

Energy efficiency and condition standards in private rented housing

Consultation response to the Scottish Government - June 2017

1. The Consumer Futures Unit ('the CFU') sits within Citizens Advice Scotland ('CAS'). The CFU is the Scottish consumer representative body in the regulated markets of energy, post and water. It uses evidence, expert analysis and research to put consumer interests at the heart of policy-making and market behaviour. We welcome the opportunity to contribute to the Scottish Government's consultation about energy efficiency and condition standards in private rented housing. It should be noted that for the section of the consultation covering general condition standards (i.e. Part 2) this response also incorporates some comments from the wider Social Policy team in CAS.

General comments and key points

2. The main energy efficiency section of this consultation comes under the framework of the Scottish Government's overall development of Scotland's Energy Efficiency Programme (SEEP). The CFU responded separately a month ago, and in more detail, to the earlier consultation about the broader aspects of SEEP; and the Scottish Government is again referred to that response. Several of its points and themes are relevant to the private rental sector, including on:
 - the top-level delivery, governance, identity and communications programme for SEEP;
 - the need to include, among SEEP's strategic objectives, the elimination of energy inefficiency as a cause of fuel poverty in Scotland;
 - the appropriate balance between regulation and incentives in encouraging investment by property owners in energy efficiency measures – although our recent research concentrated on the owner-occupied sector, its findings and conclusions may also be relevant to the approach to be adopted for private landlords and tenants in the rental market;
 - the approach to Energy Performance Certificate (EPC) assessment, and to a 'one-stop' source of reliable and independent advice/support;
 - the importance of consumer principles, protection and redress – with both landlords and tenants being seen as 'consumers' for energy efficiency suppliers, and for SEEP-related services, in this context.
3. As heralded in our earlier response, **the CFU broadly supports the Scottish Government's proposals for minimum standards of energy efficiency in private rented housing. We also support its proposals to improve condition standards.**
4. In this sector, the ultimate consumers of the 'service' – i.e. the letting of housing – are the tenants. We support the aim of giving tenants, including in particular those who may be vulnerable and/or in fuel poverty, the highest practicable levels of standards, assurance and protection, to ensure that they can live in energy-efficient, warm, dry homes of a good standard. The only caveat to this would be any circumstances or evidence in which the costs to tenants (if rents were to be increased on the grounds of recovering the costs to the property owner of making the investments) were disproportionately to outweigh the benefits to the tenants, including savings in terms of fuel bills.

5. The detailed Partial Business and Regulatory Impact Assessment (BRIA), which accompanies the consultation and which we welcome, examines the cost-benefit equation in some detail. It states that where the expected fuel bill savings (to the tenants) over the lifetime of an upgrade are higher than its cost (to the landlord) – which the analysis later in the BRIA suggests will be the case for these regulations – *“it is possible for both landlord and tenant to be better off from installing the upgrade – the landlord from being able to receive an additional rent which more than covers the cost of the upgrade, and the tenant because the increase in their rent is less than the decrease in their fuel bills”*. However, the BRIA does not appear to underpin this by quantifying the impacts on rents, or other possible charges passed from landlords to tenants, in much additional detail. In a market which the BRIA describes as an imperfect one, it may be asked whether the somewhat theoretical statement quoted above will be borne out in practice, and if so to what extent, or whether tenants may be exposed to risks of unforeseen and/or earlier additional costs. **We recommend that, in finalising the BRIA and in taking forward the proposals, this possibility be carefully considered and monitored¹.**
6. To provide an additional safeguard for the interests of tenants, we effectively suggest in our detailed comments below that **there should a robust framework of consumer advice, support, protection and redress for tenants**. In line with our response to the SEEP consultation, **general consumer principles should be applied to the design of this framework and to any new scheme of regulation and enforcement which is introduced**.
7. Through the network of Citizens Advice Bureaux across the country, we continue to see cases of clients who live in privately-rented housing in poor conditions. Over the years we have therefore supported various moves to improve standards in this sector, particularly as private renting becomes more common, having risen from 6% of homes in 2003, to 15% (or around 350,000 homes) in 2015². It is the only choice of housing available to many, with some even becoming ‘trapped’ in this sector. As we said in response³ to the Commission on Housing & Wellbeing in 2014:

“Citizens Advice Scotland is frequently alarmed at the quality and upkeep of private rental properties, often let by ‘persistent offenders’ in the landlord community; and particularly focused in urban areas, especially Scotland’s inner cities. The Scottish private rental sector market must strive to achieve the high standards that many of its landlords already achieve to ensure that renters get the best quality of living conditions”.
8. The consultation notes recent progress on energy efficiency standards in the social housing sector in Scotland, as well as efforts to apply a minimum standard from April 2018 in the private rented sector in England and Wales. We agree that it is appropriate that tenants in the Scottish private rented sector should now be guaranteed the same, or higher, quality of housing and level of protection.

