



Department  
of Energy &  
Climate Change

# Private Rented Sector Energy Efficiency Regulations (Domestic) (England and Wales)

Consultation on implementation of the Energy Act 2011 provision for energy  
efficiency regulation of the domestic private rented sector

July 2014



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The consultation and Impact Assessment can be found on DECC's website:  
<https://www.gov.uk/government/consultations/private-rented-sector-energy-efficiency-regulations-domestic>

Published by the Department of Energy and Climate Change

## Joint Ministerial Foreword



Improving the energy efficiency of needlessly cold and draughty homes in the private rented sector will enhance the quality of living and cut the energy bills for the millions of people who rent their homes. A range of cost effective measures now available can stop energy waste and make homes warmer, healthier and help control energy bills too. We are determined to ensure that these improvements are taken up, especially in the privately rented homes with the worst energy efficiency performance.

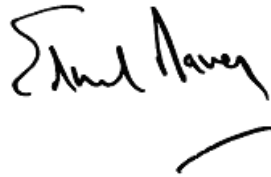
While advances have been made to the energy efficiency of the private rented sector it lags behind other tenures. One in ten privately rented homes has the lowest energy efficient ratings and one in five privately rented homes (double the national average) is in fuel poverty. Furthermore, the private rented sector is growing, having doubled in the past ten years with one in five houses now privately rented.

We want to support and encourage landlords to make improvements to their properties and empower tenants to request them. The “pay-as-you-save” principle underpinning Green Deal finance has particular relevance to privately rented homes because it creates a win-win opportunity for landlords and tenants. The electricity bill payer, normally the tenant, contributes towards the cost of the improvements through real savings on their electricity bill. They benefit from a warm, healthier home while landlords gain improvements to their property. The Energy Company Obligation (ECO) and incentives announced as part of the Autumn Statement 2013 will provide additional funding support for improvements.

We need to take additional steps to ensure that tenants are not unfairly blocked from requesting cost effective improvements, and that no tenant is forced to rent a dangerously cold home with sky-high energy bills. This consultation summarised in two documents – one for each of the domestic and non-domestic sectors - sets out our detailed proposals for energy efficiency regulations using powers within the Energy Act 2011. The energy efficiency regulations for privately rented homes in England and Wales have two distinct elements. By 1 April 2018, all eligible properties will have to be improved to a minimum energy efficiency standard before being let to tenants, except where certain exemptions apply. In addition, by 1 April 2016, tenants will have a right to request consent for energy efficiency measures that may not be unreasonably refused by the landlord. To ensure that there are not upfront costs, landlords will not be obliged to make improvements where there is not Green Deal finance, ECO or other funding support available to undertake them.


This consultation follows engagement with a range of stakeholders including leading landlord, tenant, environmental and property professional representative organisations. We are grateful for the input we have received ahead of this publication and we hope to gather further views and evidence from a wide range of people and organisations that may have an interest in this important policy.

We look forward to hearing your views on all the proposals in this consultation and would like to thank you in advance for providing a response.

A handwritten signature in black ink, appearing to read "Edward Davey". The signature is written in a cursive style with a horizontal line underneath.

Rt Hon Edward Davey MP

Secretary of State for Energy and Climate Change

A handwritten signature in black ink, appearing to read "Amber Rudd". The signature is written in a cursive style.

Amber Rudd MP

Parliamentary Under Secretary of State for Energy and Climate Change

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# General information

## **Purpose of this consultation:**

This consultation seeks views on the proposed regulations under the Energy Act 2011 to provide tenants with a right to request consent to energy efficiency improvements and a minimum energy efficiency standard for properties in the domestic private rented sector in England and Wales.

**Issued:** 22 July 2014

**Respond by:** 2 September 2014

## **Enquiries to:**

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Consultation reference: URN 14D/228 – Private Rented Sector Minimum Energy Efficiency Standard Regulations (Domestic)

## **Territorial extent:**

England and Wales

## **How to respond:**

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Please respond by email to [domprsconsultation@decc.gsi.gov.uk](mailto:domprsconsultation@decc.gsi.gov.uk)

## **Additional copies:**

You may make copies of this document without seeking permission. An electronic version can be found at <https://www.gov.uk/government/consultations/private-rented-sector-energy-efficiency-regulations-domestic>

Other versions of the document in Braille, large print or audio-cassette are available on request. This includes a Welsh version. Please contact us under the above details to request alternative versions.

## **Confidentiality and data protection:**

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. It would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request

for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded by us as a confidentiality request.

We will summarise all responses and place this summary on our website at [https://www.gov.uk/government/publications?departments%5B%5D=department-of-energy-climate-change&publication\\_filter\\_option=consultations](https://www.gov.uk/government/publications?departments%5B%5D=department-of-energy-climate-change&publication_filter_option=consultations). This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

**Quality assurance:**

This consultation has been carried out in accordance with the Government's Code of Practice on consultation, which can be found here:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/255180/Consultation-Principles-Oct-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255180/Consultation-Principles-Oct-2013.pdf)

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

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# Executive summary

This consultation seeks views on the proposed regulations under the Energy Act 2011 to provide tenants with a right to request consent to energy efficiency improvements and a minimum energy efficiency standard for properties in the domestic private rented sector in England and Wales

## Introduction

1. The Energy Act 2011 places a duty on the Secretary of State to bring into force regulations to improve the energy efficiency of buildings in the domestic and non-domestic private rented sector in England and Wales<sup>1</sup>. Domestic and non-domestic private rented sector Minimum Energy Efficiency Standard Regulations must be in force by 1 April 2018, and will require all eligible properties in the sector to be improved to a specified minimum standard. Domestic private rented sector Tenant's Energy Efficiency Improvement Regulations must be in force by 1 April 2016 and will empower tenants in the sector to request consent for energy efficiency measures that may not unreasonably be refused by the landlord.
2. This consultation document sets out the Government's proposals relating to the implementation of regulations in the domestic sector. For the Government's proposals for implementation of the non-domestic sector provisions, please see our non-domestic sector consultation document, available here: <https://www.gov.uk/government/consultations/private-rented-sector-energy-efficiency-regulations-non-domestic>.
3. For the purpose of this document the following abbreviations are used: Minimum Energy Efficiency Standard Regulations are referred to as "minimum standard regulations" and the Tenant's Energy Efficiency Improvement Regulations are referred to as "tenant's improvements regulations."

## Background

4. In 2011, the domestic private rented sector in England and Wales had 4.2 million households, representing 18% of the housing stock<sup>2</sup>. The domestic private rented sector regulations are intended to improve the least energy efficient properties in the sector –

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<sup>1</sup> The Energy Act 2011 provides Scottish Ministers with powers (but not a duty like England and Wales) to implement domestic and non-domestic private rented sector energy efficiency regulations. Scottish Ministers have set up a working group of key stakeholders to develop proposals for minimum standards of energy efficiency in private sector housing, for consultation in Spring 2015. The group will be considering the powers available to Scottish Ministers under Section 64 of the Climate Change (Scotland) Act 2009, as well as under the Energy Act.

<sup>2</sup> 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>

those with an F or G Energy Performance Certificate (EPC) rating. In 2011, around 8% of private rented sector properties in England had an EPC rating of F and 3% had an EPC rating of G compared to 7% (F) and 2% (G) in the owner occupier sector<sup>3</sup>. These properties waste energy – an unnecessary cost on households and the wider economy – and contribute to the UK's Greenhouse Gas emissions.

5. The higher proportion of energy inefficient properties in the private rented sector also contributes to the high level of private rented sector households in fuel poverty, an estimated 21%, or one in five households, compared to 8.5% of households in the owner occupier sector. In 2011, around 190,000 households were classed as fuel poor<sup>45</sup> and living in a private rented property with an EPC rating of F or G<sup>6</sup>. Fuel poverty can lead to cold living conditions that can cause a range of physical and mental health issues and there is strong evidence linking low temperatures to cardiovascular and respiratory illnesses that drive the number of excess winter deaths each year<sup>78</sup>. In 2012/13, 31,100 excess winter deaths occurred in England and Wales<sup>910</sup>. Low temperatures are also associated with diminished resistance to infections such as influenza and the incidence of damp and mould in the home. Many of these health effects are of most concern for the youngest children and eldest pensioners.
6. On 22 July 2014, the Government laid draft Regulations<sup>11</sup> before Parliament to set a new fuel poverty target of ensuring that as many fuel poor homes as is reasonably practicable achieve a minimum energy efficiency standard<sup>12</sup> of Band C by 2030. Alongside this we published a consultation<sup>13</sup> to help prepare for the forthcoming fuel poverty strategy, which must set out the policies for meeting the new target as well as interim milestones. We want to prioritise action in the coldest, least energy efficient homes. The domestic private rented sector regulations are designed with the same aims of helping people keep warm and cutting bills. Action in the private sector, where households are more

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<sup>3</sup> DCLG 2011-12 English Housing Survey: <https://www.gov.uk/government/publications/english-housing-survey-2011-to-2012-headline-report> - Please note: our final Impact Assessment will take on board the latest English Housing Survey statistics available which have not been included here due to the publication timing of this consultation paper and associated Impact Assessment.

<sup>4</sup> Fuel Poverty is primarily driven by three different factors: household income, energy prices and the thermal efficiency of dwellings. Characteristics that drive high household energy costs (e.g. having a large, poorly insulated dwelling with an inefficient heating system) and low incomes increase the likelihood of a household being fuel poor.

<sup>5</sup> DECC 2013 Fuel Poverty: a Framework for Future Action  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/211180/FuelPovFramework.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211180/FuelPovFramework.pdf)

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

<sup>7</sup> Marmot Review Team 2011 The Health Impact of Cold Homes and Fuel Poverty  
<http://www.instituteofhealthequity.org/projects/the-health-impacts-of-cold-homes-and-fuel-poverty>

<sup>8</sup> Department of Health 2009 'Winter Kills' in 2009 Annual Report of the Chief Medical Officer  
[http://www.sthc.co.uk/Documents/CMO\\_Report\\_2009.pdf](http://www.sthc.co.uk/Documents/CMO_Report_2009.pdf)

<sup>9</sup> ONS 2013 Excess Winter Mortality in England and Wales 2012/13 <http://www.ons.gov.uk/ons/rel/subnational-health2/excess-winter-mortality-in-england-and-wales/2012-13--provisional--and-2011-12--final/stb-ewm-12-13.html>

<sup>10</sup> These are the extra deaths that occur in winter (December to March) when compared to the rest of the year.

<sup>11</sup> <https://www.gov.uk/government/publications/fuel-poverty-england-regulations-2014>

<sup>12</sup> As measured under the Fuel Poverty Energy Efficiency Rating Methodology

<sup>13</sup> <https://www.gov.uk/government/consultations/cutting-the-cost-of-keeping-warm-a-new-fuel-poverty-strategy-for-england>

likely to be fuel poor, is therefore an important part of our fuel poverty efforts, which can also be expected to bring wider benefits in terms of health and wellbeing.

7. Increasing the energy efficiency of our property stock can help us smooth seasonal peaks in energy demand, and thereby increase our energy security. Increased demand for energy efficiency measures is also likely to support growth and jobs within the green construction industry and the wider supply chain for energy efficiency measures. Greater competition within these markets may also spur innovation, lowering the end costs of installing measures to households, and help sustain jobs.
8. The Government has introduced a range of mechanisms to help fund domestic energy efficiency improvements including the Green Deal finance arrangement, the Energy Company Obligation (ECO) and incentive funding announced as part of the Autumn Statement 2013. Running throughout our proposals is our commitment to ensuring that the regulations do not impose disproportionate burdens on landlords, the pass-through of which could also impact negatively on tenants. Through our Green Deal, ECO and other funding support, landlords will not face net or upfront costs for the installation of any improvement measures required under the regulations.
9. In February 2013, the Department set up a cross sector working group where leading sector stakeholders provided views and ideas regarding how the regulations could best be implemented. Following this engagement with the sector, this consultation document seeks views on the Government's proposals.

## Policy proposal summary

10. The tenant's improvements and minimum standard regulations will apply to properties occupied by a tenant on either an assured tenancy under the Housing Act 1988 or regulated tenancy under the Rent Act 1977. The Government is seeking views as to the merit of bringing other additional tenancy types in scope.
11. Both sets of regulations will apply only to those buildings within scope of the Energy Performance of Buildings (England and Wales) Regulations 2012: buildings not required to obtain an EPC such as those awaiting demolition will not be within scope of the regulations. The tenant's improvements regulations will apply regardless of whether the property has an EPC in place, whereas the minimum standard regulations will only apply where there is an existing EPC. The tenant's improvements regulations apply to any property regardless of the EPC rating whilst the minimum standard regulations only will apply to properties with an F or G EPC rating. Both sets of regulations will include Houses in Multiple Occupation (HMOs) in certain situations, explained in this consultation document.
12. Under the tenant's improvements regulations cost safeguard provisions will mean that landlords will be able to refuse a tenant's request for consent where the funding route proposed by the tenant to pay for requested improvements entails net or upfront costs to the landlord for the energy efficiency improvements. Funding options that may be available for tenants to ensure there are no net or upfront costs to landlords include Green Deal finance, ECO, local or national grants, the tenant's own sources or a combination of these. Similarly, under the minimum standard regulations where a property falls below an E EPC rating, the landlord would only be required to undertake

improvements that could be funded without net or upfront cost for the measures, for example, through using the Green Deal finance, ECO or other incentives<sup>14</sup>.

