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CAS Response to Energy Efficiency (Private Rented Property) Regulations (June 2019)

Who we are

The policy teams at Citizens Advice Scotland use research and evidence to put people at the heart of policy and regulation in the energy, post and water sectors in Scotland. We work with government, regulators and business to put consumers first, designing policy and practice around their needs and aspirations. We aim to represent the views of different consumer groups using evidence of consumer views and supporting research where ever possible.

Citizens Advice Network in Scotland

Citizens Advice Scotland (CAS), our 59 member Citizen Advice Bureaux (CAB) and the Extra Help Unit, form Scotland's largest independent advice network. Advice provided by our service is free, independent, confidential, impartial and available to everyone. Our self-help website Advice for Scotland provides information on rights and helps people solve their problems.

In 2017-18 the Citizens Advice Service network helped over 295,100 clients and dealt with almost 800,000 advice issues for clients living in Scotland. With support from the network clients had financial gains of almost £142.2 million and our self-help website Advice in Scotland received approximately 3.2 million page views. On energy consumers issues in particular, we advised on over 41,000 energy-related issues in 2017-18, generating over £1.8m in client financial gain.

Our extensive footprint is important in helping us understand how issues impact locally and nationally across the country and the different impacts that policies can have in different areas.

General Comments and Key Points

- We support mandatory standards of energy efficiency in the Private Rented Sector, provided that:
 - There are no rent increases above the cost of the energy efficiency measure per month over the lifetime of the measure.
 - Landlords that cannot retrofit their property to EPC C are still required to install all improvements that fall within the £5000 cap, to ensure that all properties are as efficient as possible.
 - There are technical, cost, and compassionate exemptions for tenants that are too vulnerable to cope with renovations in their home. The compassionate exemption should be attached to the tenant, not the property.
 - There is a continuation of interest free loans for landlords seeking to make improvements.
- We believe that the best trigger point for regulation is landlord registration. As we outlined in our [consultation response](#) to Energy Efficient Scotland (March 2019), we believe that point of new tenancy is an opportunity for advice, signposting, and support, not regulation¹.
- The program should be supported by an in-depth program of public information and guidance that encourages and supports early engagement with the regulations.

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.

- 1.1 CAS agrees that there should be exemptions from the regulation where regulation is infeasible for technical, cost, or compassionate reasons. The proposed approach seems reasonably clear. However, in the case of a tenant refusing access to carry out the work, we believe that the landlord should also make a reasonable effort to prove that they provided relevant, unbiased, and easy to understand information about the nature of the works, the length and level of disturbance installation would cause, and the potential benefits the tenant could gain from the improvement. If the tenant refuses access to the

¹ <https://www.cas.org.uk/publications/cas-response-energy-efficient-scotland-consultation-further-development-programme>

landlord on grounds of a compassionate exemption, this exemption should be for the tenant, and the landlord should be required to install any required energy efficiency upgrades when the tenant leaves the property, even if the tenant vacates before the five year exemption expires.

- 1.2 It is very important that tenants have an informed right to refuse works that are too invasive. However, as long and invasive works are a [permissible reason](#) for private landlords to evict existing tenants², it is equally important that protections are in place to ensure that unscrupulous landlords do not take advantage of the proposed standards to evict existing tenants.
- 1.3 We agree with the proposed cost cap. We would recommend additional protections for tenants that prohibit the cost of energy efficiency upgrades and energy performance certificates being passed on to tenants (see point 1.4 below) through inflated rents, including the costs of any financial penalties that the landlord might incur through late or non-compliance. As stated in [our response](#) to the Energy Efficient Scotland consultation on accelerated targets, some tenant protection is offered by section 11.1 of the [Tenements \(Scotland\) Act 2004](#), which states

"an owner is liable for any relevant costs (other than accumulating relevant costs) arising from a scheme decision from the date when the scheme decision to incur those costs is made³."

CAS would like to see landlords formally supported in meeting the costs of energy efficiency upgrades and EPC assessment formally supported by interest-free loans from the Scottish Government as is currently on offer under Home Energy Scotland. This will help to avoid the unintended risk that landlords pass on the costs of upgrades to tenants via raised rents as a result of these regulations.

- 1.4. We do not support the provision of grants for private landlords, as we believe grant funding should be reserved for those least able to pay. If grants are offered as a financial incentive, we believe that no increase of rent should be permitted.

