The Domestic Private Rented Sector Regulations Working Group – Report to Government

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The Domestic Private Rented Sector (PRS) Regulations Working Group was chaired by Dave Princep, an independent housing consultant, and the secretariat was provided by the Department of Energy and Climate Change. In order to ensure a broad range of perspectives, group members were drawn from leading landlord, tenant, environmental and property professional organisations.

The Department of Energy and Climate Change would like to thank all the group members for their hard work and advice throughout the working group's programme, and for the delivery of this recommendations report.

Please note that representatives from Government departments have helped guide the group members to consider the key issues, and have provided clarification on matters of fact where appropriate. However, this report is a reflection of the joint views of the Domestic Private Rented Sector Working Group only, not of the Department of Energy and Climate Change or of the Secretary of State. This report should not be taken as legal or technical advice and as such no liability is accepted by its authors.

Furthermore, the Working Group has on occasions raised issues that do not relate directly to the regulating powers within the Energy Act 2011, but rather to wider energy efficiency matters that may be relevant, and has on occasions made suggestions that would require further investigation to determine the vires, and wider policy implications, before adoption could be considered.

It should be noted that where the group came to a broad consensus on a particular recommendation this is represented as an 'agreed recommendation' in the report. Agreed recommendations are summarised at the start of each chapter and discussed in detail within the chapter. Where the group did not come to a consensus on some topics all views have been represented within the report. In circumstances where the group were equally split on supporting a particular recommendation both the alternative views are provided as a 'split recommendation'. Split recommendations are summarised at the start of each chapter and discussed in detail within the chapter. In circumstances where one or two group members had an alternative view to the agreed or split recommendations these are included in the body of the chapter.

GLOSSARY

BRE	Building Research Establishment
CCA	Consumer Credit Act
CERO	Carbon Emissions Reduction Obligation
CESP	Community Energy Saving Programme
CERT	Carbon Emissions Reduction Target
CSCO	Carbon Saving Community Obligation
DECC	Department of Energy and Climate Change
ECO	Energy Company Obligation
EPBD	Energy Performance of Buildings Directive
EPC	Energy Performance Certificate
GD	Green Deal
HHCRO	Home Heating Cost Reduction Obligation
HHSRS	Housing Health and Safety Rating System
HMOs	Houses in Multiple Occupation
LESA	Landlord's Energy Saving Allowance
LPG	Liquefied petroleum gas
MtCO2e	Million metric tons of carbon dioxide equivalent
rdSAP	Reduced Data Standard Assessment Procedure
RSLs	Registered Social Landlords
SAP	Standard Assessment Procedure
SBEM	Simplified Building Energy Model

Chapter 1: Introduction

SECTION A: THE DOMESTIC PRIVATE RENTED SECTOR

i. Introduction

It is essential that the UK reduce its carbon emissions to tackle climate change. The UK's 2050 carbon targets will not be met without reductions in buildings' carbon emissions. The Carbon Plan 2011 outlines a system of carbon budgets to drive progress towards the 2050 targets by setting a series of successive carbon emission targets[1]. There is continuing progress to align these targets with wider EU targets. In 2009, buildings were responsible for 213 MtCO2e, making them responsible for around 38% of the UK's total emissions. Within this, domestic buildings were responsible for around 25% of emissions to which the private rented sector is a contributor[2].

The private rented sector is a growing part of the housing market where properties are owned and let by private landlords on the open market. Of the 23.4 million households in England and Wales in 2011 4.2 million were privately rented (comprising 18% of the English housing stock).[3]

The private rented sector is dominated by individual private landlords with a minority of company landlords. More than three quarters (78%) of all landlords only own a single dwelling for rent. The private rented sector is broadly characterised by high rates of turnover, particularly in urban areas, in terms of both tenants and landlord ownership. However, rural areas are characterised by very low turnover as there has been very little house building in the countryside since World War 2 and there is a higher proportion of property rented under the Rent Act. Under the Rent Act, rent amounts and succession of tenancies may be controlled and restricted and tenancies are typically longer. Consequently, many of these properties may not yet have an Energy Performance Certificate (EPC) In 2010, almost half (44%) of all rented dwellings were let to tenants who had been in the property for less than two years and just over one in ten (13%) were occupied by a tenant with a tenure of more than 10 years[4]. In 2011, around 11% of PRS properties (around 462,000) in England had an EPC rating of F or G (8% F and 3% G), compared to around 9%

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[1] DECC 2011 The Carbon Plan: Delivering our low carbon future https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/47613/3702-the-carbon-plan-delivering-our-low-carbon-future.pdf

[2] Source: DECC 2011 The Carbon Plan. The statistics can be found here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/139583/6119-methodology-to-derive-carbon-plan-headline-emissio.pdf (see emissions by end user).

[3] ONS 2011 Census http://www.ons.gov.uk/ons/rel/census/2011-census/detailed-characteristics-on-housing-for-local-authorities-in-england-and-wales/short-story-on-detailed-characteristics.html

[4] DCLG 2010 Private Landlord Survey https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7249/2010380.pdf

(7% F and 2% G) in the owner occupied sector[5].

Three-fifths of dwellings in the private rented sector were houses, with over half of these (31% of all dwellings) being terraced houses. Of the remainder, a larger proportion were purpose built (26%) than converted flats (14%). A high proportion (37%) of private rented properties were constructed pre-1919 with just over a tenth (13%) of properties being newer post-1990 dwellings. The proportion of older properties may be due to purchases from owner occupiers who choose to move on to newer properties. Of all the F and G rated households in the private rented sector, 65% are classed as having been built pre 1919. This should be viewed as an opportunity to improve the state of the overall stock that is rented out to private tenants. It is also recognised that renewable technology also presents an opportunity in the private rented sector to contribute to the reduction in carbon emissions as well as through increased energy efficiency.

The high proportion of energy inefficient properties in the private rented sector also contributes to the sector having the highest incidence of fuel poverty among all the domestic sectors. The 2013 Fuel Poverty National Statistics, showed that in 2011 the PRS accounted for a significantly disproportionate share of fuel poor households – around a third of all fuel poor households live in the PRS, despite the sector only accounting for around 17% of all households in England.[6] Similarly, although the majority (54%) of all private rented dwellings met the Decent Home Standard[7], it is recognised that the sector has a higher incidence of dwellings failing to meet the standard than both the social housing and owner occupier sectors. However, while previous energy efficiency schemes, including Warm Front Scheme, current ECO, Carbon Emissions Reduction Target (CERT) and Community Energy Saving Programme (CESP) have been available to the private rented sector, it is acknowledged this support was not specifically targeted at this sector. In 2010, almost two-fifths (39%) of private rented dwellings did not meet all of the Housing Health and Safety Rating System (HHSRS)[8] minimum standard, repair or modernization criteria. The HHSRS is a risk-based assessment to help local authorities to identify hazards in dwellings and evaluate their potential effects on the health and safety of occupants and visitors. HHSRS was introduced under the Housing Act 2004 and so any properties identified as having hazards using HHSRS may have already been improved. The private rented sector has the highest incidence of 'excess cold' of all housing tenures with 9.1% of properties classified as a category 1 'excess cold' hazard under the HHSRS[9]. The health impacts of living in cold

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[5] English Housing Survey 2011-12: https://www.gov.uk/government/publications/english-housing-survey-2011-to-2012-headline-report

[6] DECC 2013 Fuel Poverty Detailed Tables (based on the 2011 English Housing Survey): https://www.gov.uk/government/publications/fuel-poverty-2011-detailed-tables

[7] A decent home is defined as a dwelling which meets the following criteria: a) it meets the current statutory minimum standard for housing assessed under HHSRS. b) It is in a reasonable state of repair c) it has reasonably modern facilities and services d) it provides a reasonable degree of thermal comfort.

[8] DCLG 2010 Private Landlord Survey https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7249/2010380.pdf

[9] DCLG 2011 English Housing Survey Statistical Data Sets https://www.gov.uk/government/statistical-data-sets/dwelling-condition-and-safety-

homes are increasingly being recognised. These impacts are particularly felt by already vulnerable groups such as the very young, the very old and those with pre-existing health conditions. There is also a growing body of evidence on the mental health impacts as well as wider social issues linked to fuel poverty.

There have been some welcome improvements in the conditions of the private rental properties - the English Housing Survey 2011-12[10] indicates that between 1996 and 2011 the rate of improvement in the energy efficiency of properties (average SAP rating) in the private rented sector was on par with that for the social sector albeit from a lower baseline and the SAP rating improvement for the private rented sector was higher than the owner occupied sector – however work still needs to be done to improve the least energy efficient properties in the private rented sector. In 2011 the average SAP rating in the private rented sector and owner occupier sector were similar. Although, in 2009, a Harris interactive poll of private landlords revealed inertia in the private rented sector to further install energy efficiency measures. According to the report, 54% of landlords that think their properties have un-insulated lofts and 64% of landlords that think they have un-insulated wall cavities in their rental properties are not considering insulating them in future[11]. In 2011, 34% of homes in the sector with cavity walls were uninsulated compared with 30% in the owner occupied sector and 8% of private rented sector homes had no loft insulation compared to 4% in the owner occupied sector[12].

SECTION B: BACKGROUND TO THE PRIVATE RENTED SECTOR REGULATIONS

i. The Energy Performance of Buildings Directive

According to the Directive 2010/31/EU (EPBD recast), Member States must implement mandatory certification of new and existing buildings, along with periodic certification of public buildings. Certification schemes are addressed in Articles 11 (energy performance certificates), 12 (Issue of energy performance certificates), and 13 (display of energy performance certificates) of the Directive. The energy performance certificate is a central requirement of the EPBD. EPCs may have a role to play in supporting the transition of the private rented sector towards energy efficiency. In this respect, it is paramount to increase energy efficiency in the building stock through cost effective improvements.

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[10] DCLG 2011-12 English Housing Survey www.gov.uk/government/uploads/system/uploads/attachment_data/file/211288/EHS_Headline_Report_2011-2012.pdf

[11] 'Private Landlords Research' Harris Interactive (February 2009) for EST and EEPH; EST research.

[12] DCLG 2011-12 English Housing Survey www.gov.uk/government/uploads/system/uploads/attachment_data/file/211288/EHS_Headline_Report_2011-2012.pdf

In England, Scotland and Wales, the energy performance certificate is mandatory on construction, sale or rental of a building, and is a rating expressing the theoretical (design) performance of the asset. The EPC rating must be included in property advertisements, and certificates are valid for 10 years.[13]

An EPC measures the energy performance of the building and its fixed services covered by Part L of the Building Regulations which include: lighting, heating, cooling, auxiliary power, and power associated with producing hot water. In order to normalise an EPC, standard operational parameters are assumed, such as hours of use, and occupational intensity.

ii. The Energy Act 2011:Private Rented Sector Energy Efficiency Regulations (Minimum Energy Performance Standards)

The new law relating to minimum energy performance standards in the private rented sector is contained in the Energy Act 2011, although the relevant provisions have not yet been brought into force.

At the time the Secretary of State for Energy and Climate Change, announced on 10 May 2011[14] that the Government would regulate to drive-up the energy efficiency performance of the domestic and non-domestic Private Rented Sectors. The detail that follows is restricted to the domestic sector, which is the subject of this report. The Act provides the government with the framework for implementing the new policy, with the subsequent secondary legislation to set out the detail. The Government's Carbon Plan sets out the government's policy intent for the measure. From 2016, domestic private landlords in England and Wales will not be able to reasonably refuse their tenants' requests for consent to energy efficiency improvements. In addition, the Energy Act 2011 places a duty on the Secretary of State to introduce a minimum standard for private rented housing and commercial rented property in England and Wales from 2018, and it is likely this will be set at EPC band E. Government statements have indicated that the regulations will ensure there are no upfront costs to landlords for the energy efficiency measures and will be subject to caveats setting out exemptions. The funding options for installing measures to reach the minimum standard will include the Green Deal and Energy Company Obligation although there is scope to include other types of finance mechanisms.[15]

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[13]For the latest guidance, see DCLG 2014 Improving the energy efficiency of our buildings www.gov.uk/government/uploads/system/uploads/attachment_data/file/50816/A_guide_to_energy_performance_certificates_for_the_construction__sale_and_let_of_dwellings.pdf

[14] DECC 2011 Energy Bill Second Reading: The Rt Hon Chris Huhne MP – 10 May 2011 https://www.gov.uk/government/speeches/energy-bill-second-reading-the-rt-hon-chris-huhne-mp-10-may-2011

[15] DECC 2011 The Carbon Plan: Delivering our low carbon future https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/47613/3702-the-carbon-plan-delivering-our-low-carbon-future.pdf

The Energy Act 2011 provides for the domestic energy efficiency regulations to be enforced by local authorities. The amount of any civil penalty provided for in the secondary legislation must not exceed £5,000 and there must be provision for the right of appeal to a court or tribunal against any imposed penalty.

This report is not intended to cover any development of energy performance standards for existing domestic buildings in Scotland or arrangements for energy performance certificates that exist there.

iii. The Energy Act 2011: The Green Deal and ECO

The Green Deal is an innovative financing mechanism whereby owners and occupiers of property can finance energy efficiency improvements through the energy cost-savings that the improvements generate. The domestic Green Deal was launched in January 2013.

The energy efficiency retrofit is financed by a loan to cover the upfront costs which is then repaid through instalments on the electricity bill. The repayments should not exceed the savings made. If the building is sold or let to another occupier, then the obligation to repay the finance moves to the new electricity bill payer of the building's main electricity meter. In the domestic sector, the landlord may pay the energy bills and include the cost in the tenant's rent and so may also seek to recover the cost of the Green Deal Charge from the tenant. However, during any periods when a rented property is empty, the property owner must pay the charge.

The majority of domestic properties in Great Britain will have straightforward electricity and gas metering arrangements. Under these circumstances it should be straightforward to attach a Green Deal charge to the electricity meter and responsibility for paying this charge would lie firmly with the occupants of the property. The metering and billing arrangements for electricity for other properties are more complex and it is recognised that this may affect the ability to consent to Green Deal work being carried out on properties or how responsibility is assigned for payment of Green Deal charges. It is recognised that the more unusual metering situations will also be considered by future smart metering policy. Examples of complex metering arrangements include:

1. Resale of energy where maximum resale rules do not apply - Some private tenants live in properties where the weekly or monthly rent is advertised as inclusive of all bills, including energy bills. The tenant will experience the charges as a fixed rather than variable cost and may not be aware what portion of the monthly payment goes towards each bill. Maximum Resale rules do not apply where electricity charges are recovered in this way. This type of charging can be more common for shared houses, HMOs with a high turnover of tenants or student houses and where rooms are sublet.

2. Resale of energy where maximum resale rules do apply - Landlords and property managers can legally "resell" electricity and gas to their tenants either by installing sub metering or splitting the bill equally or proportional to occupancy amongst tenants or residents. These variable charges can be recovered through the rent

payment or by billing tenants directly for the costs.[16] Whilst it is legal for landlords and freeholders to sell energy to their tenants and leaseholders, to do so for profit is not permitted. Maximum resale rules (set by Ofgem[17]) state that resellers can only pass on the costs of the energy purchased plus reasonable administration costs. This type of charging can be more common for HMOs and bedsits or where a house has been converted into flats.

