

# **Energy efficiency regulations in the private rented sector**

Shelter Scotland  
response

September 2019

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## Summary

Shelter Scotland helps over half a million people every year struggling with bad housing or homelessness through our advice, support and legal services. And we campaign so that, one day, no one will have to turn to us for help.

We're here so no one has to fight bad housing or homelessness on their own.

Shelter Scotland welcomes the opportunity to respond to this consultation.

**Shelter Scotland strongly supports the policy proposal behind the regulations to improve the energy efficiency of Scotland's private rented sector homes.** Under the proposal, landlords of privately rented homes will be required to ensure their properties achieve EPC Band E from 1 April 2020 at a change of tenancy, and then EPC Band D from 1 April 2022 at a change of tenancy, followed by a backstop date of 2025 for all properties regardless of tenancy change. The latest figures show that around a quarter of all private rented stock is below the proposed EPC standards and therefore stand to be improved by the new regulations. Currently, 360,000 households rent privately, with many there because they have been priced out of owner occupancy or because there is limited socially rented stock available. There is no justifiable reason that private tenants should be subjected to poorer property conditions than their peers in the social rented sector. Efforts to tackle fuel poverty by removing or mitigating the effects of energy inefficiency in the home are welcomed. **Everyone, no matter what tenure they live in, should have the right to a safe, warm and affordable home.**

Our consultation response does highlight some outstanding questions about achieving compliance with the regulations to ensure that this right is realised in practice. A clear route for tenants to enforce their rights as well as well-resourced enforcement bodies (in this instance, proposed to be local authorities) is essential for success. However, good awareness raising, support and advice for both tenants and landlords to encourage compliance is essential, as is supporting local authorities to be in a position to take a proactive approach. These factors will support good compliance as well as reducing the need for burdensome enforcement processes.

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**1. Do you think that the proposed approach to exemptions both within the Regulations (Regulations 11 - 13) and amplified in the Guidance (Chapter 4) provides you with sufficient clarity on meeting the standard or seeking an exemption to that standard? Please set out the reasons for your response.**

Shelter Scotland supports limited exemptions from the regulations. However where the tenant lives in a property below the regulated energy efficiency standard, there should be some means of compensation or subsidy explored for the tenant, to even the playing field for those tenants. All tenants deserve to live in a warm and affordable home. If the policy intent is, at least in part, to tackle fuel poverty, there should be some support in place for tenants who live in an exempted property. In addition, what signal is there to the landlord that they are renting a substandard property? Whilst in some areas the market would account for this in terms of renting demand and the amount of rent that could be charged, in most parts of Scotland where there is a pressured market for privately rented properties there would be little effect for the landlord.

**Consent exemption**

Shelter Scotland agrees that exemptions should be possible where the tenant does not provide consent for the landlord to proceed with works. However, there needs to be some form of mediation available or contact by an independent body with the tenant to ensure that there has not been any deliberate or otherwise manipulation of the tenant by the landlord to lead to their refusal of consent. Any protection will always be limited here but protective factors can be put in place for tenants in the small number of properties where tenants may withhold their consent. This is particularly pertinent for the exemption “if a tenant/third party has granted consent or access but subject to a condition the landlord cannot comply with”: there needs to be some method of assessing whether the landlord’s non-compliance is reasonable or not. The landlord should be required at the very least in these circumstances to provide evidence that they have made reasonable attempts to provide information to the tenant and signposted them to independent support, and consideration should be given to the possibility of mediation. Furthermore, under the Private Residential Tenancy agreement, landlords may use ‘significant works’ as a reason for eviction, and in fact it is a mandatory ground if all criteria is met. For this reason, protection and more general independent housing advice must be available for tenants to ensure they’re supported to make a decision in their best interests.

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### **Cost cap exemption**

The cost cap of £5,000 seems acceptable but the guidance should clarify whether the £5,000 cost cap is always in place regardless of whether interest free loans are or are not available. We would also question whether, in a situation where there is are interest free loans available for landlords of up to £15,000, the cost cap should remain at £5,000: landlords should be encouraged to take advantage of the support available to them and to invest further in their property by utilising the support available.

