

Response to BEIS Consultation – Improving the Energy Performance of Privately Rented Homes in England and Wales

January 2021

Introduction

The UK Green Building Council (UKGBC) is an industry network with a mission to radically improve the sustainability of the built environment, by transforming the way it is planned, designed, constructed, maintained and operated. As a charity with almost 500 member organisations spanning the entire sector, we represent the voice of the industry's current and future leaders who are striving for transformational change.

Executive Summary

While we would like to see an even greater level of ambition in some of the proposals contained in this consultation, there is a great deal to welcome – not least the proposal to bring forward from 2030¹ to 2028 the date by which all tenancies will need to be improved. This is matched by a welcome focus on a fabric first approach to energy performance improvements and a significantly more robust approach to ensuring compliance and enforcement.

We would like to highlight these key points:

- We support a dual metric that combines an EER C cost rating with an EIR C carbon rating, with an increased cost cap of £15,000 inclusive of VAT and adjusted for inflation. A dual metric aligns decarbonisation and fuel poverty goals and can help ensure that Government policies are not working against each other. Increasing the cost cap from £10,000 to £15,000 will increase from around 10% to nearly 30% the percentage of F & G properties reaching Band C.
- Because of the rate of churn in the PRS and the need to avoid backlogs in the supply chain, we advocate bringing forward the start date for improving new tenancies from 2025 to 2023. We support the backstop date of 2028 for all privately rented homes to have reached the target.
- While we support the introduction of a PRS property compliance and exemptions database, this still fails to address the problem that local authorities currently have no means of knowing who all their local landlords are. We therefore join with the Committee on Fuel Poverty in advocating the introduction of a national landlord register in England (mirroring the *Rent Smart Wales* national register of landlords in Wales).
- In order to significantly improve levels of compliance and enforcement, we support the Government's proposals to increase maximum fine levels from £200 to £30,000 per property and per breach. Likewise we fully support the proposal to enable local authorities to inspect properties to check for PRS compliance.

Responses to individual questions:

Question 1: We would welcome views on possible impacts of the policy on the size of the PRS sector, the effect this could have on vulnerable households, and suggestions to mitigate this effect where it does occur, including any evidence.

While we strongly support the Government's intention to improve the energy performance of the privately rented sector – and would in no way wish to see this watered down or postponed – we nevertheless recognise that, if landlords raise rents as a result of a strengthened MEES, this will have a detrimental effect on vulnerable households, reducing affordability and in some cases resulting in homelessness. Landlords exiting the sector would not in all circumstances adversely affect tenants (e.g. 'accidental landlords' might be replaced by professional

¹ As proposed in the [2017 Clean Growth Strategy](#)

landlords, who would likely be more willing to invest longer term in their portfolio) – but of course an overall shrinkage of the sector would reduce choice for renters.

To avoid adverse effects on renters, it is therefore important that, when implemented, the new policy should be accompanied by appropriate protections for tenants. These could include:

- Measures to cap rental increases (possibly linked to incentives for landlords);
- Increasing the minimum length of assured shorthold tenancies;
- An end to ‘no fault’ evictions under S. 21 of the Housing Act 1988 – this is the centrepiece of the Government’s Renters’ Reform Bill, which was announced in the 2019 Queen’s Speech but has yet to be introduced;
- Action to tackle the increasing numbers of long-term empty homes²;
- Regulation of holiday lets, second homes and Airbnb to make it less tempting for landlords simply to ‘abandon’ the PRS.

Question 2: Do you foresee any impacts for protected groups? Please provide evidence to support your answer.

No response.

Question 3: We would welcome views on any possible long-term impacts of COVID-19 that could impact on making the required energy efficiency improvements from April 2025 and suggestions to mitigate this effect where it does occur, including any evidence.

It is clear that the pandemic has increased the need to urgently tackle poor energy performance and thereby bring fuel bills down. COVID-19 has led to 2.8 million people falling behind on their energy bills – and to higher household energy use as people are forced to spend more time at home.³

In parallel with this, the financial impacts of COVID-19 on local authorities will make it harder for them to find the necessary resources to enforce the PRS (and associated) Regulations. They will need additional New Burdens funding to enable them to do so.