3. Domestic occupants on non-domestic energy contracts - There are several instances where a domestic resident may end up with a non-domestic contract for part or all of their dwelling, for example where a consumer lives above a business premises that they rent and the whole property has a single meter. In these cases it may be possible to split the supply between the domestic and non-domestic parts of the property but there may be an associated cost.

4. Pre-payment meters - Obtaining a supply of electricity or gas via a prepayment meters (PPMs), as opposed to a credit meter, is common in the private and social housing sectors. Landlords often prefer to have PPMs installed for properties with a higher turnover of tenants or low income tenants and students.

Many of the examples of more complex metering arrangements are more commonly found in the private rented sector and it is recognised that the practical implementation of energy efficiency improvements for properties with such metering arrangements that are in scope of the regulations need to be considered. In principle, however, Green Deal charges would not be caught by the maximum resale provisions and so must be distinct from the charges for resold electricity. Contractual provision would need to be made for any reimbursement of Green Deal charges to landlords.

Eligible measures for the Green Deal are listed on the schedule to the Green Deal (Qualifying Energy Improvements) Order 2012 and are reviewed periodically. To be eligible, measures must repay their investment in energy cost savings, reflecting actual usage. The entire package of measures installed in each building must meet 'the Golden Rule', such that the cost of the measures must not be exceeded by their energy cost savings over their useful lifetime. The Golden Rule calculation is based on a property's energy use based on average usage not actual usage and can take into account data on void periods. Under the Green Deal there is a requirement to carry out an occupancy assessment which considers the actual usage by the current occupants. Green Deal packages are assessed by Green Deal Assessors, and the finance provided by Green Deal Providers. Green Deal Installers ensure the measures are correctly installed. Green Deal Providers retain responsibility for the measures installed. The Government believes that the Green Deal offers the private rented sector a real opportunity to improve the energy efficiency of its stock. Under the Green Deal, landlords will be able to make energy efficiency improvements at no upfront financial cost to themselves. Tenants will repay the cost of the measures through their energy bill savings, whilst enjoying a more energy efficient property. In this way, the Green

[16] Where a tenant or lodger agrees to pay utility bills as a flat rate as part of the rent (e.g. the flat or room is advertised as "inclusive of all bills") Maximum Resale does not apply

[17] Maximum resale rules are set by Ofgem but enforced through the courts

Deal is said to be mutually beneficial to both landlords and tenants and can help to overcome the split incentive that discourages energy efficiency improvements in the private rented sector.

Green Deal Providers wanted greater clarity to give them the certainty they need to write Green Deal Plans in the private rented sector. On 28 February 2014, amendments to the Consumer Credit Act came into force that will help Green Deal Providers to write Green Deal plans in the rented sector and give landlords the opportunity to improve their properties for the benefit of themselves and their tenants.

The Energy Company Obligation (ECO) was launched on 1 January 2013 and the current scheme runs until 31 March 2015 with a proposed extension until 2017. ECO is an obligation that the Government has placed on energy suppliers to reduce the UK's energy consumption and support low income and vulnerable consumers by requiring energy suppliers to provide households with energy efficiency improvements. ECO works alongside the Green Deal although can be accessed separately to Green Deal.

There are three elements to ECO which can be accessed through the Green Deal or separately. The Carbon Emissions Reduction Obligation (CERO) provides support for energy efficiency measures particularly insulation measures. The Carbon Saving Communities Obligation provides insulation measures to households in specified areas of low income. The Home Heating Cost Reduction Obligation provides heating and insulation measures for low income and vulnerable consumers including the elderly, disabled and families who may be affected by the impact of living in cold homes and may be in fuel poverty.

In December 2013, proposals were announced that would see ECO extended from 2015 to 2017[18]. It was also announced that the precise future scope of the individual elements for ECO will be the subject of a public consultation.

A consultation was published by DECC[19] on 24 July 2013 on amendments to ECO including how to treat ECO in empty properties commonly referred to as void periods. DECC published the government response to the consultation on 3 February 2014 and clarified the policy position for the installation of ECO measures in an empty property. From 1 May 2014 all ECO measures can be installed in a void period. This is of particular relevance to the private rented sector.

iv. Fuel Poverty and other strategies

[18] DECC 2013 Government Action to help hardworking people with energy bills www.gov.uk/government/news/govt-action-to-help-hardworking-people-with-energy-bills

[19] DECC 2014 Updates to the Electricity and Gas (Energy Companies Obligation) Order 2012 https://www.gov.uk/government/consultations/updates-to-the-electricity-and-gas-energy-companies-obligation-order-2012

The UK's 2050 target to reduce carbon emissions can be achieved using various approaches including the use of renewable technologies; however, one of the most cost effective ways is through energy efficiency such as the approach taken by the private rented sector regulations. Another of the main drivers for the private rented sector regulations is the aim to reduce the numbers of households in fuel poverty. In the Fuel Poverty: a Framework for Future Action document[20], the Secretary of State for the Department of Energy and Climate Change acknowledged that:

> *'Fuel poverty is a real and serious problem faced by millions of households in the UK today. It is a problem that leaves many facing difficult choices about where to spend their limited income. It leaves many fearing for their health or the health of their children as they live in a home seemingly impossible to heat. This Government is determined to act'*

On 9th July 2013 Baroness Verma tabled a series of amendments[21] to the Energy Bill in the House of Lords providing a new duty to set out an objective for addressing fuel poverty and a target date for achieving the objective in secondary legislation.

The Government has also announced a revised definition of fuel poverty in England. The low income high cost definition, originally proposed by John Hills in his independent review, will now be used by Government as the primary method for defining fuel poverty in England. The new approach consists of two parts; the number of households that have both low incomes and high fuel costs and the depth of fuel poverty amongst these households[22]. The 'fuel poverty gap', represents the difference between the modelled fuel bill for each household, and the 'reasonable cost' threshold for the household and indicates the impact this is currently having for those households with the lowest incomes and high energy costs. This can be summed for all households that have both low income and high costs to give an aggregate fuel poverty gap.

The three main causes of fuel poverty are, however, largely unchanged and well documented: Poor energy efficiency of the housing stock; low income and high energy costs. The combination of these factors means that fuel poverty can affect households regardless

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[20] DECC 2013 Fuel Poverty: a framework for future action www.gov.uk/government/publications/fuel-poverty-a-framework-for-future-action

[21] HMGovernment 2013 Daily Hansard - Written Minsterial Statements www.publications.parliament.uk/pa/cm201314/cmhansrd/cm130709/wmstext/130709m0001.htm#13070947000003

[22] Households with energy costs higher than the median are considered to have 'unreasonably high' energy costs. This is considered by many stakeholders to be an arbitrary and loose approximation for the 'affordability' of the energy costs facing the household in question. On the 29th July 2013, the Energy and Climate Change Committee published a report into 'Energy Prices, Profits and Poverty'. The report, which gathered evidence from a range of experts, including NEA, highlights many of the key risks with the current or planned approach to energy policy within the UK and noted that fuel costs can be below the median and yet still remain unaffordable and recommend a modification to the new definition of fuel poverty to better reflect affordability. DECC have responded to this suggestion by making clear that in setting the new form of the definition they took the recommendations of the independent review of Fuel Poverty by Professor John Hills and set the energy cost threshold to ensure that it would take account of the energy costs faced by all households and the outcomes of energy efficiency programmes across the board and continually drive progress to tackle fuel poverty.

of their tenure, geographical location, whether they are urban or rural dwellers and whether they have access to the most economical available heating sources. However, the circumstances of some households leave them particularly vulnerable to fuel poverty.

The updated set of fuel poverty statistics released by Department of Energy and Climate Change (DECC) on 8th August 2013[23] show comprehensive analysis and detailed breakdowns on households living in fuel poverty in England as well as sub-regional information under the new definition.

Headline results include the following information:

- **Households living in the most energy inefficient dwellings are much more likely to be fuel poor** than those in more energy efficient dwellings, and have higher fuel poverty gaps.
- There are circa **800,000 fuel poor households in England that live in the private rented sector,** circa 20% of households that live in this tenure type.
- An estimated **430,000 fuel poor households in England live in F and G rated properties** and are responsible for almost half the aggregate fuel poverty gap.
- Around 190,000 of the 462,000 properties with an F or G EPC rating in the private rented sector are in fuel poverty.
- **Fuel poor households that heat their properties with oil, solid fuel, LPG or electricity** typically have individual fuel poverty gaps double the average, typically over £1000.
- **Households with other non-cavity wall types (usually solid)** are much more likely to be fuel poor than those with insulated cavity walls, and have much higher average fuel poverty gaps.
- **Households paying for their electricity or gas by pre-payment meter** are more likely to be fuel poor than those paying by other methods, with direct debit customers being least likely to be fuel poor.
- **Households in dwellings built before 1964** are more likely to be fuel poor than those in more modern dwellings, and also tend to have the largest average fuel poverty gaps.

SECTION C: THE DOMESTIC PRIVATE RENTED SECTOR REGULATIONS WORKING GROUP

Following industry representations DECC has brought together a Working Group of key stakeholders in order to examine how the domestic energy efficiency regulations might work

[23] DECC 2013 Fuel Poverty Report: updated August 2013
https://www.gov.uk/government/publications/fuel-poverty-report-updated-august-2013

in practice, and to identify key issues which should be considered via public consultation. This report forms the product of the Group's discussions and is based at time of writing on its best understanding of how the regulations might be introduced, and how they might interact with other policies designed to encourage the installation of energy efficiency measures and consequently reduce emissions in domestic buildings. On occasions the report comments on policies related to, but not directly relevant to the PRS regulations secondary legislation.

Secretariat to the Domestic Private Rented Sector Regulations Working Group has been provided by DECC. The chair of the Group is Dave Princep, an independent housing consultant who has over 30 years of working in the private rented domestic sector. We are grateful in particular to those who produced primary research for the Working Group, and to those who have helped in the compilation of the final report. The membership of the Group is listed in the Acknowledgements at **Annex A.** Its membership has been cast widely, so as to represent as broad a cross-section of the players involved in the domestic built environment as possible.

The report has been written to inform a public consultation on the Private Rented Sector Regulations which is expected to be issued in early 2014. It is recognised at the time of writing the report that there has been a Government announcement regarding the future shape of the ECO scheme and the availability of a £450 million funding package over three years from 2014/15 to boost household energy efficiency including for the private rented sector. However, further details are not available at the time of writing and therefore the impact of such scheme changes on the PRS regulations has not been assessed by the working group and is not reflected in the report. The report context reflects the timing of the working group discussion on the PRS regulations. Working group discussions were held from February 2013 until September 2013.

SECTION D: EXECUTIVE SUMMARY

The Energy Act 2011 has set a commitment for the Government to introduce energy efficiency regulations for privately rented property. The regulations will provide tenants the right to request consent for energy efficiency improvements that may not be unreasonably refused by the landlord by April 2016 and require all eligible properties to be improved to a specified minimum standard by April 2018.

The private rented sector regulations have the potential to be transformational in respect of the existing private rented sector housing stock, provided they are implemented in a way which is sensitive to the rights and responsibilities of owners and occupiers. However, a number of issues remain to be addressed, which are set out over the course of this document.

The intention of this report is to provide guidance to the Government on the key issues to be considered when drafting the private rented sector energy efficiency regulations and to identify key issues which the Working Group thinks could require further work or form part of the proposed consultation on the regulations. The Working Group hopes that the consultation will proceed quickly in order to permit the sector sufficient lead-in time to respond to the requirements of the regulations.

In Chapter 2 the group sets out the recommendations for the implementation of the Tenant's Right to Request Regulations that provides domestic tenant's with the right to request consent for energy efficiency improvements from their landlords and the landlord not to unreasonably refuse the request. Recommendations are provided to indicate the procedure for a tenant to request consent for measures and for the landlord to provide a response, including the ability to provide a counter proposal of similar measures. The Working Group believe that in certain prescribed circumstances the landlord should be able to reasonably refuse consent to the tenant request including whether the improvements cause a negative impact on the property value. The group suggest that requested measures should have no upfront costs to the landlord with funding used from the Green Deal, ECO, grants or the tenants own resources. Split recommendations are given regarding the timing of the introduction of the tenant's request regulations ranging from April 2015 to April 2016.

Chapter 3 explores the appropriateness of using EPCs as a tool on which to base the minimum standard. EPCs which provide an energy rating from A to G, where A is very efficient and G is the least efficient are required on construction, sale or letting of a building. The Working Group believes EPCs to be an appropriate choice as the basis of the minimum standard regulations; however concerns are raised over the production of EPCs that could impact their effectiveness. Recommendations on the use of EPCs include that the evidence base should be further developed around the reliability of SAP for traditional and system-build properties; the process for improving and verifying SAP should be transparent; an evidence base should be developed to quantify the impact of the assessment procedures, training and knowledge of the assessor on the reliability of EPCs and the regulations should refer to detailed guidance on the specific requirements for traditional buildings.

Chapter 4 explores the setting of the minimum standard level at a rating of E on the EPC scale, as has been suggested by the Government. The Working Group concludes that the minimum standard should be introduced at a level of an E EPC rating since this is now the wide market expectation. However, split recommendations are provided on whether all properties should be expected to reach the minimum standard under the regulations or whether only measures should be installed where there are no upfront costs even if the property does not reach the minimum standard.

In Chapter 5 the report details the findings of the Working Group in respect of the timing of the introduction of the minimum standard regulations. A key challenge for the Government is to set a standard which achieves an acceptable rate of retrofit of existing properties, whilst also respecting the rights and responsibilities of landlords and tenants. The chapter also considers the challenges associated with installing measures while tenants are in situ. In principle the Working Group agree that on introduction, the regulations should only apply to new tenancies and after a period of two years, all properties in scope of the regulations must reach the minimum standard. The group provide split recommendations on the dates for implementation: the regulations should be introduced either in April 2017 or April 2018.

Chapter 6 discusses the compliance, monitoring and enforcement of the minimum standard regulations. The Working Group agrees that local authorities should be the enforcing body for the regulations although several teams within local authorities may be suitable for this role. The chapter discusses several options for compliance of the regulations including a standard message on EPCs indicating the minimum standard; a compliance indicator on the EPC for a property and the landlord being required to show proof that the property complied with the regulations. The Energy Act 2011 states that penalties of up to a maximum of

£5,000 can be used for non-compliance of the regulations. The group suggest that penalties should be sufficient to act as a deterrent and should be proportionate to the degree of non-compliance.

Chapter 7 sets out scenarios where there might be legitimate reasons for an exemption from the minimum standard. These include:

- Buildings excluded from the EPC regulations
- Where social landlords let to private tenants
- The majority of Houses of Multiple Occupation
- Safeguards to ensure the landlord avoided a net material decrease in property value and/or rental value on installing measures

Recommendations are also given that suggest as many tenancy types as possible should be included within the scope of the regulations including tenancies for church properties and agricultural properties. The group recommend that the any temporary exemptions should last for the duration of the tenancy occupation or a period of five years whichever is the shorter.

