

# Energy Efficient Scotland

The Energy Efficiency (Domestic Private Rented Property)  
(Scotland) Regulations 2020

Consultation on Draft Regulations and Associated Draft Guidance

## Analysis of responses to the public consultation exercise



## Contents

<b>Executive Summary</b> .....	<b>i</b>
<b>Introduction</b> .....	<b>1</b>
<b>Exemptions</b> .....	<b>4</b>
Principles behind the regulations and exemptions .....	4
Definitions used .....	5
Regulation 8 .....	6
Regulation 9 – relevant energy efficiency improvements undertaken.....	8
Regulation 11 – consent exemption .....	8
Regulation 12 – cost cap .....	9
Regulation 13 – temporary exemption.....	10
Regulation 13A .....	10
Regulation 16 .....	10
Schedule 1 .....	10
Omissions from the Regulations and Guidance regarding exemptions .....	11
Other omissions or comments regarding the Guidance .....	11
<b>Doing the work</b> .....	<b>12</b>
Financial aid .....	12
Advice service .....	13
Other issues raised.....	15
Financial .....	16
Advisory .....	16
Other.....	17
<b>Cost Cap</b> .....	<b>18</b>
6 Month Lead in Time .....	18
Required information in support of a cost cap exemption .....	19
Other forms of exemption .....	20
Other issues raised.....	20
<b>Enforcement and fines</b> .....	<b>22</b>
The use of fines as a penalty.....	22
Enforcement .....	23
Other issues raised.....	25
Annex 1 - Organisations responding to the consultation.....	27
Annex 2 - List of acronyms used .....	28

# Executive Summary

## Background

This report presents analysis of responses to ‘Energy Efficient Scotland: The Energy Efficiency (Private Rented Property) (Scotland) Regulations 2019’ and associated Guidance. The consultation opened on 17 June 2019 and closed on 13 September 2019.

The consultation paper (available at: <https://www.gov.scot/publications/energy-efficiency-private-rented-property-scotland-regulations-2019-guidance/>) sets out the intentions of Energy Efficient Scotland to require landlords of privately rented homes to meet minimum energy efficiency standards from April 2020. The intention is to achieve this through bringing forward regulations based on Energy Performance Certificate (EPC) ratings. Initially minimum energy efficiency standards will be introduced under Section 55 of the Energy Act 2011 and will require landlords of privately rented homes to ensure their properties achieve EPC Band E from 1 April 2020 at a change of tenancy, and then EPC Band D from 1 April 2022 at a change of tenancy.

This consultation sought to raise awareness of the standards proposed and the means by which they will be introduced. As well as this the consultation sought views on nature of the guidance to support the Regulations to ensure that users have sufficient information to begin implementation of the standards required.

In total 40 consultation responses were received, of which 11 were from individuals with properties, housing providers, landlords and their representative bodies, 10 were local authorities, 1 Non-Departmental Public Body (NDPB), and the remainder comprising organisations and professional bodies or Industry associations/manufacturer and commercial organisations.

## Exemptions

The first question sought views on the level of information to be provided by landlords regarding exemptions to the regulations. A majority of respondents supported the principle of exemptions but thought that the information provided did not provide the level of direction needed to understand how to meet the standard or seek an exemption.

*Flaws with EPCs* – some respondents provided detailed comments on the limitations and issues associated with the EPC to measure of energy efficiency. They suggested the use of alternative measures as a more appropriate way forward. This point was repeated in other question responses in the consultation.

*Time to implement the changes* – the time given to achieving the standards was considered by some to be an issues and concerns were raised about the ability of the supply chain to cope. There were also concerns that landlords with large portfolios would face challenges managing works within their stock in a way that does not adversely impact tenants.

*Impact of the regulations* – a small number of respondents noted that an unintended consequence of the regulations might be a reduction in the availability of housing stock,

particularly in rural areas. This point was also raised in response to other questions posed in the consultation.

*Enforcement* – generally greater clarity on what would be required, in practical terms, was sought from all groups of respondents.

*Clarity and definitions*– Detailed comments were made on all parts of the regulations and guidance relating to exemptions, seeking greater clarity. The need to ensure consistency between the information contained in the regulations and guidance was also noted by some.

## **Doing the work**

Questions 2 and 3 asked for views on the range of support which is currently available to help private landlords and tenants improve the energy efficiency of their properties and reduce fuel bills.

In general, most felt that more support would assist in the delivery of the regulations, although the quality of existing support was acknowledged.

*Financial aid* – most who expressed a view on existing finance products sought a broadening of the criteria to allow support for all Private Rental Sector (PRS) landlords; including those facing particular pressures associated with volume and poor quality of stock. Those suggesting an increase in the availability of grants were generally of the view that this would greatly assist the realisation of the regulations aims. Some noted that targeted grants based on tenant need would assist in this, but changes are needed to the existing arrangements to aid this.

*Advice services* – most accepted that the current advice service was playing an important part, but it was considered that more could be done with particular regard to specific advice on more problematic building types. Many felt that the promotion of available services could be improved. Some noted the need for improved quality assurance within the supply chain, with some raising similar points as made above regarding more problematic and traditional building stock.

Question 3 asked for additional information regarding changes in behaviour which could be brought about by changes to the support services discussed in question 2.

Generally, those responding thought that if their proposed changes, as set out in their response to question 2 were actioned, implementation of standards would improve. Some suggested the focus should not be on the speed of introducing regulations and standards, but about trying to achieve the best possible outcome for landlord, tenant and building.

## **Cost cap and its practical application**

Question 4 posed an option for works carried out in advance of 1<sup>st</sup> April 2020 to be taken into account if a landlord was seeking an exemption based on costs. The question then went on to ask what information should be provided to seek an exemption based on the cost cap.

There was majority support for the concept of accepting work carried out in advance of the regulations coming in to force as part of any cost cap exemption

*6 Month Lead in Time* - Responses were split on the proposed timeframe for carrying out work before the regulations come into force, between using 6 months or using a longer alternative. The majority of those supporting a longer timeframe were made up of individuals with properties, housing providers, landlords and their representative bodies. This group felt that the practicalities of carrying out work had not been adequately taken into account. They included issues with supply chain, ongoing lack of clarity on the works required under the regulations, likely impact on tenants, and the need to plan work over a longer period, (particularly where there is a large portfolio) to be considered.

*Required information in support of a cost cap exemption* – A majority suggested the supply of written evidence from impartial/independent suppliers or consultants, or from recognised support agencies such as Home Energy Scotland would be appropriate. A small number suggested the use of in-house teams where these existed. Further options suggested were a trusted trader type approach and the use of technical experts to support local authorities in their review of information supplied.

Other issues raised included the need to review the cost cap to take into account inflation, the need to support local authorities in carrying out the work needed to assess the information supplied, and the need for additional clarity regarding the practicalities of applying the regulations.

