

Improving the Energy Performance of Privately Rented Homes in England and Wales

Response from ARLA Propertymark

January 2021

Background

1. ARLA Propertymark is the UK's foremost professional and regulatory body for letting agents, representing over 9,500 members. ARLA Propertymark agents are professionals working at all levels of letting agency, from business owners to office employees.
2. Our members operate to professional standards far higher than the law demands, hold Client Money Protection and we campaign for greater regulation in this growing and increasingly important sector of the property market. By using an ARLA Propertymark agent, consumers have the peace of mind that they are protected, and their money is safe.

Questions

Question 1: We would welcome views on possible impacts of the policy on the size of the PRS sector, the effect this could have on vulnerable households, and suggestions to mitigate this effect where it does occur, including any evidence.

3. ARLA Propertymark is concerned that the policy will reduce the size of the private rented sector because many landlords will be unable to afford the required improvements and will opt to leave the sector and sell their buy to let property. This in turn will place additional pressure on the increasing number of low-income households who need to access the private rented sector due to the lack of social housing. Moreover, for those landlords who remain in the sector, a higher cost cap will further increase the financial burdens on landlords who will ultimately pass the costs of energy efficiency improvements onto tenants through higher rents. The UK Government must recognise that landlords and their letting agents are already taking the brunt of tax changes and many are providing support to tenants with COVID-related arrears. To this end, without providing landlords with incentives and access to sustained funding, it is unlikely that energy efficiency targets for the private rented sector will be met. Subsequently, rather than improving properties, landlords will opt to sell off their low energy efficiency stock, transferring the problem to a different housing tenure rather than solving the problem and achieving the UK Government's aim.

Question 2: Do you foresee any impacts for protected groups? Please provide evidence to support your answer.

4. We do not foresee any impacts for protected groups.

Question 3: We would welcome views on any possible long-term impacts of COVID-19 that could impact on making the required energy efficiency improvements from April 2025 and suggestions to mitigate this effect where it does occur, including any evidence.

5. There are two main long-term impacts of COVID-19 that could impact on landlords being able to make the required energy efficiency improvements by April 2025. Firstly, landlords will continue to be impacted financially with extreme Covid related arrears still yet to be recovered by many landlords. Secondly, difficulty for the sector to comply with new and existing legislation, which includes access to property to carry out maintenance work, renovation, checks or make energy efficiency improvements. To mitigate the effects of long-term impacts of COVID-19 the UK Government must do two things. Firstly, set a long-term goal with incremental targets to a property rather than seeking to meet one-off targets for energy efficiency. Secondly, the UK Government must take a holistic approach to tax, financial incentives and legislation that considers the financial implications of the pandemic, these proposals and existing costs that landlords and letting agents face.

6. The UK Government must acknowledge that the private rented sector has already been heavily impacted financially in recent years based on the phasing out of tax relief on mortgage interest for landlords across the UK¹, the additional Stamp Duty Land Tax surcharge on buy-to-let property² and the Tenant Fees Act 2019 in England. In Wales, landlords and letting agents have been impacted by the Renting Homes (Fees etc.) (Wales) Act 2019³ and on 21 December 2020, the Welsh Government increased the higher residential rates of Land Transaction Tax by 1%.⁴ However, the ongoing repercussions of the pandemic means that landlords costs have increased significantly, and many landlords can no longer make ends meet. Since the start of the pandemic, employment levels for those aged 16-24 have fallen by 357,000 and for those aged 25-64 it has fallen by 141,000. Furthermore, the number of people claiming unemployment related benefits increased by 1.4 million between March and October 2020.⁵ Considering that latest figures show that the private rented sector accounted for 4.6 million of households in England⁶, hundreds of thousands of people who rent their homes face an uncertain future due to the economic impact of coronavirus and many could risk losing their homes because of rent arrears arising through no fault of their own. To this end, our Private Rented Sector Report from September 2020 shows an increase in the number of landlords selling their buy-to-let properties and the figures are the highest we have on record for the month of September.⁷ Fundamentally, private landlords cannot be expected to provide homes without being paid. In many instances, rent covers the landlord's mortgage and maintenance costs, meaning that non-payment puts the tenant at risk of eviction and the landlord at risk of repossession. The introduction of high-cost legislation to mandate

¹ <https://www.legislation.gov.uk/ukpga/2015/33/contents/enacted>

² <https://www.gov.uk/guidance/stamp-duty-land-tax-buying-an-additional-residential-property>

³ <https://www.legislation.gov.uk/anaw/2019/2/introduction/enacted>

⁴ <https://gov.wales/changes-rates-and-bands-land-transaction-tax-december-2020>

⁵ <https://commonslibrary.parliament.uk/research-briefings/cbp-8898/>

⁶ <https://www.gov.uk/government/statistics/english-housing-survey-2018-to-2019-headline-report>

⁷ <https://www.arla.co.uk/lobbying/private-rented-sector-reports/september-2020/>

expensive improvements to their rented property with no funding support or tax incentives will not help the situation or improve landlords appetite to remain in the sector.