Chapter 8 considers the ways in which the costs of compliance with the minimum standard might be funded, and on whom these costs should fall. It is thought by the Working Group that in most cases the costs will fall on the landlord. The Working Group also recommends that the regulations should only be enforced if there are no upfront costs to landlords from the installation of energy efficiency improvements. However, some group members consider that some costs should also be covered by the landlord in order to reach the minimum standard. The report also discusses ancillary costs that may be incurred through the installation of measures and the recommendation that landlords should cover these costs.

In Chapter 9, the Working Group has examined how the minimum standard might be subject to future tightening, if the built environment is to deliver its apportioned share of an 80 per cent reduction in UK greenhouse gas emissions by 2050. The Working Group present split recommendations that firstly there should be no trajectory for increasing the minimum standard higher than an E EPC rating and secondly that a trajectory needs to be set out by Government beyond 2018. The group recognise that a trajectory would give market certainty and encourage those who are improving properties to consider whether they are able to achieve higher standards in order to further delay the risk of obsolescence.

Chapter 10 recognises that the private rented sector regulations are closely linked with the existing Housing Health and Safety Rating System. The Working Group recommends that that HHSRS should take primacy over the private rented sector regulations.

SECTION E: KEY RECOMMENDATIONS

1) The required minimum standard should be an EPC rating of E, subject to specified cost, consent and property value exemptions.

2) The tenants right to request improvements catch all tenancies (new and existing) from:

    a. April 2015 or

    b. April 2016

3) A backstop should apply whereby all tenancies must reach the minimum standard (subject to exemptions where they apply). The backstop should apply $2^1/_2$ years after the introduction of the regulations although further discussion around the nature of any backstop is required.

4) The implementation of a minimum energy performance standard should catch new tenancies where new tenants move into a property, from April 2017. However, an additional back stop date whereby all tenancies, including existing tenancies, are required to meet the standard (subject to the usual freeholder consents, cost caveats and tenant consents) should also apply.

   Or

   The implementation of a minimum energy performance standard should catch new tenancies (excluding those where a sitting tenant is staying on in the property) from April 2018. However an additional back stop date whereby all tenancies, including existing tenancies, are required to meet the standard (subject to the usual freeholder consents, cost caveats and tenant consents) should also apply

5) The costs of the energy efficiency measures should be covered in one of the following ways:

   a. All costs are paid for under Green Deal agreement

   b. All costs are paid for by ECO

   c. Grants from Local Authorities, devolved administrations or third sector organisations.

   d. Any combination of Green Deal, ECO or grants;

6) If an EPC rating of E is not specified as the minimum standard for all properties in scope of the regulations, proof would have to be used to show a landlord had tried and failed to get a property to an 'E' rating using the prescribed energy efficiency funding schemes (e.g. Green Deal, ECO, local authority grants (where information available)).

7) Energy efficiency measures in addition to some associated ancillary costs must be financeable without upfront costs to landlords.

   Or

   The costs should be covered by the landlord

8) There should be no trajectory for tightening the regulations beyond 2018. A trajectory could be considered in future if:

   a) Regulations were introduced for all domestic properties to meet a minimum standard equivalent to the private rented sector and;
   b) With evidence to show UK carbon targets can only be delivered with a higher minimum standard for all domestic properties.

Any trajectory that was set out should be set using the following principles:

a) Harmonise with any other energy efficiency policies to avoid conflicting requirements
b) Provide sufficient warning of tightening of standards for industry and the supply chain to prepare
c) Be clear and easily understood by the sector

Or

A trajectory on plans for tightening the regulations beyond 2018 needs to be set out by the government for setting a minimum standard to a level beyond 'E'. A minimum standard of 'D' should be introduced by 2022 and 'C' by 2026.

9) Exclusions to the standard should be minimal and logical but more work is required to set those exclusions.

10) Subject to technical feasibility, HMOs (House in Multiple Occupation) should be included within the scope of the regulations, with the EPC carried out at a property level.

11) There should be safeguards to avoid a net material decrease in property capital and/or rental values on installing energy efficiency measures.

12) The Regulations should cover conditions under which there would be an exemption to the tenant's right to request regulations. These would be situations where it would be reasonable for a landlord to refuse a tenants request. Other situations where a landlord may be able to reasonably refuse a request would need to be decided upon by a tribunal on a case by case basis. In the first instance it should be for the landlord receiving the request to make a decision on a case by case basis.

13) The evidence base should be further developed (through using already commissioned work, or commissioning new studies) to quantify the extent to which solid wall u-values (particularly for pre 1919 buildings) and modelling of systems build houses within SAP/rdSAP, along with other issues, such as heating or mechanical ventilation may be a limiting factor on the reliability of the production of EPCs. Guidance should be further developed to inform EPC practitioners and EPC users and consumers on the process to deal with traditional and system-build properties.

14) If an EPC rating of E is not specified as the minimum standard for all properties in scope of the regulations, local authorities should use teams dealing with licensing to add a stamp to EPCs to indicate that a property is compliant with the regulations and can be rented out legally as all measures funded under the prescribed energy efficiency funding schemes have been installed. Landlords would pay a fee for the local authorities to stamp the EPC.

15) The penalty used for non-compliance should be proportionate up to a maximum of £5,000 (the cap set out in the Act), should be linked to the degree of non-compliance, should be in addition to the payment for the energy efficiency measures and should be set by a judge on a case by case basis.

Chapter 2: Tenant Right to Request Consent for Energy Efficiency Improvements

AGREED RECOMMENDATIONS

1) Subject to the amendments listed below in recommendations 2, the current definition and scope of tenants in the primary legislation are adequate. It is also suggested as many properties as possible are included within the regulations, in particular church properties and agricultural tenancies. Outside scope are hostels, holiday lets, lodgings, or where the tenant shares the property with the landlord, (not individually covered by an EPC) social housing, and where private landlords rent to third parties who in turn rent to social housing tenants.

2) Registered social landlords (RSLs) should be in scope of the regulations where they rent to private tenants

3) Subject to technical feasibility, HMOs (Houses in Multiple Occupation) should be included within the scope of the regulations, with the EPC carried out at a property level.

4) In principle, a tenant request to a landlord would be considered if the requested energy efficiency improvements can be financed in one of the following ways :

   - All costs are paid for under Green Deal agreement
   - All costs are paid for by the Energy Company Obligation
   - Grants from Local Authorities, devolved administrations or third sector organisations so long as there is no tax liability.
   - Any combination of Green Deal, ECO or grants

5) The Regulations should cover conditions under which there would be an exemption to the tenant's right to request regulations. These would be situations where it would be reasonable for a landlord to refuse a tenants request. Other situations where a landlord may be able to reasonably refuse a request would need to be decided upon by a tribunal on a case by case basis. In the first instance it should be for the landlord receiving the request to make a decision on a case by case basis.

6) A tenant should be encouraged to seek written consent from the landlord before having a Green Deal assessment carried out and must be required to seek written consent before starting the process to install energy efficiency measures using any funding source.

7) The landlord must provide a written response to tenant requests for improvements (through a Green Deal or any other scheme as described in the regulations) within a prescribed time period.

8) Landlords should be able to provide reasonable counter proposals to tenants. The counterproposal should need to result in an equivalent or improved SAP score and the counter proposal would have to be founded on examples provided for under 'reasonable right to refuse' in recommendation 6.

9) If written consent is not obtained from the landlord following a tenant's request, or where there is a disagreement during the process, then the aggrieved party must follow this up through a tribunal

10) Landlords should be exempt for a prescribed time period if a current tenant refuses a landlord request to provide consent for a Green Deal.

AGREED RECOMMENDATIONS Continued.

11) Energy efficiency measures requested by a tenant in addition to some associated ancillary costs must be financeable without upfront costs to landlords. Financing mechanisms referred to in the Regulations should cover both Green Deal, ECO and any available grants.

12) The role of third parties such as Local Authorities will be to provide advice to tenants and landlords.

13) A third party can make a request to a landlord on behalf of a tenant as long as the request is supported by the tenant. Third parties may also be able to act on behalf of landlords in some circumstances.

14) Local authorities or a third party should provide a single point of contact for information on available local or national grants for agents and landlords.

15) The regulations should stipulate that specific ancillary costs relating to the installation of measures required under the regulations should be borne by the landlord and not the tenant. It can be reasonably expected that the tenant should cover the cost of a Green Assessment when making a request for energy efficiency improvements.

16) HHSRS and the PRS regulations should complement each other. However wherever an HHSRS obligation applies the landlord must meet this obligation separately to the PRS regulations.

17) There should be safeguards to avoid a net material decrease in property capital and/or rental values on installing energy efficiency measures.

SPLIT RECOMMENDATIONS

18) The tenants right to request improvements catch all tenancies (new and existing) from:

    a. April 2015 or

    b. April 2016

SECTION A: BACKGROUND FOR TENANT'S REQUEST

The Tenant's Right to Request Regulations provides the opportunity for a tenant to request consent from their landlord for energy efficiency improvements and for the landlord not to unreasonably refuse consent for the works. The Energy Act 2011 is clear that the request has to be initiated by the tenant of a domestic private rented property. An eligible tenant is able to make a request regardless of the EPC rating of the property. Where the tenant's landlord is also the freeholder of the property it will be solely for the landlord to respond to the tenant's request. In circumstances where the landlord is not the freeholder such as for a block of flats the freeholder's permission is also needed to carry out the energy efficiency measures. The granting of consent for energy efficiency measures by the landlord does not give rise to any obligation on the part of the landlord to carry out the works or pay for the works. It is the responsibility of the tenant to arrange for the works to be carried out.

SECTION B: REASONABLENESS

Section 46 of the Energy Act 2011 sets out the scope of powers to implement a tenant right to request consent to energy efficiency improvements. It states that a landlord of a domestic private rented property may not unreasonably refuse consent to a request by the tenant for energy efficiency improvements to be made to the property. It would be for the tenant to organise and arrange the works if consent was forthcoming. A landlord may be interested to know how the works are to be funded and installed, however, works carried out through the Green Deal have to be in accordance with the Green Deal Code of Practice that provides certain safeguards.

The group agreed that a test of reasonableness should be applied to all tenant requests. In principle, a tenant request to a landlord would be deemed valid if the requested energy efficiency improvements can be financed through a Green Deal, Energy Company Obligation subsidy or national or local authority provided grants, or a mixture of these. Several group members highlighted that grants are taxable if they cover revenue expenditure and this should be taken into account when determining whether a tenant request is valid. Whether it is reasonable for a landlord to refuse consent to this request, will depend on a number of factors that would need to be considered on a case by case basis through a court or tribunal. However, the group agreed that the Regulations themselves could cover discrete conditions under which it would be reasonable for a landlord to refuse a tenants request. However, one group member highlighted that the Energy Act 2011 only allows for conditions of reasonable refusal to be addressed by means of exemptions whereby the tenant would be unable to make a request under certain conditions. This could apply where the landlord could be regarded as acting reasonably when refusing a tenant request. The list below encompasses what was agreed by the majority of the group, however some group members felt that further situations should be added to the list. The agreed provisional list of conditions under which it would be reasonable for a landlord to refuse a tenants request includes:

a) Where a landlord has evidenced reasoned plans, such as a detailed asset management plan or planning permission agreed, or an application has been submitted, to develop or undertake refurbishment to a property, it would be reasonable for the landlord to refuse the tenants request. However, if the plans are not completed within a set timescale (such as one year) the tenant request can no longer be refused.

b) Within a prescribed timeframe (to be decided) the landlord had offered the tenant a similar package of energy efficiency improvements but it was rejected by the tenant.

c) Within a prescribed timescale (to be decided) the landlord had asked for the tenants consent for Green Deal finance and the tenant had refused the consent.

d) Within a prescribed timeframe (to be decided) the tenant had asked for and was given permission for a Green Deal finance arrangement, and the measures were installed using the Green Deal finance arrangement.

e) Within a prescribed timeframe (to be decided) the landlord has responded to a previous request and provided a reasonable refusal to the request. Some group members suggested the tenant may be able to submit a new request either after a time period such as two years or when a new tenant moves in. This is to acknowledge that the

tenant's circumstances may have changed over time. However, other group members favoured a shorter time period before the tenant could submit a new request.

f) The proposal involves a change of fuel from gas to electricity for space heating, water heating or cooking (or vice versa) and the new measures are not a cost effective solution compared to the measures they are replacing. A change in fuel to gas would also place an on-going liability on the landlord e.g. for gas safety inspections which would not be provided under the Green Deal and is seen as a hassle cost. The group acknowledge a situation of change in fuel type would not arise anyway under the Green Deal.

g) Where an electricity meter is shared for multiple households (for example a block of flats), a landlord would only be required to undertake the relevant Green Deal improvements where all the tenant(s) of the benefiting households agree to the pass through of the Green Deal charge.

h) Where a landlord is able to offer a counterproposal that achieves the same or improved level of energy efficiency as the plan proposed by the tenant and funding for the measures can be obtained through the Green Deal, ECO or grant funding.

i) Planning permission is refused where it is required for the installation of measures.

This is not an exhaustive list however, and scope would need to be provided to allow for individual circumstances to be assessed by a third party on a case by case basis. One group member suggested that the powers under the Energy Act would only allow tenant requests to be deemed unreasonable, such as in the above cases, by virtue of an exemption that would not allow a tenant request to be submitted rather than a tenant request being submitted that would then be refused by the landlord. This is recognised as a legal consideration for the wording of the secondary legislation.

One group member suggested that any reasonable landlord refusal of a tenant request on the grounds of a change in fuel type should be considered to ensure consistency with the future RHI and measures to help off gas grid customers in fuel poverty. One group member also suggested that if a property already has an EPC rating higher than that set by the minimum standard under the regulations then any tenant, whether existing or new, should have to wait 3 years before being able to submit a request for energy efficiency improvements to their landlord under the regulations. Another group member suggested that cases assessed by a third party on a case by case basis could be made public so that any trends could be identified and associated guidance issued to assist landlords making decisions around the reasonable refusal of a tenant request in similar situations.

There was not consensus on what would constitute evidence for a valid future improvement plan, or how far in the future such plans could be. One group member suggested that an Asset Management Plan for large organisations could extend over several years and ideally up to 4 years or more. VAT partial exemption rules have a de minimus maximum of £7,500 per annum spend and so if all energy efficiency work was fitted into a year for a landlord then this would impact on business planning and the availability of labour to carry out the

work through the roll out of a repair program. The group member also suggested that Asset Management Plans may also be used to determine the most cost effective ways to install energy efficiency measures for multiple properties where landlords own a group of properties, for example through the use of special deals for purchasing measures. There were views by some members of the group that guidance for the installation of appropriate measures on traditional buildings such as using permeable solid wall insulation on some traditional buildings is needed under the Green Deal and new clauses in tenancies referring to part L of the building regulations, to give assurances on the performance of measures requested by tenants. It was recognised that explaining the rights and requirements of this new obligation for both landlord and tenant would need careful communication. One group member also suggested that increased training of Green Deal assessors and installers was required on the installation of appropriate measures on traditional buildings.

