



# Consultation to amend The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

Response by CIEH

March 2018

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CIEH is the professional voice for environmental health representing over 8,000 members working in the public, private and non-profit sectors. It 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 health and health protection.

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## Key points from the response:

1. We welcome this consultation and strongly agree that the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 should be amended to include a landlord contribution.
2. In terms of delivering healthy and safe homes, we do not consider Band E to be an adequate minimum standard for housing in so far as there will be many instances of excess cold in Band E properties, which would be actionable under the Housing Health and Safety Rating System (HHSRS). We would therefore like to see a clear alignment between the HHSRS and the Minimum Energy Efficiency Regulations in the statutory guidance, giving HHSRS priority, whereby it applies regardless of whether Band E has been reached and or an exemption obtained.
3. We believe it would be more effective not to have any cost cap on the grounds of costs to landlords, so that priority can be given to eliminating unhealthy and unsafe housing in this tenure. However, at the very minimum, we would support a cost cap of £5,000, in order to improve as many properties as possible to Band E.
4. If amended well, these regulations could help to reduce NHS Winter pressures and save money for the NHS by reducing the impact of cold homes on health of the occupiers. The Impact Assessments for these Regulations therefore need to include the full cost benefits due to improvements to health.
5. Any cost cap introduced should maximise the benefits that could be made to housing in the private rented sector, by not including VAT or any grants as part of the cap, and not allowing exemptions on the grounds of tenant consent.

### **1. Do you agree with the policy proposal under consideration here to introduce a landlord contribution element where funding is unavailable to ensure improvements to Band F and G properties can be delivered (unless a valid exemption applies)? This would be subject to a cost cap.**

We strongly agree that the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 should be amended to include a landlord contribution. We welcome the Government's decision to consult on this issue, as the regulations in their current form are not fit for purpose and will not be effective in improving energy efficiency in the private rented sector, without amendment.

If amended appropriately, these regulations have the potential to:

- help reduce Winter pressures and costs to the NHS
- help to reduce national energy usage
- improve conditions in the private rented sector
- Help to lift people out of fuel poverty
- Reduce carbon dioxide emissions

However, the benefits set out above are dependent on a better alignment between energy efficiency and health outcomes. The impact of housing on health is a key concern for environmental health professionals and the Housing Health and Safety Rating System (HHSRS) was designed to link action on poor quality housing to the impact on the health of the occupiers. This is also the primary tool used by EHPs to take formal action against landlords. We therefore would like to see these regulations better aligned to power under the Housing Act 2004, to ensure that housing standards are not reduced. In particular, the

status of Band E properties needs to be clearly outlined in the statutory guidance accompanying the Regulations. Dwellings achieving a Band E rating are still energy inefficient and should not be considered an adequate minimum standard for housing. It is likely that a Band E property has an excess cold hazard present, when assessed under HHSRS. The environmental health community is therefore concerned that by achieving this low standard, landlords may be able to successfully challenge any further improvements required of them by local housing teams, to remedy issues to do with excess cold. The guidance accompanying these Regulations would also be useful to help Tribunals in their decision-making.

Cold homes make up a significant proportion of the costs to the NHS and to society as a result of poor quality housing.<sup>1</sup> The Building Research Establishment estimated that there are around 1.3m category 1 hazards due to excess cold, which contribute around £848m per annum of costs to the NHS.<sup>2</sup> Excess cold is also the most common type of hazard found by environmental health professionals working to improve conditions in the private rented sector.<sup>3 4</sup> Around 9,700 of UK excess winter deaths per year are estimated to be due to cold homes<sup>5</sup> and recent research shows that the UK scores 6<sup>th</sup> worst place in Europe on its rate of excess winter deaths and 2<sup>nd</sup> worst if all cold months of the year are taken into account.<sup>6</sup>

Fuel poverty is related to the level of insulation present in a home and thereby how much energy needs to be used to keep that home at a healthy indoor temperature. The number of households in fuel poverty in England has also recently increased from 2.38m to 2.5m in 2015. This represents 11% of all households in England.<sup>7 8</sup>

It is therefore essential that these new regulations are effective at bringing dwellings up to a more energy efficient and a healthier state. It is also vital that the regulations do not undermine the powers in the Housing Act 2004 to enable environmental health professionals to deal with any issues of excess cold, whether a home has reached EPC E or an exemption has been granted. The impact of excess cold on human health and the pressures that this places on the NHS have to come before any exemptions on the basis of cost to a landlord. We welcome the clarification currently present on the priority given to the Housing Health and Safety Rating System (HHSRS) in the Guidance to Landlords<sup>9</sup> and would like this retained in any new guidance produced as a result of this consultation. If the potential for action under HHSRS is in any way diminished, this could lead to a lowering of standards within the private rented sector.