7. Depending on how long the pandemic continues we envisage on-going difficulty for the private rented sector to comply with new and existing legislation. There are two main examples that help explain the impact. Firstly, the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 came into force on 1 June 2020 and apply in England to all new tenancies from 1 July 2020 and all existing tenancies from 1 April 2021. This now means that every fixed electrical installation at the property must be inspected and tested at least every five years by a qualified person. Secondly, the remaining elements of the Renting Homes (Wales) Act 2016 are due to come into force which will mean that landlords must ensure any dwelling subject to an occupation contract is fit for human habitation, including functioning smoke alarms, carbon monoxide detectors and electrical and gas safety certificates for each dwelling they let. To this end, members report to us problems associated with carrying out work, tenancy checks and maintenance at properties they manage. In many cases, tenants are reluctant to have tradespeople enter the property, some tenants are isolating, and some have coronavirus symptoms. Collectively, these add additional obstacles for compliance with the rules and regulations. All these issues are likely to be exasperated further with additional whole scale requirements for energy efficiency improvements. To this end, we recently surveyed 250 letting agency businesses in England and Wales about the impact of COVID related issues on landlords making energy efficiency improvements to their properties. The results show that 24 per cent said tenants are denying access to the property, 18 per cent are having problems securing contractors to do work, 17 per cent said access to property to carry out improvements is an issue and 13 per cent said that reduced rents will have an impact. Many tenants are reluctant to allow access to property and many landlords have become more risk-averse to contracting works with no means of recouping the costs when they are aware that tenants may face difficulties paying their rent. Essentially, the ability to access property will likely continue to be a significant factor for the management of tenancies for at least another 12 months with the repercussions felt for much longer depending on how long the pandemic goes on for.

8. To mitigate the effect of the pandemic and support the private rented sector, the UK Government must do two things. Firstly, set a long-term goal with incremental targets to a property rather than seeking to meet one-off energy efficiency targets. For instance, for the private rented sector in England and Wales under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015⁸ and subsequent amended legislation, it is only a year since rules came into force to ensure all private rented tenancies meet Energy Performance Certificate (EPC) Band E, but the UK Government is now proposing going to Band C within five years. Secondly, without incentives or accessible funding, it is likely that targets for the private rented sector will not be met. Under the Green Homes Grant scheme, the UK Government fund up to two-thirds of the cost of home improvements up to £5,000. However,

⁸ <https://www.legislation.gov.uk/uksi/2015/962/contents/made>

landlords must redeem the voucher and ensure improvements are completed by 31 March 2022. Furthermore, the scheme is only applicable to landlords in England, and there is no equivalent scheme in Wales. The UK Government must understand that private landlords in both England and Wales have little access to funding outside of their own income in order to make high-cost energy efficiency improvements to their properties. Consequently, ambition and setting targets for improving energy efficiency are meaningless if opportunities and support are not offered in order to achieve them.

9. Since the Landlords' Energy Savings Allowance ended in 2015 there have been no tax measures to pro-actively support landlords making investments in energy efficiency improvements. To this end, the UK Government should no longer charge VAT on material and work to improve the energy efficiency of properties and the Landlord's Energy Saving Allowance should be reintroduced and extended to include anything contained within the Recommendations Report of an EPC. This would also help to address the irregularity which means that where a landlord wants to carry out work to undertake repairs it is tax-deductible whereas energy efficiency improvements are not. For example, whilst replacing a broken boiler is considered tax deductible, if a landlord wanted to replace an energy inefficient boiler it would not be. Furthermore, in 2019 a report by the House of Commons' Business, Energy and Industrial Strategy Committee highlighted that England was the only UK nation that provided no central government investment to improve domestic energy efficiency.⁹ By reintroducing the Landlords' Energy Savings Allowance, landlords will then be able to offset the costs of energy efficiency improvements against income tax for the financial year in which the costs were incurred rather than having to wait until the property is sold before being able to offset the energy efficiency costs against Capital Gains Tax. This will significantly assist landlords with the costs of the improvements and their financial planning.

Chapter 1

Question 4: Do you agree with the government's preferred new target of EER C as a minimum energy performance standard in the PRS?

10. Propertymark supports moves to improve the energy efficiency of property but does not agree with the UK Government's preferred new target of EER C as a minimum energy performance standard in the PRS. Whilst we recognise that by achieving more energy efficient properties, tenants will benefit from reduced energy bills and warmer homes as well as the environment benefiting from lower emissions, our members have three main concerns. Firstly, the target is unrealistic. In 2018, over a third of landlords with F and G properties could not afford to bring their property up to E standard, reporting costs of over £5,000.¹⁰ Therefore, an even higher cap is likely to have a devastating impact on the sector. Secondly, it is impractical to improve many properties based on the construction type and age. For instance, older properties and properties with no cavity wall are likely to cost landlords the full amount of the

⁹ <https://publications.parliament.uk/pa/cm201719/cmselect/cmbeis/1730/1730.pdf>

¹⁰ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/business-energy-and-industrial-strategy-committee/energy-efficiency/written/93909.pdf>

£10,000 cap, with off grid homes costing on average £12,000 to move from E to C.¹¹ Furthermore, Wales has the oldest private rented dwelling stock in the UK with 43% built before 1919.¹² Thirdly, too large a proportion of existing privately rented stock requires significant improvements to meet a EER C rating which would reduce the number of housing stock available to rent. Moreover, unlike social housing, which is designed to a specific specification, the private rented sector comprises a range of property without that particular specification. Therefore, the UK Government must look beyond a one-size fits all policy and develop proposals that work with the different age, condition, and size of properties in the private rented sector.

Case study one

A letting agent with a portfolio of around 1,000 units located in Oxfordshire and Berkshire said that 47 per cent of their properties would not meet a minimum C standard, 38 per cent currently meet C or above, 13 per cent could not meet the standard even if everything on the EPC was carried out and two per cent are exempt.

