



Department
of Energy &
Climate Change

Private Rented Sector Minimum Energy Efficiency Standard Regulations (Non-Domestic)

Government response to 22 July 2014 Consultation on the non-domestic private rented sector
energy efficiency regulations (England and Wales)

URN 14D/410
05/02/2015

© Crown copyright 2015

URN 14D/410

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence.

To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Any enquiries regarding this publication should be sent to us at:

Household Energy Efficiency Directorate

Private Rented Sector Team (Non-Domestic)

Area 1D

Department of Energy and Climate Change

Email: nondomprsconsultation@decc.gsi.gov.uk

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

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

Published by the Department of Energy and Climate Change

Contents

Executive summary.....	4
Introduction and overview.....	4
Key policy decisions	4
Next steps	7
Conducting the consultation process.....	7
Numerical summary of consultation responses	7
Detailed analysis of consultation responses and the Government's response.....	8
Buildings and lease types in scope	8
Required improvements	9
Restrictions on undertaking improvements.....	13
When and how the regulations apply.....	14
Enforcement, penalties and appeals	17
Miscellaneous questions	20
Annex A: List of Respondents to the Consultation on the implementation of the Energy Act 2011 provision for energy efficiency regulation of the non-domestic private rented sector	22
List of consultation respondents	22

Executive summary

Introduction and overview

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

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

We received 49 written responses from a variety of organisations and individuals. We would like to thank all respondents who submitted a formal response. We also undertook a range of stakeholder sessions, including four webinar sessions and four workshops in London (including dial in conferencing). DECC officials also attended a range of stakeholder meetings and events, and provided content for others to use in engaging their partners, supporters and members.

We have now carefully considered all the views expressed.

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

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

Key policy decisions

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

Scope

- The regulations apply to the non-domestic private rented sector in England and Wales. Non-domestic private rented properties are defined in the Energy Act 2011 as any property let on a tenancy, which is not a dwelling. In the regulations we will exclude from this definition any property which is let on a tenancy which is granted for a term of 6 months or less (provided the granting of the tenancy does not mean the tenant will have occupied the property for in excess of 12 months), and any property let on a tenancy for 99 years or more. All non-domestic property types are in scope of the regulations, except

for those specifically excluded from existing Energy Performance Certificate (EPC) obligations, as set out in the EPC regulations¹.

The minimum standard

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

Restrictions on making improvements

- As explored in the consultation document, the regulations will include a number of safeguards to ensure that only permissible, appropriate and cost effective improvements are required under the regulations. Landlords will be eligible for an exemption from reaching the minimum standard where they can evidence that one of the following applies:
 - The measures are not cost-effective, either within a seven year payback, or under the Green Deal's Golden Rule
 - Despite reasonable efforts, the landlord cannot obtain necessary consents to install the required energy efficiency improvements, including from tenants, lenders and superior landlords.
 - A relevant suitably qualified expert provides written advice that the measures will reduce a property's value by 5% or more, or that wall insulation required to improve the property will damage the property.

When and how the regulations apply

- From 1 April 2018, the regulations will apply upon the granting of:
 - a lease to a new tenant, and,
 - a lease to an existing tenant.
- From 1 April 2023, the regulations will apply to all privately rented property in scope of the regulations, including where a lease is already in place and a property is occupied by a tenant.
- Where a tenancy is granted in certain circumstances, such as by operation of law, the landlord will have six months from the date they become the landlord under that tenancy in order to comply with the regulations. Similarly, where a non-compliant property occupied by a tenant is sold, or is transferred to a lender in the case of receivership, the new landlord will have six months to improve the property, or seek to demonstrate an exemption applies.

Enforcement

- Local authorities will enforce the provisions, and we expect in most cases it will be Trading Standards who undertake enforcement activity, but local authorities may choose to use other functions to undertake this function.
- Where a landlord considers an exemption applies allowing them to let their property below an E EPC rating, the landlord will need to notify this on a centralised register (the "Private Rented Sector (PRS) Exemptions Register"). DECC may use this information to assist local authorities in targeting their enforcement activity.

¹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/50268/A_guide_to_energy_performance_certificates_for_the_construction_sale_and_let_of_non-dwellings.pdf

Compliance Notices and Penalties

- Where a local authority suspects that a landlord with a property in scope of the regulations is not compliant, or has not sufficiently proved an exemption, the local authority can serve a compliance notice on the landlord requesting further information it considers necessary to confirm compliance. If this is not provided, or is provided and is not sufficient to prove compliance, the local authority may proceed to issuing a penalty notice.
- The penalty regime for non-compliance with the regulations will reflect the degree of infringement, and length of non-compliance. In some cases the infringement will be made public to encourage compliance. Penalties may be cumulative. The penalty regime will be as follows:

Infringement	Penalty	
Providing false or misleading information to the PRS Exemptions Register; Failing to comply with a compliance notice from a local authority	£5,000 Publication of non-compliance	
Renting out a non-compliant property	Less than 3 months non-compliance 10% of rateable value, but with a minimum penalty of £5,000 and a maximum penalty of £50,000 Publication of non-compliance	3 months or more of non-compliance 20% of rateable value, but with a minimum penalty of £10,000 and a maximum penalty of £150,000 Publication of non-compliance

Reviews

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

Appeals

- Landlords may appeal a penalty imposed for non-compliance with the regulations on the basis that the penalty notice was issued in error (error of law or of fact), the penalty does not comply with the regulations, or that it was inappropriate in the circumstances for the penalty notice to have been served.

Next steps

The Government laid the regulations for parliamentary approval on 4 February 2015, implementing the policy as described in this consultation response. The Government will work with the sector to develop industry guidance to help landlords, tenants, local authorities and wider sector bodies to understand and prepare for the regulations before they begin to apply from April 2018, and before the Register becomes available to lodge exemptions in 2016.

In line with better regulation guidance, the Government has put in place a requirement to review the operation and effect of the regulations at no less than five yearly intervals. The Government intends that the first review would be carried out in 2020, prior to which it will build evidence about the progress and effectiveness of the regulations. The Government recognises the market's need for investment certainty, and will seek evidence and views from the sector to inform its reviews.

Conducting the consultation process

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

DECC also undertook four public and cost-free webinar sessions (two on the domestic, and two on the non-domestic) and four workshops in London (including dial in conferencing). In addition DECC attended a range of stakeholder and trade body events and provided content for others to use in engaging their partners, supporters and members.

Numerical summary of consultation responses

Type of respondent	No. responses	Percentage
Advisor / consultancy business	4	8.2%
Certification body	1	2.0%
Conservation charity	1	2.0%
Energy supplier	3	6.1%
Environmental NGO	3	6.1%
Individual	1	2.0%
Insulation company	1	2.0%
Legal firm / lawyer	7	14.3%
Local authority	1	2.0%
Professional body	3	6.1%

Property owner / landlord	9	18.4%
Trade association	14	28.6%
Misc NGO	1	2.0%
Total	49	100%

Detailed analysis of consultation responses and the Government's response

Buildings and lease types in scope

Question 1

Do you agree with the proposed scope of buildings and leases that should be covered by the minimum standard regulations? If not, what building or lease types should be included or excluded?

Summary of responses

Out of the 49 responses that the Government received to the non-domestic consultation, 37 respondents expressed a preference to this question, with 68% (25 respondents) agreeing with the proposed scope of buildings and leases in scope of the minimum standard regulations, and 32% (12 respondents) disagreeing. Of those who disagreed, most expressed a preference to change the lease length of leases in scope, and either see longer or shorter minimum and maximum lease length exclusions from the regulations. A minority suggested that there should be no upper or lower limit to leases in scope.

Whilst there was little dissent from the proposal to reflect the scope set out in the EPC regulations from the scope of the PRS regulations, some respondents asked that guidance setting out how the EPC regulations should apply could be made clearer with regards to the application of EPCs in certain situations, in particular to listed buildings.

Some respondents also sought clarification as to whether it is intended that the PRS regulations apply where a landlord has limited or no control over whether a lease is granted to a tenant, for example where a:

- lease is granted to a tenant due to an operation of law,
- tenant seeks to renew their lease,
- tenant sub-lets their space.

Some respondents also suggested that it should be clarified that assignment of a lease should trigger a PRS regulations obligation, and some asked how tenants who sublet their space may be brought within scope.

Government response

In line with consultee support, the Government intends to only exclude those properties that are excluded from requiring an EPC under existing EPC regulations. The Government intends to apply the regulations on sublet, as this also triggers EPC obligations. Whether the sublet triggers any obligation under the regulations will depend on the EPC rating for the unit being let. If the unit falls below the minimum standard, improvements will be required, unless a prescribed exemption applies. Whilst the Government agrees that in the case of a subletting, a tenant is likely to require landlord consent to improvements, the provisions outlined in this document for an exemption where third party consents are refused (such as a superior landlord), provides sufficient safeguards.

The Government also intends to apply the minimum and maximum lease terms as explored in the consultation document, meaning that leases outside scope will be those:

- granted for 99 years or longer, or
- those granted for a period not exceeding six months unless -
 - (i) the tenancy contains provision for renewing the term or for extending it beyond six months from its beginning, or
 - (ii) at the time the tenancy is granted, the tenant has been in occupation for a [continuous] period which exceeds 12 months.