13. For both sets of regulations the Government is also seeking views on whether an exemption from making improvements requested by a tenant, or required to meet the minimum standard, should be provided where an independent property valuation demonstrates that improvement works would result in a material reduction in a property's value.
14. The tenant's improvements regulations allow tenants to request consent from their landlord for energy efficiency measures. A tenant is required to obtain an EPC or Green Deal Assessment and to secure quotes for funding the proposed improvements before providing a written request to their landlord. The landlord is not able to unreasonably refuse the tenant's request but may provide a counter proposal of a similar package of energy efficiency measures. In the event of a dispute over a tenant's request then the tenant is able to take the matter to a tribunal. An appeal may be made if either party disagrees with the tribunal ruling.
15. Neither set of regulations would require improvements which require consent from a third party, such as a freeholder, where that consent is not given. Therefore for the minimum standard regulations, where a landlord is unable to obtain consent to such improvements, or Green Deal finance to pay for them, such works would not be required. Under the tenant's improvements regulations the fact that required consents had not been obtained would mean the landlord would be able to reasonably refuse the tenant's request.
16. Where a property has not reached an E EPC rating due to any of the above reasons, it will be granted an exemption from the minimum standard regulations. Such exemptions would last for a reasonable period of time after which the landlord would be expected again to attempt to meet the standard or again show an exemption applies. An exemption will last for five years unless it is related to tenant consent not being given for improvements when it will last until the current tenant moves out (if before five years). Under the tenant's improvements regulations there would be a minimum time period where a tenant would not be able to submit more than one request to the landlord.
17. For the minimum standard regulations, landlords of buildings within scope who let to new tenants from 1 April 2018 onwards will be required to comply with the regulations. From 1 April 2020 a regulatory "backstop" will apply whereby all landlords of properties within scope would be required to meet the standard, or demonstrate an exemption.
18. For the minimum standard regulations the Government is also seeking views on a forward trajectory whereby the regulatory standard is increased over time, providing longer term certainty over what standards apply when, helping landlords make better decisions as to what improvements to take and when.
19. Local authorities will be the enforcement bodies for the minimum standard regulations. The Government is seeking views on models for enforcement and in particular whether exemptions should be certified upfront. Local authorities may issue penalty notices for

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<sup>14</sup> Where landlords carry out building work to existing properties – for example, conversions, renovations, replacement windows and boilers etc - this work, however financed, should meet the minimum energy efficiency requirements set out in national Building Regulations irrespective of what impact this may have upon the EPC rating of the property.

non-compliance of the minimum standard regulations and we have set out proposals for setting appropriate penalty levels. In the event of a dispute over a penalty then the landlord is able to take the matter to a tribunal. An appeal may be made if the landlord disagrees with the tribunal ruling.

20. Having gathered views on the proposals the Government plans to issue its response and lay the regulations by the start of 2015 in order to provide certainty and clarity to the market as to what the regulations will require, giving businesses time to plan and implement their response ahead of the regulations coming into force.

# Catalogue of consultation questions

## 2016 Tenant's Energy Efficiency Improvements

### Consultation Question

- |    |  |
|----|--|
| 1. | <b>Does the proposed scope include all the buildings and tenancies that should be covered by the tenant's improvements regulations? If not, which additional building or tenancy types should be included or excluded?</b> |
|----|--|

### Consultation Question

- |    |  |
|----|--|
| 2. | <b>What, if any, additional funding options could be used by a tenant when seeking consent for energy efficiency improvements in addition to the Green Deal finance arrangements, ECO, grant funding and a tenant's own sources?</b> |
|----|--|

### Consultation Question

- |    |   |
|----|---|
| 3. | <b>Do you have any comments on the proposed process for when and how a tenant request for consent for energy efficiency improvements is made?</b> |
|----|---|

### Consultation Question

- |    |   |
|----|---|
| 4. | <b>Do you agree with the proposed set of circumstances in which a landlord may reasonably refuse consent to improvements, and in addition, do you agree that the regulations should also allow for landlords to make a case for a reasonable refusal on a case by case basis?</b> |
|----|---|

### Consultation Question

- |    |   |
|----|---|
| 5. | <b>Do you agree with the proposed approach for demonstrating an exemption where works would result in a material net decrease in a property's value? What would be the most appropriate way to set the threshold?</b> |
|----|---|

### Consultation Question

- |    |  |
|----|--|
| 6. | <b>Do you agree that freeholders should also be under a duty not to unreasonably refuse requests for energy efficiency improvements?</b> |
|----|--|

### Consultation Question



7.	Do you agree with the proposed landlord's response criteria and timescales?
<b>Consultation Question</b>	
8.	Do you agree that a landlord should be permitted to make a counter-offer to a tenant's request that meets or exceeds the energy efficiency improvements requested by the tenant where there are not increased costs on the tenant?
<b>Consultation Question</b>	
9.	What evidence is there that a tenant could be at risk of eviction as a consequence of making a request for consent for energy efficiency measures? If it exists, how could risk of eviction be mitigated?
<b>Consultation Question</b>	
10.	Do you have any evidence that shows the scale of the costs (including non-financial costs) and benefits associated with making a tenant request and improving the energy efficiency of a property?
<b>Consultation Question</b>	
11.	Do you consider that the First-tier Tribunal is the appropriate body to hear and determine appeals about decisions denying a tenant consent for energy efficiency improvements? Do you consider that the General Regulatory Chamber Rules of the First-tier Tribunal will suit the handling of these appeals? If not, what tribunal could be used?
<b>Consultation Question</b>	
12.	Do you have any comments regarding the tenant's improvements regulations, not raised elsewhere in the consultation?

## 2018 Minimum Energy Efficiency Standard

<b>Consultation Question</b>	
13.	Do you agree with the proposed scope of buildings and tenancies for the minimum standard regulations? If not, what additional building or tenancy types should be included or excluded?
<b>Consultation Question</b>	
14.	Do you agree that where a property falls below an E EPC rating, the landlord would

	<p>only be required to make those improvements which could be made at no net or upfront costs, i.e. those that meet the “Golden Rule”, that the cost of the work, including finance costs, should not exceed the expected savings taking into account any grant funding or ECO? For those properties that do not meet an E EPC rating, do you have any suggestions for how the process could be streamlined?</p>
<p><b>Consultation Question</b></p>	
15.	<p>How should the principle of ‘no upfront costs’ apply to Green Deal Assessments?</p>
<p><b>Consultation Question</b></p>	
16.	<p>Do you have any evidence that shows the scale of the costs and benefits (including non-financial costs and benefits) associated with improving the energy efficiency of a property, for example, time taken to undertake cost effective improvements?</p>
<p><b>Consultation Question</b></p>	
17.	<p>Do you agree with the proposed method for demonstrating an exemption where works would result in a material net decrease in a property’s value? What would be the most appropriate way to set the threshold?</p>
<p><b>Consultation Question</b></p>	
18.	<p>Does the proposed consents exemption strike the right balance between recognising existing landlord obligations, whilst also ensuring that the allowance is not used as a loophole to avoid undertaking improvements? Do you have any views on how beneficial owner consents should be taken into account?</p>
<p><b>Consultation Question</b></p>	
19.	<p>Do you think that the regulations should have a phased introduction applying only to new tenancies from 1 April 2018? Do you agree the regulations should also have a backstop, applying to all tenancies from 1 April 2020? If not, what alternatives do you suggest?</p>
<p><b>Consultation Question</b></p>	
20.	<p>Should the minimum standard regulations apply upon tenancy renewals where a valid EPC exists for the property?</p>
<p><b>Consultation Question</b></p>	
21.	<p>Do you agree that an exemption for properties below an E rating should last for five years, apart from where it relates to tenant consent not being given, where it should</p>

	expire at the end of a tenancy if before five years?
<b>Consultation Question</b>	
22.	What would be a reasonable timescale for a landlord to seek to meet the standard or demonstrate an exemption when the backstop applies to all tenancies?
<b>Consultation Question</b>	
23.	Do you agree that the Government should set a trajectory of standards beyond 2018, and if so, how and when should this be done?
<b>Consultation Question</b>	
24.	Do you consider where a property has a valid exemption for letting below an E EPC rating that certification of compliance would be helpful? If so, should this be voluntary or mandatory? Do you have any other comments regarding compliance and how local authorities could be supported with enforcement, for example identifying landlords?
<b>Consultation Question</b>	
25.	Do you agree that the penalty for non-compliance should be linked to the rent level for the property and the time period of non-compliance? Should there be a minimum penalty for all cases of non-compliance? Should a maximum penalty be applied where the amount of rent is not evidenced? If not, what alternatives do you suggest?
<b>Consultation Question</b>	
26.	Do you consider that the First-tier Tribunal is the appropriate body to hear and determine appeals about decisions regarding non-compliance with the minimum standard regulations? Do you consider that the General Regulatory Chamber Rules of the First-tier Tribunal will suit the handling of these appeals? If not, what tribunal could be used?
<b>Consultation Question</b>	
27.	Do you have any comments not raised under any of the above questions?
<b>Consultation Question</b>	
28.	Do you have any comments or evidence regarding the consultation impact assessment that could inform the final impact assessment, for example the

<b>average length of void periods?</b>
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# Introduction to the Domestic Private Rented Sector Regulations

## Overcoming Barriers

21. Carbon emissions from the UK's domestic buildings were responsible for 25% of the UK's total emissions (of around 562MtCO<sub>2</sub>e) in 2009<sup>15</sup>. The Carbon Plan states that to achieve the UK's legislative targets, emissions from all buildings must be 'close to zero' by 2050. This implies in the longer term, UK buildings will need to reach energy efficiency standards of close to an A EPC rating.
22. Increasing the energy efficiency of our property stock can help us smooth seasonal peaks in energy demand, and thereby increase our energy security. Increased demand for energy efficiency measures is also likely to support growth and jobs within the green construction industry and the wider supply chain for energy efficiency measures. Greater competition within these markets may also spur innovation, lowering the end costs of installing measures to households, and help sustain jobs.
23. Within the building stock as a whole, the domestic private rented sector is a growing part of the housing market which offers large carbon abatement opportunities. Of the 23.4 million households in England and Wales in 2011, 4.2 million were in the private rented sector (comprising around 18% of the housing stock<sup>16</sup>). The number of households in the private rented sector has doubled from 2.1 million in 2001<sup>17</sup>.
24. Whilst the average energy efficiency of buildings within the domestic private rented sector has risen over the past 15 years in line with other sectors, private rented sector housing with adequate insulation continues to lag behind other sectors. In 2011, 34% of domestic private rented sector properties with cavity walls were uninsulated in England compared with 30% in the owner occupier sector and furthermore, 8% of private rented sector homes had no loft insulation compared with around 4% in the owner occupier sector<sup>18</sup>. In addition,

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<sup>15</sup> Source: 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](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).

<sup>16</sup> 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>

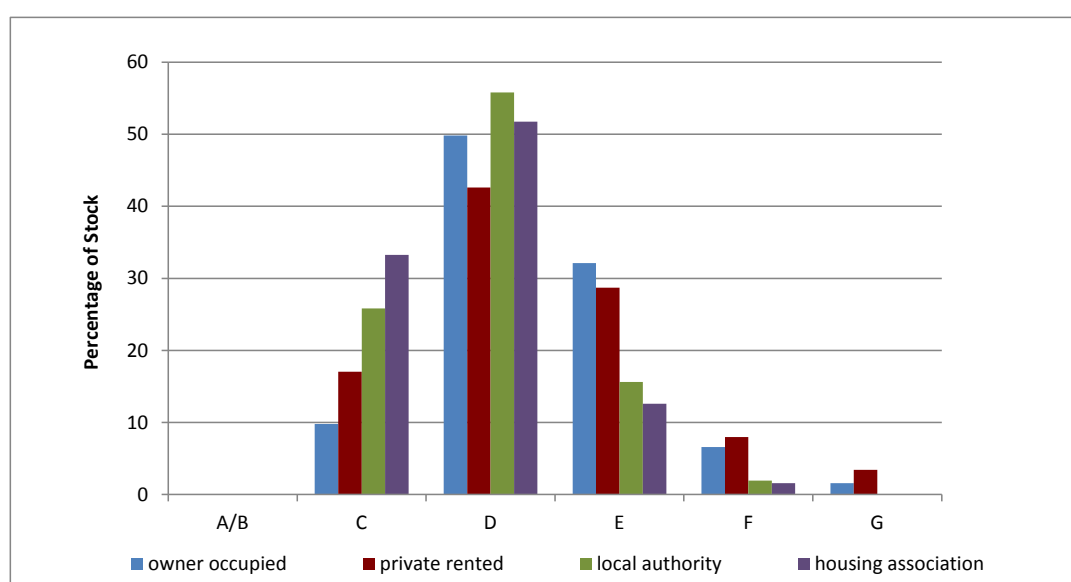
<sup>17</sup> DCLG 2011-12 English Housing Survey: <https://www.gov.uk/government/publications/english-housing-survey-2011-to-2012-headline-report> - Please note: our final Impact Assessment will take on board the latest English Housing Survey statistics available which have not been included here due to the publication timing of this consultation paper and associated Impact Assessment.

<sup>18</sup> DCLG 2011-12 English Housing Survey <https://www.gov.uk/government/publications/english-housing-survey-2011-to-2012-headline-report> - Please note: our final Impact Assessment will take on board the latest English

the domestic private rented sector has a higher number of homes with the lowest categories of EPC rating. In 2011, around 8% and 3% of domestic private rented sector properties had an EPC rating of F and G respectively compared to 7% (F) and 2% (G) in the owner occupier sector<sup>19</sup>. The sector also has a high proportion of dwellings (37%) that were constructed pre-1919, which contain some of the least energy efficient buildings, compared to 21% in the owner occupier sector<sup>20</sup>. In 2011, 65% of F and G EPC rated households in the private rented sector were classed as having been built pre-1919<sup>21</sup>.

