

# **LGA response to the BEIS consultation on amending the *Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015* in relation to domestic properties to remove the “no cost to landlord” principle**

Date: 13 March 2018

## **About the LGA**

The Local Government Association (LGA) is the national voice of local government. We work with councils to support, promote and improve local government.

We are a politically-led, cross party organisation which works on behalf of councils to ensure local government has a strong, credible voice with national government. We aim to influence and set the political agenda on the issues that matter to councils so they are able to deliver local solutions to national problems.

The LGA welcomes the opportunity to respond to [this consultation](#).

## **Meeting the ambition for better quality privately rented homes**

From April 2018 new lettings for privately rented homes must meet the minimum energy efficiency standard set at an Energy Performance Certificate (EPC) rating of E. The regulations, drawn up at a time when the Green Deal “pay as you save” funding scheme was gearing up for a widescale roll out, exempt private landlords from meeting the minimum standards if they have to spend money upfront on improving the property. By April 2020 all privately rented homes including those with existing tenancies must have an EPC rating of E or above.

The Government’s Clean Growth Strategy sets out a target to upgrade all fuel poor homes to an EPC rating of C by 2030 and for bringing as many privately rented homes up to this standard as possible. The ambition of this target is welcome, given the growth of the private rented sector and rising number of children and families who live there.

We look forward to early discussions with government and private landlords on leveraging in the investment that will be needed to improve the 3,192,000 privately rented properties with a D and E EPC<sup>1</sup> rating up to the standard of a C by 2030. This will be particularly challenging in sparsely populated rural areas and off grid properties.

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<sup>1</sup> English Housing Survey 2015 to 2016: Private Rented Sector, Annex Table 4.1 Energy efficiency rating bands by tenure  
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## Key messages

- The LGA supports the introduction of a landlord contribution element to meet the EPC E standards. Provision to meet the upfront cost through activity funded by energy suppliers and “pay as you save” finance is limited and will leave a funding gap in bringing F and G rated properties up to standard. The regulations, as currently framed, are difficult for councils to enforce because of the “no upfront cost” exemption.
- A nationally set cost cap is a blunt instrument. Government should consider options for setting cost caps locally or regionally to reflect variations in installation costs and rent levels.
- Any new requirements for enforcement activity must be properly resourced. Financial pressures mean that trading standards are unlikely to prioritise existing powers to enforce the legal requirement for private landlords to provide an EPC certificate for their property. Local and central government will need to work together on an updated impact assessment for the proposals.

## Response to consultation questions

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

Yes. Upfront funding could be secured through the obligations placed on the largest energy suppliers. However, measures are spread across a range of tenures and are focused on households in fuel poverty. Energy supplier funding will not cover the 280,000 privately rented homes with an EPC rating of F and G<sup>2</sup>.

Many member councils have advised the LGA that that they will find it difficult to enforce the minimum energy efficiency standards because of the exemption granted for “upfront costs”. Enforcing regulations that are weak, or cost far more to use than the benefit they deliver, will not be a priority for councils.

Councils have powers to require improvement works through Housing Health and Safety Rating System (HHSRS) and this is likely to remain the most effective route for tackling excess cold in the private rented sector. The LGA would be happy to discuss improvements to the HHSRS that could support the government’s ambition to improve energy efficiency in the private rented sector.

- 2a. Do you agree that a cost cap for improving sub-standard domestic private rental property should be set at £2,500?**

The introduction of a cost cap will remove a significant barrier to effective implementation and enforcement of the minimum standards.

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<sup>2</sup> Government forecasts for England and Wales based on the 2014 English Housing Survey

However, a cap of £2,500 may limit options in areas where installation costs are high, for example properties in rural areas. Where rent levels are low and make it difficult to set aside money for investment, a lower cap may be more appropriate. Government should explore options for caps to be set locally or regionally.

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

The consultation paper sets out the options between keeping costs down for landlords and the need to invest in substandard properties. This balance could be addressed by locally or regionally set cost caps, making the inclusion or exclusion of VAT a less important consideration.

Government may wish to consider the way that VAT and other taxes are applied to the installation of energy efficiency measures to encourage take up by private landlords. This will be important in meeting longer term ambitions for energy efficiency.

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

We agree that it would be relatively rare for energy efficiency measures to be installed prior to 1 October 2017 and not raise a property above an F or G EPC rating. The cost cap would apply and limit any additional spending.