The Government has considered the representations made regarding situations where a landlord has no control over the grant of a tenancy, or over the timing of the grant, and where the landlord does not have an opportunity to improve the property before the regulations apply. To ensure that the regulations always provide a genuine opportunity for the landlord to comply, where a lease is granted – for instance by order of a court or a tenant exercising a right under the Landlords and Tenant Act 1954 – landlords will be given an extension of six months from the date of the grant of the tenancy before they are required to comply with the regulations. Similarly, where a non-compliant property occupied by a tenant is sold, or is transferred to a lender in the case of receivership, the new landlord will have six months to improve the property, or seek to demonstrate an exemption applies.

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

Required improvements

Question 2

Do you agree that where a property falls below an E EPC rating, the landlord would only be required to make those improvements which could be made at no net or upfront cost, for example through a Green Deal finance arrangement? For those properties that do not meet an E EPC rating, do you have any suggestions for how the process could be streamlined?

Summary of responses

37 respondents expressed a preference in response to this question, with 59% (22 respondents), agreeing with the proposed requirements under the minimum standard and 41% (15 respondents) disagreeing.

Whilst there was broad support for setting the standard at an E EPC rating initially, those who opposed the proposals focussed on the application of the Green Deal's Golden Rule. Respondents raised concerns that the current unavailability of Green Deal finance in the non-domestic sector meant that including an exemption in the regulations relating to the application of Green Deal finance entailed risks. Typically this was because either it makes it difficult to fully understand how the exemption might apply in practice, or concern that it could be used to avoid taking action under the regulations.

Some respondents argued that many landlords would be unlikely to use Green Deal finance type arrangements and would instead use available capital or alternative sources of finance to the Green Deal. There was also concern about how the Golden Rule may apply to historic buildings.

Government response

The Government acknowledges the concerns expressed by some respondents regarding the provision of a cost exemption relating to the Green Deal's Golden Rule. Whilst the Government recognises that there is not currently Green Deal finance being offered in the non-domestic sector, the Government believes that Green Deal finance holds potential, especially for smaller landlords with fewer credit options, and the regulations should provide allowances for those landlords who undertake improvements through this route, once finance is made available. The Government intends therefore to retain this option for those landlords who may consider Green Deal finance an attractive option in the future. To ensure clarity and simplicity, the Government does not propose to permit other sources of financing in calculating the Golden Rule.

For those landlords who would not wish to explore the use of Green Deal finance on buildings in scope of the PRS regulations, the Government sought views on an alternative option, which the Government intends to take forward (see response to question 3 below).

A number of stakeholders raised concerns, both here and in response to other questions, about the potential negative impact of particular measures in historic buildings. The Government intends to provide for an additional exemption giving specific protections relating to wall insulation improvements. Such insulation will not be required under the regulations where the landlord has obtained a written opinion from either a suitably qualified expert, or an independent installer which meets relevant installer standards of the improvement in question, advising that it is not an appropriate improvement, due to its potential negative impact on the fabric or structure of the property (or the building which it is part of).

Question 3

Should the Government allow landlords the option of demonstrating compliance by installing those measures which fall within a maximum payback period, and if so do you have any evidence on an appropriate payback period? Do you have any views on how the process of identifying improvement payback periods should operate?

Summary of responses

Over 80% (29 respondents) who responded to the question agreed that an alternative test of cost effectiveness was required, with 17% disagreeing (6 respondents). There was a high level of agreement amongst stakeholders that the Government should provide landlords the option to comply with the regulations by installing all those measures that meet a minimum payback, where reaching the minimum standard was not cost-effective.

Most respondents who agreed with an alternative test for compliance provided further evidence and arguments as to an appropriate payback period. There were three common suggestions: a seven year pay back (to align either with the Renewable Heat Incentive, or with Scottish

proposals for regulations in the sector), a 15 year payback (to align with Consequential Improvement requirements as set out in Part L of the Building Regulations), or a payback period that aligned with the lease-length of the property. A fourth option raised by one respondent was to link payback period for a measure to its warrantee length.

Where the seven year payback was discussed, this was often accompanied by an explicit link to trajectories, with respondents arguing that certainty on longer term requirements would ensure that a range of ambitious options are considered before improvements are chosen. Some respondents considered that a subset or menu of standard energy efficiency measures should be provided for landlords, with Part L 2B of the Building Regulations referenced.

A number of responses suggested that the payback calculation should be based on the average payback of a package of measures rather than the payback of individual measures. This would enable the cross-subsidisation of longer pay-back measures by shorter payback measures, and might encourage some measures that have a longer payback over seven years to be installed.

Where respondents disagreed with an alternative test, in most cases this is because they felt landlords should have to meet a minimum standard of E EPC rating, without any cost based exemptions.