25. The distribution of EPC ratings within the private rented sector (and how it compares with other tenures) is shown in Figure 1 below. The private rented sector has the highest percentage of homes with the lowest energy ratings<sup>22</sup>.

**Figure 1: 2011 Distribution of EPC Ratings by Tenure (England)**



Source: English Housing Survey 2011-12

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Housing Survey statistics available which have not been included here due to the publication timing of this consultation paper and associated Impact Assessment.

19 DCLG 2011-12 English Housing Survey: <https://www.gov.uk/government/publications/english-housing-survey-2011-to-2012-headline-report> - Please note: our final Impact Assessment will take on board the latest English Housing Survey statistics available which have not been included here due to the publication timing of this consultation paper and associated Impact Assessment.

<sup>20</sup> DCLG 2011 English Homes survey

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/211324/EHS\\_HOMES\\_REPORT\\_2011.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211324/EHS_HOMES_REPORT_2011.pdf) - Please note: our final Impact Assessment will take on board the latest English Housing Survey statistics available which have not been included here due to the publication timing of this consultation paper and associated Impact Assessment.

<sup>21</sup> DCLG 2011 English Housing Survey dataset was used to calculate this figure- Please note: our final Impact Assessment will take on board the latest English Housing Survey statistics available which have not been included here due to the publication timing of this consultation paper and associated Impact Assessment.

<sup>22</sup> Ibid

26. The high proportion of energy inefficient properties in the private rented sector also contributes to the sector having a significantly disproportionate share of all fuel poor households (33%) despite the sector accounting for around 18% of all households<sup>23</sup>. In 2011, around 782,000 households in the private rented sector (21%) were in fuel poverty compared to 9% of households in the owner occupier sector. In addition, 8% of all fuel poor households (190,000) were living in a private rented sector property with an EPC rating of F or G<sup>24</sup>. Fuel poor households privately renting a G EPC rated home would need, on average, to spend over £1,200 more on energy to heat their homes properly, and those renting EPC band F homes would need to spend over £700 more. This compares to less than £370 for those in bands E and above.<sup>2526</sup>
27. The Marmot Review Team report on cold homes and health, in addition to the Hills Fuel Poverty Review, set out the strong body of evidence linking low temperatures to these poor health outcomes – in particular the cardiovascular and respiratory illnesses that drive the number of excess winter deaths each year. Low temperatures are also associated with diminished resistance to infections and the incidence of damp and mould in the home (also associated with poor energy efficiency). Many of these health effects are of most concern for the youngest children and eldest pensioners. In 2012/13, 31,100 excess winter deaths occurred in England and Wales<sup>27</sup>. These are the extra deaths that happen in winter (December to March) when compared to the rest of the year. There is also some evidence to suggest that living in cold conditions could increase the likelihood that children will experience a number of risk factors that are likely to have a negative effect on their educational outcome<sup>28</sup>.
28. The private rented sector has a higher incidence of dwellings (9.1%) classified as a category 1 'excess cold' hazard under the Housing Health and Safety Rating System (HHSRS), a major cause of ill health for occupants, than the owner occupier sector (6.0%)<sup>29</sup>. In recent years Government policy has been aimed at improving the energy efficiency of buildings through schemes such as the Carbon Emissions Reduction Target (CERT) and its predecessor the Energy Efficiency Commitment (EEC). While this resulted

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<sup>23</sup> DECC 2013 Fuel Poverty Detailed Tables (based on the 2011 English Housing Survey):

<https://www.gov.uk/government/publications/fuel-poverty-2011-detailed-tables>

<sup>24</sup> DECC 2013 Fuel Poverty Detailed Tables (based on the 2011 English Housing Survey)

<https://www.gov.uk/government/publications/fuel-poverty-2011-detailed-tables>

<sup>25</sup> The fuel poverty gap is the difference between a household's modelled bill and what their bill would need to be for them to no longer be fuel poor.

<sup>26</sup> DECC 2013 Fuel Poverty: a Framework for Future Action

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/211180/FuelPovFramework.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211180/FuelPovFramework.pdf)

<sup>27</sup> ONS 2013 Excess Winter Mortality in England and Wales 2012/13 <http://www.ons.gov.uk/ons/rel/subnational-health2/excess-winter-mortality-in-england-and-wales/2012-13--provisional--and-2011-12--final-/stb-ewm-12-13.html>

<sup>28</sup> NATCEN 2008 The Dynamics of Bad Housing: The impact of bad housing on the living standards of children <http://www.eagacharitabletrust.org/index.php/projects/item/the-dynamics-of-bad-housing-on-the-living-standards-of-children-evidence-from-the-families-and-children-study-facs>

<sup>29</sup> DCLG 2011 English Housing Survey Statistical Data Sets <https://www.gov.uk/government/statistical-data-sets/dwelling-condition-and-safety-> Please note: our final Impact Assessment will take on board the latest English Housing Survey statistics available which have not been included here due to the publication timing of this consultation paper and associated Impact Assessment.

in significant uptake of energy efficiency measures across the UK housing stock, the existing stock of private rented accommodation has not shown the same level of uptake of energy efficiency measures. In total, about 430,000 households in the private rented sector would potentially be eligible to improve the energy efficiency of their properties. While this alone will not solve the problem of cold homes or fuel poverty in the sector, it would mark a significant improvement over the current situation. Combined with other measures Government has in place to help private owner occupiers, we believe these measures will help combat the effects of living in cold homes on health and wellbeing.

29. Green Deal finance has particular relevance to the private rented sector, as it helps overcome the split incentive; that the costs of energy efficiency improvements are borne by landlords, while the benefits (lower energy bills) accrue to current or future tenants. It does this by placing the cost of improvements, spread out over time, with the energy bill payer whilst they are occupying the property and benefiting from the improvements. Bill payers are protected by the Golden Rule which says that repayments must not be any larger than the expected energy bill savings. Having established the legal framework to ensure operability of Green Deal finance in the private rented sector, the Department is working to encourage take up of Green Deal Finance Plans in the sector.
30. The Energy Company Obligation (ECO) is an obligation that the Government has placed on energy suppliers to reduce the UK's energy consumption and support those living in fuel poverty by requiring energy suppliers to provide households with energy efficiency improvements. Obligated energy suppliers have carbon savings and heating bill savings targets which they are legally required to meet by March 2015. The Government has also recently held a public consultation on the future of ECO which contained a number of proposals for the future of the scheme, including setting a Solid Wall Minimum at 100,000 measures to be delivered across all of the ECO sub-obligations and extending ECO out to 2017. The Government's response to the consultation is available online<sup>30</sup>.
31. Whilst the Green Deal and ECO will help unlock potential for improvement, they alone will not be sufficient to engender the level of take up of improvements that are needed, and a regulatory impetus to act, well sign-posted in advance, is needed. Recognition of the need for an impetus to act on energy efficiency, especially for the very worst performing buildings, was at the heart of the provisions in the Energy Act 2011 for the private rented sector regulations.
32. In developing the detailed proposals for the private rented sector regulations, the Government has sought to work with the grain of the sector; encouraging the take up of energy efficiency improvements at the most opportune points in a tenancy cycle. We have also committed to ensuring that improvements required under the regulations do not entail upfront or net costs to landlords.
33. In order to help the Government develop its consultation proposals, in February 2013 the Department convened two advisory groups, one for the domestic private rented sector, and one for the non-domestic private rented sector. The groups comprised leading landlord, tenant, environmental and property professional organisations, and provided expert feedback and views on how the regulations could apply. The Department would like to thank all those who contributed to discussions through these groups. Minutes from the

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<sup>30</sup> <https://www.gov.uk/government/consultations/the-future-of-the-energy-company-obligation>



meetings and a report providing a summary of the groups' discussions and recommendations are available online<sup>3132</sup>.

34. By engaging with the sector and setting out our consultation proposals early, well ahead of the 2016 and 2018 implementation dates, the Government has sought to provide sufficient scope for industry involvement and feedback to ensure that the regulations are a success. By setting out our intent, and laying the regulations well ahead of the 2016 and 2018 implementation deadlines, the Government aims to provide certainty as to the detail of what the regulations will require. This will allow for landlords to plan and implement their response. Moreover, by giving the sector time to prepare, the Government expects that there will be less need for enforcement action when the regulations do come into effect. To further support landlords make improvements, the Government has launched incentive schemes to help landlords take action ahead of the regulations coming into effect.

## Links to the Energy Performance of Buildings Directive and Energy Efficiency Directive

35. The Energy Performance of Buildings Directive came into effect progressively from 2007. Its implementation remains an important part of the strategy to tackle climate change. The current requirements are set out in the Energy Performance of Buildings (England and Wales) Regulations 2012, which came into effect on 9 January 2013, although they have been amended since, and the Building Regulations 2010. The principle underlying the Directive and the regulations is to make energy efficiency of buildings transparent by using an EPC, to show the energy rating of a building, when sold or rented out and recommendations on how to improve energy efficiency. The minimum standard regulations build upon this framework to help ensure that action is taken to improve the energy efficiency of the worst performing private rented properties, as determined by a property's EPC rating.
36. The 5 June 2014 marked the transposition deadline for the EU Energy Efficiency Directive. The Directive represents a major step forward for energy efficiency, contributing to the establishment of a common framework of measures to promote energy efficiency across different sectors of the economy throughout the EU.
37. In accordance with Article 4 of the Energy Efficiency Directive, the UK Government published a Building Renovation Strategy in April 2014. The UK has a rich tradition in building retrofit and has often led the way in Europe. Successive governments have used building regulations to drive energy efficiency improvements and energy savings since 1972, and we were one of the first Member States to introduce a supplier obligation. Though many of the easier to treat building measures have already been installed across the UK, particularly in the domestic sector, significant potential remains. The Government estimates over 80 TWh of outstanding cost-effective energy efficiency potential remains untapped in the UK's building stock. The Government is committed to furthering our understanding of the building stock and the options for realising the outstanding energy efficiency potential. Increased energy efficiency can drive growth and support jobs in the economy, drive cost-effective energy savings, and improve health outcomes. The refurbishment sector has a key role to play in achieving these and the introduction of

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<sup>31</sup> <https://www.gov.uk/government/policy-advisory-groups/130>

<sup>32</sup> <https://www.gov.uk/government/publications/domestic-private-rented-sector-regulations-working-group-report-report-to-government>

minimum standard regulations in the private rented sector. Building refurbishment is a key part of the UK's growing energy efficiency market, which is already worth more than £18 billion annually and employs more than 100,000 people.

38. Article 6 and Annex III(f) of the EU Energy Efficiency Directive requires Member States to ensure their central governments purchase only buildings with high energy efficiency, where this is consistent with cost-effectiveness, economic feasibility, wider sustainability, technical suitability and sufficient competition. Member States are required to purchase, or make new rental agreements for only buildings that comply at least with minimum energy performance requirements set out in the Energy Performance of Buildings Directive, with compliance measured by a building's Energy Performance Certificate (EPC) rating. The UK has transposed Article 6 of the Directive through administrative directions, which set out the energy efficiency standards that government departments must consider when purchasing or letting buildings.

# Consultation Proposals

## Introduction

39. The following sections set out the Government's proposals for using the powers contained in the Energy Act 2011 to make regulations relating to the domestic private rented sector. There are two distinct elements to the domestic private rented sector regulations: the tenant's improvements regulations and the minimum standard regulations. These will be discussed separately in this consultation.
40. The Government would welcome responses to the specific questions posed, but would also welcome wider comments and evidence regarding the issues that the proposals raise. In particular, the Government would value views regarding how the requirements under the regulations can be made clear and simple at every stage, especially for small to micro businesses and enforcement agents.

# Domestic Tenant's Energy Efficiency Improvements

## Introduction

41. The following section sets out the Government's proposals for the tenant's improvements regulations. These regulations will empower tenants in the domestic private rented sector to request consent for energy efficiency measures that may not unreasonably be refused by the landlord. A tenant may have high energy bills because their home is not energy efficient and be able to reduce these bills by making energy efficiency improvements at no net or upfront cost under the regulations. At present, the landlord may simply refuse permission for any energy efficiency improvements requested by the tenant.
42. The Government's proposals for these regulations include: which tenants may make a request; the terms of a request; the process of making a request; how a landlord should respond and where they may be able to reasonably refuse consent; and what would happen where there is a dispute between landlord and tenant.

## Tenancies and buildings in scope

### Who may make a request

43. Section 46 of the Energy Act 2011 allows the Secretary of State to make regulations providing that a landlord may not reasonably refuse a tenant's request for their consent to energy efficiency improvements. This applies to all "domestic private rented property" which is defined in section 42 of the Act as properties let under an assured tenancy for the purposes of the Housing Act 1988, or a tenancy which is a regulated tenancy for the purposes of the Rent Act 1977. The Energy Act states that certain landlords and home ownership types are excluded from the regulations including:
- a) Low cost rental accommodation within the meaning of section 69 of the Housing and Regeneration Act 2008 where the landlord is a private registered provider of social housing;
  - b) Low cost home ownership accommodation with section 70 of the Housing and Regeneration Act 2008;
  - c) Where the landlord is a body registered as a social landlord under Chapter 1 of Part 1 of the Housing Act 1996.
44. The Energy Act also gives the Secretary of State power to add to those types of tenancy that fall within the definition of "domestic private rented property". The Government would welcome views on the merits of using this power to allow tenants occupying certain types of dwellings to make requests under the regulations, for example, tenants in rented dwellings on agricultural land.
45. The Renting Homes Bill is planned to be introduced into the National Assembly for Wales in 2015. The Renting Homes Bill proposes to replace several existing types of rental contract and introduce a 'standard contract' which will be similar to the current assured short hold tenancy and will be used mainly for tenants in the private rented sector. If the Rental Homes Bill is passed by the National Assembly for Wales, the Government proposes to work with colleagues in Wales to ensure that domestic private rented property in Wales remains in scope of the tenant's improvements regulations.
46. Where a property is let under a licence to occupy, such properties are proposed not to be in scope of the tenant's improvements regulations. Property types that may be let under the license could include: hostels; holiday lets; and lodgings where the tenant shares the property with the landlord.