Although there was not group consensus, some group members held the view that for any leasehold property, insulation measures should not be carried out separately on an individual property without the rest of the building being completed. There was some agreement across the group that a landlord should not install internal wall insulation where the freeholder already had plans in place for external wall insulation.

SECTION C:COSTS

The Energy Act states that the costs of energy efficiency improvements required under the regulations will be:

a) wholly paid for pursuant to a Green Deal Plan; or

b) provided free of charge pursuant to an obligation imposed by an order made under section 33BC or 33BD of the Gas Act 1986 or section 41A or 41B of the Electricity Act 1989 such as ECO; or

c) wholly financed pursuant to a combination of such a plan or obligation; or

d) financed by such other description of financial arrangement as the regulations provide.

The overall agreement of the working group on the topic of costs was to keep the regulations simple rather than modelling complex costs. The group supported the principle that there should be no upfront costs for the energy efficiency measures being installed. Therefore the group agreed that the costs of the energy efficiency measures should be covered as a minimum in one of the following ways:

a) wholly paid for by a Green Deal Plan;

b) provided free of charge through an obligation such as ECO;

c) a grant from a local authority, devolved administration, national government or third sector organisation on the basis that there would be no tax liability as a result of the grant;

d) a combination of any of the above.

Several group members suggested that grants should only be included as a funding option for the installation of energy efficiency measures under the regulations in circumstances where the grant is not encumbered by conditions which would limit the tenant group the landlord could subsequently let the property to. Consequences of such conditions could include increased void periods or reduced rental income for landlords.

In addition, one group member highlighted that there may be a discrepancy between the traditional definition of an improvement under landlord and tenant law and the definition of improvement under the regulations. It was suggested that certain measures such as loft insulation, replacement boilers and double glazing may be termed as repairs and therefore not fall under the scope of the regulations. However, it is recognised that even if this is the case such measures may still be able to be funded using the Green Deal. One group member suggested that energy efficiency measures installed under the regulations should be deemed as repairs for tax purposes.

There was support from the group that local authorities should be the single point of reference for tenants and agents to find out about grants available in their local area. It was also acknowledged that local authorities should advise on other national grants available too. For example, a local authority may decide to provide information or advice through its call centre or on their website or other media channels. The method of providing information would be the choice of local authorities. However, one group member suggested that that a website listing non local authority grants may be better hosted nationally by a third party that could also provide a message that local authority grants may also be available and to check with individual local authorities. In any case, the emphasis would be on the tenant and/or agent to attempt to obtain available information about grants and to ensure they had attempted to fund the works through any avenues detailed by the information. Some of the group members suggested that a duty on local authorities could require them to provide information on local and national grants. One group member suggested that local authorities may have different teams that would take responsibility for compiling such webpages and it would be for individual local authorities to make it clear which team was responsible for the information being made available. Another group member suggested that lower-tier or unitary authorities should be responsible for any such website.

In general, the majority of the group held the view that specific ancillary costs[24] relating to the installation of measures required by the regulations should be borne by the landlord. However, under the tenants' right to request to consent to energy efficiency improvements legislation, it would be expected that the tenant would cover any Green Deal Assessment costs that may be incurred before making a request for consent from their landlord. Some group members suggested it would then be for the landlord to cover any expenses that may be incurred in responding to or facilitating a tenant request, for example seeking Planning Permission, or re-housing a tenant whilst any disruptive works are being carried out. The group recognised that under existing tenancy law the landlord would pay the costs to house the tenant whilst works are being carried out, however, for clarity this should be explicitly

[24] Ancillary costs are those costs that are not directly related to the energy efficiency measures themselves. These costs could include administrative costs.

stated as being the case for the regulations. However, one group member suggested that there are not powers to prescribe that the landlord should cover any ancillary costs and so this would require amendment to the primary legislation. The group member suggested that it should be the tenant, as the improver, that should organise and take responsibility for the works and also cover any ancillary costs and not the landlord. Another group member added that planning permission applications and rehousing are not considered a usual management cost for landlords. However, another group member suggested that this may be the case under HHSRS.

Such costs were agreed by some group members as forming part of landlord business costs. Further it was argued by these members that the possible benefits of improvements to a property's energy efficiency (such as in possible capital value improvement) could be expected to counter any ancillary cost burdens although this may depend on regional variations on cost and benefits. However one group member suggested that there should be a cap on ancillary costs borne by the landlords in facilitating tenant request.

One group member raised the issue about landlords recovering fees from tenants for processing requests for consent. In principle fees would be recoverable if allowed for in the tenancy agreement (subject to any issues under the Unfair Contract Terms Regulations). It was pointed out by one group member that the level of fee could be reviewed by the First Tier tribunal where the fees are variable and if unreasonable in amount. Some group members consider that there should be a requirement in the legislation barring the landlord from seeking to recover ancillary costs from tenants and also the regulations should state that tenants do not have to pay any ancillary costs arising after the point at which the work had been agreed. However, one group member highlighted this may require an amendment to the Energy Act 2011. Other group members suggested that it would not be possible for a landlord to include a tenancy clause allowing the reclaiming of ancillary costs from tenants.

There was discussion amongst the group whether the landlord would be expected to cover 'making good' or other costs such as scaffolding relating to required energy efficiency improvements. One group member highlighted that this would require an amendment to the primary legislation. It was noted that making good costs and scaffolding should be covered by the Green Deal or ECO, however, if the measures were being funded outside these schemes some members of the group argued that landlords should be responsible for basic 'making good' costs such as decorating costs but not for more substantial work such as replacing a kitchen or bathroom, although many group members thought this example was unlikely. However, in such instances, some group members suggested that if there were more substantial ancillary costs in addition to costs such as 'making good' and scaffolding the landlord would be able to reasonably refuse the tenant's request and would have complied with the regulations.

SECTION D: INCLUSIONS

Please see Chapter 7, 'Exclusions and Temporary Exemptions' Section under the Minimum Energy Efficiency Standard Regulations for details which also apply to the Tenant's Right to Request Regulations.

SECTION E: HHSRS

Please see Chapter 10 under the Minimum Energy Efficiency Standard Regulations for details which also apply to the Tenant's Right to Request Regulations.

SECTION F: VALUE EXEMPTION

Please see Chapter 7, 'Temporary Exemptions' Section under the Minimum Energy Efficiency Standard Regulations for details which also apply to the Tenant's Right to Request Regulations.

SECTION G: PROCEDURE, CONSENTS AND TIMESCALES FOR TENANT REQUEST AND LANDLORD RESPONSE

The group discussed the procedure relating to a tenant making a request to a landlord for energy efficiency measures. The purpose of setting out this procedure is to avoid the tenant incurring avoidable costs where, for instance, the landlord intends to carry out energy efficiency works and will therefore have reasonable reasons to refuse consent to a stand-alone Green Deal and provide a counterproposal to the tenant.

The group proposed that a tenant request to a landlord formally begins when a tenant writes to their landlord seeking permission to improvements funded through one of the financing options (this could be in the form of a Green Deal Plan). Given this the group suggested that it would be reasonable for the tenant to cover the cost of the Green Deal Assessment, as discussed in Section C above. As the Green Deal Assessment is a non-invasive process, landlord consent ought not to be required; however, the group recommend that a tenant should make a request to the landlord in writing (including email) asking for consent for a Green Deal Assessment to be carried out on their rental property. The purpose of the request is to avoid the tenant incurring avoidable costs where the landlord intends to carry out energy efficiency works. An additional rationale for this process is to ensure that should the property have any particular requirements that need to be taken into account when carrying out a Green Deal Assessment; for example, using appropriate measures such as permeable insulation for traditional buildings then these can be taken into account.

The group recognised that generally, in most circumstances, an authorised agent can act on behalf of the tenant or landlord as part of the tenant's right to request consent for energy efficiency measures. Whatever a tenant or landlord has power to do themselves they are able to do by means of an agents. However, there are situations where a landlord or tenant may not have the power to use the Green Deal, such as where a landlord is subject to legal restrictions on borrowing money. In this example the agent would have the same limited powers. It is advised that individual landlords should seek legal advice regarding their specific powers. In addition, there are some exemptions to this where statute law requires a transaction to be evidenced by the signature of the principal, in this case landlord/tenant, themselves. For example, under the Consumer Credit Act (CCA) although the creditor or owner is permitted to sign by an agent, the debtor has to sign personally. Therefore, if a landlord is intended to be the debtor and is an individual, as defined by the CCA, he will need to comply with the legislative provisions and if so advised by his legal advisors, sign the credit agreement himself. However, if the debtor is a partnership or unincorporated body or a body corporate then, if so advised, an agent can sign the credit agreement. One group

member highlighted that the scope of information to be provided as part of a request needs to be addressed. Sufficient details would need to be provided by the tenant so that the landlord can fully understand the scope of what is being proposed. This group member suggested that whilst not essential, plans would be required and it may be appropriate for the tenant to supply a copy of any assessment report obtained, for example from a Green Deal Assessor. In addition, it was suggested that any available costings should be provided. The landlord should be able to request further information in order to make an informed decision.

In response to a tenant's written request for energy efficiency improvements, the group argued that a landlord must provide a written response (including email) to the tenant's request within a prescribed timescale. At this stage, the landlord is able to put forward a counter proposal to the tenant or reasonably refuse, as set out in Section A. Any counter proposal must be of an equivalent or improved SAP standard where the initial request was deemed reasonable. In addition, the counter proposal would need to be founded on the conditions of reasonableness detailed in Section B. One group member suggested that the counter proposal should not need to result in an equivalent or improved SAP score but should be judged on whether it is reasonable. For example complex situations may arise such as where a tenant had requested external insulation for a flat in a block and the landlord offers a counter proposal of internal wall insulation which has a lower SAP rating but may be funded through ECO. One group member suggested that a landlord's counter proposal should not have to be reasonable according to certain criteria due to the view that there are no powers to prescribe what is and is not reasonable. This group member also suggested a tribunal should decide whether a landlord's counter proposal was reasonable or not. Where there is a disagreement on the scope or type of works between the landlord and the tenant then the appropriate course of action would be for the aggrieved party to follow this up through a Tribunal.

The group discussed that if required consents are not obtained by the landlord from third parties, for example, freeholder consent or planning permission, a Green Deal cannot go ahead and the landlord will not be able to give permission for the installation of measures. The group considered whether up to 3 months would be a reasonable maximum timescale for the landlord to respond to the tenant request. One group member suggested that 3 months was not sufficient time because a 3 month period is the usual planning permission decision period and so longer, maybe up to 6 months, would be required for obtaining planning permission. The landlord's response should give the reasons for refusals where applicable. The written request should also include written responses from any other third parties which the landlord has had to obtain consent from although one group member suggested there is not an obligation on landlords under the Energy Act 2011 to require third party consents. The group considers that if a response is not given by the landlord within the prescribed timeframe then the tenant should follow this up with a Tribunal. The group suggested the First-Tier Tribunal-Property Chamber (Residential Property) may be used to refer cases under the tenant's right to request regulations. Whether this may be possible, and what implications there might be would need confirmation with the Ministry of Justice. Funding of the tribunal would also need consideration by the Government.

The group highlighted they thought there may be a risk that in some cases such as leaseholders in blocks of flats, landlords may struggle to gain a response from the necessary person e.g. their freeholder in an attempt to facilitate a tenant request. Some group

members agreed that proof would be required to show that the landlord had made all reasonable attempts to contact the person where there was a genuine need to obtain consent for the relevant measures. It was agreed that the detail of this issue may require further consideration. One group member suggested that the regulations could define 'landlord' to include a freeholder or 'head' landlord which would mean that the freeholder would not be able to unreasonably refuse consent for a tenant's request. However, in a block of flats the freeholder would only need to provide consent for the property connected to the tenant's request. This group member also highlighted that it would be for the tenant to obtain any required freeholder consent under the regulations.

One group member suggested that it may be possible to attach conditions to any consent given as long as the conditions were reasonable. The Energy Act 2011 would allow for such conditions on consents. For example, a condition could set out requirements to ensure that the works are satisfactorily carried out or that consent could be given subject to other consents being obtained.

The group is in agreement that the role of third parties such as Local Authorities will be to provide advice to tenants and landlords about the private rented sector regulations. A third party is recognised as including Local Authorities, Students Unions etc. In addition Energy Assessors and Green Deal providers are likely to facilitate the tenant request process. Written permission would be required from the tenant or landlord stating that a third party was acting on their behalf during the tenant right to request process if this were the case.

Some group members suggested that a new tenant request could be presented to the landlord when a new tenant moves into the property or every two years, and that a tenant request for measures should not be allowed towards the end of a tenancy period or during any court action. One group member suggested that if a property has been improved to the minimum standard under the regulations then a tenant should not be able to request for a further 3 years after the improvements. In addition, some group members suggested that a tenant should be allowed to present a further request to the landlord within the prescribed timescale if the tenant's circumstances had changed. However these ideas did not command consensus across the group.

SECTION H: BUILDINGS WITH MULTIPLE PROPERTIES

The group discussed buildings with multiple properties in some detail because it is recognised there are complexities with how the Green Deal and private rented sector regulations will work with such properties.

One area of concern for the group was around insulation measures in blocks of flats, particularly around wall insulation which could be installed internally or externally (also see Section A above). External wall insulation would normally be the preferred route, but the agreement of the freeholder and/or all leaseholders would be required. For landlords subject to the PRS regulations, where external insulation is refused, internal insulation may be an option, but once installed it could prevent likely consent for Green Deal work for the whole block as one tenant will already have a Green Deal/ECO plan/funding. That would then prevent future external insulation plans for the whole block. The group suggest that flats

proposing internal insulation should obtain confirmation that external insulation is not proposed at any time in the future and that internal insulation is the preferred option for the block. One group member also highlighted they thought that walls outside the boundary of the property subject to a tenant's request would not be included in the tenant's request and this may cause an issue where external insulation was being sought and where the property was part of a block of flats.

A further related concern raised by the group was that 100% consent was needed from all tenants and landlords, as well as others such as planning departments, to install measures under Green Deal relating to buildings with multiple demises. The group felt that this level of consent may be difficult to obtain where they are a large number of individual properties, and as result they felt that this could result in a low number of measures being installed in such properties.

The group also raised concern about buildings with multiple demises, in particular bedsit HMOs, where one or more tenants may be eligible for ECO Affordable Warmth funding whereas other tenants will obtain funding through the Green Deal. The Green Deal charge associated with the installation of measures at a property level will need to be divided among all the electricity bill paying tenants within the block. The group identified the risk that it would be difficult to determine responsibility for the Green Deal charge if it was attached to a communal meter. However, if one tenant is eligible for Affordable Warmth it may be seen as unfair that this tenant should pay an equal amount towards the Green Deal charges as other tenants. There may be ways to reflect this in differing contributions towards the Green Deal charge however the group recognise this will become increasingly difficult as tenants move in and out of a block and the number of people eligible for ECO Affordable Warmth may alter. However, it is recognised that a tenant will have to sign up to the Green Deal before moving into a property and will therefore be aware of any charges before agreeing to rent the property.

SECTION I: TIMING OF INTRODUCTION

The powers in the Energy Act 2011 state that the Tenants Right to Request regulations must be introduced by April 2016 at the very latest. There was agreement with the working group that when the Tenants Right to Request regulations are introduced they should cover all new and existing tenancies from that point onwards. However, there was a split in views around the date the regulations should be introduced.