Case study two

A letting agent managing 261 properties in Norfolk, Suffolk and Cambridgeshire said that 47 per cent of their properties would need improvements to meet the proposed requirements, 10 per cent would not meet the C rating even after possible improvements with only 43 per cent of the portfolio already C rated or above.

Case study three

A letting agent managing 381 properties in England said they have one property at EPC Band A, 30 properties at EPC Band B, 96 properties at EPC Band C, 145 properties at EPC Band D, 106 properties at EPC Band E and three properties that are exempt. They are extremely concerned that without significant financial support for landlords nearly 68 per cent of their portfolio will not reach EPC Band C.

Question 5: We would welcome your views on the pros and cons of these alternative metrics, in relation to our overall policy goals around reducing carbon emissions, fuel poverty, and energy bills; please provide evidence with your answer.

11. Overall Propertymark is concerned that introducing a metric not based on cost could force landlords to install lower carbon, but higher cost heating technologies and leave people unable to afford to power them. For example, to buy one unit of mains gas (measured in kWh) people will pay about 4p / kWh. Conversely, one unit of electricity from the mains (also measure in kWh) will cost about 15p/kWh. As a result, currently the price per unit of gas is cheaper than electric heating, therefore tenants will save money using gas powered heating until electric is made more competitive in price by the UK Government. Using the Energy

¹¹ <https://questions-statements.parliament.uk/written-questions/detail/2020-09-24/95177?fbclid=IwAR2xSGhwqX-N6zHk9rMQgr3AsNIEFV21-l-4GFy5ZNKomhaUzsCMusbnf2M>

¹² <https://www.ons.gov.uk/economy/inflationandpriceindices/articles/ukprivaterentedsector/2018>

Efficiency Rating (EER) metric landlords are familiar with the structure of the PRS Regulations and use of the EER rating and the system of recommendations provided by the EPC. The EPC bands reflect the EER and are a measure of building performance based on the total annual cost of energy to heat and light a property. Moving away from a cost-based metric would mean that landlords would be forced to choose more expensive heating methods, which in turn increases bills for tenants.

Final Energy Rating

12. The benefit of using Final Energy Rating (FER) is that it would encourage the installation of measures to reduce energy demand. This could mean installing a more efficient boiler, or insulation would be required which do have carbon savings, so it would help the UK Government to meet its targets. The disadvantage of using FER is that it is not a cost-based metric, so it could have a negative impact on fuel poverty. For instance, if the best way to reduce the energy demand of a property is to install electric heating, this could put bills up for people living in a house, because electric is more expensive than gas. It also does not consider carbon savings; therefore, it is not as useful as PER in achieving the UK Government's carbon targets.

Heat Transfer Coefficient

13. The benefit of using Heat Transfer Coefficient (HTC) as an energy efficiency metric in homes is that it would be able to focus on heat loss in buildings. In England and Wales this is useful because the main problem when it comes to heat for homes is that buildings are mostly older, inefficient and leak heat. Therefore, a metric with a focus on this would go a long way to improving the situation, as there would be incentives and penalties aimed at improving the leaking of heat from a building. In addition, one advantage of this is that fuel poverty would be focused on, given that fuel poverty is often caused by homes which have poor heat retention due to a lack of insulation, or single glazed windows. Alarming, in 2019 it was revealed that 17,000 people in the UK died in 2018 due to cold housing.¹³ More energy efficient and less leaky homes could also emit less carbon. The disadvantage of using HTC as a metric is that landlords and tenants are not familiar with it. This could make it harder for landlords to adapt to it, cause issues with compliance and landlords may install the wrong measures. Secondly, HTC is not the best measurement of carbon emissions, because it is mainly concerned with heat leakage. Consequently, there is little incentive in installing a low carbon heating technology if it is not going to help with securing a higher EPC rating.

Primary Energy Rating

14. The benefits of using Primary Energy Rating (PER) are that because it is based on the energy the property uses, but also includes the primary energy required to produce that energy it is a more accurate reflection of the carbon intensity of the energy use of a property. This would be likely to ensure that low carbon heating technologies are installed sooner, compared with the other metrics because it would be considering the technology itself. It is a more accurate

¹³ <https://www.e3g.org/news/17000-people-in-the-uk-died-last-winter-due-to-cold-housing/>

representation of the carbon used by a household than HTC because HTC does not consider the heating technology, or the lights. This would mean that in theory, if HTC was used rather than PER, a house with a gas boiler, but excellent insulation could receive a higher EPC rating than a house with poor insulation but using a low carbon heat pump. This would contradict the UK Government's desire to lower carbon emissions overall, therefore PER is a superior method in this regard. A disadvantage of using PER is similar to HTC, landlords and homeowners are simply not familiar with it, therefore they could make the wrong choices regarding energy efficiency and waste their money. It would also be harder for letting agents to adapt to, given they are used to the old metric. Further, PER includes the primary energy, which is the fuel source itself, for example gas. To this end, we do not believe it is fair to penalise heat users for choices the UK Government has made with the procurement of energy and this metric appears to do that. In addition, moving away from a cost-based metric could force landlords to choose technologies they cannot afford, or to install measures which make bills for tenants more expensive. For instance, efficient new gas boilers generally have lower running costs, however some forms of electric heating are more expensive to run, despite being viewed as more environmentally friendly because there are no emissions at the point of use.