### Buildings in scope

47. The Government proposes to mirror the scope of the Energy Performance of Buildings (England and Wales) Regulations 2012, so that only those buildings which may be required to obtain an EPC will be in scope for the request for energy efficiency improvements under the regulations. Buildings not in scope of the Energy Performance of Buildings (England and Wales) Regulations 2012 and therefore not in scope of the tenant's improvement regulations include:

- a) Buildings officially protected<sup>33</sup> as part of a designated environment or because of their special architectural or historic merit where compliance with certain minimum energy efficiency requirements would unacceptably alter their character or appearance;
- b) Temporary buildings with a planned time of use of two years or less;
- c) Residential buildings which are intended to be used less than four months of the year or where the owner or landlord could reasonably expect the energy consumption of the building to be less than 25% of all year round use;
- d) Stand-alone buildings with a total useful floor area of less than 50m<sup>2</sup> (i.e. buildings entirely detached from any other building).

48. The full details as to which properties are within scope of the Energy Performance of Building Regulations are set out in the Communities and Local Government guide to energy performance certificates for the construction, sale and let of dwellings<sup>34</sup>.

49. In aligning the criteria, the Government does not however propose to exclude those properties that do not have an EPC, but would need to have one if sold or let, from the tenant's improvements regulations. Some properties may not have an EPC and may continue not to have an EPC beyond 2016. This could be because the property has been let to the same tenant since before the Energy Performance of Buildings Regulations 2007 came into effect in October 2008. Tenants of such properties would be able to make requests for consent for improvements as long as the property type was not exempt from the EPC regulations. Properties with any EPC rating are in scope of the tenant's improvements regulations.

### Houses in Multiple Occupation (HMOs)

50. Many properties in the private rented sector are shared including student and professional shared houses, and bedsits. A property falls under the definition of Houses in Multiple Occupation (HMO) if at least 3 tenants live in the property, forming more than 1 household<sup>35</sup>, and a tenant shares toilet, bathroom, or kitchen facilities with other tenants<sup>36</sup>. 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. HMOs that are outside of any local authority licensing scheme, such as a property let under a joint tenancy agreement to a group of tenants do however trigger a requirement for the property to have an EPC.

51. The Government proposes that tenants who have assured or regulated tenancies and occupy properties classified as HMOs will be able to make requests under the regulations.

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<sup>33</sup> Listed buildings on the English Heritage (or its Welsh equivalent) website ([www.english-heritage.org.uk/caring/listing/listed-buildings](http://www.english-heritage.org.uk/caring/listing/listed-buildings))

<sup>34</sup> <https://www.gov.uk/government/publications/energy-performance-certificates-for-the-construction-sale-and-let-of-dwellings>

<sup>35</sup> A household consists of either a single person or members of the same family who live together. It includes people who are married or living together and people in same-sex relationships

<sup>36</sup> More details on how HMOs are defined can be found on the Government Website <https://www.gov.uk/private-renting/houses-in-multiple-occupation>

Written consent from all parties to the tenancy agreement would need to be provided for a request in shared houses to be made; otherwise there would be a risk that the request would reach the landlord before agreement is reached between the occupants.

52. For some HMOs where the tenant rents a bedsit room, with some shared and some self-contained facilities, the Government recognises that there may be practical barriers to making a request. This is because it is not currently possible to obtain an EPC or a Green Deal Assessment for a bedsit within an HMO property, and therefore it would not be possible to start the request process (explained below). It would still be possible for energy efficiency measures to be installed in such circumstances but it would require a request being made for the whole property, encompassing co-ordination of tenants to collectively make a request for the whole property. The Department is interested in hearing views regarding whether bedsit tenants in HMOs should be able to make requests under the regulations and suggestions for how this may be achieved in practice.
53. HMOs can be used to house people who are statutorily homeless. The nature of arrangement is often very short term and fluid with little opportunity for tenants to choose or request accommodation that is energy efficient. In addition, the private rented sector more widely houses many vulnerable people including families with young children. Such tenants would only be in scope of the regulations if they are covered by one of the tenancy arrangements detailed in the 'Who may make a request section' and also, if the property is an HMO, it is within scope as detailed above. However, these tenants may often be vulnerable with a greater need for living in a warm, energy efficient home and we are working towards ensuring that such HMOs tenants are not excluded from the benefits of energy efficiency improvements.

### Consultation Question

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|-----------|--|
| <b>1.</b> | <b>Does the proposed scope include all the buildings and tenancies that should be covered by the tenant's improvements regulations? If not, which additional building or tenancy types should be included or excluded?</b> |
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## Tenant request process

### What a tenant may request

54. A tenant may request consent for energy efficiency improvements recommended for the property they occupy in a Green Deal Assessment, EPC or qualified surveyor report. Only eligible EPC or Green Deal measures identified as appropriate for the property and listed on the schedule to the Green Deal (Qualifying Energy Improvements) Order 2012 could be chosen in a tenant's request; this is regardless of the particular funding route the tenant chooses. These measures are most cost effective to reduce energy bills and carbon emissions and they also meet approved quality standards.
55. The Government proposes that tenants will be encouraged to inform the landlord of their intention to obtain an EPC (where one does not already exist) or Green Deal Assessment and make a request for energy efficiency improvements. This is because a landlord may already have plans in place to improve the property or have a preferred supplier or other preference related to energy efficiency measures that would be better raised early in the process.

56. The first formal requirement of the tenant's improvements regulations is for the tenant wishing to install energy efficiency measures to obtain an EPC, domestic Green Deal Assessment which would detail a set of recommended improvements for the property in a Green Deal Advice Report (GDAR), including their expected energy bill savings or a qualified surveyor report. The tenant would seek funding to cover the cost of any energy efficiency improvements identified in the GDAR, EPC or surveyor report through one or more of the following sources; explained further below:
- a) A Green Deal Finance Plan;
  - b) The Energy Company Obligation or similar future scheme;
  - c) A grant from a local authority, devolved administration or national Government where the funding does not place an unreasonable obligation on the landlord, such as limitations on the status of a tenant the landlord may rent to in the future;
  - d) Funding from the tenant's own sources should the tenant choose this option.
57. Each of the funding options that a tenant may use for their chosen improvement measures are explained in more detail below.

### **The Green Deal Finance Plan**

58. A Green Deal Finance Plan allows energy efficiency measures to be funded by credit to cover the upfront cost of purchasing and installing improvements. The costs are repaid through instalments on the electricity bill. The Golden Rule means that the repayments should not exceed the expected savings made on the energy use for a typical household in the property in the first year. If the building is sold or let to another occupier, then the obligation to repay moves to the new electricity bill payer of the meter the Green Deal Plan is attached to. The Government recognises that in some properties there may not be a single domestic electricity meter.
59. Eligible measures for Green Deal Finance Plans are set out in a list that is reviewed periodically. To be eligible for the list, measures must repay their investment in energy cost savings over a reasonable period of time, reflecting energy use for a typical household in the property.

### **Energy Company Obligation funding**

60. The Energy Company Obligation (ECO) is a statutory obligation that the Government has placed on energy suppliers to reduce their carbon emissions by funding domestic energy efficiency measures, with particular emphasis on those households which are in fuel poverty, or "hard to treat" homes such as those requiring solid wall insulation or hard to treat cavity wall insulation.
61. ECO can work alongside Green Deal finance, although it is more usually accessed separately. The energy companies determine the level of ECO funding for individual consumers based on the consumer's individual circumstances e.g. receipt of qualifying benefits, or the characteristics of the property and the amount of Green Deal finance being used.
62. There are currently three elements to ECO. The Carbon Emissions Reduction Obligation (CERO) provides support for less cost effective energy efficiency measures. The Carbon Saving Community Obligation (CSCO) provides insulation measures for those living in low

income areas. The Home Heating Cost Reduction Obligation (HHCRO), also known as ECO Affordable Warmth, provides heating and insulation measures to vulnerable households on certain means tested benefits, who are more likely to suffer from living in cold homes including the elderly, disabled or those with children.

63. The Government has recently held a public consultation on the future of ECO which contained a number of proposals for the future of the scheme, including setting a Solid Wall Minimum at 100,000 measures to be delivered across all of the ECO sub-obligations and extending ECO out to 2017. The Government's response to the consultation is available online<sup>37</sup>.
64. Tenants wishing to find out whether they or the property they occupy is eligible for ECO assistance could contact their energy supplier or the Energy Saving Advice Service (ESAS) for advice on 0300 123 1234.

### Grant funding

65. It is possible that funding for energy efficiency measures may be made available from local authorities, national or devolved schemes. Should a tenant wish to seek funding for recommended improvements from such sources, it would be for them to investigate and ascertain any criteria that may apply. Where such funding is to be blended with a Green Deal finance arrangement and/or ECO funding, it would be for the tenant to arrange this, although it may be that businesses, such as Green Deal Providers, might seek to do this in their offers to tenants.
66. In December 2013, the Government announced funding to be made available for energy efficiency improvements from 2014-2017, and on 1 May 2014 the Government announced the launch of the Green Deal Home Improvement Fund<sup>38</sup>, which is available to both private landlords and tenants. This is an example of the type of grant funding that may be available for a tenant to use to help fund the requested improvements.

### Tenant funding

67. A tenant may find that there is a shortfall in funding a package of improvements that a tenant wishes to install, and may be content to meet this shortfall from their own funds in order to make the request. Where there is a shortfall the tenant must explicitly agree to meet this when providing their request to their landlord for consideration.

### Consultation Question

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| <b>2.</b> | <b>What, if any, additional funding options could be used by a tenant when seeking consent for energy efficiency improvements in addition to the Green Deal finance arrangements, ECO, grant funding and a tenant's own sources?</b> |
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### When & how a request is made

68. For a request to be valid, the tenant must provide written evidence to the landlord of:

<sup>37</sup> <https://www.gov.uk/government/consultations/the-future-of-the-energy-company-obligation>

<sup>38</sup> <https://www.gov.uk/government/news/7600-to-make-your-home-more-energy-efficient>



- a) An EPC, GDAR or qualified surveyor report with the recommended improvements selected by the tenant
- b) Any Green Deal Finance Plan, demonstrating that the package is fully funded, through Green Deal finance and/or topped up with ECO, grant or tenant funding
- c) Where works are proposed to be paid for without Green Deal finance, for example grant funding or their own sources, the tenant must provide evidence of quotes for the improvements from an authorised Green Deal provider or installer that meets the Publicly Available Specification (PAS) 2030 standards<sup>39</sup> for the installation of energy efficiency measures in existing buildings

69. As detailed in the ‘Agents and third parties’ section below, third parties may help or advise tenants, including vulnerable tenants, in preparing a request submission to the landlord for consent to energy efficiency measures.

70. The tenant would retain evidence related to their request, satisfying the above criteria. If the funding option chosen by the tenant for the energy efficiency improvements does not cover any “making good” works and the tenant is not prepared to cover any costs for this then the landlord would be able to reasonably refuse the works. For the Green Deal finance arrangement and ECO, reasonable “making good” works may be covered by the Green Deal Provider in their offer.

71. An eligible tenant may make a request at any point within their tenancy, except in the following circumstances:

- a) The tenant has given notice to the landlord ending their tenancy or the tenant has been served a notice requiring possession/notice to quit by their landlord. In these situations the tenant’s interest in the property is shortened to the period of notice, and therefore it does not make sense to permit the pursuit of a request, in the unlikely event that a tenant would wish to make one.
- b) Where court action has begun related to a tenant’s failure to keep to the terms of their tenancy, for example court action relating to rent arrears. In this situation it would be reasonable to expect that the tenant meets their obligations under the tenancy before making a request for property improvements to their landlord. The tenant would not be able to submit a request for improvements until any court proceedings had concluded.

### Consultation Question

<b>3.</b>	<b>Do you have any comments on the proposed process for when and how a tenant request for consent for energy efficiency improvements is made?</b>
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### Reasonable refusal

72. The Government proposes that in certain situations it would be permitted for a landlord to reasonably refuse consent to a request even where it meets the above criteria. These situations would include:

<sup>39</sup> <https://www.gov.uk/becoming-an-authorised-green-deal-organisation>

- a) Where the landlord has evidenced plans, such as detailed asset management plans or planning permission to develop or undertake refurbishment to a property including the installation of energy efficiency measures. However, if the works set out in these plans are not completed within a set timescale the landlord would no longer be able to reasonably refuse the tenant request. The Government proposes one year would be a reasonable period for works to be completed.
  - b) Where the landlord has previously, within a prescribed period, offered the tenant a similar package of energy efficiency improvements and the tenant refused to provide consent for these works. The Government proposes one year to be a reasonable period of time.
  - c) Where the tenant has previously asked, within a prescribed timescale, and was given permission for a Green Deal finance arrangement and the recommended measures under the Green Deal finance arrangement were installed. The Government proposes one year to be a reasonable period of time.
  - d) Where the tenant has previously requested improvements in the preceding year under the regulations which had been reasonably refused by the landlord. The Government proposes the tenant may be able to submit a new request either when a new tenant moves in or after a year. The Government acknowledges that the tenant circumstances may have changed over time and the reason for the request not being valid or reasonable could have been rectified.
  - e) The tenant had refused consent to a landlord's request to a Green Deal finance arrangement within the last year. This is to avoid a landlord having to deal with a request having recently prepared an offer to their tenant.
  - f) The request involves a change of fuel from gas to electricity (or vice versa) for space heating or cooking and the new measures are not a cost effective solution compared to the measures they are replacing.
  - g) Where an electricity meter is shared for multiple demises (for example a block of flats) and not all tenants of the benefitting demises 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 request proposed by the tenant (explained in more detail below).
  - i) Planning permission, required for the energy efficiency improvements is not granted.
  - j) A third party with a right to deny consent to improvements or Green Deal finance, such as a freeholder or lender refuses consent. Freeholder consent is explored further below.
73. The above proposed list is not exhaustive and there may be unique circumstances that mean that it would be reasonable for a landlord to refuse a tenant's request. Where a tenant feels that a landlord's reason for refusal not listed above was unreasonable, it would be for the tenant to take the landlord to a tribunal which would ultimately rule on a case by case basis. The Government proposes that guidance would be issued to provide assistance to tenants and landlords to make an initial and informed decision regarding

whether a tenant request may be reasonably refused by the landlord to reduce the number of cases that may proceed to the tribunal.