²https://scotland.shelter.org.uk/get_advice/advice_topics/eviction/eviction_of_private_tenants/grounds_for_eviction_for_private_residential_tenancy_tenants

³ Tenements (Scotland) Act.. Available at: <http://www.legislation.gov.uk/asp/2004/11/section/11>

- 1.5 While more energy efficient homes can remove one driver of fuel poverty, fuel bills are not always reduced by energy efficient measures, due to a lack of change in behaviour and the rebound effect⁴. As such, calculations of these rent increases should be taken into consideration for those in receipt of benefits, so that no one who is already struggling to make ends meet faces additional pressures on their income. It is crucial that tenants in receipt of benefits see any increase in rent matched in their benefit entitlement, so that they are able to enjoy the benefits of a more energy efficient home and so the programme accomplishes its goals of helping the least able to pay out of fuel poverty⁵.
- 1.6 Currently, the only restrictions on increasing rent in private rented tenancies in Scotland are the ability of local authorities to implement rent pressure zones, and the provision in private rented tenancy agreements that landlords may only increase rent once a year. No rent pressure zones have been implemented in Scotland. CAS considers that the scale of these regulations has the potential to greatly increase rent levels across Scotland as landlords attempt to recoup costs through rent. Under these regulations we urge the Scottish Government to include an additional provision that prohibits any landlord that accepts public funds (e.g. HES interest free loans) from increasing the rent for their property more than the cost of the energy efficiency measure per month over the lifetime of the measure.

Under this formula, the cost of the measure would be divided by its lifetime and again by months in a year. For example, a new gas boiler that costs £2500 and has a lifetime of 15 years would cost the tenant:

$$£2500 \div 15 \text{ years} \div 12 \text{ months} = £13.89 \text{ per month}$$

Under the £5000 cost cap, no tenant should face more than a £27.87 increase a month in rent because of energy efficiency measures.

⁴ Hong, S., Oreszczyn, T., Ridley, I. (2006). The impact of energy efficient refurbishment on the space heating fuel consumption in English Dwellings. *Energy and Buildings*. 38. Pp. 1171-1181. <https://www.sciencedirect.com.ezproxy.is.ed.ac.uk/science/article/pii/S0378778806000399>

⁵ We are aware that under Universal Credit, the housing element is paid by Department of Work and Pensions, and that they would have to approve an increase in benefits.

We believe this formula, as laid out in the Scottish Government's application for exception for landlords in rent pressure zones, will allow landlords to recoup their investment without negatively affecting the tenant and forcing those who are already vulnerable into rent arrears⁶.

Landlords would be able to prove compliance with the cap when providing evidence of compliance with the regulations. Proof of rent before and after works, along with proof of the cost of measures could be submitted along with the new EPC. As landlords accepting public funds would be subject to the cap, this evidence could be submitted to the organisation administering the loans i.e. the Energy Saving Trust.

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.

- 2.1 We welcome the inclusion of Home Energy Scotland (HES) in the guidance as the first stop for funding and advice for landlords, and we would like to see the same information provided to tenants in their tenancy agreement and in the notice provided to tenants that their landlord is planning works in the property. Tenants should be signposted to Home Energy Scotland or a relevant independent advice agency at every step of the process to ensure that they understand their rights as tenants and can gain the maximum benefits from any measures installed. This advice should include information about necessary behavioural changes and optimal use of equipment, including heating controls.
- 2.2 Wherever possible, landlords and tenants should both be involved in the retrofit process. John Gilberts Architects recommended in their report *Guide to Domestic Retrofit* that

"...for larger housing organisations, it may be worth creating a role to specifically help tenants with their systems and controls. This can be

⁶ <https://www.gov.scot/publications/private-residential-tenancy-prescribed-notice-forms/>

carried out at handover, but can also be an ongoing service for all tenants” (32)⁷

While this advice was directed towards large scale landlords, we believe that private landlords with a small portfolio or single property could serve the same role in supporting their tenants. Letting agencies could create or appoint a dedicated member of staff to help tenants understand their heating and metering systems at property handover and throughout their tenancy, or refer tenants to an advice organisation such as HES.

2.3 We believe that a whole home/building approach is the best approach to ensure that measures such as insulation are installed correctly and ventilated well⁸. To this end, we would like to encourage further financial incentives for landlords in multi-occupancy buildings who are willing to adopt a fabric first, whole building approach that includes communal areas such as stairs, foundations, roof structures, and services (such as hallways) to individual flats. This could consist of:

- Additional (perhaps higher value) interest-free loans available to groups of landlords or a Factor
- A fund matching scheme for upgrades to communal areas
- Appointment of a government funded retrofit coordinator (as required under PAS2035) to whole building retrofit schemes so as to not increase costs

In areas of Scotland where Factors are responsible for the upkeep of buildings, scheme money could be released to the Factor.

Offering additional funding in this way would help upgrade Scottish housing stock as a whole and would create economies of scale, lowering the overall costs of meeting government targets in the coming decades. It will also ensure higher quality retrofitting that improves the long term conditions of the building as well as the health and quality of life of its inhabitants.

⁷ Morgan, C (2018) Guide to Domestic Retrofit. Available at:
file:///P:/01_Energy/02_BAU%20Work/01_Consultations/Energy%20Efficient%20Scotland%20accelerated%20targets%20May%2019/[digitalv3]guide-to-domestic-retrofit-compressed.pdf

⁸ See our consultation response to Energy Efficient Scotland (March 2019) for more detail
<https://www.cas.org.uk/publications/cas-response-energy-efficient-scotland-consultation-further-development-programme>

Question 3: How would the changes you suggest influence the speed with which you expect improvements to occur?