One proposal was that the regulations should come into effect from April 2015. Some group members suggested that there is unlikely to be an immediate high demand from tenants for consent from their landlords to install energy efficiency measures after the introduction of the regulations due to a gradual increase in awareness of tenant's new rights and so there should not be an excess demand on the supply chain. However, this would give any tenants who do want to use the powers an earlier opportunity to do so.

The other proposal was that the regulations should come into effect from April 2016. All group members suggested that the Green Deal must be fully operational for the private rented sector before these regulations are introduced and the timing provides a lead in time for the sector to voluntarily comply with the requirements before compulsion is introduced. Some group members also thought that there have been delays in the availability of Green

Deal finance and ECO within the PRS and a longer timescale would allow more time for the GD procedures to be tested, to be available and taken up in the PRS. There is nothing to stop tenants from currently requesting consent for energy efficiency measures should they so wish to and so this group think that the tenant's right will not be compromised by a later start date.

Chapter 3: On What Standard Should the Minimum Standard be Based?

AGREED RECOMMENDATIONS

1) The evidence base should be further developed (through using already commissioned work, or commissioning new studies) to quantify the extent to which solid wall u values (particularly for pre 1919 buildings) and modelling of systems build houses within SAP/rdSAP, along with other issues, such as heating or mechanical ventilation may be a limiting factor on the reliability of the production of EPCs. The evidence should be used to inform the regulations and related processes with guidance further developed to inform EPC practitioners and EPC users and consumers on the process to deal with traditional and system-build properties.

2) Ensure the process for improving, amending and verifying SAP and rdSAP is as transparent as possible, with results from relevant studies made publicly available to inform future decisions around minimum energy standards and the use of EPCs.

3) Further work be undertaken to develop an evidence base to quantify the extent to which the assessment procedures, the training, the knowledge of the assessor, the use of default settings and the user interface may be a limiting factor on the reliability of EPCs.

4) The regulations should refer to detailed guidance to ensure the nuances and specific requirements for traditional buildings are taken into account for the installation of energy efficiency measures. This is to raise awareness and understanding of the issues. In addition, further work should be undertaken to identify effective ways of raising awareness of Green Deal related traditional building issues for Green Deal amongst providers, landlords and consumers.

SECTION A: APPROPRIATENESS OF USING EPCS

The Energy Act 2011 states that the Private Rental Sector minimum energy efficiency standard regulations will apply where there is an EPC, and that the performance required will be set in relation to the EPC rating. Consequently any factors that may limit the usefulness of EPCs in this regard should be fully understood. EPCs are intended to be fit for the purpose that they were designed to meet and be accurate and reliable within reasonable tolerances for the vast majority of buildings. The working group have discussed any limitations to the use of EPCs and recognise that concerns can be introduced in four areas. These include:

- Modelling of new technologies for SAP and difference between standardised laboratory testing and actual observed performance;

- The simplification of inputs into SAP equations through rdSAP, and the related choice of SAP or rdSAP in evaluating a building;

- The software product used, its interpretation of rdSAP, the user interface generated, and any checks on keying in data, default values, limitations in selection of product components;

- The assessment procedure itself (which is visually based and non-intrusive), the training and knowledge of the assessor.

The working group proposes some recommendations relating to the production of EPCs and any factors that could impact their effectiveness.

SAP is the Government's procedure for assessing the energy performance of dwellings. SAP also underpins the UK Buildings Regulations and delivery of many other climate change policy initiatives across Government and the Devolved Administrations, particularly those relying on EPCs. SAP is one of the UK's "National Calculation Methodologies". SAP is essential for delivering the requirements of the Energy Performance of Buildings Directive, particularly the cost effective production of EPCs. A simplified variant, rdSAP, is used to produce EPCs for existing dwellings. rdSAP is a paper based inference tool. However practitioners use 3rd party software specifically designed for the task required by the EU Energy Performance of Buildings Directive. The software programmes available in the market use the lookup tables and calculations of rdSAP. rdSAP and the software allow cost effective, accurate EPCs to be generated by knowledgeable assessors. However, one group member suggested that rdSAP and the software may not always allow accurate EPCs to be generated.

There are some group members that expressed concern with the robustness of the Standard Assessment Procedure (SAP). These group members were of the view that there were specific concerns focussing on the use of SAP for assessing the performance of solid walls, particularly prevalent in pre 1919 buildings. The view is held that rdSAP systematically mis-represents the energy efficiency levels though the u-values used to represent solid walls. Some group members are concerned about landlords being required to make investment decisions to install energy efficiency measures to meet the minimum standard regulations on the basis of what is perceived as an inexact process.

SAP, rdSAP and the related EPCs are robust tools with an almost continuous programme of research and validation for verifying the accuracy of SAP and rdSAP, and benchmarking these national calculation methodologies against other European standards.

It is also recognised that the Department of Energy and Climate Change has an on-going continuous programme of research and evaluation relating to SAP including a recently launched study by the Building Research Establishment (BRE) into solid wall performance. This will be used to inform the continuous verification of the accuracy of SAP and rdSAP. One group member suggested that the implementation of the outcome of the research particularly in the context of pre 1919 buildings should align with the timing of the private rented sector regulations.

The group think that the evidence base should be further developed and used to inform the regulations, through already commissioned work, or commissioning new studies to quantify

the extent to which solid wall u-values (particularly for pre 1919 buildings) and the modelling of systems build houses within rdSAP, along with other issues such as heating or mechanical ventilation may be a limiting factor on the reliability of the production of EPCs. One group member suggested that any evidence and information obtained should be used to inform the National Energy Efficiency Data-Framework (NEED)[25] and In Use Factors used for the Green Deal[26]. rdSAP must be flexible to different building types, whilst remaining simple and cost effective to use. Work is required to identify and resolve such anomalies about aspects to the methodology for some properties. Guidance should be further developed to inform EPC practitioners and EPC users and consumers on the process to deal with traditional buildings and system build properties. It may be that for some houses a full SAP assessment may be preferable to obtain a more accurate result.

The group also support the recommendation to ensure the process for improving, amending and verifying SAP and rdSAP is as transparent as possible, with results from relevant studies made publically available to inform future decisions around minimum energy standards and the use of EPCs. It is recognised that industry confidence in the EPC is low and this must be improved. Government has an on-going piece of work to improve EPCs through the development and maintenance of the underlying SAP and rdSAP methodologies. The group suggested that information about this process and studies undertaken must be communicated to industry and the wider public for transparency.

Some group members are concerned there is limited awareness of the impact of using inappropriate energy efficiency measures for traditional buildings e.g. using impermeable solid wall insulation on a wall made from permeable material. There is concern that this will lead to a lack of trust in the quality and appropriateness of the installation of energy efficiency measures in traditional buildings under the private rented sector regulations in addition to possible damage caused by such measures to the actual building and people's health. The group support further work being undertaken to develop an evidence base to quantify the extent to which the assessment procedures, the training, the knowledge of the assessor, the use of default settings and the user interface may be a limiting factor on the reliability of EPCs. EPC assessors may be required to exercise professional judgement especially where access to property elements is restricted, or where properties are particularly unusual. This, alongside other factors, may result in unreliable and inconsistent EPC assessments. A greater understanding is needed as to the impact of such factors and whether changes and improvements are required. One group member suggested that in circumstances where there may be a negative impact on a building's fabric through the installation of energy efficiency measures then competent professional advice should be sought before undertaking any installation work. The group member highlighted concerns of making general changes to rdSAP and carrying out additional expensive training for all assessors to address concerns affecting a subset of buildings due to the resulting impact on

[25] DECC 2013 National Energy Efficiency Data-Framework (NEED) https://www.gov.uk/government/collections/national-energy-efficiency-data-need-framework

[26] In the interim as evidence is gathered on the in-situ performance of eligible Green Deal measures in-use factors are used to adjust Green Deal finance to ensure confidence in the savings estimates on which the Green Deal is based. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/48407/5505-how-the-green-deal-will-reflect-the-insitu-perfor.pdf

the price of EPCs for the majority of consumers. Another group member suggested that any evidence developed to quantify any limiting factors on the reliability of EPCs should be used to mitigate such factors where possible early to reduce any impact on the regulations.

Group members were in agreement that there should be detailed guidance to ensure the nuances and specific requirements for traditional buildings are taken into account for the installation of energy efficiency measures. The group suggest that industry should be provided with more information on the relationship between EPCs, their underlying methodology and the requirements under the regulations relate. In addition, further work should be undertaken to identify effective ways of raising awareness of Green Deal related traditional building issues for Green Deal amongst providers, landlords and consumers. This will help to ensure that measures can be installed in traditional buildings under the regulations to the benefit of tenants and landlords whilst taking into account the specific requirements of the buildings.

It is recognised that there are already additional protections built into the Green Deal process for traditional buildings. The Green Deal Provider Code of Practice states that when a Green Deal Plan is being considered the Green Deal Provider must consider whether the building is 'vulnerable'. A vulnerable building can be an historic building or a building which is constructed in a way which means that special care is required to ensure that the installation of improvements does not result in damage to or deterioration of the building fabric. In these situations a Green Deal Provider must ensure the proposed installations are appropriate for the building, the building is protected from damage by using appropriate materials, products and specifications; and consideration of whether an architect or surveyor with specialist skills in this respect should be consulted. One group member suggested that a similar safeguard for protecting traditional buildings from damage by using appropriate materials should also apply to measures installed under the regulations but outside of the Green Deal. One group member suggested that new products appropriate for traditional buildings should be further explored, for example breathable insulation. One group member highlighted that because an EPC is not required for a listed building the minimum standard regulations would not apply to listed buildings.

SECTION B: AREAS OF CONCERN

Several group members have concern about the timing of improvements to rdSAP in particular relating to the timing of any findings from the BRE Research commissioned by DECC that is investigating solid walls being input into the rdSAP methodology used for EPCs. It is recognised that DECC is compiling a timetable of research to help with addressing this concern. A consequence of the timing is that inaccurate EPCs produced now may hinder effective investment decisions being made in the meantime, ahead of and after the regulations coming into force and basically until the SAP methodology is changed. It also needs to be recognised that the same assumptions are used to generate Green Deal Assessments and could imply excess cold through HHSRS. There is a suggestion by these group members that the guidance produced for EPC practitioners and users and also for Environmental Health Officers undertaking HHSRS should cross reference Part L of the building regulations and confer liability on the assessor for their actions. However, other group members suggested that this approach is disproportionate to the concerns raised.

There is also concern from one group member whether rdSAP and SAP are tested empirically. It is recognised that SAP and rdSAP data are based on product testing to published British and European standards. For products this testing is in accredited laboratories and data is an output of the calculation. It is recognised that using different standards risks accusations of blocking competition under European law. SAP and rdSAP as methodologies are benchmarked against other building physics models and meet European standards for how to measure building related energy.

There is concern from one group member about the qualifications held by Green Deal Assessors in relation to traditional buildings and the knowledge and expertise around ensuring inappropriate measures are not installed. Concern also exists that any guidance produced for the regulations should cover Green Deal Providers and Assessors as well as installers; and refer to Appendix Q, be linked to British Board of Agrement (BBA) Certified works and mention the inappropriateness of some of the measures for traditional buildings that need a breathable wall surface. This group member also raised the requirement for more appropriate measures for traditional buildings to be included on Appendix Q where possible recognising the practical issues of currently being able to include non-production materials on the list.

One group member highlighted that it may be disproportionate to impose potentially significant additional costs on the majority of consumers to address concerns that may affect a minority of buildings. The suggestion was that an alternative approach may be to ensure that the minimum standard regulations are sufficiently flexible to allow exemptions for buildings where specialist professional advice has been provided to the effect that to carry out certain types of work on a particular building could result in damage to the fabric. One group member highlighted that in these instances landlords of traditional buildings may incur costs to carry out a Green Deal Assessment or obtain an EPC to show that installing energy efficiency measures could result in damage to a building.

Despite some of the concerns around the accuracy of EPCs, the group were in agreement that EPCs should still be used as the basis for the minimum standard regulations. However, one group member added that EPCs should be used for the minimum standard unless there are exceptional circumstances.

Chapter 4: Setting the Required Minimum Building Energy Performance Level

RECOMMENDATION

1) The required minimum standard should be an EPC rating of E, subject to specified cost, consent and property value exemptions.

SECTION A:SETTING THE LEVEL OF ENERGY PERFORMANCE FOR THE MINIMUM STANDARD.

The Government has stated that it is likely to set the minimum energy performance standard at an EPC rating of E for both domestic and non-domestic property. For example, when introducing the relevant clauses to the Energy Bill at its Second Reading on 10 May 2011, the then Secretary of State for Energy & Climate Change, Chris Huhne MP, clearly stated that: *"From 2018, the rental of the very worst performing properties—those rated F and G—will be banned through a minimum energy efficiency standard."* As this is the basis on which the industry has been preparing, there is likely to be benefit in the Government proceeding on this basis. However, the group also considered the options for setting the minimum standard at a level other than an E EPC rating. One group member highlighted that as 47% of people in fuel poverty have properties with an EPC of E a higher minimum standard should be set. However, the group broadly agreed with the minimum standard being set at an 'E' rating. The group recognised that a minimum standard set at an E EPC rating would only require the landlord to improve the property to that level. The installation of any recommended energy efficiency measures that would result in a higher EPC rating would be optional. In Chapter 9, the case for plans to tighten the minimum energy efficiency standard over time is explored.

The degree to which a cost cap temporary exemption may apply to the minimum standard was not agreed within the group. One group member highlighted that the primary legislation indicates that expenditure was only required up to the level available under the Green Deal, ECO or any other prescribed finance mechanism. A cost cap temporary exemption could mean that a landlord would still be able to let a property below an E rating where they have undertaken all works that could be financed through a prescribed scheme such as the Green Deal or ECO which would ensure there were no upfront costs to landlords. Some group members argued that a property ought to have to achieve an 'E' rating regardless of costs. The argument was made on the basis that the full benefits of raising the energy efficiency standard of properties within the private rented sector to an E, such as reductions in fuel poverty and carbon emissions, will not be realised if any caveats are included. Other group members suggested that without any reference to a cost limit by the regulations then the impact may be for properties to be sold and transfer across to the owner occupier sector. The arguments around cost and funding caps are explored in more detail in chapter 8 of this report.

Furthermore, one group member argued that there should be an exemption from the minimum standard for pre 1919 solid walled buildings until the findings of the recent BRE research commissioned by DECC are fed into the SAP and EPC methodologies, Green Deal Assessments and Appendix Q, as outlined in Chapter 3. This view was held due to a concern over the reliability of the SAP methodology. This concern is further detailed in chapter 3. The group noted that pre-1919 properties account for about 40% of the private rented sector housing stock[27].

[27] DCLG 2010 Private Landlords Survey
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7249/2010380.pdf

Chapter 5: Timetable for introducing the Minimum Energy Efficiency Standard Regulations

AGREED RECOMMENDATIONS

1) A backstop should apply whereby all tenancies must reach the minimum standard (subject to exemptions where they apply). The backstop should apply $2^1/_2$ years after the introduction of the regulations although further discussion around the nature of any backstop is required.