Government response

As noted in Question 2, the Government acknowledges that an alternative route for landlords to demonstrate cost effective improvements had been installed is necessary. Taking into account feedback from consultation responses and workshops, and following internal analysis, the Government believes the most appropriate payback is a simple seven year payback. As set out in our Final Stage Impact Assessment, the shortest lifetime of a non-domestic energy efficiency improvement is 10 years. By setting the payback period at seven years, the mechanism ensures there will be at least three years of additional energy bill savings that will accrue as a benefit which are not accounted for in the calculation. This ensures that any costs relating to credit used to purchase and install the improvements are counter balanced when the economy is in periods of low interest rates. To ensure that this remains the case if interest rates rise, the seven year payback methodology will be indexed to the Bank of England Base Rate prevailing at the start of the seven year period.

Therefore, landlords will be eligible for an exemption where they have installed those improvements that are expected to deliver within a seven year period the same or more in energy bill savings as the cost of purchasing and installing them, as well as any related interest payments. Interest payments are calculated using the prevailing Bank of England Base Rate.

Question 4

Do you agree with the proposed method for demonstrating an exemption where works would result in a material net decrease in a property's value? What would be the most appropriate way to set the threshold?

Summary of responses

Respondents generally felt there would be very few situations where an exemption based on the works resulting in a net decrease in the property value would be used. However, a majority of respondents felt that some sort of exemption should be available; of the 35 respondents who expressed a view, 69% (24 respondents) agreed that some protection should be available for landlords where the installation of the measures would result in a material decrease in value.

Some respondents suggested that landlords should be able to self-certify that such a devaluation was expected; others suggested that three valuations should be required to demonstrate a material decrease in value. There was no widespread agreement amongst stakeholders on a particular figure to set the level of materiality, with suggestions of a material decrease ranging from 'any decrease at all', to 'any decrease of more than 10% of value'.

Government response

The Government acknowledges the importance of providing safeguards to landlords in the very infrequent cases where the installation of energy efficiency measures might negatively impact on the value of a property. However, this safeguard needs to be properly calibrated to ensure wherever possible energy efficiency installations are undertaken, and exemptions are only utilised where there is a genuine and material threat to a property's value. The Government therefore intends to proceed with an exemption where a property is expected to suffer a material drop in value as a direct result of the installation of energy efficiency improvements. For an exemption to apply, the net decrease must be assessed as greater than 5% of the value of the property (excluding the cost of the measures themselves and their installation). The assessment would need to be undertaken by an independent and appropriately qualified surveyor. The Government believes that providing a defined figure in the regulations will make this exemption much clearer to understand, easier to enforce, and less likely to lead to appeal to the First-tier Tribunal, than if the Government was to leave the definition of material net decrease undefined.

Question 5

Do you have any evidence that shows the scale of the costs and benefits (including non-financial costs and benefits) associated with improving the energy efficiency of a property, for example time taken to undertake cost effective improvements?

Summary of responses

14 respondents provided evidence in response to this question. The vast majority of reports provided regarded evidence on potential costs that could arise relating to improvement works, however some highlighted benefits. Research reports referenced by consultees included:

- Costing Energy Efficiency Improvements in Existing Commercial Buildings, IPF, July 2012².
- Cutting Carbon Costs: Learning from Germany's Energy Saving Program, Anne Power and Monika Zulauf, LSE Housing & Communities, London School of Economics, 2011³.
- Mapping the Impacts of Minimum Energy Efficiency Standards for Commercial Real Estate, Green Construction Board Valuation and Demand Working Group, June 2014⁴.
- Shining a Light Report, CBI, August 2013⁵.

Government response

² <http://www.sweettgroup.com/wp-content/uploads/2014/03/costing-energy-efficiency-improvements-in-existing-commercial-buildings-summary-report1.pdf>

³ <http://sticerd.lse.ac.uk/dps/case/cp/CCCfull.pdf>

⁴ http://www.greenconstructionboard.org/images/stories/Valuation_and_Demand/GCB630%20Executive%20Summary.pdf

⁵ <http://www.cbi.org.uk/campaigns/maximising-the-potential-of-green-business/shining-a-light-report/read-online/>

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

Restrictions on undertaking improvements

Question 6

Does the proposed consents exemption strike the right balance between recognising existing landlord obligations, whilst also ensuring that the allowance is not used as a loophole to avoid undertaking improvements? Do you have any views on how beneficial owner consents should be taken into account?

Summary of responses

33 respondents expressed a view, with the vast majority (88%; 29 respondents) agreeing with the proposed exemption regime. Respondents agreed that the regulations should provide a temporary exemption to landlords who are unable to obtain necessary consents. The main concern raised by those who disagreed with the provision for a consents exemption was that they believed it risked providing scope for landlords to avoid undertaking improvements, should they wish to find a route to avoid taking action. Similar concerns were raised should the regulations provide a broad, ill-defined list of third parties that may require consents. It was further suggested that it would be unlikely that TSOs would have the necessary expertise to challenge whether third party consents were really required. However, nine respondents had concerns about the level of obligation landlords could be under in seeking and obtaining consents, and argued that requiring landlords to show "best endeavours" was too onerous, and "reasonable endeavours" was a more appropriate obligation.