## **Enforcement and fines**

Question 5 asked for views on the proposed breakdown of penalties and fines, set within the context of the limitations of the maximum financial penalty set by the Energy Act 2011.

Most respondents supported some form of penalty, in the form of fines, for non-compliance and to encourage compliance. Many considered there needed to be higher levels of fines to act as a true deterrent against non-compliance.

Of those responding in support of current or lower levels some, including, local authorities, commented that fines should be fixed to ensure consistency; reduce risk of challenge; simplify the process; and ensure the maximum fine is not breached.

Of those who were opposed completely or in part, to the use of fines as a penalty, a small number felt that the approach would result in a reduction in PRS housing supply, particularly in rural areas.

*Enforcement* - some expressed concern about the burden being placed on the already stretched resources of local authorities. Responses also suggested that the system should be based on support, incentives and flexibility to encourage improvements to properties. Others responded that the approach to enforcement should be more closely linked to the process for landlord registration.

In terms of the practical roll out of the regulations a small number sought additional time. This would allow for the undertaking of appropriate works or to secure an exemption.

Specific comments were received regarding the need for more clarity on certain aspects of the enforcement process, with most focusing on the need for a clear understanding of the practical roll out of the process.

# Introduction

## Background

This report presents analysis of responses to ‘Energy Efficient Scotland: The Energy Efficiency (Private Rented Property) (Scotland) Regulations 2019 and associated Guidance’.

The consultation paper explains that over its 20 year lifetime Energy Efficient Scotland will make our buildings warmer, greener and more efficient - supporting efforts towards eradicating fuel poverty, reducing greenhouse gas emissions, as well as contributing to sustainable economic growth. Energy Efficient Scotland brings together a programme of work to improve the energy efficiency of Scotland's buildings and to decarbonise their heat supply.

The Route Map to an Energy Efficient Scotland published in May 2018, set out a pathway to realise this vision and the actions which will be taken over the next 20 years which includes proposals to introduce a framework of standards, which will be phased in gradually over the lifetime of the programme, helping to make it the norm to invest in energy efficiency. For Scotland’s homes, this phased approach will allow property owners to plan in advance for upgrades, give certainty to the Scottish supply chain so that they can invest in and grow their businesses, and allow Scotland to reap the economic benefits of the programme.

In 2017 we consulted on proposals to improve the energy efficiency and condition standards of privately rented housing in Scotland<sup>1</sup>. This consultation explored:

- the need for setting minimum energy efficiency standards in private rented housing;
- set out the proposed scope of minimum standards;
- looked at how the standard would work at the point of rental, and at a date by which time all properties would need to meet the standard;
- set out proposals for raising the minimum standard over time;
- explored what would be needed in a new assessment to support the introduction of standards; and
- sought views on the impact of these proposals.

Informed by this consultation, the Energy Efficient Scotland Route Map confirmed our intention to bring forward regulations based on Energy Performance Certificate ratings, requiring landlords of privately rented homes to meet minimum energy efficiency standards from April 2020. Initially minimum energy efficiency standards will be introduced under Section 55 of the Energy Act 2011, and will require landlords of privately rented homes to ensure their properties achieve EPC Band E from 1 April 2020 at a change of tenancy, and then EPC Band D from 1 April 2022 at a change of tenancy.

In May 2018<sup>2</sup> we asked further questions to develop our thinking on the private rented sector and the draft regulations and guidance presented in this consultation have been informed by that, setting out the draft regulations and draft guidance. The consultation

---

<sup>1</sup> <https://www2.gov.scot/Resource/0051/00516474.pdf>

<sup>2</sup> [https://consult.gov.scot/better-homes-division/energy-efficient-scotland/user\\_uploads/188061\\_sct0118873760-1\\_energy-p8.pdf](https://consult.gov.scot/better-homes-division/energy-efficient-scotland/user_uploads/188061_sct0118873760-1_energy-p8.pdf)

sought to raise awareness of the standards proposed and the means by which they will be introduced in advance of formal parliamentary consideration of the regulations to follow later this year. The consultation also sought views on nature of the guidance to support the regulations to ensure that users have sufficient information to begin implementation of the standards required.

The consultation opened on 17 June 2019 and closed on 13 September 2019. The consultation paper is available at: <https://consult.gov.scot/better-homes-division/private-rented-property/>

## Profile of respondents

In total 40 responses were received to the consultation, of which 33 were from groups or organisations and 7 from individual members of the public. The majority of responses were received through the Scottish Government's Citizen Space consultation hub. Where consent has been given to publish the response, it may be found at: <https://consult.gov.scot/better-homes-division/energy-efficient/>

Respondents were asked to identify whether they were responding as an individual or on behalf of a group or organisation. Organisational respondents were then allocated to one of eight categories. A breakdown of the number of responses received by respondent type is set out in Table 1 below and a full list of organisational respondents can be found in Annex 1.

**Table 1: Respondents by type**

Type of respondent	Number
Individuals owning properties, housing providers, landlords and their representative bodies	11
Local Authorities	10
NDPB	1
Organisations – voluntary/charitable	7
Organisations - other	3
Professional body	3
Industry assoc/manufacturer and commercial organisations	5
All respondents	39

## Analysis and reporting

In total, the consultation posed 5 questions, all of which were open questions.

This report presents a question-by-question analysis of the comments made. It should be noted, however, that all responses are available via the link above.

As with any public consultation exercise, it should be noted that those responding generally have a particular interest in the subject area. However, the views they express cannot necessarily be seen as representative of wider public opinion.

The following terms have been used in the qualitative analysis. Please note that the number of responses represented by some of these terms will vary based on the number of respondents commenting at a question:

- most: used when a majority of those commenting made a point;
- many: used when a large minority, 1 in 3 or more, made a point;
- some: used when fewer than 1 in 3 but more than a small number made a comment; and
- a small number: used when two or more, but a maximum of five respondents made a comment.

A list of acronyms used in the report is provided at Annex 2.

# Exemptions

The first question sought opinion on the level of information provided on exemptions to the regulations. The level of information was high in the 2017 consultation. In that consultation views were sought regarding situations where it might be appropriate to accept a lower standard for certain properties within the private rented sector.

**Question 1** - Do you think that the proposed approach to exemptions both within the Regulations (Regulations 11-13) and amplified in the Guidance (Chapter 4) provides you with sufficient clarity on meeting the standard or seeking an exemption to that standard?

Please set out the reasons for your response.

39 respondents answered Question 1. The majority of respondents supported the principle of exemptions but also thought that the information provided did not provide the level of direction needed to understand how to meet the standard or seek an exemption.

The responses have been grouped under broad thematic headings to assist in understanding both the general, and more detailed nature of comments received.

## Principles behind the regulations and exemptions

**Flaws with EPC** – some respondents are opposed to the use of the EPC, which forms the underlying basis of these regulations, as a measure against which properties should be judged. This opposition is particularly voiced in relation to historic and traditional properties.