Question 6: Do you agree with the government's preferred policy scenario of requiring 'new tenancies' to reach EER C from 1 April 2025 and 'all tenancies' to reach EER C by 1 April 2028? If not, do you have alternative suggestions; please provide evidence with your answer.

15. We agree with the intent of the preferred policy scenario but have concerns about the prescribed dates. We think this for three reasons. Firstly, with no additional funding 2025 is too soon for the sector to comply. Secondly, staggered timings will help to sustain tenancies. Secondly, a single completion date could raise prices on goods and add additional pressure on supply chains, engineers, and the ability to get the improvements done. Furthermore, interim targets mean that there would have to be additional price caps which would cost landlords more in the long-term. As modelling from the Department for Business, Energy and Industrial Strategy (BEIS) suggests a cost cap of around £9,000 would be required for both the interim target of EER D in 2025 as well as the target of EER C by 2028 to achieve the same outcomes as a single £10,000 cap under the preferred phased trajectory.¹⁴ Therefore, the preferred policy scenario will be of least cost to landlords and limit the disruption to landlords and tenants.

Question 7: Do you agree with increasing the cost cap to £10,000 inclusive of VAT as our preferred policy proposal? If not, please explain why not and provide evidence with your answer.

16. We do not agree with increasing the cost cap to £10,000 inclusive of VAT. The cost cap should be much lower because a higher cost cap will further increase the financial burdens on landlords who in turn will either leave the market or pass the additional energy efficiency costs

¹⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/932403/prs-epc-c-consultation-stage-ia.pdf

onto tenants through higher rents. The consultation impact assessment shows that the average capital cost for landlords per home does vary between those that are able to achieve the target compared to those that cannot. This is because those that do not reach the target will need to install all the measures, they can under the cost cap, while some of the properties that can reach EER C may have only needed one or two cheaper measures to improve their SAP score enough. Therefore, increasing the cost cap to £10,000 would mean on average costs for homes which install measures, but do not reach the EER C are predicted to spend on average, £5,800. Furthermore, a year's rent for some landlords could easily exceed £10,000 given that for November 2020 data shows that the average rental price for a tenancy in the UK was £974 per calendar month, which is up by 2.9% on last year.¹⁵ Many landlords will simply not be able to afford these costs and ultimately will be forced to sell their buy to let property or increase rents.

Question 8: Should the £10,000 cost cap be adjusted for inflation?

17. No, we do not think that the £10,000 cost cap should be adjusted for inflation.

Question 9: Should a requirement for landlords to install fabric insulation measures first be introduced? If yes, when, and how should such a requirement be implemented? If no, what are the alternative installation methods that maximise energy efficiency outcomes? Please provide evidence to support your answer.

18. We are concerned that the requirement for landlords to install fabric insulation measures first is a one size fits all approach that does not account for the diversity in housing stock across England and Wales. Whilst we accept that well-insulated property is very energy efficient and will need very little additional heating and cooling, housing stock differs from region to region with some property suitable for fabric first, others will not. Furthermore, the Climate Assembly UK report notes that, "different properties may need different solutions – e.g. old versus new houses' and that energy efficiency 'needs to be individualised – solutions need to suit different households".¹⁶ To this end, the UK Government need to approach requirements for improving energy efficiency based on the properties' age, location and construction. This way the UK Government can target grants and funding support based on the archetype of a property rather than its tenure.
19. For properties where a fabric first approach would be appropriate, we think the UK Government should embark on a national infrastructure project to install insulation at no cost to the consumer. For example, the Energy Company Obligation (ECO) was the only public scheme delivering insulation measures into homes until recently. The target for all homes to reach EPC Band C requires over 1 million insulation installations per year in England alone, but in 2018 only around 110,000 insulation measures were installed with ECO support, translating

¹⁵ <https://homelet.co.uk/homelet-rental-index>

¹⁶ <https://www.climateassembly.uk/report/read/final-report.pdf>

into an average of 2,100 insulation measures per week.¹⁷ This is important because there is little evidence to suggest that there is a considerable amount of insulation deployment taking place outside of ECO in England, except for double glazing installations. Whilst we recognise the success ECO has had for fuel poor homes, this is not available to most homes and it is also not UK Government funded, instead it relies on work from energy companies. In Scotland and Wales, centrally funded schemes are delivered alongside ECO. E3G, an independent climate change think tank, said that in 2017, average annual per capita investment was: £35 in Scotland, £23 in Northern Ireland, £17 in Wales and £8 in England.¹⁸ To this end, there needs to be a more equal take up of insulation and the UK Government should embark on a national infrastructure project to install insulation for all homes where a fabric first approach would be appropriate.

Question 10: We would welcome views on the alternative of a dual metric target to reach both EER Band C cost metric and EIR Band C carbon metric, with an increased cost cap of £15,000 inclusive of VAT.