Furthermore, a review should be set for the cost cap, to consider if this is still an appropriate level in a few years' time to take into account the effects of inflation.

## **2. What are your views on the existing mixed nature of support (financial and advice) available to landlords and tenants? Include any additions or changes you think would assist.**

### **Tenants**

An awareness raising scheme for private tenants is vital both with regard to their rights and the means of enforcement. We know generally that many tenants are unaware of their rights and, even if they are aware, often feel unable to enforce them either through raising them with their landlord or letting agent or following up when slow or no action is being taken by the landlord/letting agent. This is particularly the case for tenants who experience other vulnerabilities; and tenants in these situations are more likely to be in the substandard properties this policy aims to improve. It is crucial that this programme of works ties in with wider rights awareness work for tenants, and that energy efficiency information shouldn't be pigeonholed into advice on this subject area only.

Advice should also be available for tenants on how to raise issues regarding compliance – clarifying if this is possible to raise through the First-tier Tribunal (Housing and Property Chamber), and if not, what avenues there are to raise concerns about compliance for example if their local authority is not taking action. At present, we are not clear on what options if any exist for tenants in these situations. In addition, information should be available on financial support for tenants during the period of enforcement action or in cases of non-compliance whilst they are subjected to a sub-standard property.

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## **Landlords**

Shelter Scotland has advocated for some time for a much more proactive approach to engaging with landlords amongst local authorities.

We propose a Private Landlord Support Officer model, trialled by Shelter Scotland in Highland and Dundee and now in place in Dundee, Glasgow and Perth and Kinross councils. This preventative model sees landlords receive information and one-to-one support on their responsibilities. For landlords who are currently falling short of the expected standard, this service provides an opportunity for them to engage on a more informal basis and accept assistance at an early stage, prior to enforcement action being considered.

Shelter Scotland believe this type of approach is necessary alongside any advice and information campaign to increase compliance amongst landlords.

## **Local authorities**

Training, resources and other support needs should also be considered in terms of local authorities, particularly given the differing size, placement and function of the officers likely to take on the task of ensuring compliance. Shelter Scotland have a variety of resources available for supporting local authorities with the approach outlined above.

### **3. How would the changes you suggest influence the speed with which you would expect improvements to occur?**

Without a significant awareness raising campaign and advice for tenants and for landlords (and indeed, local authorities) in terms of meeting their obligations, we expect compliance to be low amongst certain groups given the lack of monitoring and enforcement. Shelter Scotland believe the changes and approach outlined in question 2 are vital for the success of this policy to overcome some of the challenges already raised.

### **4. We propose that 6 months in advance of the Regulations coming into force local authorities should take account of expenditure outlay on measure which are intended to meet the standards set. Do you agree that this is a reasonable lead in time period? if not, what alternative lead in time would you propose? What information would you expect to provide to local authorities to seek an exemption based on the cost cap proposed?**

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Yes, Shelter Scotland agrees that the cost cap of £5,000 (for each new standard) is reasonable and that expenditure outlay that can be evidenced in the 6 months leading up to the new regulations being introduced should be taken into account for landlords have sought to be proactive in improving their properties.

However, care needs to be taken when considering what costs can be attributed to this – if a landlord has installed a new kitchen for example costing £5,000 which has had some improvements in energy efficiency the full costs may not be relevant to be held against the £5,000 cost cap.

Shelter Scotland would expect to see evidence that the landlord has improved their property up to the cost cap to show they have made their property as energy efficient as possible.

### **5. What are your views on the proposed penalties, in terms of the impact they will have on achieving compliance with the Regulations and ensuring the completion of carry out improvement works across the Private Rented Sector?**

The penalties are only a small part of the compliance process and should be a last resort. Information and support should be available to encourage action by landlords at a much earlier stage to prevent local authorities from having to take on the likely time consuming and onerous task of pursuing civil fines from landlords.

We understand that the proposed fines including the £2,000 cap relate to the caps in the Energy Act under which the regulations are being brought in. However, we have concerns about the efficacy of the proposed penalties in achieving compliance with the regulations.