SPLIT RECOMMENDATIONS

2) The implementation of a minimum energy performance standard should catch new tenancies where new tenants move into a property, from April 2017. However, an additional back stop date whereby all tenancies, including existing tenancies, are required to meet the standard (subject to the usual freeholder consents, cost caveats and tenant consents) should also apply.

Or

3) The implementation of a minimum energy performance standard should catch new tenancies (excluding those where a sitting tenant is staying on in the property) from April 2018. However an additional back stop date whereby all tenancies, including existing tenancies, are required to meet the standard (subject to the usual freeholder consents, cost caveats and tenant consents) should also apply.

SECTION A: WHAT SHOULD THE TIMING OF INTRODUCTION FOR THE MINIMUM ENERGY EFFICENCY STANDARD REGULATIONS BE?

Government has an obligation under the 2011 Energy Act (Chapter 2, Section 43) to introduce the minimum energy efficiency standards for the private rented sector no later than April 2018. The issue of when the minimum standard should come into effect is important and the group recognises that there is a need to balance what is feasible and achievable against the need to have a clear timetable that does not allow for avoidance or evasion. The Energy Act gives the government scope to introduce the regulations through the options of a 'hard' or 'soft' start.

These options can be defined as follows:

1) A 'hard start' means that as from 1st April 2018, a landlords domestic rented property will need to be compliant with the minimum standard where there is a tenancy in place on 1st April 2018 and where there is an EPC.

2) A 'soft start' means that the minimum standard applies only to new tenancies granted to new tenants on or after 1st April 2018 where there is an EPC.

Both options would be subject to appropriate exemptions, which may be temporary in some cases, such as consents requirements, value safeguards or funding caps, where applicable.

The group was in agreement that the regulations should apply as a soft start, although there are variations in views on the details of how the soft start should apply. Therefore the regulations would exclude situations where there is a sitting tenant who renews a tenancy. One group member highlighted that consideration must be given to situations where there is more than one tenant in a property and a new tenancy is granted to one or several tenants who move in although some existing tenants remain in the property. The group agree that it is easier for energy efficiency measures to be installed without tenants in the property wherever possible. The measures would be installed in this situation by the landlord in the void period between one tenant moving out and the other moving in. It is recognised that in rural areas where tenant turnover is lower this opportunity will be less frequent.

There was disagreement however, about the date for the soft start to be introduced. Some supported a soft start being introduced in April 2017 on the basis that properties would be improved earlier to benefit tenants, providing them with warmer homes, and contribute to meeting carbon emission targets. This view is based on Ministerial statements and statistics from the English Housing survey that suggest there are no substantial differences between a start date of 2017 and 2018. When questioned in Committee during the passage of the Energy Bill, Greg Barker offered reasoning for a 2018 start as "by 2018 we expect 80-90% of tenancies will have changed" however it is recognised that the English Housing Survey 2009-2010 states 80.3% of tenants in the private rented sector have lived in the property for less than 5 years. Given this, by 2017, 80% of tenancies will also have changed. Whereas others supported the soft start date being introduced in April 2018. This is due to concern that the Green Deal is not fully operational for the private rented sector, that landlords and the property industry should be given time to self-regulate and make voluntary improvements before implementation of the regulations and any output from the BRE research on solid wall insulation should inform rdSAP/SAP methodologies in the context of traditional buildings. A soft start date of April 2018 provides the sector with maximum time to self-regulate taking into account the requirement for the Green Deal to be fully operational and tailored to the sector. One group member suggested the timeframes may still be challenging.

All group members supported the notion of a "back stop date" whereby existing tenancies would be required to meet the minimum standard, subject to consents, value and cost caveats as appropriate. Whilst there is a high turnover of tenancy agreements in the private rented sector it is recognised that some tenancies are relatively long term with tenants staying in a property for many years. However, it was also noted that there was a high likelihood these properties may not have EPCs if individual tenancies had existed for many years, including where existing tenancies had been transferred from fixed term to rolling contracts, or the property had not been sold. It would provide the sector with more time to prepare their response to the regulations, lessen a sudden surge of requests for Green Deal works and avoid the potential risk of landlords seeking eviction of tenants to undertake works should the standard apply to all tenancies from 2017 or 2018. One group member suggested that the demand for energy efficiency improvements due to the introduction of the regulations should be modelled to ensure the demand could be adequately handled. One group member proposed that where tenants had longer term security of tenure, for example under the Rent Act or non short hold assured tenancies these should be excluded from the backstop provisions. It is recognised that Rent Act regulated tenants may not want the

disruption some installations may bring or may fear increased rent, however the group also recognise that such tenants would be able to refuse giving consent under the regulations. In all cases, due to the consents requirements, a sitting tenant denying consent to the works or the finance to pay for them, would mean the landlord would be in compliance. One group member suggested that consideration is needed as to whether a tenant must always consent and always have a veto although it would always have to apply where Green Deal finance is sought. Whilst this approach is provided for in the primary legislation issues may arise whether the landlord has a power of entry to the property to carry out the work, depending on the wording of the tenancy agreement.

There was broad consensus that the backstop date should apply $2^{1}/_{2}$ years after the introduction of the soft start (which may be 2017 or 2018 as described above). This would fit with the approximate average tenancy length of 20 months[28] and would mean that the majority of properties would have had a new tenant moving in during this time and would have been captured by the soft start. The group recognise that the average turnover for tenancies under the Rent Act is far greater than for those under the Housing Act. One group member however argued that the backstop should apply from 2023 or later due to uncertainties around the accuracy of EPCs (as described in chapter 3), the perceived timescale for the Green Deal becoming fully operational, a greater proportion of the sector will have an EPC by then and be covered by the regulations and also to help lessen any surge in demand for energy efficiency measures. This group member added that the backstop should only be introduced once the EPC is fit for purpose for traditional buildings.

SECTION B: IMPLICATION FOR THE MARKET

The working group flagged up that if the regulations were introduced aggressively or the back stop date were introduced early, then landlords may decide to sell properties falling below the required standard rather than carrying out the energy efficiency improvements. A consequence of houses being sold may be these properties move to the owner occupier sector and the energy efficiency of these properties is not improved. With an increasing demand for rental properties it is important that impediments to supply are avoided.

The majority of the group hold the view that with the timescales for the soft start and back stop date outlined above this would support the private rented sector to comply with the regulations and ensure houses remain in the sector.

In addition, if there were to be a “hard start” and all landlords of F and G properties had to comply with the minimum standard regulations by 1st April 2018 this would put substantial short term pressure on the supply chain to deliver the required energy efficiency improvements. One group member suggested that this short term demand would decrease quickly afterwards and not justify the effort involved in the initial gearing up process.

[28] ARLA 2013 ARLA Members survey of the Private Rented Sector
http://www.arla.co.uk/media/56542/arla-private-rented-survey-2013-q1.pdf

Chapter 6: Compliance, monitoring and enforcement

AGREED RECOMMENDATIONS

1) The regulations should apply to all buildings for which an EPC is required.

2) Remove section 43, 1(b) of the Energy Act 2011 which states the PRS regulations apply only where a property has an EPC.

3) A tenant should be encouraged to inform the landlord of any EPC obtained for the property.

4) Local authorities should allocate a specific team or teams for enforcement, evaluating all suitable avenues including PRS property teams, Environmental Health Officers and Trading Standards Officers. The choice of enforcement team should be published.

5) The Energy Performance of Buildings Register containing EPC information for properties that have an EPC should be open, accessible and able to be used by enforcement agencies free-of-charge. This would be similar to current access for Trading Standard Officers who have access to the Register to complete enforcement work under the Energy Performance of Buildings Regulations.

6) Government should consider whether the EPC could contain standard wording to reflect what the minimum standard rating is.

7) If an EPC rating of E is not specified as the minimum standard for all properties in scope of the regulations, proof would have to be used to show a landlord had tried and failed to get a property to an 'E' rating using the prescribed energy efficiency funding schemes (e.g. Green Deal, ECO, local authority grants (where information available)).

8) Guidance should be provided on the types of evidence that could be provided to show the landlord had tried and failed to get a property to an 'E' rating.

9) If an EPC rating of E is not specified as the minimum standard for all properties in scope of the regulations, local authorities should use teams dealing with licensing to add a stamp to EPCs to indicate that a property is compliant with the regulations and can be rented out legally as all measures funded under the prescribed energy efficiency funding schemes have been installed. Landlords would pay a fee for the local authorities to stamp the EPC.

10) The penalty used for non-compliance should be proportionate up to a maximum of £5,000 (the cap set out in the Act), should be linked to the degree of non-compliance, should be in addition to the payment for the energy efficiency measures and should be set by a judge on a case by case basis.

11) All fines collected by tribunals through enforcement of the regulations should be returned to the enforcement body.

SECTION A: ENFORCEMENT AND COMPLIANCE ARRANGEMENTS

The Energy Act 2011, chapter 2, section 43, specifies that a property may not be let until the landlord has complied with the minimum standards obligation but only where there is an EPC. A property will have an EPC where the property complies with the Energy

Performance of Buildings Directive requirement to have an EPC on construction, sale or rental. If a property was let prior to the introduction of EPCs in 2008, it is not within scope of the minimum standard regulations since it does not have an EPC and neither the Energy Act nor the secondary regulations provide powers to require an EPC to be obtained unless the property is sold or let.

Some group members expressed concern and thought that there seemed to be poor compliance with the requirement to have an EPC, little enforcement of the EPC regulations by local authorities and little demand from tenants to see the certificates. In 2010, over two-fifths of all dwellings in the sector are estimated to have had an EPC carried out on them[29]. It is acknowledged that this is the latest official statistic available, however, due to the number of properties likely to have been let since 2010 given the average tenancy length of 20 months[30] in the domestic sector, this figure is now likely to be much higher. There was concern across the group that the low levels of EPC compliance may indicate that similar levels of compliance may occur with the PRS regulations.There is also concern at the level of understanding of when an EPC is required and which premises were exempt. It is recognised that there are currently no powers to compel EPCs to be carried out where there is not an EPC in place in order to facilitate the implementation of the PRS regulations. The current penalty for not being in compliance with the EPC regulations is £200 which the group thinks is too low to compel people to obtain an EPC. The group expressed a desire to support the government to identify ways to help encourage compliance.

Whilst it was acknowledged that not all properties that should have an EPC under existing legislation do have an EPC, it is also recognised that previous poor levels of EPC compliance may not continue. Recent changes to the EPC regulations, such that EPC ratings must be displayed in advertisements, may lead to greater visibility of non-compliance. Increased compliance with the EPC requirements would increase the number of properties captured by the Private Rented Sector regulations.

Although the EPC database can currently be queried for individual EPCs it is not possible to carry out queries on bulk data. The group supported greater accessibility of the EPC database if this was possible, making it open and free to use by enforcement agencies. This and other measures would encourage and incentivise compliance with the requirements for EPCs. The group suggested that the possibility of having a live EPC document that updated automatically should be explored to assess whether it would be straightforward to implement.

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[29] DCLG 2010 Private Landlord Survey
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7249/2010380.pdf

[30] ARLA 2013 ARLA Members Survey of the Private Rented Sector
http://www.arla.co.uk/media/56542/arla-private-rented-survey-2013-q1.pdf

In order to ensure the minimum standard regulations are not limited at the point where a backstop date is introduced the majority of the group supported the idea that the minimum standard regulations could be applied in such a way as to capture properties where there is not an EPC. The majority of the group propose that section 43, 1(b) of the Energy Act 2011 which states the PRS regulations apply only where a property has an EPC should be removed. It was recognised that this would require a change to the primary legislation and therefore was likely to be a longer term objective. Several group members did not agree with altering the current wording around EPCs in the Energy Act 2011. This was because EPCs are a product of an EU Directive not UK law and the triggers for obtaining an EPC, as outlined in the EU Directive, only require an EPC to be obtained when a property is sold or let and not for compliance with the minimum standard regulations. One group member suggested another option would be to widen the types of property types that are required to have an EPC to include HMOs such as bedsits.

The group recognised that a situation may arise where the tenant may have obtained an EPC for the property, either through a Green Deal Assessment or because they may want to ensure the landlord has to comply with the minimum standard regulations. The group recommends that the tenant should be encouraged to inform the landlord in any circumstances where they have procured an EPC for the property otherwise the landlord may not be aware there is an EPC for the property and therefore they may be in breach of minimum standard regulations.

Section 45 of the Energy Act 2011 provides for sanctions and identifies local authorities as the enforcement body, enables civil penalties not greater than £5,000 in the event of non-compliance or provision of false information about compliance. It also requires provision for appeals to a court or tribunal.

The group agreed that local authorities should be the enforcing body for the private rented sector regulations. It was acknowledged that there are various teams within the local authorities that may be suitable for the enforcement of the regulations including Environmental Health Officers, Private Rented Sector property teams and Trading Standards Officers. Similarly, Part 7 of the Energy Performance of Buildings 2012 Regulations defines ‘every local weights and measures authority’ as an enforcement body which in practice is usually Trading Standards Officers. The group considered that the local authorities are best placed to allocate enforcement responsibilities within their teams, but that they should consider which the most suitable group is and not necessarily restrict the powers exclusively to just one group. The choice of enforcement team should be published by local authorities.

The group recognised that funding may be required to enable local authorities to carry out the enforcement role, and that there should be reporting mechanisms for central government to monitor and provide feedback on the levels of compliance and enforcement action by local authorities. This is similar to funding provided by Government to local authorities to carry out enforcement work under the Energy Performance of Buildings Regulations. Some group members suggested that tenants should not be expected to play a part in enforcement as it is important that the landlord-tenant relationship is not soured.

It is also recognised that a grass roots and communications campaign would be useful to raise awareness of the regulations so that landlords are aware of their responsibilities under

the regulations, what is required of them in order to comply and what help/advice would be available to them.

SECTION B: RAISING COMPLIANCE THROUGH EFFECTIVE ENFORCEMENT

The group supported standard wording being included on the EPC to reflect what the minimum standard is. This would raise awareness of the minimum standard regulations. The wording would need to be clear about what a property has to do to demonstrate compliance and contain links to further information. If a trajectory was introduced for the minimum standard this would have to be reflected on the EPC.

There was broad support from group members for a compliance indicator, as opposed to standard wording, to be introduced on the EPC, however there were also some views that this may not be practical to implement. Members felt that without a compliance indicator for an individual property it would be difficult to ascertain whether a property was compliant, unless there was a flat 'E' rating for the minimum standard. One group member suggested that local authorities could use the teams that currently deal with landlord licensing to review landlord applications for an exemption (whether triggered due to consents, funding or value depreciation safeguards). Local authorities would then be able to certify that the property was below the minimum E standard, but was in compliance with the regulations. It was suggested that funding would be required for this type of approach however, how this function is funded would need further exploration. One proposal was that local authorities could charge a fee, similar to the licensing regime, whereby the fee must be levied only to cover the cost of administering the process. The group also suggested this process should be consistent across all local authorities.