20. We do not agree with the alternative of a dual metric to reach both EER Band C and cost metric EIR Band C with an increased cost cap of £15,000 inclusive of VAT. We are concerned that the proposal is unaffordable for the majority of landlords and will impact off-grid property as well as the installation of heat pumps.
21. This proposal does not consider the cost implications for the majority of landlords. For instance, according to the Ministry of Housing, Communities and Local Government's English Private Landlord Survey in 2018, the two most prevalent reasons for becoming a landlord were as a pension contribution (44%) and around a third (34%) said they wanted to supplement earnings or income.¹⁹ In BEIS's Consultation Stage Impact Assessment it is argued that because the value of the property increases when improving the EPC this is a benefit for landlords and therefore justifies the high-cost cap.²⁰ However, we do not think this is a sufficient incentive, as it implies that landlords are intending to sell their property rather than maintain their buy-to-let investment to supplement their income or pension.
22. In relation to off-grid property, we are concerned that houses in rural areas with no mains gas will have almost zero chance of reaching EIR C carbon metric as we are aware that it is a struggle for these properties to reach an EER E in many cases off grid. Therefore, there will be many homes which could not reach an EPC C, even with adequate financial support as they may be unsuitable for insulation or have protected characteristics. For instance, we know of property in non mains gas areas which have failed to reach E despite significant expenditure and is exempt for 5 years now. The tenants who have moved in are very happy with the LPG heating and describe it as their 'dream home'. It would be unfortunate for them to be forced

¹⁷ <https://publications.parliament.uk/pa/cm201719/cmselect/cmbeis/1730/173005.htm>

¹⁸ <https://publications.parliament.uk/pa/cm201719/cmselect/cmbeis/1730/1730.pdf>

¹⁹ <https://www.gov.uk/government/publications/english-private-landlord-survey-2018-main-report>

²⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/932403/prs-epc-c-consultation-stage-ia.pdf

to move out due to the impossibility of achieving C or above and the landlord having to sell. We also think that EIR C should be avoided as there are many properties off grid which will use some form of bio-oil boilers which are technically carbon neutral, however at point of use do emit carbon emissions, making them non compliant with an EIR C.

23. In relation to heat pumps, EIR C could mandate the installation of heat pumps for off grid homes because they cannot connect to the gas grid and cannot continue to use oil. Indeed, the impact assessment in relation to EIR C states that, “this means that more ambitious options, which would deliver increased greenhouse gas emissions savings through driving more energy performance improvements, could become more desirable in the future. These include solid wall insulation and deployment of low-carbon heating systems such as heat pumps”. BEIS have estimated that an 8kW air source heat pump fully installed including fittings, small buffer tank and cylinder, controls, and heat distribution system (new for a smaller house) will cost on average, £14,750, while a 16kW air source heat pump fully installed including fittings, large buffer tank and cylinder, advanced controls and heat distribution system new in larger a house will cost on average, £21,550 excluding VAT²¹. For a ground source heat pump, with the necessary additions the figure is up to £27,350 because heat pumps require many additional extras to heat the house, such as underfloor heating and significant insulation. Given these possible costs, landlords could be forced to pay the entire £15,000 cap, even when the Green Homes Grant scheme is taken into consideration.²²

Question 11: Should government introduce an affordability exemption? If so, we would welcome views on how such an exemption should be designed and evidenced, and any potential impacts on the PRS market.

23. If the UK Government decides to not help landlords adequately fund energy efficiency work, then we do think an affordability exemption should be introduced. When surveyed, most (59%) of our members support an affordability exemption but said that £10,000 is too high and most landlords will not have this additional money to spend. Furthermore, although we recognise that not all landlords would spend the full £10,000 cost cap, it is realistic that some would spend the full amount. For example, some off grid and older properties could cost a lot more with ground source heat pumps and underfloor heating required to be compliant. In addition, the UK Government have estimated that for off grid properties, the cost of moving from band E to C is on average, £12,300 and from F, it is £18,900.²³ Furthermore, exemptions are not linked to any grants or funding, and we are concerned about how they are enforced. To allow landlords to comply with the UK Government’s preferred policy proposals the cost cap must be reduced, and adequate funding and incentives provided to the sector.

²¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/913508/cost-of-installing-heating-measures-in-domestic-properties.pdf

²² <https://www.gov.uk/guidance/apply-for-the-green-homes-grant-scheme>

²³ <https://questions-statements.parliament.uk/written-questions/detail/2020-09-24/95177?fbclid=IwAR2xSGhwqX-N6zHk9rMOqr3AsNIEFV21-I-4GFy5ZNKomhaUzsCMusbnf2M>

Question 12: What should the eligibility criteria be for an affordability exemption if it is introduced, and how can the criteria accommodate fluctuations in a landlord's finances and/or in the value of a property? Please provide evidence to support your answer.

24. The eligibility criteria for an affordability exemption if it is introduced should be based on profit. We do not think that the value of property should be applied to an affordability exemption because there are many properties in certain areas that have increased to levels much higher than the rest of the country. For example, the average property price in London is £666,264²⁴ whereas the average property price in Newcastle is £207,000.²⁵ If an affordability exemption was based on property value, this would make many landlords ineligible for the exemption.

Question 13: Should we incorporate Trustmark into energy performance improvement works? If not, please explain why not and provide evidence with your answer.

24. Propertymark recognises the merits of incorporating Trustmark into energy performance improvement works. For instance, there is a vetting process and businesses must meet certain standards. However, we have two concerns about the UK Government providing inclusivity to Trustmark. Firstly, the scope and reach of registered businesses. Our members report that there are not enough Trustmark suppliers and choice. For instance, as of 26 October 2020, Trustmark had only registered 1,108 businesses able to install the primary and/or secondary measures supported by the Green Homes Grant scheme. Secondly, it is important that letting agents and landlords can continue to use good quality local suppliers and they are not overlooked as a means to deliver energy efficiency improvements. Under the Green Homes Grant scheme many letting agents want to use local installers and have encouraged their suppliers to become Trustmark approved so they can do the work. However, we are told that the compliance steps for Trustmark approval are costly and burdensome for many small businesses, which is discouraging them from applying.