On a more positive note, the Green Homes Grant scheme is a key plank of the Government’s post-COVID green recovery plan. It will enable landlords to secure vouchers to set them on an early path to reach the higher MEES target.

Question 4: Do you agree with the government’s preferred new target of EER C as a minimum energy performance standard in the PRS?

We support a dual metric that combines an EER C cost rating with an EIR C carbon rating. We give our detailed reasons for this in our response to Q.10.

However, the dual metric must be underpinned by a fabric first approach to ensure that low carbon heating systems are not installed in inadequately insulated homes, which would lead to sub-optimal performance and unnecessarily high fuel bills (see our response to Q. 9).

² [Action on Empty Homes](#) puts forward a number of proposals for tackling the problem.

³ Citizens Advice, [Energy Consumers face unprecedented challenges this winter](#), October 2020

Question 5: We would welcome your views on the pros and cons of these alternative metrics, in relation to our overall policy goals around reducing carbon emissions, fuel poverty and energy bills; please provide evidence with your answer.

We agree that it makes sense to start with the EER metric, which is familiar to landlords, tenants and the energy efficiency industry as a whole. Introducing and rolling out new metrics would inevitably delay progress. However, the Government must act quickly to implement the welcome proposals set out in the EPC Action Plan for improving the accuracy and relevance of EPCs and the performance of both assessors and assessor schemes. These improvements will be vital to ensuring that the EPC becomes a more useful tool for assisting households and landlords on the journey to zero carbon homes.

Alongside EPC improvements, we believe that the Government should support the development of ‘building renovation passports’ or ‘renovation roadmaps’. This is an innovation in which Germany has taken the lead with their so-called ‘Sanierungsfahrplan’. These passports provide a guide to homeowners and installers, showing how deep renovation can be achieved in stages that avoid or reduce costs. They highlight key dates for Government objectives and upcoming regulation, as well as available incentives and finance offerings. Crucially they also set out the appropriate sequencing of improvements in order to avoid unintended consequences. The Climate Change Committee has supported the introduction of building renovation passports, saying that they would ‘provide householders with a holistic and long-term view of renovation needs’.⁴

Houses in Multiple Occupation (HMOs)

We have a specific concern that the domestic MEES does not apply to the overwhelming majority of HMOs. This is because it only applies where a property has an EPC, and there is currently no obligation to obtain an EPC for an individual non-self-contained unit within a property.

HMOs are disproportionately occupied by vulnerable people who have no other choice about where they live. Energy efficiency problems (such as damp and unhealthily low temperatures) are more prevalent in HMOs than in other types of home.⁵ We would therefore strongly advocate the introduction of a requirement for an EPC for the whole building to be produced when a single unit in the building is marketed for rent. This would go part way to triggering the PRS minimum standard – but it would also need to be accompanied by a minor amendment to the Energy Act 2011.

The Act currently only applies where properties are let out under a single tenancy, not multiple tenancies (as is generally the case with HMOs). A simple amendment to Section 42 of the Energy Act 2011 could extend the definition of ‘domestic private rented property’ to include a property let out on more than one tenancy. A private member’s bill introduced by Dr Alan Whitehead MP in the 2014/15 Parliamentary session showed how this could be done.⁶

Question 6: Do you agree with the government’s preferred policy scenario of requiring ‘new tenancies’ to reach EER C from 1 April 2025 and ‘all tenancies’ to reach EER C by 1 April 2028? If not, do you have alternative suggestions; please provide evidence with your answer.

We support the backstop date of 2028 for all privately rented homes to have reached EPC Band C. However, we echo the concerns of the ADE (see their consultation response) that, due to rates of churn in the PRS, waiting until 2025 to start to tackle newly rented properties could lead to a very large backlog of properties needing to be upgraded in 2028. This would increase disruption to tenants and cause problems for the supply chain. We therefore advocate bringing forward the start date from 2025 to 2023. We believe that this gives landlords

⁴ Climate Change Committee, [UK housing: Fit for the future?](#), February 2019

⁵ NEA and Future Climate, *Fuel Poverty and Houses in Multiple Occupation: Practitioners’ Views, Final Report*, March 2016

⁶ Houses in Multiple Occupation (Energy Performance Certificates and Minimum Energy Efficiency Standards) Bill, <https://publications.parliament.uk/pa/bills/cbill/2014-2015/0082/15082.pdf>

adequate time to prepare – and, as per our response to Q. 11, any hardship can be mitigated by making available grants or low- or no-cost loans. Landlords will also be able to avail themselves of the Green Homes Grant scheme.