¹ CAS understands that a forthcoming piece of economic research from Citizens Advice (England & Wales) takes a look at the potential impact on rents, and the net costs/benefits for tenants, of minimum standards of energy efficiency in the private rented sector; although not directly covering the Scottish rental market, its findings may be relevant and should be studied with interest

² para.2 of consultation

³ <http://www.cas.org.uk/publications/response-housing-wellbeing-consultation>

9. As well as falling behind the social housing sector, the private rented sector also contains a higher proportion of properties in the lowest-rated energy efficiency bands than the owner-occupied sector⁴.
10. We therefore support the Minister's vision, set out at the outset of the consultation, for a private rented sector which *"provides good-quality homes and high management standards, inspires consumer confidence, and encourages growth through attracting increased investment"*.
11. Our detailed comments on the specific paragraphs and questions in the consultation paper are attached at [Annex A](#).

**Consumer Futures Unit, Citizens Advice Scotland
30th June 2017**

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⁴ para. 19 of consultation – 28% of private rented dwellings fall into Energy Performance Certificate (EPC) bands E, F and G, compared with 22% in the owner-occupied sector and 10% in the social rented sector (drawn from Scottish House Condition Survey, 2015)

Comments on specific paragraphs and consultation questions

Part 1 – energy efficiency improvements

Q1.1 Do you think that only tenancies covered by the repairing standard should have to meet minimum energy efficiency standards?

12. The general principles of consumer protection and standards, which we have outlined in the introduction to our response, should apply to all consumers regardless of what type of tenancy they may have. There is also particular concern about the higher prevalence of fuel poverty (35% of households⁵) in rural areas, where agricultural tenancies would primarily be found. We note as well that a higher proportion of private rented dwellings with lower EPC ratings are situated in rural areas – 39% of private rented dwellings with a rating of E, F or G, and 63% of those with a rating of F or G, whereas only 15% of all private rented dwellings are in rural areas⁶. Furthermore, tenants in such areas may have less choice and be in a more vulnerable position than urban dwellers, for example if they are ‘tied’ to their home by their work.
13. The CFU therefore considers that the application of minimum standards regulation should be consistent across all the different types of tenancy. We understand the logic set out in the consultation for ‘aligning’ the repairing standard with the energy efficiency standards; and it would be for the Scottish Government, in consultation with housing, agricultural and rural experts, to determine the best route to achieve the desired consistency of approach, as long as this should have no unintended consequences, and should not lead to tenants being disadvantaged by a higher balance of costs over benefits.

Q1.2 We propose to link the minimum energy efficiency standard to the Energy Performance Certificate (EPC) as we think this is the most suitable mechanism. Do you agree?

Q1.3 Do you think there are elements of the EPC assessment that would need to be altered to support a minimum energy efficiency standard?

14. We support ongoing refinement and improvement of the EPC approach – please see our general SEEP consultation response for comments and suggestions on this. Consumers, including landlords, tenants and the general public, need full confidence that the system is robust and consistent. At the consultation event which the CFU attended about the proposals for the private rented sector, there was some comment about the need for a ‘serious look’ at the quality assurance process for EPCs. There was likewise a degree of concern about the possible risks that those who commission EPCs, perhaps especially larger commercial operators, might be able to influence the content and outcome of EPC assessments so as to get round some aspects of the new regulatory system. However, it was noted that this raises important questions about higher levels of training and independence for assessors, as well as about auditing, enforcement and resourcing.

⁵ [Scottish House Condition Survey, 2015](#), Table 36

⁶ Partial Business & Regulatory Impact Assessment (BRIA), p.14 (drawing on Scottish House Condition Survey 2014-15)

15. There were also suggestions, which may be worth considering, about piloting improvements in EPC methodology and quality assurance in one or two local areas first, before attempting to roll out at national level, although it is admittedly hard to see how this could be done with the overall regulation *per se*, as this could lead to unfairness for those being regulated in only those areas.

Q1.4 Do you think that the minimum energy efficiency standard for private rented properties should be set at an energy efficiency rating of E in the first instance?

16. The CFU welcomes the detailed and thorough Partial Business and Regulatory Impact Assessment which accompanies this consultation, building on the work of the Regulation of Energy Efficiency in Private Sector Housing (REEPS) Working Group, in which the CFU was also involved. This provides an extensive body of research-based evidence to help inform policy decisions such as the one posed in this question.

