



Improving the Energy Performance of Privately Rented Homes in England and Wales

CIEH response to the BEIS consultation

December 2020

About the Chartered Institute of Environmental Health (CIEH)

CIEH is the professional voice for environmental health representing over 7,000 members working in the public, private and non-profit sectors. Building on its rich heritage, CIEH ensures the highest standards of professional competence in its members, in the belief that through environmental health action people's health can be improved.

Environmental health has an important and unique contribution to make to improving public health and reducing health inequalities. CIEH campaigns to ensure that government policy addresses the needs of communities and business in achieving and maintaining improvements to our environment and our health.

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Key points:

We welcome the proposals in this consultation and are encouraged to see that the consultation references health outcomes as well as carbon emissions.

We welcome the proposal of £10,000 cost cap for landlords and cut off point of 2028 to bring all PRS properties up to a Band C standard. This is the minimum cost cap that could be introduced in order to achieve the stated policy objectives.

We need to see the implementation of a holistic landlord registration scheme in England, replicating what has already been achieved in Wales and including all housing hazards, to help aid enforcement of the new standards. We would also want to see the findings of the local authority PRS MEEES enforcement pilots shared with all local authorities as a matter of urgency.

Energy Performance Certificates (EPCs) help tenants, landlords or homeowners find out how they can save energy and money by installing improvement measures. We agree that EPCs should be a key metric for the new policy. However, the success of the policy proposals of this consultation will depend on the outcomes of the work detailed in the EPC Action Plan. Around 60% of our members have come across erroneous or falsified EPCs, suggesting that the accuracy of EPCs and oversight of EPC assessors needs to be improved to ensure that these documents are a reliable measure of success.

We strongly support a fabric first approach so that energy efficiency measures installed reduce needless space heating demand and pave the way for low carbon heating in future.

Houses in Multiple Occupation (HMOs) tend to house vulnerable tenants on lower incomes. We therefore want to see a faster timescale for HMOs to achieve EPC Band C than other properties alongside a higher cost cap of £15,000, as landlords for these properties face fewer barriers to upgrading their properties.

Some incentives should be made available to landlords to encourage them to comply with the new standards as early as possible by making some grant funding and low interest loans available for this sector. However, landlords should only be able to access energy efficiency grant and low interest loan schemes to upgrade their properties with the condition of no rent increases for three years.

We are members of the End Fuel Poverty Coalition.

To inform our response, we ran a webinar in November, where we polled our members and collected their feedback on a selection of the proposals. We reference the results of these polls throughout our response.

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.

The private rented sector is home to many vulnerable households. These households often live in the worst housing conditions at the bottom end of the market. Raising the minimum standard is therefore likely to benefit these groups overall.

It is possible that some landlords may choose to increase rents, however, the savings in energy bills will also be substantial for the average tenant. However, we do not think that large rent increases will be the norm for the sector. The average property spend is around £4,700 per property. There are also various local and national schemes that landlords can access to help them finance the improvements – for example the Green Homes Grants announced in August 2020. This funding should come with the condition of not increasing rent for at least three years to ensure that the most vulnerable households benefit from reduced energy bills and improved health outcomes. Attaching conditions to protect tenants from rent increases should be a pre-requisite to grant funding.

Whilst some landlords may decide to sell their property as a result of these proposals, we do not think this will be a large proportion of the sector. Selling property is not without a cost to landlords. They will need to pay for legal fees and capital gains tax on any increases in value since they had purchased the property. Any significant improvements made to the property will be deducted from the capital gains calculation. Paying for energy efficiency measures could therefore offset their capital gains tax when they come to sell the property in the future. These benefits should be highlighted to landlords.

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

No.

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.

The future effects of COVID-19 are very uncertain at this point in time. We do not yet know how long lockdown restrictions will last, how effective the vaccines will be and the full impact on jobs and unemployment as a result of the pandemic. All these factors will affect the ability of tenants to pay rent and may impact on the profit margin for landlords.

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

Yes. We support the Government's preferred target. Whilst this approach may not maximise carbon emissions reductions, we welcome the focus on maximising health outcomes and reductions in energy bills for consumers that the proposals would bring. This approach should help to protect

more vulnerable tenants from excess cold and also help to reduce the number of people living in fuel poverty in the private rented sector (PRS). However, these savings in tenants' energy bills are likely to come after 2028 and will depend on energy prices at that point.