- 3.1 We do not expect that the changes we suggest would influence the speed with which improvements are expected to occur. We believe that they will ensure good quality works are installed correctly the first time and ideally considering a whole-building approach, to the benefit of both landlord and tenant.

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?

- 4.1 We agree that six months seems a reasonable amount of time for local authorities to take account of expenditure outlays that landlords have made in upgrading the energy efficiency of their stock. This will help to avoid disincentivising landlords for being proactive in upgrading the energy efficiency of their stock early. This is also practical given that this consultation closes on 6th September, approximately 6 months in advance of regulations coming into force from 1 April 2020. A landlord may only become aware of the imminent regulations from September 2019 onwards as a result of Scottish Government engagement. Any upgrades that the landlord has chosen to undertake any earlier than 6 months in advance of regulation, is more likely a result of necessary thermal upgrades to make the property habitable. It therefore follows that a landlord shouldn't be rewarded (i.e. in being made exempt from the regulations) for completing energy efficiency upgrades that were necessary anyway, without regulation. After all, the regulation is intended to incentivise works that go above, and beyond business-as-usual.
- 4.2 We would like to emphasize the importance of a robust information campaign leading up to the regulations coming into force so that landlords are fully aware of the regulations and the processes they are meant to follow, as well as any available support and advice. This campaign should be centrally driven

by the Scottish government so that information is consistent and clear across Scotland.

- 4.3 We would expect landlords to provide evidence of quotes for required works exceeding the cost cap from at least three independent contractors. If a landlord could not improve a property to EPC band C within the proposed cap, they should still provide evidence that they had installed any and all improvements up to £5000 to make their property as efficient and comfortable as possible.
- 4.4 Some degree of human judgement will be required for all exemption cases; we recommend that if a landlord applies for an exemption based on the cost cap or technical feasibility, the local authority has the application evaluated by someone with relevant technical expertise to ensure all evidence is evaluated accurately and fairly. Should the exemption be denied, landlords should be directed to Home Energy Scotland for advice and support.
- 4.5 We agree with the proposal under 4.3.3 to take into consideration any costs for energy efficiency upgrades that a landlord has incurred within a 6 month period prior to regulation coming into force, when calculating whether they have met the price cap of £5000 and seeking a valid exemption.

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?

- 5.1 The proposed penalties would ensure much higher compliance if, whilst under a penalty notice, landlords could not collect rent or other revenue from their tenants until the minimum standards were met. Tenants should be able to bring complaints about any failure to meet the standard to the First-Tier tribunal, just as they might for a failure to meet the repair standard⁹.
- 5.2 The proposed process for local authorities to monitor and require compliance is vague and would require large amounts of resourcing, which would likely

⁹ <https://www.gov.scot/publications/repairing-standard/>

result in low levels of compliance. Requiring local authorities to go through a multi-step process of cross checking several databases to estimate the number of PRS properties in their areas which may not meet minimum standards seems like an unnecessarily complicated process that would discourage enforcement. Additionally, the percentages of landlords and properties registered are [not currently available](#), making it difficult to estimate compliance¹⁰. Many of the most vulnerable tenants and properties in the worst condition could easily slip through the cracks.

- 5.3 As point of new tenancy is not a natural point of interaction between the local authority, landlord, and tenant, we believe that point of landlord registration would be a more suitable trigger point to ensure good rates of compliance¹¹.

In our previous consultation to the Energy Efficiency Consultation in March 2019 we said of trigger points:

Point 7.1

While change of tenancy could be a trigger for regulation – there is a risk that landlords could pass on the costs of energy efficiency upgrades to tenants. We would only support this if legislation or some robust measure was put in place to avoid landlords raising rents to cover their retrofit costs. Our preferred option is that the increased standard be applied when landlords register or re-register with their local council. This supports Shelter Scotland’s previous recommendation.

The proposed regulations permit local authorities to check the EPC rating of a PRS property when a landlord registers or re-registers on the landlords register; it would be easy to designate this as the trigger for enforcement. Re-registration occurs every 3 years anyway, and the back-stop for compliance with these regulations is in 2025, therefore existing and new landlords will have already taken action by 2025. For this reason we do not foresee this

¹⁰ Livingston, M., Berry, Kate., Gibb, Kenneth, and Bailey, N. (2018). Private Renting Reforms: how to evidence the impact of legislation.. Available at: <https://sp-bpr-en-prod-cdnep.azureedge.net/published/2018/11/14/Private-renting-reforms--how-to-evidence-the-impact-of-legislation-1/SB%2018-77.pdf>

¹¹ For more details, please refer to our response to the Energy Efficient Scotland Consultation on further development of the program, found [here](#).



trigger point as creating any delay in action being taken by landlords to increase the EPC rating.