### Consultation Question

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| <b>4.</b> | <b>Do you agree with the proposed set of circumstances in which a landlord may reasonably refuse consent to improvements, and in addition, do you agree that the regulations should also allow for landlords to make a case for a reasonable refusal on a case by case basis?</b> |
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74. The Government is seeking views as to whether an additional reason for refusal could be where an accredited Royal Institution of Chartered Surveyors (RICS) valuer assesses that the installation of measures will be expected to cause a net material decrease in the property value. Where an assessment agrees that this is the case, the landlord would be able to reasonably refuse consent to the tenant's requested package of improvements. This potential exemption, which would also apply to works required to meet the minimum standard is explained further in the 'Potential devaluation exemption' section in the Domestic Minimum Standard Regulations Chapter below.

### Consultation Question

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| <b>5.</b> | <b>Do you agree with the proposed approach for demonstrating an exemption where works would result in a material net decrease in a property's value? What would be the most appropriate way to set the threshold?</b> |
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### Freeholder consents

75. Where a tenant makes a request for improvements and their landlord is a leaseholder, consent may be required from the freeholder depending on the measures to be installed and the provisions of the tenancy agreement. In order to ensure that such consents are not reasonably refused, the Government intends to extend the obligation not to reasonably refuse consent, to the superior landlord. This would mean that the obligation to respond reasonably passes up the consent chain from leaseholder landlord, to freeholder.

76. The Government is also investigating whether this proposal could also apply to a wider set of circumstances where the landlord is a leaseholder and freeholder's consent is required for energy efficiency improvements.

### Consultation Question

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| <b>6.</b> | <b>Do you agree that freeholders should also be under a duty not to unreasonably refuse requests for energy efficiency improvements?</b> |
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### Landlord response criteria

77. Having received a tenant request in writing, a landlord must either provide their consent to the improvements and any Green Deal finance, or refuse, including an explanation as to why the refusal is reasonable. The Government proposes that from the point at which a tenant submits a request for energy efficiency measures to their landlord, the landlord is

required to respond in writing within three months of receipt. As a minimum, the response must include:

- a) Whether the landlord consents to all or some of the requested measures;
- b) Whether the landlord consents to any Green Deal finance (where applicable);
- c) Where consent is refused to either of the above, the reasons why consent is denied. Where consent is denied due to third party consent denial, such as a freeholder consent denial, or a planning permission refusal, the landlord must provide evidence that:
  - i. Such consent was required. For example, this evidence could be provided in the form of scanned or photocopied version of the relevant section of the landlord's lease if freeholder consent was denied or the relevant section of their mortgage agreement if lender consent was denied;
  - ii. Evidence that required consent was denied or contains unreasonable conditions

78. If the tenant considers that the landlord's response is unreasonable or that the landlord is in breach of an obligation under the regulations, the tenant may notify the landlord of their intent to take the matter a tribunal (please see 'Compliance and Appeals section below).

### Consultation Question

<b>7.</b>	<b>Do you agree with the proposed landlord's response criteria and timescales?</b>
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### Landlord's counter proposal

79. The Government is seeking views as to whether landlords should be permitted to also offer a counter proposal in their response. This would mean that landlords could propose an alternative package of energy efficiency measures that would deliver the same or improved levels of energy efficiency than the tenant's requested package of measures, expressed as a Standard Assessment Procedure (SAP) score (which determines the EPC rating). This could be in the form of a predicted EPC rating post installation of the energy efficiency measures or a Green Deal Plan indicating the impact after the works are installed. The new package must not entail any more costs borne by the tenant, through the energy bill or their own funding, than the tenant's original offer.

80. Where a counter offer is made, there would not be an obligation on the tenant to accept it. If the tenant considers that the counter proposal is unreasonable, for example the landlord is proposing that are works significantly more disruptive or the landlord refuses to agree to the tenant's proposal and such a refusal is unreasonable as discussed above, the tenant may choose to take the matter to tribunal, on the basis that the landlord's response to their request was unreasonable.

81. Where a landlord's offer meets the above criteria, a tenant must confirm in writing within two months of receiving the landlord counterproposal whether they consent to the landlord's offer or whether they wish to withdraw their request. If no response is received within this period the request is deemed to lapse.

82. In situations where the landlord consents to a tenant request, the Government proposes such works must be installed to PAS2030 standards regardless of the chosen funding route. This is to ensure the quality of work carried out to install the measures. Therefore the landlord would not be able to provide qualified consent to a tenant's original request relating to the works, for example that the landlord could seek compensation from the tenant for any damages to the property as a result of the works.

83. Where a landlord makes a counter proposal no restrictions on the installer would apply, unless they are a leaseholder and are required to meet certain conditions contained in their lease. This is because the property belongs to the landlord and they are able to judge and take the necessary risks relating to the quality of work. Some landlords may also have preferred contractors outside the Green Deal framework. Similarly, the landlord can propose a different funding route through a counterproposal to the tenant; this may be because they have found a better Green Deal finance quote, or greater ECO or grant contributions.

### Consultation Question

<b>8.</b>	<b>Do you agree that a landlord should be permitted to make a counter offer to a tenant's request that meets or exceeds the energy efficiency improvements requested by the tenant where there are not increased costs on the tenant?</b>
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### Avoiding retaliatory evictions

84. Where a tenant makes a request for consent to improvements, the Government expects that in most cases landlords will respond favourably; the requirement that the improvements must be paid for without landlord net or upfront costs mean that landlord stands to gain improvements to their property and a happier tenant at little or no cost to themselves. The Government recognises however that not all landlords will see a tenant request in this way, and there could be risks that in some situations landlords seek to evict tenants who make requests at the next available opportunity. This risk is perhaps highest where a tenant makes a request once their fixed term has ended. However, Government expects this risk may reduce as the market responds to the minimum standard regulations from 2018 and any disparity in energy efficiency in the sector is lowered.

85. To mitigate the risk of retaliatory eviction, the Government proposes to explore the principle that once a tenant has made a request, it stays live even if the landlord subsequently issues a notice requiring possession of the property from the tenant. One option for keeping the request live would be for the out-going tenant to inform a third party such as a local authority. However due to the parameters of the powers in the Energy Act, it is likely that the tenant that made the request, or the incoming tenant, would have to play a role in pursuing the request with the local authority, and that this may be challenging. Where the property in which a request was made falls below the minimum standard (see Domestic Minimum Energy Efficiency Standard Chapter), such notification could help local authorities identify properties likely to be non-compliant with the minimum standard from 2018. Landlords may be discouraged from giving tenants notice to move out where they know that this would alert a local authority or other third party to their non-compliance with the minimum standard regulations. Another option would be for the tenant to take the matter to the tribunal under the regulations in relation to the landlord not responding reasonably to the tenant request. However, it is recognised that the time to achieve this may not occur before the tenant may have to move out of the property. The Government

is interested to hear views as to how any risk of retaliatory eviction could be avoided and would welcome practical suggestions regarding how this may be achieved.

### Consultation Question

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| <b>9.</b> | <b>What evidence is there that a tenant could be at risk of eviction as a consequence of making a request for consent for energy efficiency measures? If it exists, how could risk of eviction be mitigated?</b> |
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### Ancillary costs

86. The Government proposes that the tenant should cover the cost of the Green Deal Assessment or EPC and any other costs that may be incurred in getting to the stage of seeking consent from the landlord for their requested energy efficiency improvements. However, it is recognised that under ECO HHCRO vulnerable tenants should receive a free Green Deal Assessment. It is also proposed that the landlord should cover reasonable ancillary costs such as seeking planning permission, or obtaining information relating to a potential counter proposal. Some ancillary costs may be covered by available funding options such as the Green Deal finance, ECO or local or national grants. The Department would welcome evidence as to whether there could be any cases where costs are unreasonable.

### Consultation Question

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| <b>10.</b> | <b>Do you have any evidence that shows the scale of the costs (including non-financial costs) and benefits associated with making a tenant request and improving the energy efficiency of a property?</b> |
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### Agents and third parties

87. Third parties, such as local authorities and third sector organisations may help or advise tenants in preparing a request for consent to energy efficiency measures for submission to the landlord. The Government recognises that there are many vulnerable people with support needs in the private rented sector for who such help will be invaluable for them to benefit from the regulations. Assistance could include exploring possible finance options. However, agents may not make the tenant's request to the landlord as the powers in the Energy Act 2011 require the request to be made by the tenant. Agents may act on behalf of landlords in carrying out functions in relation to a tenant request. This will be determined by the contract between the two parties. It will be for agents and landlords to ensure that they have adequate contractual provisions that specify the process and timelines for facilitating responses to a tenant request. As the statutory duty not to unreasonably refuse consent rests with the landlord, it will be the landlord's responsibility to face any consequences of the agent's failure to ensure the landlord is in compliance with responding to the tenant request. As a result it would be for the landlord to face any enforcement action and to seek recompense from the agent for any failures to meet contractual obligations.

88. The Government is aware that there are some exceptions to an agent's ability to carry out a landlord's activities on their behalf under the regulations. This is where such third party activity cannot be carried out by law by a third party. For example, under the Consumer

Credit Act the Improver must sign agreement to a Green Deal Plan. The bill payer (and others) must sign a consent form. The Government proposes the tenant's improvements regulations will not change or overwrite any such requirements and it would be for the landlord and/or agent to ensure that the necessary process has been adhered to.

89. In situations where the landlord has a mortgage on the property, the lender does not have any obligations to ensure that a tenant's request is not reasonably refused. The landlord has sole responsibility for compliance. However, if the ownership of the property is transferred across to the lender through repossession or the property is sold to a new landlord and they continue to let the property to the same tenants any existing tenant's request would remain live and the new landlord would have to comply with the tenant's improvements regulations.

## Implementation date for regulations

90. A tenant will be able to request consent for energy efficiency measures to their landlord from 1 April 2016. From this date all tenants, subject to the eligibility criteria detailed above are afforded with this right to request consent for energy efficiency improvements under the regulations.

## Compliance and Appeals

### Non-compliance, disputes and appeals

91. In the event of a dispute between the landlord and tenant over a request, the Government proposes to encourage the parties to seek to resolve the issue before undertaking any formal complaints process. The Department will provide guidance to help landlords and tenants understand their rights and responsibilities under the regulations, including outlining scenarios where the landlord may reasonably refuse a tenant request or be able to provide a counterproposal. Ultimately however, if a tenant has made what they consider a valid request for consent for energy efficiency measures to their landlord and they feel it has not been honoured in accordance with the regulations, they would be able to take the matter to a tribunal.

92. The regulations will make provisions for a tenant to be able to request a ruling for any dispute over a tenant's request for consent for energy efficiency improvements. The proposed tribunal for resolving cases under the tenant's improvements regulations is the First Tier Tribunal. The Government proposes that within two months of receipt of a landlord's counter proposal or where a landlord has not provided any response to a tenant request within a period of two months following the allowed three month period for a landlord to respond, a tenant may take the matter to the tribunal. The tenant would have to provide proof of tenancy of the property, the written tenant request, EPC or GDAR, any Green Deal Finance Plan obtained, any other funding proposed, landlord response if relevant and any other evidence to support the case.

93. The tribunal would consider the case and the evidence provided and make a ruling regarding whether the landlord response was reasonable. If the ruling was in the tenant's favour the landlord would be expected to cover the costs of the tribunal case and install the energy efficiency measures as requested by the tenant. Either party may appeal the tribunal decision to the tribunal, as outlined in the 'Tribunal overview' section below, within a 28 day period. An appeal by the landlord would be on the grounds that the tenant request was not reasonable or any counter proposal was reasonable. An appeal by the

tenant would be on the grounds that the landlord had not complied with the regulations. The tribunal would be able to quash the original ruling.