Some respondents suggested that the regulations would need to be clear as to whether an exemption would be valid if a landlord had placed unreasonable conditions on their request to a third party. There was also some concern that landlords without an EPC would not be in scope of the PRS regulations, and that this amounted to a potential "loophole." There was overall support for the provision of non-statutory guidance to assist the market in understanding how the provisions may apply in particular circumstances.

Three respondents provided views on how beneficial owner consents should be treated; one proposed that they ought to be able to refuse consent, one suggested that they should not be permitted to unreasonably refuse consent and another commented that there would not be a simple way to overcome complexities around ownership structures and that the regulations should not impose anything beyond 'reasonable endeavours' on a landlord to seek the requisite consents.

Government response

It is important that the regulations provide allowances where a landlord is required to seek and obtain consents from relevant third parties before undertaking improvement works. This is important to avoid a situation whereby, in meeting requirements under the PRS regulations, a landlord falls foul of existing obligations to obtain consent from a third party. Such third party consents are likely to vary depending on a range of factors, including the terms in a lease and the nature of the proposed works.

The Government recognises there is a balancing act between including such safeguards, and ensuring they are not used to deliberately avoid taking action. It is also important that the regulations are simple to understand and enforce. Therefore, only consents a landlord is legally bound to seek and obtain before work can be undertaken would be in scope. Parties that a landlord may be required to notify of improvement works, rather than obtain consent, would not count as a third party requiring consent. It would always be a landlord's obligation to demonstrate that the both consent was required, and that it was refused.

To ensure an appropriate balance between flexibility and certainty, the regulations will detail a non-exhaustive list of third parties that a landlord may, depending on the situation, need to seek consent from. These are as follows:

- the consent of any tenant of the property or, where the rented space is one of two or more properties comprised in a building, the consent of a tenant of any of those properties,
- the consent of any person who has a charge in respect of the property or in respect of the building of which the property forms part,
- the consent of any superior landlord,
- planning permission, approval or consent required under the Town and Country Planning Act 1990,
- consent required as a result of the property being in a conservation area designated in accordance with section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

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

Non-statutory guidance will set out likely scenarios whereby a landlord may and may not be considered to have met this obligation. A landlord would not be considered to have met their obligation to use reasonable endeavours to obtain consent if they were placing unreasonable conditions on their request to a third party.

When and how the regulations apply

Question 7

Do you think the regulations should have a phased introduction applying only to new leases to new tenants from 1 April 2018? Do you agree the regulations should also have a backstop, applying to all leases from 1 April 2023? If not, what alternatives do you suggest?

Summary of responses

41 respondents expressed a view on this question, with 51% of respondents (21 respondents) agreeing that the regulations should apply in a phased manner, applying to new leases to new tenants in 2018, and to all leases in 2023, with 49% (20 respondents) expressing a preference for an alternative manner of introduction. Of those who expressed alternatives, four agreed with a phased introduction but argued for earlier or later backstops (two argued for a backstop of 2020, one for a backstop of 2025 and one for a backstop of 2028). Four requested a hard start, and six requested a soft start. Two respondents proposed a soft start, but instead of a backstop argued that the regulations should apply at lease renewals on the basis that this provided an opportune moment to negotiate energy efficiency issues. One respondent raised concern that

Trading Standards Officers (TSOs) may not know when a triggering transaction has occurred, posing challenges for enforcement.

Government response

The feedback received suggests that the Government's proposed manner of introduction is appropriate; whilst there was reasonably strong support for the phased approach as set out in the consultation document, those who disagreed were broadly split between those that wanted to see a version of introduction that was faster, and those that wanted an introduction that was slower, suggesting that the Government's proposed timetable strikes the right balance between the two.

The Government proposes to apply the regulations in a phased manner, applying the regulations to new leases from April 2018 and from April 2023 to all leases, as described in the consultation document. However, to ensure that opportunities where landlord and tenant are in negotiation are capitalised upon, the Government intends to apply the regulations on lease renewals and extensions where there is an EPC (explained in more detail under question 8).

Question 8

Should the regulations apply upon lease renewals or extensions where a valid EPC exists for the property?

Summary of responses

35 respondents expressed a preference as to whether to apply the regulations on lease renewal and extension; the opinion was split, with 49% (17 respondents) supporting lease renewal inclusion, and 51% disagreeing (18 respondents). Four respondents provided views on the implications of doing so but did not provide a preference. Some respondents also argued that EPCs should be provided on lease renewals and extensions, and therefore the PRS regulations should not be contingent on whether a property had an EPC. Some respondents also sought clarification as to when a renewal of a lease would be considered to have arisen.