Question 7: Do you agree with increasing the cost cap to £10,000 inclusive of VAT as our preferred policy proposal? If not, please explain why not and provide evidence with your answer.

As noted in our responses to Qs. 4 and 10, we support the introduction of a dual metric with a £15,000 cost cap. However, even if the Government decides not to proceed with the dual metric, we would still support increasing the cost cap for an EER C target from £10,000 to £15,000, inclusive of VAT. As the below table from the Consultation Stage Impact Assessment makes clear, a £15,000 cost cap would deliver greater benefits across the board – including, significantly, higher property values for landlords. Furthermore the average capital cost to landlords under a £15,000 cost cap is, at £5,300, only £600 higher than under a £10,000 cost cap.

Table 17: Summary of Impact of all policy options

Policy Option cost cap	Net Present Value (£bn)	Percentage of in scope PRS homes reaching the required target by 2028	Estimated percentage-point change in low income PRS households at FPEER Band C in England at 2028	Estimated total value of improved tenant health (£bn)	Estimated average capital cost to landlords (£/property with measures installed)	Estimated average property value differential (£/property with measures installed)	Estimated average annual energy bill savings (£/property with measures installed)	Non-traded carbon savings over CB5 (MtCO2e)
£5,000	-0.4	42%	+26.9%	0.4	£2,400	£3,100	£110	3.0
£10,000	0.3	70%	+46.1%	0.8	£4,700	£5,400	£220	6.1
£15,000	3.2	74%	+49.0%	0.8	£5,300	£6,100	£260	7.1
£15,000 CC	-1.7	73%	+46.9%	0.9	£6,200	£5,600	£230	10.4

Additional figures obtained from BEIS show that only 1% of landlords would have to pay between £14,000 and £15,000 under a £15,000 EER C cost cap (with 11% paying between £10,000 and £15,000); and only 6% of landlords would have to spend within the top 10% of the cost cap in the dual metric scenario, i.e. between £13,500 and £15,000 under the £15,000 cost cap.

It is also crucial to note that the Impact Assessment shows that, under a £10,000 cost cap, only around 10% of F & G properties would reach Band C, whereas under a £15,000 cost cap, nearly 30% of them would do so⁷. This is a critical consideration, as F & G-rated PRS properties are where the most acute fuel poverty is felt. The current PRS Regulations specifically designate as ‘sub-standard’ all domestic privately rented properties below Band E. Elsewhere BEIS has explicitly acknowledged that F & G-rated PRS properties account for a ‘disproportionate number of households in fuel poverty’ and ‘represent some of the coldest homes in the housing stock’⁸. According to the consultation document, a staggering 72% of F & G-rated PRS households are fuel poor⁹.

Question 8: Should the £10,000 cost cap be adjusted for inflation?

Yes – for all the cogent reasons set out in the consultation, we agree that the cost cap should be adjusted for inflation. Without this, some landlords would be tempted to delay making improvements.

⁷ [BEIS Consultation Stage Impact Assessment](#), Figure 3

⁸ BEIS, [Amending the Private Rented Sector Energy Efficiency Regulations, final stage Impact Assessment](#), November 2018

⁹ Table 3

Question 9: Should a requirement for landlords to install fabric insulation measures first be introduced? If yes, when, and how should such a requirement be implemented? If no, what are the alternative installation methods that maximise energy efficiency outcomes? Please provide evidence to support your answer.

In principle we support the ‘fabric first’ approach to ensure appropriate levels of insulation, draught-proofing, ventilation etc. and to make homes low carbon-ready. However, there are some situations, for example in the case of internal wall insulation, where cost and consumer choice mean that fabric first cannot be taken to its limits. There can also be difficulties in blocks of flats with obtaining permission from freeholders for fabric measures such as external wall insulation.

To deal with these kinds of situations – and to ensure that in all cases the right measures are installed in the right order, BEIS should introduce a requirement for a whole house assessment to be undertaken by a qualified retrofit coordinator before work begins. This mirrors the approach taken by both the Optimised Retrofit Programme (ORP) in Wales and the evolving PAS2035 standard.