We held a webinar to consult with our members on the proposals and include the results of the polling done during this webinar throughout our response. 63% of our members attending the webinar agreed with the target being set for energy efficiency Band C, whilst 20% preferred the standard to include carbon emissions and 3% wanted the Band to be higher.

Improvements to building fabric should be prioritised. This approach would also make some headway in carbon emissions reductions and pave the way for greener heating systems in the future, which will be needed in order to reach net zero by 2050. A tighter EIR target should be considered for introduction after 2028.

However, this target needs to be considered alongside improvements in the accuracy and quality of Energy Performance Certificates (EPCs). Stronger sanctions and more robust processes are needed to reduce the number of erroneous and falsified EPCs. During our webinar, 60% of our members told us that they have come across erroneous or falsified EPCs in their line of work. Of these, 15% have seen both cases. This suggests that inaccurate EPCs are quite common and this is a serious concern amongst regulators seeking to enforce the proposed new standards. Lack of reasonable checks and thus unnecessary assumptions made, partial insulation measures and 'desktop' EPCs, where the assessor is likely not to have visited the property at all, are all issues we have heard raised by our members. The length of validity of EPCs also needs to be considered. If changes to the assessment methodology processes are introduced, it may take a long time for these to appear in existing EPCs, which are valid for up to 10 years.

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.

If EPC accuracy and quality is improved, this should be a good metric to measure improvements in energy efficiency. The alternative metrics suggested could be new and possibly confusing for both landlords and tenants. It would be better to focus on improvements to the building fabric in the first instance as this will result in a reduction in energy demand and help to achieve several goals at the same time, whilst also paving the way for low carbon heating systems in the future.

However, the introduction of further targets and standards should be considered for all housing tenures from 2030 onwards. As many homes as possible should be encouraged to generate some energy onsite, whether this is via solar panels or other methods. A Primary Energy Rating could therefore be adopted in a future standard.

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.

Yes. 42% of our members said they were happy with the proposed timings of the new standards whilst 21% of our members felt that the standard should be brought in sooner. Overall, we feel that

the cut-off point of 2028 is sooner than we expected and we therefore welcome the timings as they are proposed. However, it will be difficult for local authorities to enforce the new standards until 2028. A national registration scheme for all rented properties would help with enforcement and was recommended by the Committee on Fuel Poverty. In order to help with enforcement, we would suggest that the database should be fully operational before 2025 and all landlords should be required to register at the outset, whether there is a new tenancy or not. The records could then help in cases where there is ambiguity about when the tenancy began.

Many renters still have relatively short contracts of 1-2 years. There should therefore be some improvements in energy performance of rented homes between 2025 and 2028, but only if tenants are empowered to challenge low EPCs and are protected from eviction.

Landlords should begin preparing for these changes as soon as possible. We are therefore concerned that energy efficiency improvements made before 2023 would not count towards the cost cap. This approach would risk delaying works in some of the worst properties, as the landlord is likely to wait until 2023 to begin any works. It would be more sensible to begin counting landlords' contributions as soon as the new standards are confirmed, so that earlier improvements are incentivised. This may also help to stimulate the economy in the short term.

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.

Yes. A cost cap of £10,000 is the minimum cost cap needed in order to achieve the objectives of government targets and bring the majority of PRS properties up to EPC Band C. 38% of our members attending the webinar felt that the cost cap was about right, with 33% saying that the cap should be set at £15,000 and 17% saying that it might be too high for some parts of the country.

However, according to Chart 1, only around 10% of properties in Bands F and G would be brought up to Band C with a £10,000 cap. This is a very low proportion. The Government should consider more targeted support in the form of low interest loans or grants for hard to treat properties, especially those occupied by fuel poor and low income households.

Furthermore, statutory guidance on improvements to listed and conservation area properties would be useful for both landlords and regulators to ensure that all suitable improvements are made, rather than these types of properties simply being exempted.

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

Yes, this is especially important if the inflation rate increases in coming years as a result of the longer-term economic impact of COVID-19. The cost cap should be reviewed in 2024 and the cost cap adjusted for inflation before 2025.

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.

