Worcestershire Network
Westdale Services Ltd
Westminster City Council
Which?
Wirral Council
Wolseley
WWF
Wyre Forest District Council

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