Furthermore, it is not clearly set out that landlords will still need to make improvements up to the cap value even if they cannot reach the minimum E rating. This point should be clarified to landlords and to enforcers. Guidance should also be clear about what kinds of improvements landlords will need to make to bring their properties as close as possible to Band E. It should be made clear that where the cost cap allows exemption for landlords, unable to bring their properties up to the minimum standards, the improvements they are required to make should be the ones that bring them as close as possible to the minimum standard. This would ensure that landlords cannot make cheaper or less effective improvements and 'cherry pick' these over more expensive or more effective ones.

**2a. Do you agree that a cost cap for improving sub-standard domestic private rented property should be set at £2,500?  
If you do not agree, what would be the most appropriate level to set the threshold?.**

Homes that are in bands F and G are by definition excessively cold – they are very likely to have a category 1 hazard under HHSRS<sup>10</sup> - and therefore would impact on the health of occupiers. As a result, these homes should not be rented out at all. This is especially the case since the private rented section has been increasingly used by vulnerable families and individuals.<sup>11</sup>

At the very minimum, the cost cap should be increased to £5,000. There are several reasons to support this higher cap. There will be higher benefits and cost savings in health and wellbeing due to improvements being made to homes in this sector. Table 7 in the consultation document itself shows that when the cost cap is doubled for landlords from £2,500 to £5,000, the estimated value of health benefits to tenants more than doubles going from £78m to £193m.

The Government's Clean Growth Strategy highlighted the ambition to bring as many private rented sector homes as possible to Band C by 2030. However, a cap at £2,500 would allow 224,000 of private rented sector dwellings languishing in Bands F and G.<sup>12</sup> Whilst BEIS analysis shows that a £5,000 cost cap would only bring 42% of buildings up to an E standard, this is still around 35,000 more dwellings in Band E.

Furthermore, the new higher cap would go further to realising the Government's commitment towards reducing fuel poverty and fulfilling its obligations in relation to cutting CO<sub>2</sub> and energy waste.

**2b. Do you agree that a cost cap for improving sub-standard domestic private rented property should be set inclusive of VAT?**

No. The proposed cost cap of £2,500 is too low for VAT to be included as part of the total. Including VAT as part of the cap would limit the number of improvements that the regulations would require to be made and thus restrict the effectiveness of these regulations in improving the quality of private rented sector property. Whilst we recognise that most builders' quotes for work would include VAT as part of the total, VAT is usually separated out so from a practical point of view, it should be relatively straightforward for landlords to understand the cap, whether it includes VAT or not. Whilst domestic landlords cannot reclaim VAT incurred when purchasing and installing energy saving measures, we consider this to be a separate policy that Government could consider to further incentivise improvements.

**3. Do you agree that a cost cap should not take account of spending on energy efficiency improvements incurred prior to 1 October 2017?**

**If you do not agree, what would be the most appropriate way of taking account of previous spending on measures which have failed to raise a property above EPC F or G? Please provide reasons and evidence where available to support your views.**

The purpose of these regulations is to bring as many dwellings up to a Band E as possible. With this in mind, it would be appropriate not to take into account spending on energy efficiency improvements prior to 1 October 2017. Furthermore, the properties in question are in Band F and G, which are the most energy inefficient and very likely to be excessively cold. It is vital that the fewest possible number of these unsafe and unhealthy properties remain.