A small number of respondents claim EPC assessors are lacking in knowledge regarding historic properties, and this is further compounded by inexperienced tradesmen who are delivering grant works.

Respondents report that on occasion, EPC recommendation reports do not propose works to get to the standards required by the regulations which a small number of respondents felt, would cause confusion on what action a landlord should take. It was further suggested by respondents that EPC recommendations can conflict with goals to reduce greenhouse gases.

Finally, a small number thought the EPC register a cumbersome tool for enforcement authorities.

**Time to implement the changes** – a small number of respondents supported the principles but considered that more time should be allowed to implement the necessary changes. They based this consideration on existing problems and limitations within the supply chain. In particular this was felt to be the case where highly disruptive works are needed and may take longer to implement. Respondents felt such occasions should be given additional time to meet the standard.

One suggestion proposed related to agreeing more time to implement the standards if the landlord has an agreed programme of improvements covering a large portfolio.

**Impact of the regulations** - a small number of respondents considered that the regulations could result in rural properties being removed from the Private Rented Sector after purchase by owner occupiers.

It was suggested that where a landlord gains an exemption and the property remains below the required standard the tenant should be entitled to some form of compensation.

Finally, it has been suggested that the impact of allowing exemptions may focus landlords on working around the standard, thus causing an administrative burden for the enforcement authorities and resulting in no real change to the quality of the housing stock.

**Enforcement** – Some respondents have raised a general point regarding the enforcement of the regulations seeking guidance on the evidence required to support each exemption category. They also sought guidance on how information would be verified, how long exemption would last, and the timings for temporary exemptions. This point linked with concerns raised regarding the potential for inconsistency across Scotland if each local authority interprets the regulations in a slightly different way.

A number of local authorities were concerned about the impact on their workload and one urged for a co-ordinated approach lead by Scottish Government to help target the worst properties first. The use of a common template supplied to the enforcement authorities by Scottish Government was supported by another local authority.

**Clarity** – One local authority has suggested a suite of leaflets to assist in the understanding of the regulations as follows:

1. *'The new Energy Efficiency Standard in the Private Rented Sector and your obligations as landlord*
2. *Private landlord notification of energy efficiency improvements with the local authority*
3. *Costs of energy improvement, professional advice and exemptions*
4. *Fine and penalties for non-compliance of the new Energy Efficiency Standard in the Private Rented Sector'*

Local Authority respondent

Another respondent raised the need for clear information to be developed for tenants regarding their tenancies and the position regarding properties which are in breach of the regulations. This is mentioned in Regulation 10, but it was not felt that this had been made appropriately clear.

## **Definitions used**

**Scope of regulations** – clarity is sought regarding a number of issues relating to the scope of the regulations, as follows:

- the suggested use of the definition provided in the Energy Act 2011;
- that wording clarifies that the regulations apply where there is a requirement to have an EPC under EPBD (Energy Performance of Buildings Directive);
- that the regulations clarify the need to reach the standard prior to the signing of a tenancy;

- that it is not just properties in Band F and G affected, but also those in Band E since they will be also affected;
- that the position for properties which do not have, and never have had, an EPC be made clear;
- that clarification is provided for properties who have an EPC which is older than 10 years and does not need to be renewed for the purposes of the Energy Performance of Buildings (Scotland) Regulations 2008;
- that the applicability of the standard to houses in multiple occupation be made clear;
- that any links to the Repairing standard are set out, as there seems to be an inference in the guidance that these regulations form part of that;
- that the position for tenancies on agricultural holdings and the standard they will have to reach when they become part of the PRS is clarified;
- that clarity is provided on who is responsible where existing contractual leases are in place, particularly so with sub-letting within tenancies on agricultural holdings; and
- that the guidance is clear on the position for existing tenancies of sub-standard properties which seem to be able can continue after April 2020, although the regulations do not seem to provide for the continuation of such tenancies.

**Other definitions** – some respondents have sought further clarity on a number of defined terms used within the regulations and guidance, as follows:

- one respondent has suggested the term cost cap should be defined as *‘where the cost of works to achieve the new standard are likely to exceed or are actually greater than £5,000 per property. This is known as the ‘cost cap’.*
- It was noted that the term ‘installer standards’ used in regulation 8 but not defined elsewhere in the regulations. This is particularly relevant when cross checking against the measures listed in Schedule 1;
- Respondents sought clarity on the term ‘reasonable effort’ in Regulation 11 and not defined elsewhere in the regulations, perhaps aided by some worked examples; and
- The term ‘independent’ and what constitutes independence as all may not be adequately skilled on understanding all forms of building type.

One local authority suggested referencing the need for building warrants for certain works this being important for working out the timescale for completion of works.

## Regulation 8

Clarity was sought by a small number of respondents regarding what is ‘relevant’ and how regulation 8(1)(a) links to schedule 1. This clarity should be carry into the guidance so that it is clear to the reader what constitutes a relevant energy efficiency improvement.

In terms of who can provide the evidence listed at 8(1)(b)(iii) clarification has been sought by some, with a number of suggested additions proposed as follows:

- an EPC assessor and/or;
- relevant person;
- other expert;
- a definition of surveyor (if charter, or to include anyone who has carried out a survey of the building); or
- a qualified professionals (particularly for historic buildings).

The nature and complexity of the reports was also questioned, including the need for clarification if a landlord is dealing with properties that each require a report, with the suggestion on cost grounds that it be possible to submit a common report.

In terms of the evidence to support this regulation one respondent raised that the use of the term Green Deal risks becoming outmoded. The respondent went on to consider how the Green Deal report is defined, noting that several pieces of legislation are cross referenced, thus making it very difficult for the reader to understand. Linked to this are the limitations of the Green Deal Advice Report identified by a small number of respondents.

There was some confusion over the exemptions which would apply to listed and historic buildings. Whilst these are set out at regulation 8(2) the wording is considered by some to be ambiguous, particularly in regard to works which would have a potential negative impact on the fabric of the building in question. One respondent seeks further clarification of wording that this may be in the short, medium and/or long term and is not restricted to immediate damage.

In terms of the guidance around this regulation, it is suggested that additional information be supplied regarding the change management process for historic environment designations and the respondent has supplied suggested wording accordingly. A web link has been provided to include in FAQs to assist.

In terms of support and guidance to assist in this regulation, concern has been expressed regarding the ability of Home Energy Scotland (HES) to provide this service.

In terms of the related recommendation report, it is noted that the guidance should clarify that the list of measures are not comprehensive and also that the measures should not be assumed to be appropriate in every case.

It was suggested that natural heritage or landscape designations which may preclude certain works, such as wind turbines, should be mentioned.

Clarity was also sought by a small number on the matter of availability of funding listed in regulation 8(3), and, in the event that this is not forthcoming, whether this would then become a further exemption.

In terms of clarity on this regulation It has been suggested that the wording which relates to exemptions based on measures not being relevant should be moved to Part 3.

Finally, the need for section 8(2) is questioned, as if a measure is not contained within the list of documents set out in 8(1), they are by definition, not relevant.