Question 10: We would welcome views on the alternative of a dual metric target to reach both EER Band C cost metric and also EIR Band C carbon metric, with an increased cost cap of £15,000 inclusive of VAT.

As already noted, we support a dual metric target to reach both EER Band C cost metric and also EIR Band C carbon metric, with an increased cost cap of £15,000 inclusive of VAT.

While we understand and support the use of an EER metric as an indicator of running costs and affordability, it is nevertheless important that the PRS also starts to play its part in helping the UK meet its decarbonisation goals. The EIR is a measure of a home’s CO₂ emissions and is therefore a vital tool in tracking progress towards the decarbonisation of home heating, which the Climate Change Committee says will be by far the largest contributor to emissions reductions in the buildings sector.¹⁰

It is important to note in relation to the EER that energy costs are not static and will be subject to change. For example, the relative costs of gas and electricity mean that at present the EER supports gas boilers over electric heating systems such as heat pumps. A sole focus on the EER would therefore frustrate the UK’s ambitions for low carbon heat.

A dual metric aligns decarbonisation and fuel poverty goals and can help ensure that Government policies are not working against each other.

Question 11: Should government introduce an affordability exemption? If so, we would welcome views on how such an exemption should be designed and evidenced, and any potential impacts on the PRS market.

No. The consultation rightly identifies the risk of landlords intentionally reducing profits in order to qualify for an affordability exemption. However, we do recognise that for some landlords upfront cost is likely to be an issue at higher cost levels. That is why we would recommend that, where landlords can demonstrate that they meet certain qualifying criteria (taking into account total income and savings), some form of financial assistance should be made available, either grants or no- or low-cost finance with interest rates subsidised by Government.

In addition, Government should act swiftly to reintroduce the Landlords Energy Saving Allowance (LESA), which was scrapped in 2015. LESA was introduced by the UK Government in Budget 2004, with the aim of encouraging landlords to improve the energy efficiency of let residential properties. LESA was a maximum tax allowance of £1,500 per dwelling, which landlords could claim for the costs of buying and installing cavity wall, loft, solid wall, floor and hot water system insulation and draught-proofing. While LESA had very low take-up, that was largely because in the days before the domestic MEES, landlords had little incentive to make energy efficiency improvements as it was tenants who benefitted from fuel bill savings. In addition the allowance was very poorly promoted. However, against a completely changed policy backdrop – and with the MEES cost cap set to increase –

¹⁰ Climate Change Committee, [The Sixth Carbon Budget: The UK’s path to Net Zero](#), December 2020

we believe that LESA would be a powerful incentive for landlords to take earlier and more ambitious action to raise the energy performance of their stock. The Committee on Fuel Poverty also advocate the reinstatement of LESA, saying in their latest Annual Report: *'Reintroducing LESA would assist landlords and would also reduce the chances of them passing on their costs in the form of higher rents.'*¹¹

Question 12: What should the eligibility criteria be for an affordability exemption if it is introduced, and how can the criteria accommodate fluctuations in a landlord's finances and/or in the value of a property? Please provide evidence to support your answer.

See our response to Q. 11.

Question 13: Should we incorporate TrustMark into energy performance improvement works? If not, please explain why not and provide evidence with your answer.

Yes.

Question 14: What role can the private rented sector play in supporting the rollout of smart meters and what are the barriers and possible solutions to achieving this?

We believe that Government should require landlords to install smart meters in privately rented homes before they are able to be let. The benefits of smart meters for vulnerable and low-income households are potentially great, as they allow for accurate billing and greater visibility of expenditure and can also be switched between credit and prepayment modes remotely.

Question 15: We would welcome views on whether the PRS Regulations may need to be tightened further for the 2030s? Please provide evidence with your answer.

Yes, we believe that the PRS Regulations will need to be tightened further for the 2030s.

First of all, NEA has calculated that even the £15,000 cost cap will leave 490,000 fuel poor households still failing to reach the statutory fuel poverty target for all fuel poor households to reach EPC C by 2030. This clearly means that additional policy interventions will be needed if the target is not to be missed.