Building fabric improvements should be prioritised first, as these will reduce the amount of energy required to heat a property and also make the property more suitable for low carbon heating solutions to be installed in the future. Installing low carbon heating in un-insulated and inefficient properties may actually be more expensive for the occupiers and have a detrimental effect on fuel poverty rates. Windows and doors should be included in the building fabric measures definition.

We would prefer for the fabric first approach to be written into legislation. Setting this out in guidance only may bring about a situation where an excess cold hazard is created as a result of the works. For example, installing air source heat pumps in homes that have not been insulated well could result in bills being more expensive and tenants not being able to heat their homes adequately due to excessive heat loss in the building and the low operating temperature of low carbon heating systems. The landlord may then find themselves in the perverse situation of having an improvement notice served by the local authority due to there being an excess cold hazard at the property. If the fabric first approach is set out in guidance rather than in legislation, this situation may arise. Since the objectives of the Government are to ensure that its approach is cost effective for landlords, reduces the incidence of excess cold hazards and fuel poverty as well as lowering energy bills for tenants, the fabric first approach should be set as a mandatory requirement, with a clear guidance to support legislation.

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.

We welcome a future target being set after 2028, which includes both EER and EIR metrics. This would set a clear trajectory for this sector to reach net zero and give landlords and regulators clarity about the future ambition, allowing both parties to prepare for this. However, in the short term, the priority should be the reduction of fuel poverty and the effects of excess cold on the occupiers' health and wellbeing.

However, clear action on Houses in Multiple Occupation (HMOs) is missing from the proposals. These are dwellings that often house some of the most vulnerable and low-income tenants. HMOs are also some of the most profitable type of rental for landlords and tend to be larger properties. We would like to see all HMOs be required to have an EPC by 2023 and to make improvements by 2026. The cost cap for HMOs should also be set at £15,000 rather than £10,000 for the reasons outlined above. Since in many HMOs, it is the landlord rather than the tenant, who pays for the energy bills, it should also be in the landlord's interest to make improvements sooner.

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. An exemption is likely to be more complicated for enforcers and for tenants. The objective of the new standard is to help get as many properties up to a Band C as possible. However, the Government needs to look at the suite of assistance available to landlords, in the form of grants and low interest loans and target these at those landlords who may not be able to do the works otherwise, along with the requirement of no rent rises for three years.

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.

None.

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

Yes. We would welcome the incorporation of TrustMark into all energy performance work to ensure that the installation is done to a high standard and achieves the ambitions of Government policy and also meets the value expected by consumers. Given that there are now several local and national Government schemes in operation to improve energy efficiency, which use TrustMark, all work in the PRS should also align to this standard.

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?

No comment.

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 would welcome further tightening of regulations post 2028, such as by including the EIR requirements and the higher £15,000 cost cap for landlords. However, it is important to set out a clear trajectory soon in order to give landlords, regulators and tenants some certainty about the future direction and time to prepare for these changes.

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

The introduction of a national landlord register ahead of the regulations coming in would help central Government and local authorities to communicate with landlords about new laws and regulations as well as reminding them about some of their existing responsibilities. We have seen communication processes work well, where there are selective licensing schemes in place in some parts of the country. Where these licensing schemes are in place, local authorities have the contact details of their local landlords and can organise landlord forums and send out communications to landlords in the area more easily.¹

In the absence of a register, national media and social media channels may need to be used to raise awareness of the changes, as well as using existing networks of trade bodies and campaigning organisations.

Question 17: Is the introduction of a 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. We have long called for a national registration scheme for all privately rented properties. This would cover a range of health and safety considerations and checks rather than only being focussed on energy efficiency. A broader database would be more useful to local authorities, simpler for landlords to use and also more cost-effective to run, whilst bringing benefits of better quality homes and better information for tenants. A national register was also recommended by the Committee on Fuel Poverty and has broad support from many organisations and regulators alike.²

A register is useful for enforcement if:

- There is a penalty for compliant properties not being registered, as this would help to ensure completeness of the database. The usefulness of the register depends on whether it can help local authorities identify which properties are in the PRS and which are not.
- The data in the register is open to local authorities to be used for other housing enforcement work. This would ensure that the register helps local authorities to maximise their limited resources and becomes a useful tool to be used regularly. This would help enforcement of both energy efficiency and other housing standards, some of which may be inter-related such as excess cold, damp and mould.