## **Regulation 9 – relevant energy efficiency improvements undertaken**

Similar to a point raised above, it is noted that this regulation provides scope to seek an exemption, but it is not clearly framed as such, and it is suggested that this also be embedded in Part 3 of the Regulations.

## **Regulation 11 – consent exemption**

The view was expressed that tenants should not be able to block improvements being undertaken. However, a small number cautioned against this exemption as it may result in the risk of intimidation of tenants where landlords are seeking an exemption based on this regulation. An additional part to this exemption was suggested where a tenant refuses access to an EPC assessor where the current EPC is older than 10 years.

A small number of respondents felt landlords should provide clear information to tenants on the nature and timing of proposed works thus ensuring they have the best available information on which to base their decision in advance of seeking any exemption. A further suggestion included the provision of mediation services to ensure the tenant understands what is being asked, and also to ensure that they are not being intimidated.

A small number of respondents asked for more clarity on when exemptions would lapse, this being assumed to be at change of tenancy. In the event of a 5 year exemption, the apparent conflict with regulation 11(1)(b) which cites 5 years preceding the exemption as a measure to be used was highlighted. Related to this point, a small number of respondents also felt 5 years was excessive as the tenant may have changed, the suggestion was made to reduce this period to 3 years with a check at point of renewal of landlord registration.

Some respondents referenced the Housing and Property Chamber First Tier Tribunal as the place where disputes, notably those relating to access, should be taken. It was suggested that evidence of this process could be a way to seek an exemption under Regulation 11. Respondents considered this to be particularly true if there is indeed a formal link between these regulations and the Repairing Standard. Some noted that this would provide the tenant with some security.

Some respondents asked for further clarity on the requirement for third party consent (regulation 11(1)(c)) in the event of a jointly owned block where other owners may be required to provide evidence that they do not wish works to be carried out. It was felt this could also be an issue where jointly owned blocks are the subject of a programme of works by a RSL (or similar) but which fall outside the timeframe proposed by these regulations.

Regarding third party consent where this relates to formal consents, a small number of respondents asked for additional explanation of what that includes, making reference to listed building consent and planning permission amongst other concerns.

Some also noted the need for careful consideration of long and invasive works being used as a reason for eviction and sought clarity on what protections would be put in place

regarding this. This was also true of costs (including fines) being passed on the tenants through rent increases. A small number suggested the use of a formula based on the cost cap, as used in the Scottish Government's application for exception for landlords in rent pressure zones could be used to prevent this.

## **Regulation 12 – cost cap**

Some sought further guidance as they felt the current wording does not make it sufficiently clear that works should be carried out up to the value of the cap (£5k) They felt this further conflated in the wording of the guidance at 4.3.1 which implies that works should be undertaken up to the cap – without any cross referenced wording in the regulations to support this. This was also felt to be the case where the list of recommended works includes a number of improvements which individually cost less than £5K but together come to more than £5k. Clarity is sought on how the landlord would decide which out of the list of measures they should undertake. Finally on this point, clarity was also sought regarding a scenario where the list of recommended measures does not include any which cost less than £5k. Would the landlord, then have to spend anything?

A small number considers that the requirement is to spend up to £5K on each property, to be excessive where a landlord holds a large portfolio. In such cases, a longer period to comply should be considered. It was also considered not clear if costs spent to reach B and E would then count towards a cost cap exemption for Band D. Further, a small number sought clarification on a scenario where a landlord spends up to £5k in an effort to reach band E but fails to do so, would they then be expected to spend another £5k, knowing that they will not be able to reach Band D.

Within the £5k, some sought clarity on precisely what is included:

- specialist surveyor costs including where the landlord is tackling a number of similar properties which will require surveyor reports – is there a need for a separate report per property;
- VAT;
- impact of any grants;
- redecoration and making good; and
- ancillary wiring, plumbing, etc.

A small number asked for more guidance to explain the practicalities of seeking an exemption and the evidence that should be supplied to the local authority with the need for 3 estimates considered to be excessive.

Regarding the practical application of the cost cap exemption, further guidance was sought to clarify the position where a spending programme over several years was undertaken. In such an instance respondents reported confusion in understanding which costs, over which period, would count towards the exemption being sought.

One local authority suggested that the cost cap is too low, given the support, both advisory and financial, which is available.

A small number did not support the principle of any cost cap, as properties which do not generate sufficient income to allow proper investment and maintenance should not be seen as viable within the PRS and should be sold, thus removing the worst properties from the sector and releasing more properties on to the market.

A small number also considered that the cap of £5K is excessive, particularly where landlords have a large portfolio, or hold several older properties which will all require work, and suggests this be reduced to a cap of £3,500. Alternatively, it is suggested that the cap be reduced in the event of below market rents. A further alternative seeks a review point of the £5k cap to account for inflation in the future. Finally one respondent suggested using a case by case approach.

## **Regulation 13 – temporary exemption**

A small number of respondents felt this regulation was confusing and some simplification or clarification was sought. A suggested alternative was proposed based on a one year clock starting at change of tenancy (subject to the exemption listed at regulation 11) similar to the system used for Residential Energy Conservation Ordinances (RECOs).

One organisation consider regulation 13(3) does not provide sufficient time particularly where the landlord has acquired a number of properties at once. Suggested alternative wording is supplied as follows:

*'6 months or such longer period as may be agreed between the landlord and the relevant local authority'.*

Organisations - other

## **Regulation 13A**

A small number of respondents were confused about the purpose of this regulation, why it is time bound, and why it does not include the period 1/4/20-31/3/22. Also it was felt unclear if this regulation applies in the event of an existing tenant signing a new contract rather than extension to an existing one.

## **Regulation 16**

One organisation noted that the list provided does not include reference to Regulation 9 which they consider to be an omission. Another organisation asked if the register will be publicly available online.

## **Schedule 1**

A small number of respondents noted that having a schedule/list does not allow for innovative and new measures. However, given the existence of the list, one respondent considers it would be useful to include it within the guidance to ease of reference. A number of detailed suggestions are provided by a small number of respondents, which although not providing a commentary on the regulation, are helpful in future reviews of the schedule.

## **Omissions from the Regulations and Guidance regarding exemptions**

A small number considered there would be a need for financial support to help implement these regulations. They felt this support could take the form of interest free loans instead of grants which should be reserved for the most in need.

It was commented that there appeared to be an omission in the regulations regarding the impact on protected species which is mentioned in the guidance as a possible exemption. A further omission was suggested where the guidance provides information on properties which are to be demolished but this is not referenced in the regulations.

## **Other omissions or comments regarding the Guidance**

It was felt that in the introduction, more information should be included to assist the reader to understand the benefits of energy efficiency. The benefits of going beyond the required standard could also be clarified at this point.

In terms of encouraging landlords to reach a higher standard, some practical detail could assist the readers understanding of what is likely to be required.