Second, as the Climate Change Committee makes clear, if we are to meet our 2050 net zero target, there needs to be a major ramp-up in supply chains for insulation and heat networks¹². Strengthened PRS Regulations can play a significant role in achieving that ramp-up. As already noted, the CCC has identified the decarbonisation of home heating as being the single biggest contributor to emissions reductions in the buildings sector.

Alongside the tightening of the standard, EPCs need to be improved to better reflect heat decarbonisation requirements, as well as capturing the real-time energy performance savings associated with the different energy efficiency measures.

Question 16: What are the other steps government could take to increase awareness and understanding of the PRS Regulations?

Landlords

The main landlords' associations are clearly a prime vehicle for promoting awareness of the PRS Regulations. However, there are other landlord forums and networks that can play their part. Letting agencies are an important conduit of information to both landlords and tenants – and, as green financing options becoming increasingly common in the marketplace, mortgage lenders will play an ever larger role in educating landlords.

¹¹ Committee on Fuel Poverty, [Annual Report](#), June 2020

¹² Climate Change Committee, [The Sixth Carbon Budget: The UK's path to Net Zero](#), December 2020

We continue to believe, however, that a national landlords' register would be by far the best means of disseminating information to landlords, not just about their obligations but also about any funding opportunities that may from time to time be available.

Tenants

Local authorities and advice bodies like Citizens Advice and Shelter have a key role to play in informing tenants of the Regulations. Energy advice agencies and debt agencies, where they exist, are also important.

Question 17: Is the introduction of the PRS property compliance and exemptions database necessary to help local authorities to proactively enforce minimum energy efficiency standards? If yes, should we include the per-property registration fee within the cost cap? If not, what alternatives to a PRS property compliance and exemption database would you suggest?

Yes. A compliance and exemptions database is the very minimum that is required to assist local authorities with compliance-monitoring and enforcement. A database registration fee of around £30 per property seems about right. However, we do not agree with a maximum total registration fee for landlords with very large portfolios - if a landlord can afford to own and run a large portfolio of properties, then he or she can afford a £30 registration fee on each of his/her properties. For the same reason, we do not think that the fee should be included in the cost cap.

However, a compliance and exemptions database fails to address the bigger – and arguably more important – problem that local authorities currently have no means of knowing who all their local landlords are. Unlike in the non-domestic sector, where it is fairly easy to identify rented premises, privately rented dwellings will in the main look just like their owner-occupied neighbours. And less scrupulous landlords will certainly not want to be drawing attention to the tenure of the premises they rent out.

In recognition of this problem, in 2019 the Committee on Fuel Poverty commissioned RSM UK to undertake research into PRS MEEs enforcement levels¹³. RSM's key finding was that: 'A national landlord register is the only means by which the landlords of properties without EPCs can be systematically identified and contacted.' The most notable example of a national register of landlords (and letting agents) is in Wales – Rent Smart Wales (RSW) has been in place since 2015 and now has an estimated 97.5% of private rented properties registered. Scotland and Northern Ireland also have landlord registration schemes, leaving England as the only one of the four UK nations without one. Local authority representatives interviewed by RSM were in the main strongly supportive of a national landlord register as a means of identifying and engaging with landlords.

As a result of the RSM report, the Committee on Fuel Poverty has continued – so far without success – to advocate the introduction of a national landlord register in England. Responsible landlords would have nothing to fear from such a register – indeed it would be a means of providing additional education and support to them, promoting good practice and ensuring that the right advice and help are available. We would therefore urge the Government to set up such a register without delay.

Question 18: Do you agree that government should set a maximum total registration fee for landlords with a very large portfolio? If yes, how many properties should qualify as a 'very large' portfolio? What should the maximum fee be? If you do not agree to a maximum total registration fee proposal, do you have alternative suggestions?

No. See our response to Q. 17.

¹³ RSM UK, [Enforcing the Enhancement of Energy Efficiency Regulations in the English Private Rented Sector](#), June 2019

Question 19: Should government seek primary powers to place a requirement on letting agents and online property platforms to only advertise and let properties compliant with the PRS Regulations? If not, please explain why not and provide evidence with your answer.

Yes – this is an excellent proposal. The legislation should additionally be future-proofed to apply to any form of promotion, marketing or advertising to let – so that it includes lets via Facebook, Gumtree and other forms of online promotion yet to be invented.