**4. Do you agree with the proposal that where a landlord contributes to the improvement, the cost cap threshold should be inclusive of any funding which can be obtained through a “no cost” finance plan (including a Green Deal finance plan), Supplier Obligation Funding (for example, ECO: Help to Heat or a successor scheme), or energy efficiency grant funding from a Local Authority or other third parties?**

The LGA has not reached a consensus view on this question.

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

Where an energy supplier could install measures through ECO but will not provide information on the cost, there is no way for the landlord or council to know how much additional contribution is needed before the cap is reached. This makes compliance with the regulations complicated and difficult to prove. However, it is not clear whether placing a legal obligation on energy suppliers would make it any easier to enforce the proposed new regulations or simply add to the cost of administering the ECO scheme.

**6. Where a landlord is intending to register a “high cost” exemption, should the landlord be required to provide three quotes for the cost of purchasing and installing the measures, in line with the non-domestic minimum standards?**

Yes. However, it is possible that unscrupulous landlords will supply fake quotes to avoid their responsibilities. Provision for enforcement costs should take account of the additional burden of checking all, or a proportion of the quotes registered with exemptions on the grounds of high cost.

**7. Do you agree with the proposal to limit the validity of any “no cost to the landlord” exemptions registered between October 2017 and the point at which a capped landlord contribution comes into force?**

Yes. It is difficult to see how any meaningful enforcement could take place if all the “no upfront cost” exemptions registered between October 2017 and the start of new regulations have no end date.

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

If the exemption was removed, the consultation paper notes that where a tenant has refused the addition of a Green Deal charge to their energy bill the landlord would not be able to register an automatic exemption, and would have to explore third party and self-funding within the limit of the cost cap.

The consultation paper and impact assessment do not estimate how many landlords would be affected. As the take up of Green Deal finance is currently uncertain and expected to be low, it seems likely that number of landlords affected by this proposal would be quite small.

We support the removal of the exemption.

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

The effectiveness of the regulations depends on private landlords complying with the legal obligation to have an EPC certificate. This is enforced by trading standards departments. The reality is that trading standards services will only be able to actively enforce issues that are key local priorities, meaning that the service’s response to the introduction of minimum standards will vary depending on the priority and available resources locally. This applies equally to proposed new areas of enforcement in the private rented sector, including the ban on letting agent fees to tenants.

The Housing and Planning Act 2016 made provision for councils to use information from Tenancy Deposit schemes for certain purposes related to enforcement activity. Enforcement of the minimum energy standards should be added to the list of functions to allow councils to cross check data from tenancy deposit schemes with EPC data.

If introduced, councils will be implementing these proposals at the same time as supporting national and local strategies for tackling fuel poverty

and reducing carbon emissions. The Private Members Bill on Fitness for Human Habitation will change the landscape for privately rented housing regulation and enforcement if it is passed as legislation. As well as joining up at the local level, it will be important for government to have a co-ordinated approach to these areas of work.

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

The impact assessment states:

*“Local authorities will be required to administer and enforce the PRS Regulations. These costs are expected to be small, as Local Authorities will already monitor and enforce the requirement to have an EPC. There will therefore only be small additional costs associated with monitoring that these landlords have also complied with the Regulations. Costs to local authorities will largely be in the form of staff costs. These have been estimated drawing on evidence submitted by Local Authorities for the 2015 Impact Assessment, which we will seek to update as part of the consultation”<sup>3</sup>.*

As noted above, the capacity of trading standards to proactively enforce EPC compliance is severely limited. The assumption that costs can be easily absorbed does not match the advice provided to the LGA by member councils.

If government is relying on effective enforcement to drive up standards in the private rented sector this must be properly resourced. If there is an expectation that local authorities will proactively monitor exemption registers, check the validity of quotes and make their own assessment of the cost of works and funding support this will all take time. We agree that the evidence provided by local authorities as part of the 2015 impact assessment should be revisited and updated.

While it is helpful that councils can retain the income from fines, this will not cover the cost of any proactive work or enforcement activity that results in compliance before a fine is issued.

Modelling the benefits of energy efficiency improvements is complex. The Core Cities Group of local authorities are working with the Treasury to update their cost methodology, and while not complete this work may help BEIS test the cost benefits presented in the impact assessment.

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

It would be difficult for councils to answer this question. The LGA has not compiled any evidence or information on this point.

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<sup>3</sup> Amending the Private Rented Sector Energy Efficiency Regulations: consultation stage impact assessment, page 30