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. The fee should be set per property. There will be some minimum administration costs involved in the registration of a property and this should be the same for every property regardless of whether there is one owner or different owners. One owner might have a large portfolio but have a number of different management arrangements in place so these would need to be captured. To ensure that the system is fair to all types of landlords and is also well resourced and self-financing, it would be best to keep the fee per property the same for all types of landlords.

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, we would strongly support this proposal. This proposal also scored highly in our webinar poll with environmental health practitioners. Letting agents hold the keys to a better managed private rented sector. It is therefore important that they play their part and make all the necessary compliance checks on the property before they advertise it for rent. Property agents should also be required to do a number of other safety checks, including the presence of working smoke detection and carbon monoxide alarms, valid gas safety certificates and electrical safety certificates before advertising properties.

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 sounds like a positive change. A valid EPC must be in place by the time a property is put up on the market. An EPC should be a key part of information provided to a prospective tenant. The change would ensure that information is available at the time a decision to rent the property is made. This would also be a simpler rule to enforce and comply with.

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. It would be best to bring this fine in line with the rest of the civil penalty regime and allow fines to be issued by both environmental health and trading standards teams. The fine must be a sufficient deterrent for the landlord. However, where the EPC is not provided because it does not meet minimum standards, the fine should be up to a maximum of £30,000.

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. Power of entry is important to enable more effective enforcement of the standard and would be in line with other powers under the Housing Act 2004. 60% of our members attending the webinar have told us that they have come across an erroneous or falsified EPC. This can only be established by actually inspecting the property in person. Even if EPC accuracy is improved via the actions in the EPC Action Plan, it will take many years for this to filter through since the validity of EPCs lasts for 10 years.

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. We have heard from our members that non-compliance in one area is often accompanied by non-compliance in other areas. EPC records are an important data source for local authorities in the absence of a national register for all privately rented properties. It is a rich source of information which can be cross referenced against other records that the LA has access to.

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

Yes. Post improvement EPCs will be needed to ascertain whether the property in question has met EPC Band C and to provide current and future tenants with up to date information about the property. However, we do not think that the cost of this should come out of the cost cap, which will leave 30% of PRS properties not achieving an EPC Band C. The cost cap must be maximised and targeted at measures to improve energy efficiency.

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

Yes.

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?

No comment.

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

Yes, it would be useful for listed buildings to have an EPC. EPCs also provide an estimate of the cost of heating the property and are therefore a key piece of information for a prospective tenant. Furthermore, there may be some improvements that can be made to listed buildings that will not interfere with their listed status – for example a new boiler, loft insulation and under floor insulation. These improvements should be done insofar as they do not harm the building's appearance or infringe on the protected parts of the building. A blanket exemption for these buildings would fail to capitalise on the potential to save energy and keep tenants living in these buildings in a safe and comfortable home. Any progress towards a more energy efficient home is a step closer to achieving net zero.

We would also recommend that BEIS publish some guidance on improving energy efficiency in listed buildings as well as in heritage and conservation areas. This would help landlords as well as owner occupiers to consider the improvements they can make to a building.

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, the fine should be increased to a maximum of £30,000 and added to the existing civil penalties regime. Most local authorities' private sector housing teams should be using civil penalties now. The benefit of the civil penalty regime is that the fines can be kept by local authorities and reinvested into future enforcement work, so they act as both a deterrent to non-compliant landlords and a way of maintaining enforcement resources.

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, tenants will need good protection from eviction if they are to use this power. Whilst there has been a freeze on evictions during the pandemic, Section 21 or 'no fault' eviction powers are still in place, allowing landlords to evict tenants for no reason. With Section 21 in place, we are not convinced tenants would use this new power in practice, especially the more vulnerable tenants.

Where local authorities have taken enforcement action on housing safety matters, Rent Repayment Orders have worked well to deter criminal behaviour and compensate tenants. These orders generally work best when the local authority establishes that a breach has taken place and provides the documentation of formal action against the landlord that the tenant can then use to obtain part or all of their rent back for a set period of time, as decided by the courts. With EPCs, it should be easier to work out whether a breach has taken place, so tenants could be allowed to use this power to request RROs in court.

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

No comment.

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

¹ A licence to rent, CIEH and CIH, Jan 2018

² [A national registration scheme for the PRS](#), CIEH parliamentary briefing, July 2019.