Regarding compliance, one respondent felt it would be useful to explain the relationship between the compliance notice and penalty notice and set out how the fines will be applied to ensure landlords cannot ignore certain steps in the process to advantage themselves financially.

Finally, it was not felt clear from regulations or guidance what happens to the property at the end of the enforcement process, or at which point the works have to be undertaken to raise the standard of the property, although this is implied in the FAQs.

## Doing the work

Questions 2 and 3 asked for views on the current range of support which is available to help private landlords and tenants to improve the energy efficiency of their properties and reduce their fuel bills. In terms of financial support from the Scottish Government this includes loans from Home Energy Scotland (HES), Resource Efficient Scotland (RES), Home Energy Efficiency Programme for Scotland (HEEPS) Area Based Schemes (ABS), the HEEPS Equity Loan Pilot, and Warmer Homes Scotland.

As well as funded support, private sector landlords and tenants can get free and impartial advice from Home Energy Scotland (HES) on energy saving, renewable energy and access to funding, including access to schemes provided by the UK Government.

In addition, Scottish Government intend to introduce a new tailored financial loan product for the Private Rented Sector and the question sought opinion on how such an incentive might help improve the energy efficiency of properties in the private rented sector.

### Question 2

What are your views on the existing mixed nature of support (financial and advice) available to landlords and tenants? Include any additions or changes you think would assist.

39 respondents answered Question 2. The question was open, seeking opinion and suggestions.

Generally, whilst existing support is acknowledged, most felt that, more support would assist in the delivery of the regulations.

### Financial aid

Regarding financial aid, respondents suggested that the key to the success of any support programme is adequately budgeting to meet any increased demand which arises as a result of these regulations. As a way of managing this it was also suggested that the support which is available should be targeted at the worst properties first.

**Loans** – Many respondents considered there to be a need to broaden the existing loan funds to cover all landlords, or a dedicated PRS loan fund. Simplifying the application process was also suggested as something which might help landlords engage and speed up the process.

A number of suggestions were made to target funds towards particular types of property, as follows:

- targeting of the more expensive measures needed to reach EPC bands B and A to help deliver the overall outcomes of the regulations;
- targeting towards those proposing a whole home/building approach, particularly where this includes multi occupancy buildings, which should include communal areas and the cost of retrofit co-ordinators; and

- targeting properties in rural areas and off grid properties where rental incomes are lower and so, costs to the landlord, higher overall.

A small number of respondents highlighted the limitations of loans, as a further debt associated with their business/estate, noting that this should be kept in mind when considering how best to achieve the aims of the regulations. It was suggested that a reasonably priced finance product at favourable fixed term interest rates secured against let property, and made available to landlords with large portfolios may assist.

**Grants** – A small number saw the availability of grants as the only real way to ensure the regulations are delivered.

Respondents suggested linking grants to loan funds while another suggested encouraging links between social enterprises and the private rented sector to gain best value from available grants and to reach as large a number of buildings as possible.

Tenant-led grants were seen by some as problematic and confusing, particularly in terms of liability, and gave the landlord less control over the works being carried out. Linked to this one respondent suggested that Warmer Homes Scotland grants should be extended to assist low paid workers and the elderly, with those who just miss the pension credit threshold noted as being at particular risk. Another suggested a change to this form of grant to tackle properties where there is a regulated tenancy and costs will never, as a result, be recouped by rent increases.

One voluntary/charitable organisation also considered the need for financial assistance for tenants in the event enforcement action is taken.

**Fiscal incentives** – Tax incentives were cited by a small number of respondents as a way to incentivise compliance with the regulations. Changes to VAT rules were also suggested as an option.

**Other funding options** – As an alternative to the suggestions above, one respondent suggested an option to allow landlords with large portfolios, particularly where these are historic/traditional to commit to a programme of work over an agreed period of time, rather than forcing them to act within the prescribed timeframes. A further respondent suggested making the payment to the contractor, rather than the landlord, to smooth issues in the supply chain and reduce the need for the landlord to find funds up front.

## **Advice service**

Some respondents noted the need for increased capacity within existing advisory services, to meet the increase in requests which will come as a result of these regulations. Linked to this, it was suggested that there was a need for additional support for local authorities, most notably linked to training regarding their role as enforcement authority.

Improved web information was also suggested by a small number, targeted at the hard to reach, who are often landlords with single properties, with a focus on particular building types.

Some suggested building on existing communication networks with a high profile marketing campaign to raise the profile of the regulations and ensure landlords understand their obligations and what support is available. Examples suggested include:

- private landlord forums;
- a private landlord support officer model piloted already in some areas of Scotland;
- enhanced HES advice services to include
  - Development of the existing HES PRS advisory role;
  - Improved advisory service specifically regarding traditional and historic properties;
  - Improved advisory service specifically regarding shared ownership blocks;
  - Tailored advice by house type (which requires research);
- a government led associative body or database was suggested as a way to increase knowledge;
- face to face and in home support particularly in regard to tackling fuel poverty; and
- a publicly owned service to co-ordinate existing and future advice providers. As a minimum all forms of support should be made available through a centralised portal, for example under Resource Efficient Scotland (RES).

A small number note the need for care in the roll out of advisory services and the link up to owner occupier standards and roll out of much wider standards across the whole of the building stock. A joined up approach is needed to ensure success.

The quality of installers was also noted as having problems, with contractors not correctly installing measures which can result in damage to the property affected.

A number of suggestions were made about specific measures which may help landlords understand what is available and what is needed, as follows:

- an options appraisal report which would allow real costs of energy and measure to be fully accounted for, these being linked to the various EPC bands to allow landlords to make informed decisions about investment;
- an amendment to the information provided in home reports is also suggested as a way to raise the profile of the regulations and routes to advice;
- advice and support with surveys and installers would assist; and
- advice which promotes a whole building approach in an effort to reduce the risk of smaller measures being taken which will require further updating in the future.

Some respondents suggested that advisory services should also be promoted with tenants, possibly through their tenancy agreement, with suggestions including the following:

- tenant rights;
- information on behaviour change;
- educational information on the benefits of energy efficiency measures. This is important where measures are being installed to ensure the best outcome for the tenant in terms of gaining efficiencies and reductions in energy bills; and

- enforcement rights and clarity on the role of the First Tier Housing Tribunal for some tenant issues, and the local authority for others.

A number of specific advisory measures are suggested by one local authority as follows:

- *extending the tenement management scheme to include energy efficiency improvements which enable properties to meet the standards set in the regulations*
- *revise the model Private Residential Tenancy agreement to include reference to minimum energy efficiency performance standards*
- *strengthen the guidance to require that any non-compliance with the regulations is immediately referred to Landlord Registration teams to review if the landlord is 'fit and proper'*

Local Authority respondent

One respondent called for caution, concerned that increased demand within the supply chain would result in a reduction in quality of suppliers. They considered that advisory services must be alert to this in the advice they give.