Government response

The Government proposes to apply the regulations on lease renewals, where the property has an EPC, as this is an opportune point at which landlord and tenant are in negotiation. Furthermore, to exclude this trigger point would result in a limited number of properties being in scope in the initial "soft phase" of the regulations, as tenants tend to occupy their property for longer periods than their initial lease term. The consents and other exemptions as detailed in this response will apply as normal, so where a tenant has a right to refuse consent, and they refuse a landlord's request for consent, the landlord would be eligible for an exemption.

Question 9

Do you agree that an exemption for properties below an E rating should last for five years, or where the exemption was due to a tenant's refusal to consent, when that tenant leaves, if before five years?

Summary of responses

37 respondents expressed a view on whether the exemptions should expire after five years, or when a tenant vacates their property (if before five years), with 76% agreeing (28 respondents)

and 24% (nine respondents) disagreeing. Of those who disagreed, six expressed preferences for shorter exemption periods, ranging from six months to three years. One respondent suggested 10 year exemptions. One suggested that the exemption should always apply for five years regardless of when the property becomes vacant, and one respondent argued that there should not be any set expiry timescales, and that exemptions should only ever expire when a tenant vacates the property.

Government response

Given the Government's energy and climate change goals, it is important that properties which are unable to achieve the minimum standard initially are eventually improved if there are opportunities in the future to do so. It is therefore important that any exemptions afforded to those properties that allow them to remain lettable below minimum standard do not last in perpetuity.

In line with the general feedback received, the Government intends to retain its proposal of applying exemptions for a set period of five years, expiring earlier if it was the tenant who had caused the exemption by refusing their consent, and that tenant vacates the property before five years. The feedback received broadly supported this approach, and of the minority that disagreed, much shorter or much longer exemptions were suggested, underscoring five years as striking a reasonable balance between preferences. Upon expiry of an exemption, landlords will need to either achieve the minimum standard or obtain another exemption if a prescribed exemption applies. Some landlords may equally elect to improve their property before the exemption expires to avoid further work at a later date, but this would be at the discretion of the landlord.

Question 10

Do you agree that the Government should set a trajectory of standards beyond 2018, and if so, how and when should this be done?

Summary of responses

43 respondents expressed a view on this question, with over 90% of respondents (39 respondents) agreeing that the Government should set a trajectory of standards. Respondents argued that a trajectory would provide industry with longer term investment certainty, and would result in lower overall costs of installation for the energy and carbon saved. A number of respondents pointed out that if the built environment were to deliver its fair share of an 80% emissions reduction by 2050, it would translate to the average EPC rating being four grades higher by 2050 (i.e. an A EPC rating, up from an average D EPC rating now).

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

For the small minority of respondents who disagreed with a trajectory, this was primarily due to concerns over the appropriateness of installing energy efficiency improvements in traditional buildings, and the possible impact of unintended consequences of retro-fitting older buildings.

Government response

The Government acknowledges that a trajectory would provide longer term investment certainty. However the Government also considers it important to learn from the experience of implementing these regulations, as well as any improvements in energy efficiency across all of

the UK's building stock. This is why we have included a provision in the regulations requiring the Government to review the regulations. In light of this, the Government is not including a trajectory for the minimum energy standard in these regulations.

As set out earlier in this response document, the regulations will include specific protections relating to wall insulation improvements so that such measures will not be required where the landlord has obtained a written opinion from a suitably qualified expert, or independent installer, advising that it is not an appropriate improvement due to its potential negative impact on the fabric or structure of the property (or the building which it is part of).

Enforcement, penalties and appeals

Question 11

Do you consider where a property has a valid exemption for letting below an E EPC rating that certification of compliance would be helpful? If so should this be voluntary or mandatory? Do you have any other comments regarding compliance and how Trading Standard Officers (TSOs) could be supported with enforcement, for example identifying landlords?

Summary of responses

35 respondents expressed a view on whether a certificate of compliance for properties below an E EPC rating would be useful, with 77% (27 respondents) supporting the idea of a certificate and 23% opposing the idea (8 respondents). Of those who agreed with the idea of a certificate and expressed a view on whether it should be mandatory or voluntary, 60% felt the certificate should be mandatory (12 respondents), and 40% (8 respondents) thought it should be voluntary. Those who opposed the concept of a certificate suggested that the process risked introducing additional processes and administration, and that landlords may be best placed to assess whether they had sufficient evidence of an exemption, should they be challenged.

Some respondents questioned how a third party tasked with reviewing evidence and providing exemption certificates would be funded, with some respondents commenting that costs for the service should be kept low for landlords, or provided free of charge.