## Tribunals overview

94. The First-tier Tribunal and the Upper Tribunal were created by the Tribunals, Courts and Enforcement Act 2007. The First-tier Tribunal is part of Her Majesty's Courts Service. The First-tier Tribunal is empowered to deal with a wide range of issues which might form the substance of appeals, and to ensure the cases are dealt with in the interests of justice and in a manner which minimises parties' costs. The First-tier Tribunal system is already used as the appeals process for a number of UK policies the Department is responsible for, such as the EU ETS and Green Deal.
95. The composition of a Tribunal is a matter for the Senior President of Tribunals to decide and may include non-legal members with suitable expertise or experience in an appeal in addition to Tribunal judiciary. The First-tier Tribunal is divided into several different chambers. The General Regulatory Chamber brings together various different jurisdictions of a regulatory nature, including environmental regulations.
96. If the First-tier Tribunal is selected as the appropriate body to hear appeals relating to non-compliance with the tenant's improvements regulations, it would operate under the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009<sup>40</sup> which provide flexibility for dealing with individual cases. The General Regulatory Chamber Rules state its overriding objective as being to deal with a case fairly and justly. This includes dealing with a case in ways which are proportionate to the importance of the case, the complexity of the issues and the anticipated costs and resources of the parties. The Rules give the Tribunal judge wide case management powers in order to achieve these objectives.
97. Any party to a case has a right to appeal to the Upper Tribunal on points of law arising from a decision of the First-tier Tribunal. The right may only be exercised with the permission of the First-tier Tribunal or the Upper Tribunal. Where permission is given, the further appeal would be made to the Upper Tribunal. Under the Rules the First-tier Tribunal has the power to award costs against a party where it considers that a party has acted unreasonably in bringing, defending or conducting the proceedings.

### Consultation Question

11. **Do you consider that the First-tier Tribunal is the appropriate body to hear and determine appeals about decisions denying a tenant consent for energy efficiency improvements? Do you consider that the General Regulatory Chamber Rules of the First-tier Tribunal will suit the handling of these appeals? If not, what tribunal could be used?**

<sup>40</sup> <http://www.justice.gov.uk/tribunals/rules>



## Links with existing policies - Housing Health and Safety Rating System

98. The Housing Health and Safety Rating System (HHSRS) is a risk based assessment that is currently used to identify hazards in dwellings and evaluate their potential effects on the health and safety of the property occupants and visitors. Under the Housing Act 2004, local authorities have a statutory duty to keep the housing conditions in the local area under review and also to inspect an individual property if they consider it appropriate to do so or have been asked to inspect the property.
99. The Government views that HHSRS will operate alongside the tenant's improvements regulations, however, in any circumstance where a property has been issued with notice under HHSRS this will take primacy over any tenant request under the regulations for the period that the landlord has to comply with HHSRS i.e. a landlord would first need to meet their HHSRS obligations, before considering any request under the regulations. During period of time provided for the landlord to meet the HHSRS obligations the landlord would be able to reasonably refuse a tenant's request for energy efficiency improvements. The property would have a temporary exemption from the tenant's improvements regulations. Following the resolution of the notice, the tenant would again have the right to submit a request to the landlord under the tenant's improvements regulations as usual.

## Miscellaneous questions

### Consultation Question

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| 12. | <b>Do you have any comments regarding the tenant's improvements regulations, not raised elsewhere in the consultation?</b> |
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# Domestic Minimum Energy Efficiency Standard Regulations

## Introduction

100. The following section sets out the Government's proposals for the domestic minimum standard regulations that will require all eligible properties in the private rented sector to be improved to a specified minimum standard. The proposals include; what buildings and tenancies are in scope; what improvements are required, including consents and cost exemptions; and enforcement, including penalties and appeals.

## Scope of Regulations

### Which buildings and tenancies are in scope of the regulations

101. The Government proposes that the tenancies to be included and excluded from scope for the minimum standard regulation are the same as those in scope for the tenant's improvements regulations detailed above.

### Alignment with EPC Requirements

102. The minimum standard regulations do not apply to properties that are not in scope of the Energy Performance of Buildings (England and Wales) Regulations 2012. Buildings not in scope of the Energy Performance of Buildings (England and Wales) Regulations 2012 and are therefore not in scope of the minimum standard regulations include:

- a) Buildings officially protected<sup>41</sup> as part of a designated environment or because of their special architectural or historic merit where compliance with certain minimum energy efficiency requirements would unacceptably alter their character or appearance;
- b) Temporary buildings with a planned time of use of two years or less;
- c) Residential buildings which are intended to be used less than four months of the year or where the owner or landlord could reasonably expect the energy consumption of the building to be less than 25% of all year round use;
- d) Stand-alone buildings with a total useful floor area of less than 50m<sup>2</sup> (i.e. buildings entirely detached from any other building).

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<sup>41</sup> Listed buildings on the English Heritage (or its Welsh equivalent) website ([www.english-heritage.org.uk/caring/listing/listed-buildings](http://www.english-heritage.org.uk/caring/listing/listed-buildings))

103. The full details as to which properties are within scope of the EPC regulations are set out in the Communities and Local Government guide to energy performance certificates for the construction, sale and let of dwellings<sup>42</sup>.
104. The Government will however be encouraging voluntary energy efficiency improvements across the domestic property stock through our energy efficiency incentives packages.

### Houses in Multiple Occupation (HMOs)

105. The minimum standard regulations will only apply where an HMO, or part of an HMO, is let on a tenancy in scope of the regulations as described in the 'Who may make a request' section under the Tenant's Energy Efficiency Improvement Regulations. In addition, the property must also have an EPC. Currently, an EPC is only required for HMOs when the property is sold or the whole property is let on a joint tenancy to multiple tenants. However, an EPC may also be obtained for an HMO at other times on a voluntary basis.

#### Consultation Question

- 13. Do you agree with the proposed scope of buildings and tenancies for the minimum standard regulations? If not, what additional building or tenancy types should be included or excluded?**

### The required improvements

#### The minimum standard

106. The Government proposes to set the minimum standard for domestic properties at an EPC rating of 'E', in line with the non-domestic sector. Properties below this standard must install those measures required to reach an 'E' EPC rating before they can be rented out unless exemptions apply. Properties with an EPC rating of F or G are in scope of the minimum standard regulations.
107. However, the Government is committed to ensuring the regulations do not entail net or upfront costs to landlords for the required improvements, and therefore landlords would be permitted to let a property below the minimum 'E' standard where the property has undertaken all those improvements that would meet the Green Deal's "Golden Rule": that the cost of the work, including finance costs, should not exceed the expected savings. This calculation would take into account any funding available through:
- a) Green Deal finance;
  - b) ECO funding;
  - c) Grant funding;

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<sup>42</sup> <https://www.gov.uk/government/publications/energy-performance-certificates-for-the-construction-sale-and-let-of-dwellings>

d) A combination of these funding mechanisms.

108. The landlord is free to contribute extra to the cost of the energy efficiency improvements in order to realise the benefits from installing measures. However there is no compulsion to do so. Where a landlord has improved the property as far as possible within the “Golden Rule”, they will be deemed to have met their obligations under the regulations, even if the property remains below an ‘E’ rating. This allowance to let the property below an ‘E’ would not last in perpetuity. The point at which a landlord would need to seek to reach the ‘E’ rating again is explored in the ‘Duration of exemptions for properties below an E rating’ section below.

### Funding routes

109. A landlord wishing to let a property still rated ‘F’ or ‘G’ EPC rated would need to demonstrate compliance with the regulations by undertaking those measures that meet the Green Deal Golden Rule, taking into account any funding available from Green Deal Finance, ECO or grant source. To do this, they would first obtain a domestic Green Deal Assessment which would set out a recommended package of improvements for the property, including their expected bill savings.

110. The landlord would then take the Green Deal Assessment and seek a quote for the improvements, including financing costs, e.g. from a Green Deal Provider for a Green Deal finance package. The landlord would need to satisfy themselves that they had sought out any grant funding that may be available to them. This could involve calling the Energy Saving Advice Service (ESAS) on 0300 123 1234 and/or checking with their local authority. The Government is considering how landlords may be expected to evidence that they had sought available grants for improvements. One option is to obtain confirmation from a Green Deal Provider that their offer includes any available grant or ECO funding, but a range of options could be considered.

111. Having obtained such a quote the landlord may choose to either:

- a) Undertake the works reaching an E rating, or;
- b) Proceed with the offer meeting the Golden Rule, including any Green Deal finance and other funding, from one or more quotes, even if this does not reach an E rating, or;
- c) Proceed with the package of measures identified within the Golden Rule, including any funding available, but instead of taking the Green Deal finance offer, cover the upfront cost for the measures from other funding sources.

112. Where the landlord has undertaken all improvements within the Golden Rule (taking into account relevant funding sources) but the property remains below an ‘E’, the landlord would need to retain evidence of the Green Deal Assessment, Green Deal Provider offer (in writing), and the post works EPC. This would demonstrate for the purposes of the regulations that the landlord had undertaken all measures possible within the Golden Rule.

113. Where no measures pass the Golden Rule a landlord would need to obtain another two quotes. If none of these offered a package within the Golden Rule the landlord would be permitted to let the property but would need to retain evidence of the assessment and their quotes. Should either the second or third quote offer a package within the Golden Rule, that package would be required to be undertaken. As usual, the landlord would not

necessarily have to use the supplier that offered the quote, but would need to undertake the measures identified.

### Consultation Question

- 14. Do you agree that where a property falls below an E EPC rating, the landlord would only be required to make those improvements which could be made at no net or upfront costs, i.e. those that meet the “Golden Rule” that the cost of the work, including finance costs, should not exceed the expected savings taking into account any grant funding or ECO? For those properties that do not meet an E EPC rating, do you have any suggestions for how the process could be streamlined?**

### Green Deal Assessment costs

114. Landlords may choose to improve their property to an E rating or above by undertaking those measures recommended on their EPC Recommendations Report. A landlord is already required to provide an EPC on let<sup>43</sup> and therefore the minimum standard regulations would not entail any additional property assessment costs for landlords in this situation.
115. However if a landlord wished to comply with the regulations by installing improvements without upfront cost using Green Deal finance, they would need to first obtain a Green Deal Assessment. The Impact Assessment accompanying this consultation assumes the average cost of a domestic Green Deal Assessment is £112.50. Whilst evidence suggests that many assessments are being offered free of charge to customers either by the market or through the Energy Company Obligation (ECO), and the recently launched Green Deal Home Improvement Fund provides a Green Deal Assessment cashback of up to £100 once measures are installed, the Government cannot guarantee that no landlord will face an upfront Green Deal Assessment cost. Therefore whilst landlords undertaking a package of improvements using Green Deal finance would not need to meet an upfront cost for the energy efficiency improvements, there is at least the potential that the policy could entail an upfront assessment cost for a small minority of landlords.
116. Government is interested to hear views as to whether the potential for a landlord to face an upfront cost for a Green Deal Assessment is a material consideration that should be taken into account in the policy design, and if so, how this could be done without placing additional financial or administrative burdens on landlords or other parties. The Government is also interested to hear views on ways in which the potential for an upfront Green Deal Assessment cost could be mitigated, including how industry could be encouraged to provide GDARs at no upfront cost.

### Consultation Question

- 15. How should the principle of ‘no upfront costs’ apply to Green Deal Assessments?**

<sup>43</sup> <https://www.gov.uk/government/publications/energy-performance-certificates-for-the-construction-sale-and-let-of-dwellings>

## Ancillary costs

117. The Government recognises that whilst the Green Deal finance arrangement may offer a route to overcome upfront costs for improvements, there could be costs in facilitating the works. Such ancillary costs in many cases will be small. And in many cases may be expected to be offered free, as is currently the case. However in some instances there may be wider ancillary costs relating to the improvements not covered by Green Deal finance, ECO or grant funding, for example planning permission and potentially project management for large scale complex improvements, though we would expect this to be very rare given the types of measures required to reach an E rating. The Government expects that the possible benefits of an improved property would outweigh any such possible costs.

## Consultation Question

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

## Potential devaluation exemption

118. In addition to a proposed safeguard regarding net or upfront costs to landlords through a Green Deal, ECO or local or national grant, the Government is considering the merits of allowing landlords an exemption where required energy efficiency improvements would result in a devaluation of their property. It is the Government's view that it would be highly unlikely that energy efficiency improvements could have this effect.

119. However, as a precaution, the Government proposes to include provisions within the regulations for an exemption where improvement works required are deemed to result in a net material decrease in a property's capital or rental value. To ensure that the assessment is carried out in an independent manner and to avoid any risk of the allowance being used by those wishing to circumvent the regulations, the assessment would need to be carried out by a valuer accredited by the Royal Institution of Chartered Surveyors (RICS). The assessment would:

- a) be based on the impact of the measures, and would not take into account any Green Deal finance. This is because through the Golden Rule the repayments should be the same or lower than the expected energy bill savings, and therefore are not a material consideration.
- b) balance any potential negative impact against any positive impact (for example the benefits of an improved EPC rating and warmer property as well as any reduction of internal floor space due to internal wall insulation).
- c) need to show a material impact on value. Any overall decrease in property value would need to be material to avoid exemptions being given where the net impact is marginal, and to reduce the risk that the exemption is used to deliberately avoid the regulations.

120. In determining the meaning of a "material" decrease, one approach would be to leave it to the valuer to make the judgement based on the particular circumstances of the property and local market. Another approach would be to set the decrease as a percentage of the property's capital or rental value, for example a net material decrease of

5% or 10%. However given the wide variation on property values across the country and between properties, the level of the threshold would vary considerably in absolute value terms.

121. Where a landlord was concerned that the improvements might negatively impact the value of their property, they would need to provide details of the package of improvements to a valuer, so that the valuer could undertake a before and after assessment. Where the valuer's assessment agrees with the landlord that the works would result in a net material devaluation of the property, the landlord would need to retain a copy of the RICS valuers report, a copy of a Green Deal assessment or Independent Audit, the quotes for work showing the package of works and the latest version of the EPC.
122. Property valuation is not an exact science and therefore it may not be possible to disentangle which improvements would be the main cause of the devaluation; however where it is possible to identify specific measures that would lead to devaluation only these measures would not have to be installed.