The guidance associated with these regulations was suggested by a small number as a first 'port' to provide additional information which can then be used by advisors and landlord registration teams to point landlords towards help. It was noted that there is more information available in the consultation document which was not contained in the guidance document. Information should also be included within the information on landlord registration provided by local authorities.

## **Other issues raised**

The previously mentioned perceived limitations of the EPC was raised by some respondents, the view being that the resolution of this problem would go a long way to encouraging landlords, particularly in rural areas, to install appropriate energy efficiency measures, thus delivering the objectives of the regulations.

A number of specific issues were also been raised and these are as follows:

- the need to ensure costs incurred by landlords are not passed on the tenants, and seek, from the Scottish Government, methods to ensure this. This is also true of the risk of eviction as a result of the need for long and invasive works within a property;
- the risks associated between lack of available funding and requests for large numbers of exemptions;
- the need for an extended lead in time to help manage increased demand for both finance and advice, and allow landlords sufficient time to be clear on the requirements of the regulations; and
- the need to understand the unintended consequences of the regulations being to reduce the overall supply of PRS stock or a high percentage of exemptions.

Question 3 asked for additional information regarding change in behaviour which may be brought about by changes to the support services discussed in question 2.

### **Question 3**

How would the changes you suggest influence the speed with which you would expect improvements to occur?

34 respondents answered Question 3. Generally, respondents were of the view that if their suggestions, made under Question 2, were taken up, this would aid the speed of improvements. They felt this should start with the suggested changes to improve clarity in the formal regulations and associated guidance, as raised in connection to other questions in the consultation.

## **Financial**

Regarding financial assistance, a number of specific additional points were raised, as follows:

- any financial support should be time bound to act as an incentive;
- loan options to be extended to cover all PRS landlords;
- an adjustment to the HEEPS ABS scheme would speed up the completion of improvements; and
- an improved/simplified grant/loan application process would speed up the process and encourage co-operation.

A large percentage grant was suggested by a small number as a way to speed up works. This could be coupled with tax and other fiscal incentives and concessions. Other respondents considered the provision of financial incentives as a route to speeding up the process.

## **Advisory**

If the advisory service was improved there was a general view that this would accelerate the process and help landlords and tenants understand what is required.

It was also felt that improvements to the current service should focus on clear and concise advice, thus avoiding confusion. Improvements to the current service should also include building in additional capacity and tailored advice providing help to educate landlords on the best options. In line with points raised in regard to question 2, if this included whole building advice, this would improve the quality of overall improvements.

Promoting available services would improve take up and knowledge of regulations within the sector. Without this a small number considered compliance with the regulation would be low.

As mentioned above in answer to question 2, the availability and knowledge of assessors was considered by some to be crucial to the successful roll out of these regulations. It was felt demand will increase as a result of the regulations, and this must be matched by an increase in skills and knowledge.

A small number considered that specialist advice regarding historic and traditional buildings was urgently needed. However this was not considered likely to speed up improvements, but would ultimately improve the quality of works installed.

## Other

A small number considered that works should be prioritised based on the best fit for tenants, the best fit for landlords and their finances, and on landlord management of their portfolios, rather than on forcing landlords to seek exemptions. A small number suggest agreed long term improvement programmes agreed between landlords and enforcement authorities would be a solution, particularly in rural areas where landlords may have large portfolios of sub-standard stock. Linked to this is the need for the approach to recognise that not all properties are the same, and some flexibility is needed if the aims of the regulations are to be realised.

One local authority raised a number of specific points regarding their role as enforcement authority as follows:

- the process seems to focus on ensuring compliance rather than the burden being on the landlord to comply;
- should local authorities contact all relevant landlords to begin the dialogue;
- should local authorities investigate compliance during investigations into other tenant enquires;
- should local authorities undertake a sample to ensure compliance;
- the process of seeking information to confirm compliance appears complex and time consuming;
- a link between the EPC register and landlord register would be a good starting point to assist in identification of non-compliant properties and could tap into the existing options for email reminders which are built in to the Landlord registration system; and
- a centralised exemptions register is also suggested as a way to save time within individual local authorities.

A number of additional points were made by individuals, as follows:

- the introduction of the regulations will help drive improvements in the sector;
- high penalties may encourage improvements within the sector; and
- the process should include the introduction of a regulated system for contractors and suppliers to drive quality in the supply chain.

A number of points raised elsewhere are also repeated here, as follows:

- the unintended consequence of these regulations could be causing a reduction in the PRS stock;
- the use of EPC and the need to address this issue if confidence is to be built; and
- the ongoing conflicting agendas between improving energy efficiency and fuel poverty.

# Cost Cap

Question 4 considered the need for landlords to take action in advance of the regulations coming in to force, and sought views on what impact this might have on costs and the ability of landlords, through Regulation 12, to secure an exemption based on excessive costs of works (a cost cap).

## Question 4

We propose that 6 months in advance of the Regulations coming into force local authorities should take account of expenditure outlay on measures which are intended to meet the standards set.

Do you agree that this is a reasonable lead in time period? If not, what alternative lead in time would you propose?

What information would you expect to provide to local authorities to seek an exemption based on the cost cap proposed?

## 6 Month Lead in Time

In total, 34 respondents commented on Question 4. There was wide support for the concept of accepting work carried out in advance of the regulations coming in to force as part of any cost cap exemption with the majority welcoming this approach. The responses were split when considering the timeframe for such work. Half of those who commented on the timeframe support a 6 month period considering this to be sufficient to allow works to proceed in advance of the standard coming in to force. Of these, the majority were local authorities, the remainder comprising, in the main, professional and voluntary bodies. Some reasons given to support a 6 month period were that:

- the lead in time will help avoid dis-incentivising landlords from being proactive in upgrading their stock in advance of the standard coming in to force; and
- it links with the close of the consultation period on the draft regulations which is approximately 6 months in advance of the regulations coming in to force.

Those supporting a 6 month period did however note a number of concerns which, they felt, should be qualified in guidance associated with the regulations. Some such concerns included:

- the need for a comprehensive communications and awareness raising campaign by Scottish Government to trail the introduction of the regulations;
- the work carried out in this period must be relevant to the standard, provided by reputable companies and the information supplied to support this must be valid;
- the need for discretion by the local authority regarding the dates of receipts, particularly where local authority areas contain a large portfolio of PRS stock;
- availability of assessors and suppliers as demand grows in advance of the regulations coming in to force;
- the need for this approach to be embedded in the regulations; and
- that this approach be extended to include a lead in time for the higher standard of Band D.

The other half of those who commented, mainly individuals, housing providers, landlords and their representative bodies, on the timeframe considered 6 months to be too short a period with many suggesting a period of at least one year.