Question 14: What role can the private rented sector play in supporting the rollout of smart meters and what are the barriers and possible solutions to achieving this?

25. Propertymark and our members recognise that smart meters can send up-to-date information in order to provide more accurate data on usage with the aim of reducing spending. However, the private rented sector can only play a limited role in supporting the roll out of smart meters. In relation to the barriers and possible solutions to achieving greater take up, the UK Government must consider three things. Firstly, in the vast majority of tenancy agreements tenants are responsible for arranging their energy provider and paying energy bills. Conversely, if the landlord pays the energy bill for the property, the decision to get a smart meter will be made by the landlord. In either scenario, energy providers are the ones who will liaise directly with the end user and thus are best placed to influence people to install smart

²⁴ <https://www.zoopla.co.uk/house-prices/london/>

²⁵ <https://www.zoopla.co.uk/house-prices/browse/newcastle-upon-tyne/?q=Newcastle%20upon%20Tyne%2C%20Tyne%20%26%20Wear>

meters. Secondly, Propertymark members have made us aware of issues with smart-meter installation and functionality. For instance, the networks go down regularly and with a change to energy provider the functionality disappears. To this end for people to have more confidence and improve take up the technology needs to improve and be consistent across all providers. Thirdly, the UK Government must focus on ensuring that energy providers contact tenants, and landlords, directly and encourage them to install a smart meter rather than placing an onus on landlords and letting agents who, in the vast majority of tenancies, are not directly involved in arranging utilities at the property.

Question 15: We would welcome views on whether the PRS Regulations may need to be tightened further for the 2030s? Please provide evidence with your answer.

26. Propertymark believes that forcing tighter restrictions on landlords, without sustained financial support, is too ambitious and will not be achieved. We have four main concerns. Firstly, the potential cost implications are too high. The Committee on Climate Change found last year that the average landlord will need to pay £26,300 over the next 30 years to bring their properties up to carbon neutral status (an A rating) and meet the UK Government’s target of net zero carbon by 2050.²⁶ For instance, tightening the rules will mean that low carbon heating like heat pumps become necessary, and costs on average can be up to £27,000 for ground source and £14,750 for air source. Secondly, the UK Government needs to set a long-term goal with incremental targets to a property rather than seeking to meet one-off targets. For instance, for the private rented sector in England and Wales, it is only a year since rules came into force to ensure all private rented tenancies meet EPC Band E, but the UK Government has now proposed going to Band C within five years. Thirdly, with the collapse of the Green Deal, the only UK Government scheme ever designed to overcome the “Split Incentive” (the landlord pays for the energy efficiency improvements and the tenant benefits from a reduced bill) the UK Government must act to ensure landlords can comply with the proposed energy efficiency targets. In order for the UK Government’s targets to be more realistic, it must provide better funding options for the private rented sector. Fourthly, existing UK Government backed funding initiatives largely focus on existing social rented stock, even though the social rented sector is the smallest tenure accounting for only 17% of housing stock in England according to the English Housing Survey and having the highest number of homes with the most energy efficient EPC ratings. For instance, in the social rented sector, the majority of dwellings (61%) were in EER bands A to C, compared with 38% of private rented sector dwellings and 36% of owner-occupied dwellings.²⁷ Billions of pounds have been given in grant aid to social landlords whereas private landlords have barely benefitted from any funding. This is despite the increasing number of low-income households living in privately rented property due to the lack of available social housing. Furthermore, ECO funding is more difficult and costlier to implement when applied to the private rented sector, meaning that landlords can find it difficult to access. For example, one social housing provider with 1,000

²⁶ <https://www.theccc.org.uk/wp-content/uploads/2019/02/UK-housing-Fit-for-the-future-CCC-2019.pdf>

²⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945013/2019-20_EHS_Headline_Report.pdf

units, compared to 1,000 private rented sector landlords with one unit, is a more cost-effective way for ECO companies to deliver their obligation. To this end, in order for the UK Government to achieve its objectives, ECO funding to social housing should now be stopped, and all future funding from energy suppliers should be dedicated to supporting the private rented sector.

Chapter 3

Compliance

Question 16: What are the other steps government could take to increase awareness and understanding of the PRS Regulations?

27. In order to encourage greater awareness and understanding of the PRS Regulations, the UK Government should regulate property agents and take forward the recommendations of the Regulation of Property Agents (RoPA) Working Group.²⁸ This in turn would ensure landlords in England, other than those self-managing, use a regulated letting agent who holds a qualification and adheres to a Code of Practice. Full mandatory government regulation of sales and letting agents is the quickest and most effective method to eliminate unprofessional, unqualified and unethical agents from the property sector. Piecemeal legislation is unmanageable and unenforceable and there is currently no statutory regulation to ensure letting agents in England are suitably qualified. Additionally, agents who are not members of a professional body do not have to meet minimum competency standards and are less likely to be aware of changing legislative and compliance requirements such as the PRS Regulations.

Question 17: Is the introduction of a PRS property compliance and exemptions database necessary to help local authorities to proactively enforce minimum energy efficiency standards? If yes, should we include the per-property registration fee within the cost cap? If not, what alternatives to a PRS property compliance and exemption database would you suggest?