### Consultation Question

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

## Restrictions on undertaking improvements

### Consent exemptions

123. In some cases a package of improvement works meeting the Golden Rule, a prescribed payback period or an E rating will need consents from a third party. Where improvement works have been prevented by lack of such consent, through no fault of the landlord, it would not be right to prevent the landlord from letting the property. The Government therefore proposes to provide an exemption where a landlord has been denied consent to undertake works, allowing them to let the property below an E EPC rating. Only those measures that were denied consent would not have to be installed; those improvements within a package that do not require consent or had consent provided would still need to be undertaken by the landlord.
124. Whether consent is required for improvements will depend on factors such as the nature of the measures, the wording of any contract, planning policy or tenancy. As was the case for the Green Deal finance where an Improver wishes to undertake improvements, the Government would not set out in legislation from whom a landlord must seek consent as this will vary considerably depending on individual circumstances. Therefore where a landlord considers that consent is required, it will be for the landlord to seek such consent and retain any evidence of denial of consent.
125. Third parties from whom the landlord may need to seek consent, depending on the specific circumstances, may include:

- a) A planning authority where one or more improvements require planning permission
  - b) A lender where permission is required for changes to the property or the use of Green Deal finance
  - c) A freeholder where permission is required for the improvements
  - d) A tenant, if the regulations apply where there is a sitting tenant or where a future tenant has already signed a tenancy agreement for the property, any improvements or Green Deal finance requires tenant consent or where the improvements required the tenant to move out.
126. Where consent is denied for measures the landlord must retain evidence (in writing) that:
- a) such consent was needed for the improvement(s) (for example their lease where the need to obtain consent from a freeholder is stipulated);
  - b) consent was refused (for example a letter from the freeholder denying consent).
127. Where no response is received from a third party that is required to provide consent, the landlord would have to do their best endeavours to obtain consent and show evidence of this.
128. Some stakeholders have suggested that there could be complexities where a legal owner requires beneficial owner consent to improvements, or Green Deal finance to fund them. The Government wants to avoid such consents posing as a barrier to improvements required by the regulations being undertaken and is investigating how such consents ought to be treated and would welcome views on this issue.

### Conditional consent

129. In some cases consent may be provided outright to the landlord, but may come with conditions attached. The Government proposes several options for dealing with given consent with conditions and would welcome your views on this. In the first scenario, where the conditions are unreasonable, the Government proposes the landlord would not be expected to proceed. Given the range of situations where conditions may be attached to consents it is not possible to set out in legislation what would be deemed reasonable, and what would not. However, we may need to set the broad parameters: for instance if a condition reduces a landlord's ability to let the building, or if it involves unreasonable costs. It would still however, be for the enforcement body (local authority) to decide on a case by case basis, and ultimately a tribunal should a landlord appeal enforcement activity (please see chapter on enforcement below).
130. The Government recognises that there is a tension between ensuring that the regulations do not require a landlord to carry out work where required third party consent is not given, and ensuring that such allowances do not create complexity and therefore unnecessary challenges in ensuring compliance. Options for reducing the complexity of consents allowances could include the development of guidance for local authorities, landlords and tenants as to typical third party consent scenarios and the standard of evidence that would be expected to be retained.



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| <b>18.</b> | <b>Does the proposed consents exemption strike the right balance between recognising existing landlord obligations, whilst also ensuring that the allowance is not used as a loophole to avoid undertaking improvements? Do you have any views on how beneficial owner consents should be taken into account?</b> |
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## Green Deal Finance

131. If Green Deal finance is chosen as the preferred funding option for energy efficiency improvements by the landlord then the electricity bill payer would be subject to a credit worthiness assessment in order to obtain a Green Deal finance arrangement. If the assessment failed and Green Deal finance was not secured, other finance options would have to be investigated. If no other funding sources were available then the landlord would have an exemption from the minimum standard regulations.

## Agents and third parties

132. Agents may act on behalf of landlords in carrying out functions in relation to meeting the minimum standard regulations. This will be determined by the contract between the two parties. It will be for agents and landlords to ensure that they have adequate contractual provisions that specify the process and timelines for meeting the minimum energy efficiency standard. It would be the landlord's responsibility to face any consequences of the agent's failure to ensure the landlord is in compliance with the regulations. As a result it would be for the landlord to face any enforcement action and to seek recompense from the agent for any failures to meet contractual obligations.
133. The Government is aware that there are some exceptions to an agent's ability to carry out a landlord's activities on their behalf under the regulations. This is where such third party activity cannot be carried out by law by a third party. For example, under the Green Deal Framework Regulations 2012 a landlord must sign agreement to a Green Deal Plan. The Government proposes the minimum standard regulations will not change or overwrite any such requirements and it would be for the landlord and/or agent to ensure that the necessary process has been adhered to.
134. In situations where the landlord has a mortgage on the property, the obligations under the regulations would apply to the landlord alone, and not the lender. However, if the ownership of the property is transferred across to the lender through repossession and they continue to let the property they would have to comply with the minimum standard regulations as a landlord.

## When and how the regulations apply

### Commencement dates

135. There are a number of ways in which the Government could implement the minimum standard regulations. For all building and tenancy types within scope of the regulations (please see the 'Scope of Regulations' chapter above), the regulations could apply in the following ways:

### **A soft introduction – application of the regulations to new tenancies from 1 April 2018**

136. With a soft introduction the requirement not to let a property with a rating of below E, would apply only to tenancies granted to new tenants agreed on or after 1 April 2018.
137. A soft start approach would have the benefit of working with the grain of the tenancy cycle and capitalising on using void periods when the property is empty to install measures and to minimise potential disruption to existing tenants. However a soft start would risk some very long tenancies - including Regulated Tenancies - being outside of scope of the regulations for an unreasonably long period, reducing the impact of the regulations in delivering energy efficiency improvements. It may also send the wrong signal to the market – that it may be beneficial to delay and extend tenancies to avoid having to comply.

### **A hard introduction – application of the regulations to all tenancies from 1 April 2018**

138. With a hard introduction the regulations would apply to all domestic properties from 1 April 2018, regardless as to whether the property is let on a tenancy and occupied on that date. However due to the consents exemptions outlined in the ‘Restrictions on undertaking improvements’ section above, any tenants in occupation with a right to refuse works or Green Deal charges added to their energy bill, would be able to refuse the works, providing the landlord with an exemption.
139. The benefit of a hard introduction is that it is very clear and sends a strong message to the market to improve properties before 2018. It may also make it easier for local authorities to undertake enforcement action as any property rented below standard would need to demonstrate an E rating or an exemption, and enforcement agents would not need to consider when the property was rented. However, there may be a risk of landlords seeking to evict tenants where consent was refused, even though such refusal may be used to obtain an exemption. Furthermore, in requiring all tenancies to demonstrate compliance immediately there may be a risk of sudden high demand when the regulations come into effect, straining the supply chain of Green Deal Assessors, installers, providers and legal advisors.
140. Where a hard start applies, properties without an EPC (for example because they have been let continuously to the same tenant since before the EPC regulations came into effect in April 2008), would not be caught by the regulations. This is because the property would not have an EPC on which to apply the regulatory requirement. Some stakeholders have suggested that this puts those landlords who may have voluntarily obtained an EPC at a disadvantage. However in obtaining an EPC early such landlords would be in a much stronger position to assess and plan improvements to their property before the regulations apply. Furthermore it would be difficult to establish an exemption for properties that had voluntarily obtained an EPC as the enforcement body would have to establish whether the property had or hadn't been required to obtain an EPC in the past.

### **A phased introduction - a soft start with a hard “backstop”**

141. The Government's preferred option is a phased introduction, whereby the regulations apply to new tenancies agreed from April 2018, (to new tenants) but with a hard “backstop” at a later date applying the requirements to all tenancies. This would allow the sector, the supply chain and the enforcement agents, to gear up before the regulations apply to all tenancies and it would ensure that very long tenancies do not remain outside the regulations. This would send a strong message to the market that there is no advantage to delay.

142. The Domestic Stakeholder Working Group also preferred a phased introduction for the regulations. The reasons for this were that it is easier for landlords to install energy efficiency improvements during void periods and this also keeps disruption to tenants to a minimum. However, the group also recognised the value in having a backstop date to ensure all properties with longstanding tenants and tenants in fuel poverty also had the benefits of having a warmer home and associated health benefits within a reasonable timeframe.

143. The Government suggests that 1 April 2020 would be an appropriate time to apply the backstop, providing 2 years, which is slightly greater than the average length of time for a tenancy in the private rented sector, before the backstop applies. This would help to ensure that many properties will have been improved having been caught by a change of tenant before the backstop applies. It also provides sufficient time for landlords and tenants to discuss, negotiate and agree any improvements before the regulatory obligation starts.

144. Should the regulations be in place as to apply to all let property (hard start or backstop), a grace period for complying with the minimum standard regulations may be provided to accidental landlords where there is a transfer of a non-compliant property to a lender in the event of receivership.

#### Consultation Question

**19. Do you think that the regulations should have a phased introduction applying only to new tenancies from 1 April 2018? Do you agree the regulations should also have a backstop, applying to all tenancies from 1 April 2020? If not, what alternatives do you suggest?**

#### Tenancy renewals

145. Given the Government's approach of aligning the EPC requirements with minimum standard regulations, as tenancy renewals do not trigger an obligation to provide an EPC, the regulations would also not apply at this point. If a soft start is employed (with or without a backstop), there may be an argument in favour of going further than the EPC requirements for the minimum standard regulations; so that where a property has an EPC and a tenancy is renewed, a minimum standard regulatory requirement bites.

146. Applying the requirement on renewals would mean that works may be undertaken whilst a tenant is in occupation, but it would work with the grain of a tenancy in that at point of renewal, both landlord and tenant are in negotiations, providing an opportune time to raise matters regarding energy efficiency improvements.

#### Consultation Question

**20. Should the minimum standard regulations apply upon tenancy renewals where a valid EPC exists for the property?**

## Duration of exemptions for properties below an E rating

147. Where a property has not been able to reach an E rating, but has installed those measures that could have been financed through a Green Deal finance arrangement, ECO or local or national grant, the property's exemption from having to achieve the E rating does not last in perpetuity. Similarly where consent has been denied for improvement works to achieve an E, the exemption does not last in perpetuity. A landlord would need to demonstrate the exemption still applies, or undertake any further works that may be possible at a later date. This is because improvement costs may have come down, new technologies may become available, planning rules may change, and freeholders and other third parties may change their view on proposed works.
148. The Government proposes that exemptions from reaching the minimum E standard would last for five years. Upon expiry of an exemption the landlord would need to either meet the required E rating, or demonstrate an exemption applies again.
149. However, in cases where an exemption relates to a sitting tenant's consent not being given for improvements, if the tenant moves out before the five year period has elapsed, the exemption would expire at the point the tenant moves out of the property, even though this would be before five years. An earlier expiry in this situation is sensible because the reason for the improvements not being undertaken – a sitting tenant's refusal – would no longer apply when the tenant has left the property.
150. Expiry of exemptions after a reasonable period – suggested as five years – ensures that a property below standard with an exemption does not remain below standard for long periods of time. Furthermore expiry of exemptions would engender an impetus to reach the standard in the first place. Allowing a reasonable period before a landlord must reattempt to meet the standard also ensures there is a realistic chance that circumstances, such as the cost of improvements, may have changed and improvements can be undertaken.

### Consultation Question

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| <b>21.</b> | <b>Do you agree that an exemption for properties below an E rating should last for five years, apart from where it relates to tenant consent not being given, where it should expire at the end of a tenancy if before five years?</b> |
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## Timing of works

151. Assuming the regulations introduce the Government's preferred phased manner of a soft start with a backstop, during the initial "soft" phase, any required works could be agreed before the tenant takes occupation.
152. Where the regulations apply only to new tenancies (soft start), the landlord would not need a tenant's consent to improvements or Green Deal finance as these would need to be in place before the tenant signs the tenancy. If the landlord chooses to use Green Deal finance, tenant agreement to pay these costs would form part of the terms of the tenancy.
153. Where a hard start or a backstop applies, meaning all leases/tenancies must comply, landlords would need to reach an E rating before the hard start or backstop comes into effect. If a landlord is unable to reach an E rating due to one of the exemptions set out

earlier in this consultation document, they will need to retain evidence of this. For example should the regulations be introduced in our preferred manner of a soft start in 2018, followed by a backstop 2020, where a landlord undertakes all improvements possible within the Green Deal's Golden Rule but failed to reach an E rating in January 2017, they would need to retain evidence of this to prove that they had a valid exemption when the backstop applies. As exemptions last five years however, in this situation, the exemption would only apply until January 2022.

154. Stakeholders have questioned whether any existing tenants of properties being let below standard without an exemption after a backstop (or a hard start) applies would be allowed to stay at the property. The primary powers do not appear to say anything about the regulations being able to require tenants to move out. Should such a situation occur, the landlord would be issued a penalty by the enforcement body, but the landlord would not be forced to end the tenancy.

### Consultation Question

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| <b>22.</b> | <b>Do you agree that landlords would need to attempt to meet the minimum standard or retain evidence of an exemption before a hard start or a backstop applies?</b> |
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### Trajectory beyond 2018

155. Given the UK's need to reduce energy consumption from buildings and the value of regulatory certainty, a number of stakeholders have suggested there may be merit in setting out a forward trajectory of standards beyond 2018. By providing guidance on the likely trajectory, Government can ensure that the sector is making an appropriate contribution to the UK's legally binding carbon targets, any agreed fuel poverty targets, and is improving housing for vulnerable tenants. Setting out a trajectory would also help businesses put in place the most cost-effective compliance strategies, as for example it may be more cost effective for a landlord to undertake a single retrofit to meet forthcoming minimum standards and future standards, than to undertake two (or more) separate improvements. A trajectory would also help the supply chain plan ahead and ensure capacity to meet expected demand.