**4. Do you agree with the proposal that where a landlord contributes to the improvement, the cost cap threshold should be inclusive of any funding which can be obtained through a 'no cost' finance plan (including a Green Deal finance**

**plan), Supplier Obligation Funding (for example, ECO: Help to Heat or a successor scheme), or energy efficiency grant funding from a Local Authority or other third parties?**

**If you do not agree, please provide reasons and evidence where available to support your views.**

No. The cost cap threshold should not be inclusive of 'no cost' finance plans supplier obligation funding, Local Authority or any other grants. With 'no cost' finance like the Green Deal, the tenant has to pay back the cost of the improvements. Similarly, the supplier obligation funding is provided to certain vulnerable or low income households. If this was to be included as part of the cap, it would essentially mean that the tenants would be subsidising the landlord and improving their property. Landlords, whatever the size of their portfolio, are a type of business. They therefore need to meet minimum standards in order to operate in the private rented sector.

In cases where the landlord is fortunate enough to obtain external funding through this kind of programme, this funding should be used on top of the cost cap to improve the property further above a Band E. We believe that landlords should still be motivated to make improvements on their properties using grant funding, if the Government clearly sets out its ambition to bring all dwellings up to Band C by 2030.

**5. Do you agree that it is not necessary to place a regulatory duty on energy suppliers, or their agents, to provide landlords with cost information relating to the value of energy efficiency improvements made to the landlord's property through a supplier obligation?**

As mentioned in response to Question 4, we do not think that grants from external sources should be used to reduce the landlord's obligation towards improving the energy efficiency of their rented properties. If this is done, then no additional duty would need to be placed on energy suppliers.

**6. Where a landlord is intending to register a 'high cost' exemption, should the landlord be required to provide three quotes for the cost of purchasing and installing the measures, in line with the non-domestic minimum standards? If you do not agree, please provide reasons and evidence where available to support your views.**

We agree with this proposal. This is the minimum number of quotes needed to establish a more accurate cost for the work. All three quotes should be above the cost cap for the exemption to be granted. To reduce the level of potential fraud with the quotes provided, at least one of the quotes should be sought from a certified installer, such as members of the PAS 2030 scheme or Microgeneration Certification Scheme.

However, it is not clear how it will be established what other improvements the landlord is required to fund to reach the cost cap, even if this doesn't bring the property up to a Band E. For example, if a landlord provides a quote for external wall insulation, is he still required to install double glazing or can he get away with simply draught proofing and installing energy efficiency lightbulbs, thus taking the double glazing measure above his cost cap? If the key recommendations are to be followed from the EPC, then this could be further clarified for the avoidance of any doubt.

**7. Do you agree with the proposal to limit the validity of any 'no cost to the landlord' exemptions (under Regulation 25(1)(b)) registered between October 2017 and the point at which a capped landlord contribution amendment comes into force?**

**If you do not agree, what are your objections, and how do you recommend that the minimum standard regulations be amended to ensure the energy efficiency improvements are delivered to such properties, which might otherwise be left unimproved once the amended regulations came into force? Please provide reasons and evidence where available to support your views.**

We agree with the proposal to limit the validity of the exemptions obtained between 1 October 2017 and the time that a cost cap contribution for landlords is introduced. The original exemption would last for a full 5 years, which would be too long. As many homes as possible need to be brought up from Band F and G between now and five years' time, if the Government is serious about its ambition to bring all privately rented property up to a Band C by 2030.

**8. Do you have views on whether the consent exemption under Regulation 31(1)(a)(ii) should be removed from the minimum standard regulations or retained?**

**Please provide reasons and evidence where available to support your views.**

We believe that the 'consent exemption' should be removed. Green Deal finance is 'no cost' to the landlord because the tenant agrees to pay for the energy efficiency improvements on the landlord's behalf. Given that tenants generally have very little protection from evictions or rent increases, this is not an attractive or fair deal for tenants, who will get no financial benefit and may therefore refuse to sign up. Where a tenant refuses to give consent to a Green Deal charge, the landlord should be obliged to fund improvements himself.

Although, there will be cases where a tenant may refuse consent for major works funded by the landlord, this is relatively rare and through negotiation this can usually be resolved. Therefore, this is also not a good reason to provide another exemption to the regulations.

**9 Do you have any comments on the policy proposals not raised under any of the above questions?**

We would welcome a clear steer from the Government on its intended trajectory of energy efficient improvements in the private rented sector. This would encourage landlords to plan the improvements they fund and to have longer-term plans for their property portfolio.