Some reasons given to support an alternative to a 6 month period were that:

- the introduction of a new process will put an additional burden on local authorities which may take more than the suggested timeframe to settle down, allowing local authorities to fully engage with landlords, provide the required level of advice on requirements and process information supplied;
- there is a shortage of skilled suppliers, particularly in rural areas and waiting lists can run to over a year;
- landlords with large portfolios may have difficulty meeting the standard across all their stock within the timeframe suggested;
- the 6 months preceding the regulations coming in to force runs between October and end March, during which time work is often delayed because of weather;
- current communications around the introduction of these regulations is inadequate at present and there is a need for a more robust approach lead by Scottish Government;
- a period of at least a year better reflects the time taken to seek quotes, agree contracts and complete works needed using the existing supply chain; and
- the use of a 6 month timeframe will dissuade landlords from carrying out structured and constant investment in their stock.

The majority of those suggesting a period longer than 6 months considered that the practicalities of carrying out work was not being adequately taken into account. This included impact of supply chain, lack of clarity on the works required in the lead up to the regulations coming in to force, the impact on tenants, and the need to plan work over a longer period. For example:

*‘Some improvements (eg double glazing or new heating) might be better carried out when the property is vacant and a 6 month period might not be long enough.’*

Organisations – voluntary/charitable respondent

### **Required information in support of a cost cap exemption**

The majority of those who responded to this question suggested that written evidence be supplied by impartial/independent suppliers or consultants or from recognised support agencies such as Home Energy Scotland.

A small number recognised that landlords with large portfolios, at times, have in-house building and repair teams and wished their experience and ability to provide quotes to be recognised. The use of a trusted trader type approach was also suggested, as was the use of technical experts to support local authorities in their review of information supplied.

Some expressed concern regarding the nature of information to be supplied, as EPC recommendation reports already include cost estimates. They expressed the need for clarity on the precise nature of the cost estimates and from whom they should be provided.

Some suggested that associated guidance should include clear information on the parameters of cost and works, mentioning the need for clarity on the following:

- redecoration;
- VAT;
- ancillary costs;
- availability of grants and loans;
- associated costs linked to but not providing energy efficiency such as replacement of rotten timbers;
- the need for temporary rehousing of tenants;
- the difference between costs per energy efficiency measure and combined cost;
- expenditure to reach Band E and then D and the option to seek a cap based on the combined costs;
- the need to undertake some works, despite that work not securing an improvement in the band to the required standard; and
- the need to seek advice from HES on the most cost effective way of gaining improvement.

While the majority agree on the need for quotes as noted above, some consider that the need for 3 quotes was not reasonable, particularly noting limitations with the supply chain to seek and secure such quotes. For example:

*‘We have received some feedback suggesting that it may be difficult for landlords to receive three quotes for work and that this approach may not be welcomed by tradespeople who may be reluctant to provide quotes if they think it is unlikely to result in a job.’*

Professional body

## **Other forms of exemption**

Within the responses to this question, a small number of respondents expressed views on exemptions other than the cost cap.

Regarding Consent exemptions, a small number suggested evidence supplied in support should take the form of written evidence and confirmed by the local authority seeking direct access themselves where this is not possible. The tenant should also be able to contact the local authority to confirm they do not wish works to be undertaken.

## **Other issues raised**

A number of other views were expressed, which, while not directly in answer to the question posed, are important to capture, and were made by one or a small number of respondents, as follows.

- concern regarding the use of EPC to measure for both the standard and the associated costs. Concern was expressed regarding the methodology behind the EPC to measure for the standard with landlords undertaking recommended work to find no improvement in the EPC rating as a result;

- the need to review the cost cap value in the future to take account of inflation;
- the need for additional support within local authorities to carry out the work associated with these regulations;
- the issue of properties within scope of the regulations and need to absolute clarity, particularly where there may be conflicting legislation and standards already in force; and
- issues associated with penalties which will be captured under the analysis of question 5.

# Enforcement and fines

The regulations will apply to privately rented properties covered by the repairing standard<sup>3</sup> and will be enforced by local authorities. Primary legislation provides us with the parameters for enforcement measures and the use of civil fines which may be applicable in the event of non-compliance. The limitations of the maximum financial penalty are set out in the Energy Act 2011 and must be no more than £5,000. However, the Regulations can break down this total to best fit with our intentions to achieve compliance and improvement under the Regulations and proposed the following:

- a financial penalty not exceeding £2,000 and the publication penalty where the breach is less than 3 months;
- a financial penalty not exceeding £4,000 and the publication penalty where the breach exceeds 3 months;
- where a landlord provides false or misleading information in connection with the compliance notice set out in regulation 17(2) a financial penalty not exceeding £1,000 and the publication penalty; and
- where the landlord fails to comply with the compliance notice in breach of regulation 20(4) the penalties are a financial penalty not exceeding £2,000 and the publication penalty.

The final question sought views on this breakdown.

## Question 5

What are your views on the proposed penalties, in terms of the impact they will have on achieving compliance with the Regulations and ensuring the completion of carry out improvement works across the Private Rented Sector.

In total, 36 respondents made a comment on Question 5.

## The use of fines as a penalty

Most of those who responded supported some form of penalty in the form of fines for non-compliance of the standard and to encourage compliance. Many of these considered there to be a need for higher fines to act as a true deterrent against non-compliance.

Of those responding in support of higher fines, a small number considered the need to reflect the cost of required upgrades, the additional costs incurred to the tenant as a result of non-compliance, the costs incurred by the enforcement authority to investigate, and the cost cap to secure an exemption. A small number noted the risk of escalating rents for tenants as landlords try to cover the cost of works or fines.

---

<sup>3</sup> <https://www.mygov.scot/landlord-repairs/repairing-standard/>

Of those responding in support of the current or lower levels, some commented that they should be fixed within the regulations rather than at the discretion of each local authority, with reasons in support of this including:

- ensuring consistency across Scotland, particularly noting that landlords may have properties in a number of local authority areas;
- reducing the risk of legal and other challenge;
- simplify understanding of how the fine has been calculated;
- enable the scale of penalties to more simply comply with the maximum fine per breach of £5000; and
- if not within the regulations, clear guidance should be provided on how to calculate the various fines based on the severity of the breach.

Of those who are opposed, completely or in part, to the use of fines as a penalty, a small number representing a range of respondent types, responded that the approach proposed will result in a reduction in PRS housing supply particularly in rural areas.

A small number of respondents commented on the way in which fines gathered by local authorities should be spent, suggesting it should be used to the benefit of fuel poverty and energy efficiency services within local authorities or through centralised advice services.

## **Enforcement**

When responding to views on the use of penalties, particularly in reference to their ability to achieve success in delivering the objectives of the regulation, some from a broad range of respondent types expressed concern about the burden being placed on local authorities. These concerns included the following:

- the additional burden on limited resources;
- the option to consider a centralised approach;
- the need for additional resources to be committed to meet these new requirements;
- lack of resources will result in poor levels of compliance;
- enforcement will become reactive, risking that the worst properties slip through the net; and
- the need to consider pilots to gauge the burden and resources needed for a robust enforcement approach.