156. When exploring this issue with stakeholders, there was no consensus reached on whether the Government should attempt to set out a trajectory beyond 2018 early, but they did agree to a set of principles that ought to be used when assessing when and how a forward trajectory could apply; these are as follows:

- a) Be linked to Government's wider energy and carbon saving objectives
- b) Take into account any changes that could affect EPC calculations
- c) Harmonise with other energy efficiency policies to avoid conflicting requirements
- d) Align and support the Government's target and strategy on tackling fuel poverty
- e) Align and support Government policies to improve housing conditions for vulnerable tenant groups such as low income families with children

- f) Provide sufficient warning of tightening of standards for industry and the supply chain to prepare
- g) Be clear and easily understood by the whole industry, including smaller owners and occupiers.

157. Instead of setting out the required standard at a date beyond 2018 now there may be merit in establishing a formal process for reviewing the detail as to when and how this would best be done. The review could be undertaken by a cross Government-industry working group, similar to the Green Construction Board. This would send a message to the market encouraging voluntary improvements in anticipation of future standards.

### Consultation Question

<b>23.</b>	<b>Do you agree that the Government should set a trajectory of standards beyond 2018, and if so, what should this be, and how and when should this be done?</b>
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## Enforcement, Penalties and appeals

### Local Authority led enforcement

158. The Energy Act 2011 states that local authorities will be the enforcement body for the domestic minimum standard regulations. It would be for the local authority to decide which team would carry out the enforcement, however, the Government considers that it is likely to be Trading Standard Officers who carry out this function although local authorities may wish to share this responsibility with Environmental Health Officers or housing teams.

159. Whilst the regulations may in some cases entail a number of steps – in taking into account consent rights and funding considerations – the Government is committed to ensuring that the process of assessing exemptions and enforcing the regulations is as straight forward as possible, for the benefit of landlords, tenants and local authorities. Furthermore the Government is committed to funding any new burdens on local authorities to avoid pressure on council tax.

160. A key challenge with enforcing the minimum standard regulations will be distinguishing between F and G rated properties that are rented out legally, i.e. those that have a valid and evidenced exemption from reaching an E, and F and G rated properties that are rented out illegally because they have not complied with the regulations. Another challenge is in identifying those properties that are let – and the point in which they are let – from owner occupied properties. The Department is exploring ways in which Government data could be used better to assist local authorities to direct their enforcement action, for example improved use of and open cost-effective access to EPC data. The Department is also looking at the type of information that is displayed on EPCs (for example page 5 which sets out details of a Green Deal Finance Plan).

### Intermediaries

161. Unlike the non-domestic sector, landlords and tenants in the domestic private rented sector are less likely to use legal advice or professional advisors before agreeing to a tenancy. However the Government considers that letting and managing agents will play an important role in alerting landlords (and tenants) as to whether a property has met its

obligations under the regulations. The Department will work with the representative bodies for agents to consider how best information and guidance can be disseminated to ensure they are made aware of the regulations and how they apply. However the regulations would not place any additional legal obligations on agents or other third parties to police compliance with the regulations.

## Enforcement

162. The Government is committed to keeping the cost of enforcement as low as possible, whilst ensuring sufficient capacity to undertake enforcement activity. The Government has also committed to quantifying any cost burdens and may provide funding towards these.
163. Similar to the EPC regulations, it will be up to landlords and their advisors to satisfy themselves that a property is in compliance with the regulations, and that any evidence required for an exemption is sufficient. Local authorities would be empowered to challenge landlords where they consider that a property may not be in compliance, either following up on a compliant or their own intelligence. If a landlord cannot provide sufficient evidence for a valid exemption, the local authorities would impose a civil penalty. This is detailed further in the 'Evidence to show compliance' section. Where the local authority is acting on tenant intelligence they may wish to pursue action under HHSRS. For more details see 'Links with existing policies – Housing Health and Safety Rating System' section.
164. Some landlords may prefer the peace of mind of having confirmation that they have met their obligations under the regulations where they have a valid reason for their property not being able to reach an E rating, for example they have undertaken all measures within the Golden Rule or have had consent for improvements withheld. Landlords or agents may welcome the ability to show prospective tenants evidence that the landlord had complied with the regulations, and a certification or stamp of approval from the local authority could help them demonstrate this. Furthermore, local authorities may welcome some assistance in identifying those properties that have a valid exemption from reaching an E rating, from those that do not. The Government recognises that challenges exist in identifying landlords and properties that are let in order to target enforcement activities and would welcome practical solutions to facilitate this.

## Certification of exemptions

165. The Government is exploring ways in which exemptions could be certified by a third party upfront. For example, landlords could be encouraged to voluntarily provide details of any exemption they have from meeting the E standard. Where evidence was insufficient the local authority would advise the landlord of this, and where it was sufficient, the local authority would provide written confirmation that they had complied.
166. For those that would welcome the assurance, this approach would provide certainty to landlords, tenants and their advisors that a property was in compliance, much in the same way a property owner can choose to apply for a Lawful Development Certificate confirming that planning permission for works is not required, giving the recipient peace of mind that they are in compliance. This would also help a prospective tenant in their decision whether to move into the property and understand whether the property was in compliance with the regulations. The Government also recognises that it may be helpful for prospective tenants to understand whether and why any exemptions currently applied to an F or G property.

167. There may be some cost in providing such a service, which could be met by a small fee chargeable by the local authority. However as the avenue would be optional, landlords could decide whether they wish to pay for the certification service, or simply satisfy themselves that they are in compliance. Furthermore consideration would be needed as to reasonable timescales for local authorities to respond to a landlord application, and whether confirmation can be deemed after a certain period. Clearly this process should not risk holding up a letting.
168. This approach would not tackle those landlords who wilfully ignore the regulations, as there would be no compulsion to come forward. However enforcement action could be better targeted as there may be a smaller pool of properties below E where the landlord has not come forward.
169. A more comprehensive approach would be to require landlords to apply to their local authority to obtain certification that their exemption is valid. Therefore any landlord found to be letting a property below standard without the express confirmation of a valid exemption from the local authority would risk a penalty. This would make it easier for local authorities to target their enforcement action and would provide certainty to landlords.
170. This would provide a level playing field in that all landlords would have to come forward and any landlord letting a property without express local authority permission would face enforcement action.

### Consultation Question

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| <b>24.</b> | <b>Do you consider where a property has a valid exemption for letting below an E EPC rating that certification of compliance would be helpful? If so should this be voluntary or mandatory? Do you have any other comments regarding compliance and how local authorities could be supported with enforcement, for example identifying landlords?</b> |
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### Powers to request evidence of compliance

171. Should the Government proposals for certification of exemptions be taken forward as outlined above, landlords would be able, or compelled, to come forward for certification of an exemption from reaching an E standard. Regardless as to whether the Government takes forward these options, the regulations will empower local authorities to require that landlords show evidence of compliance with the regulations.
172. Where a local authority believes that a property is being let in breach of the regulations, a local authority would be able to issue the landlord with a request in writing asking them to:
- a) demonstrate an exemption applies (for example consent denial for the required works, or inability to undertake the improvements do all the measures required within the Golden Rule) or provide a certificate of a valid exemption, if the Government proceeds with third party certification
  - b) respond to the notice within 7 days of the request, including any evidence that may be required to support an exemption. This should be sufficient time as a landlord



should have satisfied themselves that they had an exemption, and the relevant evidence to support it, before letting the property below an E rating.

173. The precise form of evidence that may be provided by a landlord will depend on the type of exemption that a landlord may feel applies, and therefore could include:
- a) EPCs for pre and post installation works;
  - b) Proof of tenancy for the property (i.e. a written tenancy agreement);
  - c) Green Deal Advice Report;
  - d) Written proof to show consent was required for the improvement(s) (for example their lease where the need to obtain consent from a freeholder is stipulated) and consent was denied, for example, from tenants, freeholders or planning permission;
  - e) Survey report from an accredited valuer showing a material decrease on the property's value following the improvements;
  - f) Green Deal finance quotes that show improvements do not meet the Green Deal Golden Rule.

## Penalties

174. The Government proposes that should the landlord not respond to a local authority or provide evidence of an exemption, or should the local authority consider that a landlord's evidence is inadequate or false, the local authority may issue a penalty charge notice in writing to the landlord. A local authority may however use their discretion and not issue a penalty notice where, for example, they feel the landlord had made a genuine error in attempting to comply. The local authority may also choose instead to take action under HHSRS. When issuing a penalty notice to a landlord, the Government proposes that the penalty notice should (at least) state the:
- a) details of the breach of the regulations;
  - b) amount the penalty charge;
  - c) the date by which the landlord must respond if they dispute the reasons provided for the penalty, not less than 28 days from the date of the penalty notice;
  - d) the date by which a landlord must pay the penalty, not less than 28 days from the date of the penalty notice;
  - e) The action the landlord must take to bring the property up to compliance, and the date by which this should be achieved.
175. The formula for calculating a penalty for non-compliance should be set at a level to persuade landlords to comply, and ensure a degree of proportionality to reflect the scale of benefit that a landlord may have received from the property during the period of non-compliance. The Government proposes that the formula for calculating a penalty for an instance of non-compliance would be:
- a) The equivalent amount in rent for the property for the period of non-compliance (the day on which the tenancy began in non-compliance with the regulations, to the day

in which the penalty notice is served), with a minimum fine of £1,000 and maximum of £5,000.

- b) Where the amount of rent cannot be evidenced (for example the landlord does not have a written tenancy agreement or does not respond to the original request to comply from the local authority), the fine will be fixed at £5,000.

176. Should a landlord respond to the local authority with a valid reason why the penalty had been imposed wrongly, a local authority may waive the penalty. A local authority may choose to provide the landlord with more time to demonstrate why a penalty had been wrongly imposed, should the local authority wish to do so.

177. Following the issuing of a penalty notice, the landlord would have six months to comply with the regulations. If after this six month period the landlord had not complied the local authority may issue another penalty notice. The usual exemptions for reaching the E standard would apply in this instance, therefore for example where a sitting tenant refused consent, the landlord would retain evidence of this as a valid exemption. The penalty regime will never require that a landlord evict their tenant in order to comply with the regulations. If penalties are not paid they may be recoverable as civil debt.

178. The Government will develop guidance for local authorities and the sector to help ensure the enforcement requirements are understood and easy to follow.

### Consultation Question

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| <b>25.</b> | <b>Do you agree that the penalty for non-compliance should be linked to the rent level for the property and the time period of non-compliance? Should there be a minimum penalty for all cases of non-compliance? Should a maximum penalty be applied where the amount of rent is not evidenced? If not, what alternatives do you suggest?</b> |
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### Appeals

179. The recipient of the penalty charge notice may be able to give notice to the local authority within 28 days that they challenge a penalty notice. The local authority will consider any representations made by the recipient and all other circumstances of the case and then decide whether to confirm or withdraw the notice.

180. The regulations will make provisions for a landlord to be able to appeal any penalties imposed by local authorities at a tribunal or court. The Government proposes that appeals relating to the minimum standard regulations will be heard by the First Tier Tribunal. Following the local authority's response to any landlord challenge to the penalty charge notice, the recipient may appeal the local authority's decision at the First Tier Tribunal within a further 28 day period. The appeal would be on the grounds that the recipient did not commit a breach of the regulations as specified in the penalty notice, the notice was not given with the correct timescales or in the circumstances of the case it was not appropriate for the notice to be given to the recipient. Provision will be made to appeal a ruling made by the First Tier Tribunal to the Upper Tribunal.

181. If the recipient of the penalty notice has not paid the penalty and a local authority or tribunal has not withdrawn the penalty, the penalty charge amount would be recoverable as a debt owed to the local authority.
182. The Government proposes that the tribunal to be used for the minimum standard regulations for is the same as that used for the tenant's improvements regulations. Details of the tribunal are included under the 'Tribunals overview' section under the tenant's improvements regulations above.

### Consultation Question

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

### Links with existing policies – Housing Health and Safety Rating System

183. As discussed under the tenant's improvements regulations, the Housing Health and Safety Rating System (HHSRS) is a risk based assessment that is currently used to identify hazards in dwellings and evaluate their potential effects on the health and safety of the property occupants and visitors. Under the Housing Act 2004, local authorities have a statutory duty to keep the housing conditions in the local area under review and also to inspect an individual property if they consider it appropriate to do so or have been asked to inspect the property.
184. The Government views that HHSRS will continue to operate alongside the minimum standard regulations, however, we also propose that in any circumstance where a property has been issued with notice under HHSRS then this will take primacy over the need to comply with the minimum standard regulations for the period that the landlord has to comply with HHSRS. The Government proposes that if a local authority requests a landlord to provide documentation to show an F or G EPC rated property is in compliance with the regulations, as detailed in the 'Evidence to show compliance' section above, and the landlord provides evidence that a notice under HHSRS currently applies to their property, if the local authority verifies that an HHSRS notice has been served on the property the landlord would not be required to take action regarding the minimum standard regulations until the HHSRS notice had been withdrawn or addressed. At which point the landlord will have to comply with the regulations and show evidence of this if requested. This is proposed to avoid the regulations conflicting with any requirements to comply with an HHSRS notice.

## Miscellaneous questions

### Consultation Question

27.	<b>Do you have any comments not raised under any of the above questions?</b>
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### Consultation Question

28.	<b>Do you have any comments or evidence regarding the consultation impact assessment that could inform the final impact assessment, for example the average length of void periods?</b>
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