17. Drawing on this evidence, the consultation sets out a well-reasoned case for the gradual approach and milestones which are proposed. The introduction of regulated minimum standards in the private rented sector is a significant step and major undertaking for the businesses and tenants who are affected, and for the supply chain; and policy-makers and local authorities will need to carry these sectors with them on the journey towards higher standards and the challenging future targets set out under the Climate Change Plan. Our separate new research on the owner-occupied sector shows the likely difficulties and scepticism about regulation (detailed in our earlier SEEP consultation response) which continue to be prevalent among property owners towards regulation, and which will need careful handling, as well as more compelling communications and marketing helping to justify the case for regulation.

18. A precautionary lesson from the experience of rolling out smart meters may be that setting ambitious initial targets, which stretch the capacity of the supply chain, can run the risk of increasing overall costs, as companies seek to recruit, train and retain sufficient numbers of qualified installers, and face potential wage inflation if demand outstrips supply⁷.

19. On the other hand, from a consumer point of view, the CFU supports better standards for tenants, at the earliest possible date, and the faster and more effective achievement of targets on fuel poverty. The position of those calling for a more ambitious EPC rating of D to be set as the standard in the first instance, but possibly with a longer lead-in time, is therefore also persuasive.

20. At SEEP consultation events, representatives of property owners have tended to indicate that they would prefer to know the ultimate destination and trajectory of regulation, more than a gradual approach. This enables them to plan ahead at an earlier date for the levels of improvement and investment which are required. Although the consultation proposals do also set out the later trajectory from E to D, there may be a case that it would be clearer to set D as the standard from the outset, and then eventually C, but possibly with a longer timescale. We note that C is seen as the longer-term destination and if so, then this ought to be made clear to people. As we said in response to the general SEEP consultation, there is an overall need to communicate what 'good' is – and this is accepted as being C, beyond both E and D. It seems likely that this would encourage some landlords and other property owners to make the full upgrade to C (or even beyond) in one step if they wish, and if this would better suit their investment plans.

⁷ *Smart Move: taking stock of the smart meter rollout programme in Scotland*, CFU, June 2016, p.32 'Timeframe' – stakeholders told us that this was a potential concern: <http://www.cas.org.uk/publications/smart-move>

21. An initial minimum standard of E would have a relatively small impact (estimated in the consultation to be 30,000 homes), yet would still require all the surrounding regulatory and enforcement mechanisms to be established. There may be an argument that it would be more cost-effective, with greater economies of scale, for such mechanisms to be set up to cover the larger number of homes impacted by a D standard (stated in the consultation to be 95,000) from the outset.
22. Ultimately, only the Scottish Government will have the fullest picture of evidence from around the country, and from different consultees, about the appropriate approach to take; but the CFU would certainly support the best and fastest outcomes for consumers – in this case the tenants – subject to considerations of cost-benefit and practicability.

Q1.5 Do you think that the minimum energy efficiency standard should first of all apply only to those properties where there is a change in tenancy, and after that to all private rented properties?

Q1.6 Do you think that 1 April 2019 is the right date to start applying the minimum standard of E when there is a change in tenancy?

Q1.7 Do you think that 31 March 2022 is the right date by which all privately-rented properties would need to meet the minimum standard?

23. The phased approach set out in the consultation appears reasonable. If it were decided to set D as the initial minimum standard, rather than E (as discussed above), then the milestone dates would need to be reviewed, informed by all the evidence set out in the Regulatory Impact Assessment and further provided by different consultees in their responses. Again, if C is viewed as the ultimate destination, then this should be made clear to encourage owners to make the maximum investment in one step if they so wish.

Q1.8 Where a property has an EPC of F or G at the point of rental (a) do you think that we should require the owner to carry out a minimum standards assessment before renting the property out; (b) do you think that we should allow a period of six months from the date of the minimum standards assessment to carry out the improvement identified by the assessment; (c) do you think that the owner should have to provide a post-improvement EPC to prove that the necessary improvements have been made?

Q1.9 We think that all privately rented properties should have to meet the minimum standard by 31 March 2022. Where a property does not have an EPC of E (a) do you think that we should require the owner to carry out a minimum standards assessment by 30 September 2021 (the 'backstop assessment' date); (b) do you think that we should allow a period of six months from the backstop assessment date to carry out the improvement identified by the minimum standards assessment; (c) do you think that the owner should have to provide a post-improvement EPC to prove that the necessary improvements have been made?

24. The approaches to these questions proposed in the consultation appear sensible and well-reasoned. Our only comment is that it might be helpful to set out the experience and any lessons from the existing application of minimum energy efficiency standards in social housing (EESHS).