25. The introduction of a PRS property compliance and exemptions database should not be implemented at the expense of local authorities prioritising enforcement. We are concerned that local authorities do not already have existing records of the enforcement activity they have undertaken. The UK Government should not include a per-property registration fee within the cost cap. Fines collected by local authorities as a result of housing breaches must be ring-fenced with the money going towards further enforcement. To this end, enforcement needs to be a higher priority for local authorities, and it is essential that prosecuting bodies are given the powers to become revenue generators for local authorities rather than revenue drains.
26. Before moving to a PRS property compliance and exemptions database, the UK Government must ensure the existing Exemptions Register is fit for purpose. The existing Exemptions Register would work better if the information did not rely entirely on self-certification and

²⁸ <https://www.gov.uk/government/publications/regulation-of-property-agents-working-group-report>

self-reported data. As explained on page 37 of the consultation document it is no wonder that this has resulted in confusion and BEIS receiving a significant number of enquiries as to how the exemptions framework works and what landlords need to do to be compliant. There is no acknowledgement or follow up once information is provided to the Register. This should be automated after the expiry of an exemption.

Question 18: Do you agree that government should set a maximum total registration fee for landlords with a very large portfolio? If yes, how many properties should qualify as a “very large” portfolio? What should the maximum fee be? If you do not agree to a maximum total registration fee proposal, do you have alternative suggestions?

28. We do not agree that the UK Government should set a maximum total registration fee for landlords with a very large portfolio. Local authorities must actively enforce the rules to check compliance and a properly functioning Exemptions Register not based on self-certification can ensure that landlords know they are compliant with the rules.

Question 19: Should government seek primary powers to place a requirement on letting agents and online property platforms to only advertise and let properties compliant with the PRS Regulations? If not, please explain why not and provide evidence with your answer.

29. Yes, the UK Government should seek primary powers to place a requirement on letting agents and online property platforms to only advertise and let properties compliant with the PRS Regulations. However, the UK Government must take into consideration four things. Firstly, the Regulations apply to all privately rented properties that are legally required to have an EPC and where rooms are let on one of the qualifying tenancy types in England and Wales. To this end, it is not common practice to advertise the tenancy type. Furthermore, for rooms in shared accommodation such as Houses in Multiple Occupation (HMO) there is no requirement for individual rooms within an HMO to have their own EPC unless it is required for a property as a whole. Secondly, private landlords cannot advertise directly on property portals, so based on the consultation document which states that around 43% of landlords use a letting agent to either let or let and manage a property for them²⁹, this means the UK Government is focussing a large proportion of its future enforcement activity and compliance on less than half of the sector. Thirdly, it is not common practice to advertise whether the property has an exemption. This is further complicated when considering that the existing Exemptions Register does not provide a reference or response to landlords when an exemption has been made. Consequently, it is unclear how the portals can check whether a property and the applicable tenancy are compliant. In addition, the exemptions are not transferable between property owners and exemptions are treated as personal to each landlord rather than the letting agent whereas an EPC relates to the property and not the owner. Fourthly, the Tenant Fees Act 2019, defines third party websites as websites other than the agent’s own website which includes Rightmove, Zoopla or Facebook. Therefore, for the purpose of clarity and

²⁹ Page 38 - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/934534/prs-consultation-2020.pdf

fairness to letting agents and self-managing landlords, the UK Government need to define online property platforms and the requirements under these proposals more clearly.

Question 20: Should government remove the seven to twenty-one-day exemption period on landlords making all reasonable efforts to provide a valid EPC prior to a property being marketed or let? If not, please explain why not and provide evidence with your answer.

30. Yes, the UK Government should remove the seven to twenty-one-day exemption period on landlords making all reasonable efforts to provide a valid EPC prior to a property being marketed or let.

Question 21: Should government increase the level of the fixed civil penalty fine for offences under the EPB Regulations (currently set at £200)? If yes, how high should the fine be?

31. Yes, we do think the UK Government should increase the level of the fixed civil penalty fine for offences under the EPB Regulations. The penalty charge should be increased to £500. This would act as a greater deterrent and ensure landlords and letting agents ensure a valid EPC is available to the prospective tenant, an EPC is commissioned before the property is put on the market, the energy performance rating included in any advertisements and landlords stick to the time scales to obtain an EPC.

Enforcement

Question 22: Should government enable LAs to inspect properties for PRS compliance? If not, please explain why not and provide evidence with your answer.

32. Yes, we do think that the UK Government should enable local authorities to inspect properties for PRS compliance. However, we do not believe that local authorities have the capacity required to enforce standards in the private rented sector. There are not enough resources and enforcement is not a high enough priority for local authorities. As outlined in the consultation document, it is concerning that “some” and not all local authorities deal with compliance of the PRS Regulations when a Housing Health and Safety Rating System inspection takes place.³⁰ Furthermore, although this should have been remedied with the introduction of the Housing and Planning Act 2016, with civil penalty fines levied for offences in the private rented sector to be retained by local authorities for further enforcement, many local authorities do not exercise their powers to bring additional resources into enforcement of the private rented sector. To this end, regardless of new rules to inspect properties for PRS compliance, local authorities must make better use of existing enforcement powers and coordinate their activity to handle compliance with regulations across the private rented sector rather than the UK Government passing laws that are not enforced and powers that are not used.

³⁰ Page 41 - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/934534/prs-consultation-2020.pdf

Question 23: Should government permit local authorities to use EPC Open Data for some phases of PRS enforcement? Please provide evidence with your answer.