Some respondents questioned whether local authorities were the most appropriate bodies to carry out the function, with one suggestion that accreditation bodies or a national contractor should carry out the work. There was some concern about the potential for variability should the exemption process be carried out by local authorities, and one respondent suggested that instead of a model of certification, a national register of exemptions could be set up, with a proportion of properties listed on the register audited.

Government response

The Government considers there to be strong rationale and broad support for some mechanism to improve the transparency regarding properties that are rated below the minimum standard, but are in compliance, having been eligible for one of the prescribed exemptions. However, the Government also recognises that any process of third party verification of an exemption needs to be simple and low cost. The Government also recognises concerns expressed regarding the capacity for local authorities to fulfil a certification regime.

Instead of requiring local authorities to certify exemptions, the Government intends to establish an online "PRS Exemptions Register", which will be run by DECC, and will act as a centralised database of exemptions relating to the regulations. When a landlord considers that they are eligible for a prescribed exemption, they will be required to notify this exemption on the

Register. The provision of the relevant information should not entail any additional burden as it would simply involve the lodging of evidence that the landlord will have gathered in the process of establishing the exemption.

DECC, or a supplier on DECC's behalf, may audit a proportion of entries on the Register and may notify parties about lodgements where insufficient evidence is submitted. Information from the Register may also be used to support local authorities target their enforcement activities.

By providing a single online process for landlords to go through across the country, landlords will have a simple and consistent process to follow, without additional cost. This process will also help local authorities, as they can seek to target their activity and will be supported in the monitoring and challenging of evidence pertaining to claimed exemptions.

Question 12

Do you agree that the penalty for non-compliance should be linked to a percentage of a property's rateable value? If so, what percentage should this be? If not, what alternatives do you suggest? Should the Government set a minimum and maximum fine level, and if so at what levels should these be set?

Summary of responses

27 respondents provided a view on this question with 78% (21 respondents) agreeing that the penalty should be linked to a percentage of the property's rateable value. There was a broad range of options presented as to how this could be calculated, some of which were diametrically opposed. Some concern was expressed regarding the enormity of the fines that could be generated depending on the calculation used and how fines of this level could be managed by local authority officers. There was a desire that the level of penalty should be greater than the cost of compliance in order to encourage improvements to be made to properties. Some respondents favoured the use of improvement or enforcement notices and the escalation of fines following non-compliance after six months.

Only 13 respondents expressed a view on whether there should be a set minimum and maximum penalty level; however of these, 100% favoured such an approach. Few options were offered for the levels of penalty to be set.

Government response

The Government recognises the support in favour of setting the penalty with reference to a property's rateable value. It is essential that particular circumstances are considered, including errors by landlords. The Government therefore intends to ensure that local authorities retain discretion regarding fixed penalty notices. The Government believes that a request for evidence of an exemption obviates the need for an enforcement notice as the landlord will be aware of the requirements of the regulations.

Where a landlord fails to comply with a request for evidence of an exemption (through a compliance notice issued by the local authority) or the evidence is deemed inadequate or false, a fixed penalty notice will be issued as previously proposed. In addition this exemption will only be valid if registered on a central database by the landlord. The penalty regime is set out below:

Infringement	Penalty	
Providing false or misleading information to the PRS Exemptions Register; Failing to comply with a compliance notice	£5,000 Publication of non-compliance	
Renting out a non-compliant property	Less than 3 months non-compliance 10% of rateable value, but with a minimum penalty of £5,000 and a maximum penalty of £50,000 Publication of non-compliance	3 months or more of non-compliance 20% of rateable value, but with a minimum penalty of £10,000 and a maximum penalty of £150,000 Publication of non-compliance

Where the property has no rateable value as a result of the status of the occupant, local authorities will use the standard formula that determine rateable value, and apply the penalties to this theoretical amount.

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

Question 13

Do you consider that the First-tier Tribunal is the appropriate body to hear and determine appeals about decisions regarding non-compliance with the minimum standard regulations? Do you consider that the General Regulatory Chamber Rules of the First-tier Tribunal will suit the handling of these appeals? If not, what tribunal could be used?

Summary of responses

Only 10 respondents provided a view on this question, with 100% of those expressing a view favouring the use of the First-tier Tribunal as the appropriate body to manage appeals. One respondent did not express a view, but did raise a general concern regarding the appeals process and the potential for it to be resource intensive for trading standards. Eight respondents provided a view as to whether the General Regulatory Chamber would suit the handling of appeals, with 88% (seven respondents) agreeing that the General Regulatory Chamber Rules will suit the handling of such appeals, and the remaining one disagreeing, suggesting that the Property Chamber should be used instead.

Government response

In line with the responses received, the Government intends to place responsibility for handling of appeals relating to the imposition of penalties for non-compliance with the minimum standard regulations with the First-tier Tribunal, General Regulatory Chamber.