Some, across a broad range of respondent types, responded that the system should be based on support, incentives and flexibility to encourage improvements to properties.

Reasons in support of this include:

- the need for flexibility regarding the timing of works particularly with reference to seasonality;
- the availability of contractors within the supply chain;
- the need to focus available funds on energy efficiency measures to the benefit of tenants;

- the risk of a reduction in overall supply of PRS housing, including long term voids which can incur higher council tax costs;
- the ability to take into account demonstrable investment programmes where, but not limited to, where a landlord holds a large portfolio;
- the option to build on pilot work already in operation in some parts of Scotland which supports landlords by providing information and one to one support on their responsibilities;
- encouraging landlords to go beyond the standard and make more intelligent investment decisions based on longer term programmes of repair, to the benefit of the tenant and to the long term benefit of the housing stock;
- funding should be made available for all landlords. Current options are too limiting in the criteria; and
- funding could be based on the approach for social landlords where the property provided is at an affordable rent.

Others responded that the approach to enforcement should be more closely linked to the process for landlord registration. This small number provided detailed comments on the practical application of the regulations as follows:

- any appeal process should be considered by the Housing and Property Chamber First Tier Tribunal;
- using this approach would give tenants a right of appeal and right to compensation;
- it provides a natural trigger point of engagement between the landlord and local authority (as opposed to a change of tenancy which local authorities are unaware of);
- the process for landlord registration and re-registration after 3 years is now operational. The proposed approach will be confusing for tenants, landlords and local authorities;
- local authorities are already gathering information using this system in a consistent manner, which would allow better picture building on the suitability of a landlord;
- there are issues regarding the EPC register and the data held there;
- the standards should form part of the repairing standard;
- EPC banding could easily be added to the landlord registration system; and
- the need for formal enforcement may prove limited if the local authority takes the view that the landlord is not a fit and proper person and so, revokes their registration as a landlord.

In terms of the practical roll out of the regulations a small number sought additional time. This would allow for the undertaking of appropriate works or to secure an exemption as expressed below:

*‘This may take a number of years given the availability of assessors and installers, the possible need for consents from other parties, and the lead in time for planning consents. The application of enforcement penalties should therefore be phased.’*

Organisations – voluntary/charitable

Some specific comments have been made regarding the work required by the enforcement authority. These include the following:

- the perceived benefit of using a publication penalty which will have limited impact;
- the omission of Regulation 9 from the list at Regulation 16(5);
- the need for guidance on the duration of any exemption (guidance para 4.2.1);
- what happens in the event of penalty being applied but the property remains below the standard set;
- the need for a robust communications strategy to promote the standard including for tenants;
- the need for clarity on the primary legislation;
- the links to the repairing standard and clarity on who is the responsible authority for both;
- the order in which notices should be served to ensure landlords are sufficiently sighted on any breach in advance of the serving of any penalty notice;
- the method to pursue non-payment of fines; and
- the nature of the review process and appeal process.

## **Other issues raised**

A number of other views were expressed, which, while not directly in answer to the question posed and only made by a small number of respondents, are important to capture and are as follows.

- concern regarding the use of EPC to measure for the standard, the quality of EPC assessors, and the quality of the methodology behind the EPC;
- a suggestion that the dates for roll out and enforcement be linked to the industry updates to SAP;
- concern regarding the level of fines which should be linked to rental income rather than being fixed;
- the option to consider the use of rent penalty notices;
- the option to make it illegal to market a property which is non-compliant;
- the option to link this to the letting agents code of practice;
- the option for an automated reminder service to help landlords manage exemptions;
- the option for Scottish Government to consider funding support for local authorities to implement these regulations, or use of a pilot in a small number of authorities; and
- the option to trigger the withdrawal of exemptions where technology has moved on and provides a solution for hard to treat properties.

## Annex 1 - Organisations responding to the consultation

Respondent	Group type
Aberdeen Council	Local authorities
Aberdeenshire Council	Local authorities
Agility Eco	Industry assoc/manufacturer and commercial organisations
Brodies LLP	Organisations - other
Central Association of Agricultural Valuers and Scottish Agricultural Arbiters and Valuers Association	Professional body
Changeworks	Organisations – voluntary/charitable
Chartered Institute of Housing Scotland	Professional body
Citizens Advice Scotland	Organisations – voluntary/charitable
Dundee City Council	Local authorities
Edinglassie Estate	Housing providers, landlords and their representative bodies
Energy Action Scotland	Organisations – voluntary/charitable
Energy Poverty Research initiative (EPRi) and Common Weal (joint response)	Organisations - other
Energy Saving Trust	Organisations - other
Existing Homes Alliance Scotland	Organisations – voluntary/charitable
Glasgow City Council	Local authorities
Historic Environment Scotland	NDPB
Historic Houses Scotland	Industry assoc/manufacturer and commercial organisations
Inverclyde Council	Local authorities
James Gray Nicol Trust	Organisations – voluntary/charitable
Mineral Wool Insulation Manufacturers Association (MIMA)	Industry assoc/manufacturer and commercial organisations
North Lanarkshire Council	Local authorities
Renfrewshire Council	Local authorities
Royal Incorporation of Architects in Scotland	Professional body
Scottish Association of Landlords	Housing providers, landlords and their representative bodies

<b>Respondent</b>	<b>Group type</b>
Scottish Land & Estates	Housing providers, landlords and their representative bodies
Scottish Property Federation	Industry assoc/manufacturer and commercial organisations
Shelter Scotland	Organisations – voluntary/charitable
Solar Trade Association	Industry assoc/manufacturer and commercial organisations
South Ayrshire Council	Local authorities
South Lanarkshire Council	Local authorities
The Dupplin Trust 2000	Housing providers, landlords and their representative bodies
The National Trust for Scotland	Organisations – voluntary/charitable
West Dunbartonshire Council	Local authorities

## **Annex 2 - List of acronyms used**

EPC	Energy Performance Certificate
EPBD	Energy performance of buildings directive
HEEPS	Home Energy Efficiency Programme Scotland
HEEPS ABS	Home Energy Efficiency Programme Scotland Area Based Scheme
HES	Home Energy Scotland
PRS	Private Rented Sector
RdSAP	Reduced data Standard Assessment Procedure
RECOs	Residential Energy Conservation Ordinances
RES	Resource Efficient Scotland
RSL	Registered Social Landlord
SAP	Standard Assessment Procedure



Scottish Government  
Riaghaltas na h-Alba  
gov.scot

© Crown copyright 2020

**OGL**

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](https://nationalarchives.gov.uk/doc/open-government-licence/version/3) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at [www.gov.scot](http://www.gov.scot)

Any enquiries regarding this publication should be sent to us at

The Scottish Government  
St Andrew's House  
Edinburgh  
EH1 3DG

ISBN: 978-1-83960-515-4 (web only)

Published by The Scottish Government, January 2020

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA  
PPDAS687335 (01/20)

W W W . g o v . s c o t