We would also like to see closer working between BEIS, MHCLG and DHSC to ensure that enforcement tools related to excess cold work well and are fully up to date. We would also want to see the health impact as a result of energy efficient improvements to be fully incorporated into any policies which affect health.

**10a Do you have any evidence or comments regarding the consultation impact assessment (including views on any of the assumptions we have made to support our analysis), which could inform the final stage impact assessment?**

We do not consider that the health cost savings are adequately included in the cost-benefit analyses and are not given adequate weighting in the impact assessment assumptions.

The cost-benefit analysis in its present form is skewed towards Policy Option 2, delivering relatively easily installed measures, which individually produce relatively low improvements to the SAP rating. This is reflected in the deliverables shown in Appendix B, Table 8, where Option 2 tends to deliver Electric Storage Heaters (over and above Option 1), while Option 3 delivers Double Glazing (and some Photovoltaics) over and above Option 2. Only Option 4 delivers improvements that would make a marked impact on SAP ratings (more than twice the numbers of Loft and Cavity Wall insulation than Option 2, Solid Wall insulation and First Time Central Heating).

This strongly implies that many of the 30% of properties improved to Band E under Option 2 will be those that already have higher SAP ratings (within upper Band F). Many of the 70% of properties that are not improved to Band E will therefore still have SAP ratings below 35 – historically considered a proxy for a Category 1 Excess Cold Hazard rating under the HHSRS.

**10b. Do you have any evidence or information on the potential for these proposals to impact on the PRS market, including any potential for landlords who are required to act by the minimum standard regulations to pass through costs to tenants after making improvements to their properties?**

We believe it is unlikely that landlords will pass on the costs of improvements to tenants. Rental costs are closely related to the rental market rather than an individual landlord's costs. Furthermore, whilst Band F and G properties make up a large number of properties across the country, these are a relatively small proportion of the overall private rented sector – about 6.6% - therefore rent increases are not likely to occur, as the rest of the market would be unaffected by these regulations.

**10c. Can you provide any evidence on the likely costs associated with the compilation of evidence in advance of registering an exemption on the PRS Exemptions Register?**

We have no further information to add to our response.

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<sup>1</sup> The full cost of poor housing, BRE, 2016.

<sup>2</sup> <https://www.bre.co.uk/filelibrary/pdf/87741-Cost-of-Poor-Housing-Briefing-Paper-v3.pdf>

<sup>3</sup> Local housing authority action on conditions in rented housing, Report following a FOI request to local housing authorities prepared for Karen Buck MP, Stephen Battersby, Jan 2018.

<sup>4</sup> Table DA4101 (SST4.1): Health and safety - dwellings, 2015. English Housing Survey, 2017. <https://www.gov.uk/government/statistical-data-sets/dwelling-condition-and-safety>

<sup>5</sup>

[https://www.e3g.org/docs/E3G\\_NEA\\_Cold\\_homes\\_and\\_excess\\_winter\\_deaths\\_Press\\_Release.pdf](https://www.e3g.org/docs/E3G_NEA_Cold_homes_and_excess_winter_deaths_Press_Release.pdf)

<sup>6</sup>

[https://www.e3g.org/docs/E3G\\_NEA\\_Cold\\_homes\\_and\\_excess\\_winter\\_deaths\\_Press\\_Release.pdf](https://www.e3g.org/docs/E3G_NEA_Cold_homes_and_excess_winter_deaths_Press_Release.pdf)

<sup>7</sup> [Annual Fuel Poverty Statistics Report 2016](#), Department of Energy and Climate Change, Jun 2016.

<sup>8</sup> Annual fuel poverty statistics report: 2017 (2015 data), BEIS, June 2017.

<sup>9</sup> The Private Rented Property minimum standard – landlord guidance documents, BEIS, Oct 2017.

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<sup>10</sup> The Health costs of cold dwellings, BRE for CIEH, 2011.

<sup>11</sup> Those in receipt of housing benefit living in the private rented sector has increased from 0.6m in 2008-09 to 1.0m in 2016-17. English Housing Survey 2016-17 household tables (Table 1.15).

<sup>12</sup> We made this estimate by using BEIS analysis of the proportion of dwellings due to be brought up to Band E (30%) and applying it to most up to date figures from the English Housing survey (size of the PRS 4.7m and 6.6% of the sector being a Band F or G) English Housing Survey 2016-17.