The group agreed that, if an EPC rating of E is not specified as the minimum standard in all circumstances (as recommended by some group members), then if a landlord was unable to get a property to an 'E' rating using the prescribed energy efficiency funding schemes including the Green Deal, ECO, local authority grants (assuming this cost test applies), then they would be expected to show evidence of this. Proof could include a Green Deal Assessment, 3 Green Deal quotes to show financing was not viable, a completed Green Deal Plan showing that the maximum package of works had been undertaken, or written refusal for consent from a tenant or freeholder. If written proof of a refusal was not available the burden of proof would lie with the landlord to show the steps taken to seek it. In addition, some group members felt that documents such as the Green Deal Assessment should state requirements for minimum standard compliance clearly because this would help the landlord provide proof. Some group members suggested that only proof of freeholder consent should be required where applicable as the requirement to provide proof of failure for a tenant to give the consent requested by a landlord may affect the tenant/landlord relationship and may lead to retaliatory evictions. One group member suggested that obtaining three quotes as proof was too many and Green Deal Providers would not be in favour of having to produce a high number of quotes. One group member suggested that further consideration is required whether tenants would be given the right to refuse the installation of energy efficiency measures under the regulations although it was recognised that tenant consent would be required for any Green Deal finance obtained. This group member also acknowledged that

any related issue around whether landlords have right to access a property with a sitting tenant would also need exploration.

The group suggest that if an EPC rating of E is not specified as the minimum standard in all circumstances (as recommended by some group members), then guidance should be provided on the types of evidence that could be provided to show the landlord had tried and failed to get a property to an 'E' rating. Guidance should provide the details of all the evidence that would have to be collated by a landlord to prove they had tried to get a property to comply with the regulations but had been unsuccessful.

The group support the view that the penalty used for non-compliance should be proportionate up to a maximum of £5,000 (the cap set out in the Act), should be linked to the degree of non-compliance, should be in addition to the payment for the energy efficiency measures and should be set by a judge on a case by case basis. There is suggestion that the proportionate penalty would follow a standard scale of 1-5 such as the ones used by criminal statutes. The group agreed that the penalty must be sufficient to act as a deterrent. There was concern that without a clear set penalty there was a risk that there would not be sufficient levels of disincentive to non-comply. One group member suggested the penalty could be recurring and apply to a non-compliant property again after a prescribed period of time.

In order to encourage local authorities to effectively enforce the regulations, the group suggest that all fines collected by tribunals through enforcement of the regulations should be returned to the enforcement body. It is recognised that under the Energy Performance of Buildings Regulations local authorities can retain any fines collected although there is not any ring fencing requirement on the use of these fines.

Several group members raised the issue regarding the lawfulness of recovery of rent where the premises are let in breach of the regulations. This issue arose in relation to HMOs and selective licensing where the Housing Act 2004 makes specific provision which overturns the normal common law rule prohibiting recovery of rent where the contract is unlawful. It is seen that similar considerations arise in the case of the regulations. Where premises require licenses, but do not have them, the 2004 Act provides for a system of rent repayment orders. If a landlord is unable to recover rent in this situation this is potentially a sanction and could perhaps be addressed via the regulations. Further consideration of this issue is seen to be required.

Chapter 7: Exclusions and temporary exemptions

AGREED RECOMMENDATIONS

1) Exclusions to the standard should be minimal and logical, but more work is required to set those exclusions.

2) The current definition and scope of tenants in the primary legislation was agreed by the Group to be adequate, with a few recommended amendments.

3) Government should consider amending primary legislation to include Registered Social Landlords (RSLs) so that they are in scope where they rent to private tenants.

4) Subject to technical feasibility, HMOs (House in Multiple Occupation) should be included within the scope of the regulations, with the EPC carried out at a property level.

5) Regulated tenancies, short and assured short hold tenancies should be included in the Regulations.

6) There should be safeguards to avoid material decreases in property capital and rental values on installing energy efficiency measures.

7) A property that meets one of the specified exemptions for the regulations should be exempt from the regulations for the duration of the tenant occupation (unless shorter than two years) or a period of five years whichever is the shorter.

SECTION A: ALIGNMENT WITH EPC REGULATIONS

There was general agreement within the working group that the exemptions to the minimum standard regulations should be kept to a minimum although any exemptions should be logical and justified. If there are too many exemptions then the regulations become complex to understand and it will be easier for landlords to avoid meeting the regulations due to not understanding whether their property needs to comply or does already comply with the regulations. In addition, enforcement of the regulations will become complex because it will be difficult to identify whether individual properties comply with the regulations or not.

As previously outlined, in order to be in scope of the PRS regulations, a dwelling must have an EPC. Consequently, all buildings that are not specifically exempted from the provisions of the Energy Performance of Buildings Certificate and Inspections (England and Wales) Regulations 2007 are within scope of the PRS regulations. This applies only if an EPC is in place. However, it was recognised that all listed buildings ought to be expressly put out of scope of the PRS Regulations also to ensure absolute clarity.

SECTION B: EXCLUSIONS AND TEMPORARY EXEMPTIONS

In addition, the group suggested that particular properties should be outside scope of the regulations including hostels, lodgings, holiday lets or where the tenant shares the property with the landlord (not individually covered by an EPC), social housing and situations where

private landlords rent to social housing tenants such as properties let through Social Letting Agencies and Private Sector Leasing Schemes. One group member raised whether there should be an exemption in certain circumstances such as where work will breach building regulations or some other relevant code including the Green Deal code. This group member also raised concerns about potential adverse impacts especially on ventilation. One group member suggested that buildings built pre 1919 should be excluded from the regulations until the EPC was considered fit for purpose.

The majority of the group suggested that whilst the definition within the Energy Act 2011 of tenancy types within scope was broadly adequate, there were some additional types that could merit inclusion. The current definition of tenants includes tenants with tenancy agreements covered by the Housing Act 1988 and the Rent Act 1977. One group member suggested that tenancies under the Rent Act should be excluded from the regulations where rents are capped and succession restrictions apply. The group understood that Section 42(1)(a)(iii) of the Energy Act 2011 states that some of the following additional tenancies may be specified by order however some may not be permissible without changes to the primary legislation. The additional tenancy types proposed were:

a) Social landlords letting property to private tenants. The Energy Act 2011 states that if 'the landlord is a body registered as a social landlord under Chapter 1 of Part 1 of the Housing Act 1996', they are outside the scope of the regulations. It was acknowledged that the social housing sector has comparatively low levels of properties within the F and G bands of EPC ratings. However, it was also recognised that social landlords do rent out properties to private tenants on the open market with tenancy agreements covered by the Housing Act 1988 as well as renting out social housing. Given this the group suggested that all landlords including Registered Social Landlords (RSLs) should be in scope of the regulations where they rent to private tenants using tenancy agreements covered by the Housing Act 1988 or the Rent Act 1977. However, it is recognised that the inclusion of RSLs in the regulations would require changes to the primary legislation and would therefore constitute a longer term ambition.

b) The group was of the view that the Energy Act 2011 implies that most Houses of Multiple Occupation (HMOs) are out of scope of the regulations. However, it was recognised that HMOs may form a proportion of the private rented sector and often house the most vulnerable members of society, often on low incomes. Under the Housing Act 2004, an HMO is defined as any premises with 3 or more persons in 2 or more households. Statistics suggest that there may be around 400,000 domestic properties in England and Wales that fall under this definition of HMO[31]. A tenant of a bedsit can be an assured tenant or a regulated tenant even though the tenant may share facilities such as a bathroom or kitchen with others. Any HMO requires an EPC when it is brought or sold, however, rooms let on an individual basis within HMOs, such as bedsits, do not currently trigger a requirement for the property to have an EPC. A property let under a single tenancy agreement to a group of tenants does however trigger a requirement for the

[31] Data on the number of HMOs in England can be found in the Housing Strategy Statistical Appendix http://data.gov.uk/dataset/england-hssa-housing-strategy-statistical-appendix# and figures for Wales can be found at StatsWales https://statswales.wales.gov.uk/Catalogue/Housing/Hazards-and-Licences/HousesInMultipleOccupation-by-Area

property to have an EPC. The group suggested that rooms let individually within HMOs such as bedsits should trigger a requirement for the property to have an EPC, however it was acknowledged that government does not currently have plans to change the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations to require this.

The group proposed that subject to technical feasibility of the proposal, HMOs should be included within the scope of the regulations where an EPC is carried out on the whole property. This may typically be HMOs including house shares where all the tenants have signed the same agreement. The group recognise limitations with the use of rdSAP to provide an accurate and useful EPC for HMOs such as bedsits where a kitchen or bathroom is shared. In these situations the group suggest that the practicalities of using full SAP or SBEM to produce a more meaningful EPC could be explored and examples and information collected on the feasibility of this. For example, one group member recognises an issue where a bedsit has an EPC and only one tenant requests the energy efficient improvements. In that case it would need to be clarified whether the landlord needs to carry out to only that bedsit or should the whole premises be considered for improvements in which case all the tenants in the building would be affected.

c) The group suggested that the regulations ought to cover as many tenancy types as possible, and proposed that church properties and agricultural tenancies should be included. One group member suggested that tenancies such as those under the Agricultural Holdings Act that may have capped rents and multiple succession rights should not be included within the regulations. For example, a farmhouse unit rented under the Agricultural Holdings Act may have low rent but the properties may be large and costly to install energy efficiency measures, may not be eligible for ECO and may require an EPC so would be in scope of the private rented sector regulations.

The group also acknowledged that the regulations apply to properties owned by the Crown Estate; however, there may be limitations where the Crown Estate is not able to borrow money and so would not be able to use the Green Deal to install measures. However, other funding mechanisms may be available instead.

SECTION C: TEMPORARY EXEMPTIONS

There was support within the working group that there should be safeguards to ensure the landlord avoided a net material decrease in property capital and/or rental values on installing energy efficiency measures.

The group recognised that situations where room sizes would be decreased due to internal solid wall insulation could cause a negative impact on the property value, depending on the degree of positive value appreciation due to the improved energy efficiency of the property. The group acknowledge that reduction of room sizes may be a particular issue as local authorities set minimum room sizes independently in their amenity standards documents. Other situations that may create a negative property value may include unsympathetic energy improvements installed either inside or outside a conservation area, however these

would probably not get approval through the planning process, and would therefore not be required under the regulations. One group member suggested that property prices may decrease in the long term following the installation of solid wall insulation measures which do not maintain a breathable wall surface and may cause future damage.

There was agreement by the group that the decrease on property capital values would have to be material, net of any benefits and firmly evidenced. One group member questioned this approach highlighting that the cost of the improvements would have to be repaid over time unless covered by a subsidy such as ECO and so the benefit should only be netted off if it was a non-repayable benefit. The majority of the group suggested that a definition of material was required; however, the definition itself was not agreed and requires further discussion. The process around how the impact on value could be calculated was discussed and the group agreed that a valuation of the property both before and after the proposed measures would be required from a RICS surveyor. The amount of capital decrease could then be quantified and compared against an agreed definition of the amount of value decrease that would be deemed unacceptable. The group agreed that it would only be any specific measures that impacted on the property value that would not have to be installed and consent should be given for any other energy efficiency improvements recommended for the same property.

SECTION D: DURATION OF TEMPORARY EXEMPTIONS

There was broad group agreement that where a property meets one of the specified exemptions for the regulations the property should be exempt from the regulations for the duration of the tenant occupation or a period of five years whichever is the shorter. At the start of a new tenant occupancy the landlord would have to demonstrate that the property is still exempt. Where a longer tenancy or tenant occupation exists such as a regulated tenancy the landlord would have to demonstrate that the property is still exempt every five years. One group member highlighted that in circumstances where there was a high turnover of tenants the property should remain exempt for a period of two years.

Chapter 8: Funding Energy Efficiency Improvements and Associated Costs

AGREED RECOMMENDATIONS

1) Landlords should pay for any ancillary costs associated with the installation of energy efficiency measures associated with the regulations. This would include on-going costs such as those incurred during a void period.

2) The costs of the energy efficiency measures should be covered in one of the following ways:

    - All costs are paid for under Green Deal agreement;
    - All costs are paid for by ECO;
    - Grants from Local Authorities, devolved administrations or third sector organisations;
    - Any combination of Green Deal, ECO or grants.

SPLIT RECOMMENDATIONS

3) The Regulations should only be enforced if there are no upfront costs to landlords for the improvements.

And

4) Financing mechanisms which create a future tax liability for the landlord should be excluded.

Or

5) The costs should be covered by the landlord.

SECTION A:GREEN DEAL, ECO AND OTHER FUNDING SOURCES

The Energy Act states that the costs of energy efficiency improvements required under the regulations will be:

a) wholly paid for pursuant to a Green Deal Plan; or

b) provided free of charge pursuant to an obligation imposed by an order made under section 33BC or 33BD of the Gas Act 1986 or section 41A or 41B of the Electricity Act 1989 such as ECO; or

c) wholly financed pursuant to a combination of such a plan or obligation; or

d) financed by such other description of financial arrangement as the regulations provide.

The overall agreement of the working group on the topic of costs was to keep the regulations simple rather than modelling complex costs. Therefore the group agreed that the costs of the energy efficiency measures should be covered as a minimum by one of the following:

a) wholly paid for by a Green Deal Plan;

b) provided free of charge through an obligation such as ECO;

c) a grant from a local authority, devolved administration, national government or third sector organisation so long as there is no tax liability and information on grants is made available;

d) a combination of any of the above.

However, one group member highlighted that there may be a discrepancy between the traditional definition of an improvement under landlord and tenant law and the definition of improvement under the regulations. It was suggested that certain measures such as loft insulation, replacement boilers and double glazing may be termed as repairs and therefore not fall under the scope of the regulations. One group member suggested that in circumstances where the landlord funded the energy efficiency measures this could be classified as a repair rather than an improvement with taxation to reflect this. Similarly, at least one group member raised concerns around conditions being attached to grants which may be unacceptable to landlords, for example, stipulating the rent for which a property could be let once improvements had been carried out.

However, there was disagreement within the group if there was no available funding from the sources listed above. For the purposes of costs, about half of the group hold the view that the minimum standard should be reached regardless of costs involved to get there. There was also concern from some group members that by limiting the funding requirement to the Green Deal, ECO or available grants then the regulations risked placing reliance on the availability of such funding which may or may not be available in 2018. It was suggested by these group members that other funding options such as commercial loans should be considered in addition to the landlord being expected to cover the costs if other funding sources were not available or where such financing options entailed conditions or future tax liability.