33. Yes, the UK Government should permit local authorities to use EPC Open Data for some phases of PRS enforcement. In this context, Propertymark has long held the view that where enforcement does take place there needs to be better joined up working between local enforcement agencies. It is our view that within local authorities, planning departments rarely speak to environmental health teams and therefore there have been situations where landlords cannot comply with the requirements of both planning and environmental health. This fundamentally undermines the local enforcement regime.

Question 24: Should there be a requirement for post-improvement EPCs (and for the cost to be included within the cost cap)?

34. Yes, there should be a requirement for post-improvement EPCs.

Question 25: Should a valid EPC be in place at all times while a property is let?

23. Yes, a valid EPC should be in place at time while a property is let.

Question 26: How can the most consistent set of recommendations in the EPC be assured? Does using only the most recent SAP methodology allow this?

35. We believe that the most consistent set of recommendations in the EPC can be assured by only using the most recent SAP methodology, rather than allowing some to use the older methodology. We think this for three reasons. Firstly, the current SAP does not take into consideration the most up to date energy efficiency electrical heating systems and this is important to ensure consistency between properties. Secondly, we are aware that updates to the SAP methodology over recent years mean that the list of recommended energy performance improvement measures on an older EPC may differ from a newer EPC. This could mean that outdated recommendations are given for some properties and not others, which could lead to the UK Government not realising their targets, or requiring some landlords to spend more than others when their recommendations should have been the same. Thirdly, members are concerned that while the assessments should be consistent, newer properties can build stricter requirements in, where older properties cannot.

Question 27: Should listed buildings and those in a conservation area be legally required to have an EPC?

36. Yes, listed buildings and those in a conservation area should be legally required to have an EPC. We think this for three reasons. Firstly, this would maintain consistency across the property sector with the same information provided for when a building is built, sold or rented. Secondly, EPCs contain information about a property's energy use and typical energy

costs as well as recommendations about how to reduce energy use and save money. Consequently, there may be some improvements that can be made to listed buildings that will not interfere with their listed status. Thirdly, under the Deregulation Act 2015, landlords are unable to serve a Section 21 Notice on tenancies that begin on or after 1 October 2015 unless they have provided tenants with the property's EPC. Removing the requirement for an EPC for listed buildings and those in a conservation area could add further complexity to the evictions process.

37. However, for listed buildings and those in a conservation area to be able to successfully comply with minimum energy efficiency rules the UK Government must do three things. Firstly, develop and set out a clear list of approved work that clearly defines what would or would not unacceptably alter the buildings character or appearance. Under the current rules this would also help to determine whether the building requires an EPC in the first place. Secondly, publish separate guidance on improving energy efficiency in listed buildings and those in a conservation area. To this end, many local authorities do not have a conservation officer and many local trading standards teams are overstretched and under resourced to deal with the specific detail needed to support the private rented sector.³¹ Therefore it is very difficult for landlords and letting agents to find accurate information and ask for advice. Thirdly, consider removing the requirement for minimum energy efficiency standards from listed buildings and those in a conservation area by offsetting the carbon emissions through planting trees and sponsoring offset schemes. To this end, net zero does not require that there be zero carbon emissions, only that all emissions are accounted for and balanced, so that the total does not exceed zero.

Question 28: Should government seek primary powers to increase the maximum fine level to £30,000 per property for each breach of the PRS Regulations? If yes, should it be adjusted for inflation? If not, what would be an alternative, appropriate maximum fine level? Please provide evidence with your answer.

38. Yes, the UK Government should seek primary powers to increase the maximum fine level to £30,000 per property for each breach of the PRS Regulations. This is in line with the other penalties brought into force under the Housing and Planning Act 2016³² and allows for consistency across the sector. In order for there to be tangible improvements in the sector, there needs to be effective enforcement coupled with consequences which are sufficiently severe to act as a deterrent to unlawful conduct.

³¹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/882957/Domestic_Private_Rented_Property_Minimum_Standard_-_Landlord_Guidance_2020.pdf

³² <https://www.legislation.gov.uk/ukpga/2016/22/contents/enacted>

Question 29: Should government introduce powers for tenants to request that energy performance improvements are carried out where a property is in breach? If yes, how could a redress mechanism be devised?

39. Yes, the UK Government should introduce powers for tenants to request that energy performance improvements are carried out where a property is in breach. To this end, we believe that Rent Repayment Orders, as introduced by Housing Act 2004 and extended under the Housing and Planning Act 2016, should be used.

Question 30: Should government introduce some form of local authority disclosure or benchmarking where a property is in breach of PRS Regulations?

40. Yes, the UK Government should introduce local authority disclosure or benchmarking where a property is in breach of PRS Regulations. This should include actual enforcement of the rules and how effectively local authorities address issues from tenants, landlords and letting agents.

Exemptions

Question 31: Do you agree that the updated exemption regime should come into force on 1 April 2025? If yes, do you agree that the property compliance and exemptions database should be opened six months prior to commencement of exemptions? If not, please explain why.

41. Yes, we agree that the updated exemption regime should come into force with the commencement of any new regulations. We also agree that the compliance and exemptions database should be opened six months prior to commencement of exemptions.

Question 32: Should the 'new landlord' temporary exemption be simplified so that it applies to any person who has become a landlord within the last six months? Please provide evidence with your answer.

42. Yes, the 'new landlord' temporary exemption should be simplified so that it applies to any person who has become a landlord within the last six months.