#### **The penalties**

The £2,000 penalty cap is much less than the £5,000 cost cap for works. Given fines will be used in cases where a landlord is unwilling to take action, potentially more likely where expensive works are required, will a £2,000 penalty act as an effective deterrent given paying the fine still offers a potential outright saving when compared to the cost cap?

We advocated for the regulations to be brought in under the repair standard and/or for enforcement to be available via the Housing and Property Chamber First-tier Tribunal. Under this, rent penalty notices would have been possible which would perhaps act as a stronger deterrent while at the same time compensating the tenant for their

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inconvenience in living in a sub-standard property and tackling fuel poverty.

Shelter Scotland remains to be persuaded that these fines will act as a sufficient deterrent or motivation for action. We note that the consultation document states “Initially minimum energy efficiency standards will be introduced under Section 55 of the Energy Act 2011” and encourage the Scottish Government to consider tabling a review of the cost cap, the fines, and the enforcement mechanisms to consider alternative methods in future.

### **Monitoring and enforcement**

Monitoring and enforcement of the standard for the private rented sector is key. We know from our advisers that tenants are not always able to challenge non-compliance. We must ensure that tenants are well-informed of their housing rights, empowered to take action and be aware of where to get help if they require it. However, tenants must not be the sole conduit for change.

We previously stated in our response to the 2017, 2018 and June 2019 consultations that the implementation of the standard (before the backstop date) at the change of tenancy is problematic because there is no natural communication between the landlord and local authority or the tenant and local authority at this date. Furthermore, we know that tenants do not feel in a position to challenge compliance or vote with their feet before a tenancy has begun. We proposed an alternative, that the standard is introduced at the point of landlord registration or re-registration. Local authorities already collect information on compliance with other regulations at this stage, for example gas safety certificates, and the recent landlord registration consultation proposed that EPCs were included at this stage. As the regulations stands, we anticipate that monitoring and enforcement will be difficult before the backstop date and in practice that the standard will not be easily monitored or enforced until the backstop date for each new EPC band.

To ensure compliance with the standard, self-certification of the appropriate EPCs should be added to the landlord registration process and the repairing standard should be amended. Plus, we strongly believe local authorities must pursue a more hands-on approach to landlord registration administration and their engagement with private landlords more generally to ensure this regulation is effective.

Adding it to the landlord registration process would involve landlords self-certifying the EPC of the property. Documentation submitted to local

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authorities must then be verified in some way. To ensure that resources are used effectively this verification should take place via a combination of a risk-based check and a regular audit of a sample of registered landlords. This will provide the local authority with the means to assess whether the landlord is renting out properties which comply with the repairing standard. Where a property's EPC rating is such that it does not comply with the regulations then the local authority can start a conversation with the landlord about the steps they need to take to make the property more energy efficient.

As stated in question 2, we propose a Private Landlord Support Officer model, trialled by Shelter Scotland in Highland and Dundee and now in place in Dundee, Glasgow and Perth and Kinross councils. This preventative model sees landlords receive information and one-to-one support on their responsibilities. For landlords who are currently falling short of the expected standard, this service provides an opportunity for them to engage on a more informal basis and accept assistance at an early stage, prior to enforcement action being considered.

Adopting this approach should then reduce the number of properties reaching non-compliance whereby enforcement action is necessary.

### **Other avenues for enforcement**

The new letting agent code of practice can help provide an additional route for compliance and monitoring, as outlined in section 31, which states that letting agents must not act on a landlord's behalf if they know them to not be meeting their legal obligations as a landlord, and they must inform the appropriate authorities. Another option to explore to supplement local authority enforcement action is banning those responsible from marketing rental properties from marketing properties that were not compliant with the regulations.

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Shelter Scotland helps over half a million people every year struggling with bad housing or homelessness through our advice, support and legal services. And we campaign to make sure that, one day, no one will have to turn to us for help.

We're here so no one has to fight bad housing or homelessness on their own.

Please support us at [shelterscotland.org](https://shelterscotland.org)

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