The remaining half of the group supports the notion that there should be no upfront costs for the energy efficiency measures being installed. Therefore, if funding was not available from one of the sources outlined above then the property would comply with the regulations even if the measures installed do not bring the property up to the minimum standard. Several group members raised concern that with the ECO funding reduction announced in December 2013[32] the number of properties that may be able to reach the minimum standard of an EPC rating of E using the specified funding routes may be reduced. There was some discussion within the group whether if funding was not available from the Green Deal, ECO or a grant then the landlord should be expected to pay a minimum amount (level to be decided) towards the cost of installing measures. If a minimum spend is introduced, the group preference is for the minimum spend to be linked to property or rental value to account for regional variation, and for it be expressed as a multiple of a week's rent. Other options could be to express the minimum spend as a flat rate or as an equivalent to the allowance under the Landlord's Energy Saving Allowance (LESA). LESA allows landlords to reduce

[32] DECC 2013 Government action to help hardworking people with energy bills https://www.gov.uk/government/news/govt-action-to-help-hardworking-people-with-energy-bills

their tax bill by up to £1,500 a year in relation to the costs of buying and installing certain energy efficiency measures for the properties they rent out. One group member highlighted that there should be a clear message that only measures that are paid for by the landlord are eligible for LESA and any measures covered by other funding or the tenant are not covered. One group member suggested that landlords of traditional properties may prefer to have the LESA initiative extended and amended so that they could use this when installing measures. Any measures that cost more than any minimum threshold would probably not be required. Consideration would need to be given as to how the value of the minimum threshold would change overtime to reflect inflation. However, the general consensus of this half of the group was that landlords should not be expected to pay towards the costs of measures up to a minimum level of spend. One group member suggested that a minimum spend may not legally constitute a financial arrangement and so may not be permitted under the regulations.

Whilst the group did not agree whether 'no upfront costs' should be specified in the regulations relating to the cost of installing measures to bring properties up to the minimum standard there was majority agreement that 'no upfront costs' should not relate to other costs associated with the installation of the energy efficiency measures. The recommendations for these ancillary costs associated with energy efficiency improvements are outlined below.

There was support from the group that local authorities should be the single point of reference for landlords and agents to find out about grants available in their local area. It was also acknowledged that local authorities should advise on other national grants available too. For example, a local authority may decide to provide information or advice through its call centre or on its website or other media channels. The method of providing information would be the choice of local authorities. However, one group member suggested that a website listing non local authority grants may be better hosted nationally by a third party that could also provide a message that local authority grants may also be available and to check with individual local authorities. In any case, the emphasis would be on the tenant and/or agent to attempt to obtain available information about grants and to ensure they had attempted to fund the works through any avenues detailed by the information. Some of the group members suggested that a duty on local authorities could require them to provide information on local and national grants. One group member suggested that local authorities may have different teams that would take responsibility for compiling such webpages and it would be for individual local authorities to make it clear which team was responsible for the information being made available. Another group member suggested that lower-tier or unitary authorities should be responsible for any such website.

SECTION C: OTHER ASSOCIATED COSTS

In general, the group held the view that specific ancillary costs[33] relating to the installation of measures required by the regulations should be borne by the landlord. One group member

[33] Ancillary costs are those costs that are not directly related to the energy efficiency measures themselves. These costs could include administrative costs.

suggested that if the landlord is under an obligation to carry out works then any costs which are ancillary to this should on normal principles fall to the landlord.

Under the minimum standard (2018) regulations, the specific ancillary costs that the group expects landlords to pay include:

a) Green Deal Assessment

b) Planning Permission

c) Costs to house tenant whilst the works are being carried out (if necessary).

Such costs were agreed as forming part of landlord business costs by most group members. Further it was argued that the possible benefits of improvements to a property's energy efficiency (such as in possible capital value improvement) could be expected to counter any ancillary cost burdens. The group recognised that under existing tenancy law the landlord would pay the costs to house the tenant whilst works are being carried out, however, for clarity this should be explicitly stated as being the case for the regulations. One group member suggested that there should be a limit to the amount of costs that the landlord would be expected to pay in these circumstances. One group member suggested that if a 'hard start' or a backstop were used as part of the regulations implementation then there may be a shortage of temporary accommodation to house tenants whilst works are being carried out. It was also recognised that if Green Deal funding was used for measures then the landlord would have to cover the cost of any Green Deal repayment charges during void period whereas tenants would cover these costs during occupancy of the property.

However, one group member suggested that there should be a cap on all ancillary costs borne by the landlords in meeting the minimum standard. Another group member disagreed that landlords should cover any of the ancillary costs associated with the installation of energy efficiency measures. Some group members consider that there should be a requirement in the legislation barring the landlord from seeking to recover ancillary costs from tenants and also the regulations should state that tenants do not have to pay any ancillary costs arising after the point at which the work had been agreed. Other group members suggested that it may not be possible for a landlord to include a tenancy clause allowing the reclaiming of ancillary costs from tenants because of the impact of Unfair Contract Terms Regulations. In the case of repairs which are the legal responsibility of the landlord there is a prohibition on recovery in Section 11 of the Landlord & Tenant Act 1985.

There was discussion amongst the group whether the landlord would be expected to cover 'making good' or other costs such as scaffolding relating to required energy efficiency improvements. One group member suggested that 'making good' should include plastering and floor coverings. It was noted that making good costs and scaffolding should be covered by the Green Deal and ECO. However, if the measures were being funded outside these schemes the group agreed landlords should be responsible for basic 'making good' costs such as decorating costs, but not for more substantial work such as replacing a kitchen or bathroom. One group member suggested that work such as replacing floor covering could be classified as a substantial cost.

Chapter 9: Plan beyond 2018

AGREED RECOMMENDATIONS

1) An early opportunity should be sought to introduce regulations for the entire domestic sector to meet a minimum standard equivalent to the private rented sector.

SPLIT RECOMMENDATIONS

2) There should be no trajectory for tightening the regulations beyond 2018. A trajectory could be considered in future if:
    a) Regulations were introduced for all domestic properties to meet a minimum standard equivalent to the private rented sector and;
    b) With evidence to show UK carbon targets can only be delivered with a higher minimum standard for all domestic properties.

    Any trajectory that was set out should be set using the following principles:
    a) Harmonise with any other energy efficiency policies to avoid conflicting requirements;
    b) Provide sufficient warning of tightening of standards for industry and the supply chain to prepare;
    c) Be clear and easily understood by the sector.

Or:

3) A trajectory on plans for tightening the regulations beyond 2018 needs to be set out by the government for setting a minimum standard to a level beyond 'E'. A minimum standard of 'D' should be introduced by 2022 and 'C' by 2026.

SECTION A:THE PROCESS FOR SETTING A TRAJECTORY BEYOND 2018

Whilst the Energy Act 2011 contains details for a minimum standard to be initially introduced there is not an explicit duty on government to set a trajectory for the minimum standard beyond its introduction. However, in the passage of the Energy Bill, Greg Barker stated in Committee that there was a clear ambition to go beyond a minimum standard of an EPC rating of E. The possibility of having a trajectory for the minimum standard was discussed by the working group but there was not a consensus reached. The two views of the group are outlined below.

Opposition to a Trajectory

Some of the group members do not wish the government to set out a trajectory of tightening the regulations beyond 2018; however, the notion of a trajectory could be revisited if:

a) Regulations were introduced for all domestic properties to meet a minimum standard equivalent to those proposed for the private rented sector. This is further discussed below.

b) Evidence is available to show UK carbon targets can only be delivered with a higher minimum standard for all domestic properties.

The view is held that it is ultimately tenants that will cover the costs of energy efficient improvements to meet the minimum standard regulations. This may be through increased rent or Green Deal payments. Therefore any increase in the minimum standard would pass higher costs of installing measures to the tenant. If the trajectory is too steep and the costs to the tenant too great, then this may impact the demand for these properties and landlord may not be able to rent them and may sell them. Specifically, extra costs are likely to arise to meet any trajectory in relation to properties which are currently off the gas grid.

A steep trajectory may also impact any future investment into the private rented sector by deterring potential landlords. There is concern that the early introduction of a trajectory may send mixed messages to landlords about expectations for the level of improvements required to their properties and any improvement work is likely to be delayed until the higher minimum standard is introduced. However, the group recognise that given a change in the circumstances outlined above a future trajectory could be considered. There was agreement that any consideration of a trajectory should be set using the following principles:

a) Harmonise with any other energy efficiency policies and building regulations to avoid conflicting requirements.
b) Provide sufficient warning of tightening of standards for industry and the supply chain to prepare. It is essential to the supply side to enable it to plan appropriately to provide the capacity to deliver large scale building refurbishment.
c) Be clear and easily understood by the sector. With long term clarity over the long term challenge they face, there is potential for landlords to voluntarily go beyond whatever minimum standard is chosen as a starting point as a means of minimising costs and mitigating risks such as taking a longer term investment horizon.
d) Take into account evidence from the previous stage of the minimum standard implementation and also the capacity of the market.

<u>In Favour of a Trajectory</u>

Some group members supported the idea that government should set out a trajectory for tightening the regulations beyond 2018. Group members argued that considering the Government's carbon targets of achieving an 80% reduction in carbon emissions from 1990 levels by 2050 as set out in the Carbon Plan[34], it is inevitable that the requirement would be tightened over time and it would be better for the sector to have certainty over future requirements as early as possible so that they can plan ahead. These group members also suggested that a regulated trajectory is required to ensure properties are improved to higher levels because this has not happened voluntarily. It is also recognised that a trajectory for the non-domestic minimum standard was being considered positively and the group supported the notion of consistency across the domestic and non-domestic sectors.

[34] DECC 2011 The Carbon Plan: Delivering our low carbon future www.gov.uk/government/uploads/system/uploads/attachment_data/file/47613/3702-the-carbon-plan-delivering-our-low-carbon-future.pdf

It is understood that for some properties it may be more cost effective to improve a property to a ‘D’ rating straight away rather than to an ‘E’ and then a ‘D’. A trajectory will provide clarity over future intentions around the minimum standard and provide landlords with the opportunity to make an informed choice on the initial level of improvement made to a property. Some group members favoured a trajectory to be set where a minimum standard of ‘D’ should be introduced by 2022 and ‘C’ by 2026. The time period between each rating increase is longer than the average tenancy turnaround rate so that most properties will have a void period and the opportunity to improve the property to the increased minimum standard.

There were widespread views across the entire working group that whilst it is recognised that some of the most energy inefficient properties (F/ G ratings) are in the private rented sector, there is not a significantly higher proportion of rented properties with EPC ratings of E or D than in other domestic sectors. Therefore, these sectors should also be expected to raise the energy efficiency of lower performing properties before the minimum standard is increased further in the private rented sector. The group supported an early opportunity to introduce regulations for the entire domestic sector to meet a minimum standard equivalent to the private rented sector.

Chapter 10: HHSRS

AGREED RECOMMENDATIONS

1) HHSRS and the PRS regulations should complement each other. However, wherever an HHSRS obligation applies, the landlord must meet this obligation separately to the PRS regulations.

The Housing Health and Safety Rating System (HHSRS) is a risk-based assessment that identifies hazards in dwellings and evaluates their potential effects on the health and safety of occupants and visitors[35]. Under the Housing Act 2004, local authorities have a statutory duty to keep the housing conditions in their area under review and also to inspect an individual property if they consider it appropriate to do so. Specifically, the group discussed[36] how the existing HHSRS under Part 1 of the Housing Act 2004 may work with the proposed private rented sector regulations.

The group supported the view that the existing HHSRS regulations and the PRS regulations should work alongside each other. The group recognised that there are only limited circumstances in which the two sets of statutory provisions could be considered to be in alignment due to different methods for assessing the condition of an individual property as described below. The duty to review housing conditions under the Housing Act 2004 and inspect properties for Category 1 or 2 hazards could lead to enforcement action requiring energy efficiency improvements to premises to which the PRS regulations apply. There are distinct differences between the two sets of provisions and whereas the minimum standard will be modelled on SAP assessments, the HHSRS uses an Environmental Health Practitioner's objective judgement with some additional subjectivity of the actual health and safety risks present in a property. There will be instances where properties rated as a category 1 excess cold hazard may also fall within F or G EPC ratings.

Under the Housing Act 2004, if an improvement notice or prohibition order is served, or emergency remedial action is undertaken the full cost of the energy improvement works is borne by the landlord. Whereas, any energy efficiency improvements carried out under the private rented sector regulations should be at no upfront cost to the landlord, as discussed in

[35] DCLG 2006 Housing Health and Safety Rating System: Guidance for Landlords and Property Related Professionals
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/9425/150940.pdf

[36] The discussion was based on a useful document compiled by David Shiner, Domestic Energy Efficiency Manager, Coventry City Council. Information contained within this section of the report has been kindly used with permission from David.

section B. However, it is acknowledged that works carried out by the landlord under HHSRS may be paid for using the Green Deal, ECO or other finance available such as local or national grants. However, it is recognised that if the tenant does not provide consent for the Green Deal in these circumstances the landlord is still required to comply with HHSRS and fund the measures through another route. The majority of the group recommends that wherever enforcement action has commenced under the HHSRS that this takes priority to any obligation under the PRS regulations. However, one group member suggested that the private rented sector regulations should take primacy over HHSRS at a point when the group member considered the EPC fit for purpose because the HHSRS assessment of a property is subjective. One group member suggested that if the works under HHSRS had not been completed under HHSRS and the tenant wanted to make a request for improvements then the case could be taken to a tribunal. In addition, it is acknowledged that any work undertaken under the Green Deal would not necessarily exempt a property from any obligations under HHSRS. It is recognised that the practicalities of this interaction may need further investigation. In addition, the group acknowledge that following an inquiry conducted by a government select committee a consultation on HHSRS is planned. The group recommend that the outcome of this must be co-ordinated with the private rented sector regulations.

Annex A – Acknowledgements

Members of the Domestic Working Group. Please note this list comprises members who have had active involvement in the working group meetings (indicated by *) and members who have solely received papers from the working group.

Organisation	**Representative**
*CHAIR**	Dave Princep (RLA)
Association for the Conservation of Energy*	Jenny Holland
BIS	Andrew Rodgers
British Property Federation*	Tom Younespour (until July), Ian Fletcher, and Matthew O'Connell
Camden Federation of Private Tenants*	Robert Taylor
Carbon Action Network	Rob Leeson and Jo Gill
Carbon Trust	Katherine Deas
CBI	Stephen Mayne and Dave McLaughlin
Chartered Institute of Environmental Health*	Bob Mayho
Citizens Advice Bureau*	Anne Pardoe
Consumer Focus*	Hannah Mummery
Country & Land Business Association*	Danielle Troop and Jonathan Thompson
CLG*	Mark Malvisi
Crisis	Katherine Sack-Jones
DECC*	Marcia Poletti, Chenab Mangat, Alison Oliver, Tom Younespour (from July)
DoH	Dr. Ray Earwicker
Energy Efficiency Partnership for Buildings	Mathias Hessler
Energy UK*	Frances Williamson, Sofia Gkiousou and Daniel Alchin
Electricity Safety Council*	Daniel Walker-Nolan
Friends of the Earth*	Dave Timms and Jennifer Rosenberg
HMT	Shalyni Saravanann

Local Government Association	Hilary Tanner
London Borough of Islington*	John Kolm-Murray
National Energy Action*	Peter Smith
National Landlords Association*	David Cox
North West Tenants & Residents Association*	Jimmy Devlin
National Union of Students*	Neil Jennings
Residential Landlords Association*	Simon Gordon and Richard Jones
Royal Institute of Chartered Surveyors*	Martin Russell-Croucher
Scottish Government	Jonathan Waite
Trowers & Hamlins (Legal)	Christopher Paul
Welsh Government	Huw McLean
UKGreenBuilding Council*	Richard Twinn