Miscellaneous questions

Question 14

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

Summary of responses

A range of comments and issues were raised in response to this question. One issue raised by two consultees was that landlords ought to be provided with more than seven days to provide relevant evidence of any exemption, should a request be made by an enforcement officer.

The majority of other comments received in response to this question regarded wider energy efficiency issues. Issues raised included:

- Anecdotal evidence of poor practice in the production of EPCs; low levels of enforcement of duties to provide EPCs to prospective tenants; and calls for confirmation as to how the EPC guidance applies in certain specific situations.
- Calls to ensure predictability on changes that may affect EPC assessments, such as changes to the National Calculation Methodologies, to ensure that the potential implications are understood by industry.
- The importance of implementing wider policy interventions to improve the operation and use of buildings, as well as encouraging the physical improvement of buildings. In particular, support and encouragement of “green leases” (whereby landlord and tenant agree to certain responsibilities intended to ensure an efficient and sustainable use of the building) was referenced as an approach to be encouraged.

Government response

The Government understands concerns regarding the time proposed for landlords to obtain evidence in support of compliance with the regulations. Although in most situations the Government expects landlords to have evidence immediately available, given that they will have uploaded the information to a central register, the Government agrees that there could be situations where a landlord will require time to obtain the relevant information, and therefore the Government will require landlords to present information within one month or less from the date on which the compliance notice is served. DECC will continue to work with the Department for Communities and Local Government (DCLG) to ensure that the EPC regime and the PRS regulations work together to best effect. The Government encourages those who feel they have not been provided with a good quality EPC assessment to raise their complaint with the supplier, and ultimately the supplier’s accreditation body.

The Government agrees improving the energy performance of the building stock is a key issue, and a considerable infrastructure opportunity. The principle objective of the PRS regulations is to improve the physical condition and energy efficiency of rental properties; the Government, however, has a range of policies driving energy efficiency improvements in the building stock, as set out in the UK’s Building Renovation Strategy (published in April 2014 in accordance with Article 4 of the Energy Efficiency Directive). This includes our domestic renovation policies as well as policies driving improvements in the non-domestic building stock, including the new Energy Savings Opportunity Scheme.

Question 15

Do you have any comments or evidence regarding the consultation impact assessment that could inform the final impact assessment, for example the average length of void periods or length of tenant stay in different sectors?

Summary of responses

Only nine respondents provided views on this question. Evidence submitted, included:

- BPF & IPD Lease Review⁶.
- Strutt and Parker IPD Lease Events review⁷.
- Mapping the Impacts of the Minimum Energy Efficiency Standards for Commercial Real Estate, Green Construction Board's Valuation and Demand Working Group Report 630. September 2014⁸.

Comments received included:

- That there could be a range of ancillary costs incurred, which whilst they may only occur in a minority of situations, could be significant.
- Landlords are likely to obtain legal advice before responding to the regulations, and this has not been included in the costing.
- Void periods may be longer, and rents lower in rural areas.

Government response

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

⁶ http://www.bpf.org.uk/en/files/bpf_documents/commercial/IPD-MSCI-LeaseEventsReport- FINAL.pdf

⁷ http://www.struttandparker.com/media/309191/lease_events_review_2011.pdf

⁸ http://www.greenconstructionboard.org/images/stories/Valuation_and_Demand/GCB%20630%20final%20report.pdf

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

List of consultation respondents

The following list includes all non-confidential organisations which have responded to the consultation. In addition we have withheld details of 2 responses in line with our policy not to publish personal names.

Associated British Ports
Association for the Conservation of Energy
Better Buildings Partnership
BNP Paribas Real Estate
British Beer and Pub Association
British Council for Offices
British Council of Shopping Centres
British Gas
British Hospitality Association
British Property Federation
British Retail Consortium
Chartered Institute of Building Services Engineers
Countryland & Business Association (CLA)
Cripps LLP
E.ON
Elmhurst Energy Systems Limited
Falco Legal Training
Forth Ports Limited
GD ORB
Glass and Glazing Federation

Greene King
Greenwoods Solicitors LLP
GVA
Hammerson
Herefordshire Council
Hilson Moran
Hogan Lovells (International Solicitors)
Institute of Historic Building Conversation
Investment Property Forum
Kinspan Insulation Ltd
LaSalle Investment Management
Network Rail Infrastructure Ltd
Npower
Ocobase Property Group
Pinsent Masons LLP
Property Energy Professionals Association
Royal Institution of Chartered Surveyors
Sustainable Energy Association
Sustainable Investment & Asset Management LLP
Sweett Group PLC
The Central Association of Agricultural Valuers
The National Trust
Trading Standards Institute
UK-GBC
Verco Advisory Services
Virgin Media
WSP Group

© Crown copyright 2015
Department of Energy & Climate Change
3 Whitehall Place
London SW1A 2AW
www.gov.uk/decc
URN 14D/410