Question 20: Should government remove the seven to twenty-one day exemption period on landlords making all reasonable efforts to provide a valid EPC prior to a property being marketed or let? If not, please explain why not and provide evidence with your answer.

Yes. This is a significant loophole in the current Regulations and should be closed as soon as possible.

Question 21: Should government increase the level of the fixed civil penalty fine for offences under the EPB Regulations (currently set at £200)? If yes, how high should the fine be?

Yes – in the context of a £10,000 or £15,000 cost cap, a £200 fine is far too low to deter irresponsible landlords from flouting the Regulations. The suggested fine of £30,000 per property and per breach seems appropriate.

Question 22: Should government enable LAs to inspect properties for PRS compliance? If not, please explain why not and provide evidence with your answer.

Yes. Local authorities' current lack of ability to inspect properties is a key weakness of the PRS Regulations. Currently a number of local authorities use their inspection powers under the Housing Health & Safety Rating System (HHSRS) as a means whereby also to check for compliance with the PRS Regulations (in practice local authorities will often use an EPC F or G rating as a proxy for a Category 1 hazard for excess cold under HHSRS). However, as the PRS minimum standard increases to a minimum of EER C, local authority officers will no longer be able to use an HHSRS inspection as a means whereby to check PRS compliance.

It is important that enhanced legal powers for local authorities be combined with increased capacity and resources to enable them to utilise their legal powers fully.

Question 23: Should government permit local authorities to use EPC Open Data for some phases of PRS enforcement? Please provide evidence with your answer.

Yes. EPC Open Data is an important tool for local authorities seeking to identify properties with poor-performing EPCs.

Question 24: Should there be a requirement for post-improvement EPCs (and for the cost to be included within the cost cap)?

Yes. This will be a vital tool to enable local authorities to check compliance or take enforcement action. However, we do not think that the cost should be included within the cost cap.

Question 25: Should a valid EPC be in place at all times while a property is let?

Yes. Without this there is a risk that properties with very long tenancies will remain unimproved, as the current EPC Regulations¹⁴ only require an EPC to be made available when a home is marketed for sale or rent. In the absence of such a transactional trigger point, there is no legal requirement for a privately rented home to have an EPC – and in turn only those PRS homes with an EPC fall within the scope of the PRS Regulations.

¹⁴ Energy Performance of Buildings (England & Wales) Regulations 2012

Question 26: How can the most consistent set of recommendations in the EPC be assured? Does using only the most recent SAP methodology allow this?

See our response to Q. 25. The way to ensure the use of the most recent SAP methodology is by (a) requiring a new EPC to be produced after the previous one has expired, regardless of whether the property is being re-let; and (b) reducing the validity period of an EPC from 10 years to a shorter period. We would favour a 5-year validity period, which would strike a balance between the need for up-to-date information about a property's performance and the cost to building owners.

Question 27: Should listed buildings and those in a conservation area be legally required to have an EPC?

Yes. Listed buildings are often the most expensive to heat affordably. Having an EPC in place can help prospective and existing tenants understand living costs. It is also the case that conservation areas can also include numbers of more modern properties, which can be straightforward and relatively inexpensive to improve.

Question 28: Should government seek primary powers to increase the maximum fine level to £30,000 per property for each breach of the PRS Regulations? If yes, should it be adjusted for inflation? If not, what would be an alternative, appropriate maximum fine level? Please provide evidence with your answer.

Yes. See our response to Q. 21. In the context of a £10,000 or £15,000 cost cap, a £30,000 fine would provide the right level of incentive to the landlord to comply.

Question 29: Should government introduce powers for tenants to request that energy performance improvements are carried out where a property is in breach? If yes, how could a redress mechanism be devised?

Yes. However, as per our response to Q. 1, it is vital that such powers be accompanied by protection from retaliatory eviction or rent increases.

Question 30: Should government introduce some form of local authority disclosure or benchmarking where a property is in breach of PRS Regulations?

Yes.

Question 31: Do you agree that the updated exemption regime should come into force on 1 April 2025?

Yes.

If yes, do you agree that the property compliance and exemptions database should be opened six months prior to commencement of exemptions? If not, please explain why.

Yes

Question 32: Should the 'new landlord' temporary exemption be simplified so that it applies to any person who has become a landlord within the last six months? Please provide evidence with your answer.

No response.

**UKGBC
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