Q1.10 We are proposing that there should be a new minimum standards assessment based on the EPC methodology that will tell an owner how to bring their property up to standard. Please tell us your views on the following elements of the proposal: (a) that the assessment would use the EPC methodology,

since that is how we are proposing that the standard is set; (b) that the assessment would work out the lowest cost technically appropriate package of measures to bring the property up to standard, based on the average of costs used in EPC methodology; (c) that the assessment would set out the package of measures to meet an energy efficiency rating of E, and separately of D, from the property's current rating; (d) that the assessment include a calculation of the property's EPC rating before identifying the appropriate measures, where there is no EPC under the current version of the EPC methodology; (e) that the assessment could include measures which are not currently in the EPC assessment, but which can be measured using the RdSAP methodology; (f) that the assessment would cost in the region of £120-£160.

Q1.11 Do you think that the assessment should only recommend a package of measures which improves both the energy efficiency and environmental impact scores of the property?

Q1.12 We propose to develop a new role of minimum standards assessor. (a) Do you think that a new role of minimum standards assessor is needed; (b) if so, what additional skills beyond those of an EPC assessor would be needed; (c) How long do you think it would take to get this in place; (d) Who do you think should maintain the register of assessors?

25. These questions are more for technical bodies and institutes involved in EPC methodology to provide views and evidence. As already stated, the CFU supports the design of an improved process which builds upon the existing EPC approach. In our response to the overall SEEP consultation, we welcomed the concept of minimum standards assessment/assessors, and recommended that a bespoke EPC for a property should be able to give a more accurate picture of real (not modelled) costs and bills. In view of the debate about the later trajectory and final destination of minimum standards, there may also be a case for the minimum standards assessment setting out the measures necessary to meet a C rating, as well as a D.

26. On costs, it will be important for the Scottish Government to provide re-assurance that sufficient protections for tenants are built in to the process. For example, it should be confirmed that landlords are not able to pass on the costs of EPC assessments, or other one-off costs, to tenants – whether at the point of a new rental, or at some other time.

27. On Q1.11, from a consumer perspective, the CFU would answer no, not necessarily. The alleviation of fuel poverty and the reduction of carbon emissions are both important. We consider that for properties with the lowest energy efficiency ratings, the elimination of energy inefficiency as a potential cause of fuel poverty should be given a high priority; and, therefore, the assessment should not exclude a package of measures which will benefit that objective but may have a negative effect on the property's environmental impact rating. Affordable, efficient heating systems will be crucial to tackling fuel poverty.

28. The consultation indicates that this potential dilemma may affect only a relatively small number (7%, or around 2,100) properties. Also, there might be scope for a some degree of confusion among consumers, and among those regulated, at a regulation ostensibly directed towards minimum standards of energy efficiency, and in the context of wider efforts to reduce fuel poverty, if it were to exclude certain measures leading to positive consumer outcomes for tenants (especially those who are vulnerable and/or in fuel poverty) on this basis.

29. The example given in the consultation of potentially conflicting objectives appears to relate primarily to circumstances involving the replacement of non-fixed (assumed to refer to plug-in types) electric heating with mains gas. The tables below show that those using electric heating are

much more likely to live in properties with a low EPC rating, and that electric heating is significantly more expensive than mains gas. In addition, 54% of consumers in electrically-heated homes are in fuel poverty⁸. Twice as many of those in Scotland who use electric heating say that it is unaffordable, compared with those who use mains gas⁹. Without improving the efficiency of heating systems, it will be more difficult and costly to improve the affected properties by other means, and consumers in those homes are already likely to have high fuel bills, increasing their risk of being in fuel poverty.

30. The replacement of non-fixed heating with a more efficient, fixed heating system (in this scenario, probably a gas boiler) would be likely to reduce energy costs significantly for people at higher risk of fuel poverty. In this context, it is important to note that improvements in energy efficiency alone are unlikely to be sufficient to eradicate fuel poverty (particularly at an EPC level of D or lower), but must come alongside reductions in the cost of energy. The CFU's 2016 research into energy efficiency schemes in Scotland found that improvements in energy efficiency are not sufficient to eradicate fuel poverty without measures to reduce costs and increase incomes. Indeed, housing associations already have the most efficient housing stock, but due to lower incomes, fuel poverty rates are higher than average¹⁰. These factors will be crucial for those at most risk of fuel poverty, and in some circumstances, connection to mains gas may be the most viable option to address them, so should not be ruled out.
31. The following table¹¹ shows EPC ratings broken down by heating fuel type. It demonstrates that almost no G-rated properties, and less than a quarter of F-rated properties, have mains gas; and also that electric heating is the most common type in G- and F-rated properties.

⁸ Scottish House Condition Survey, 2015

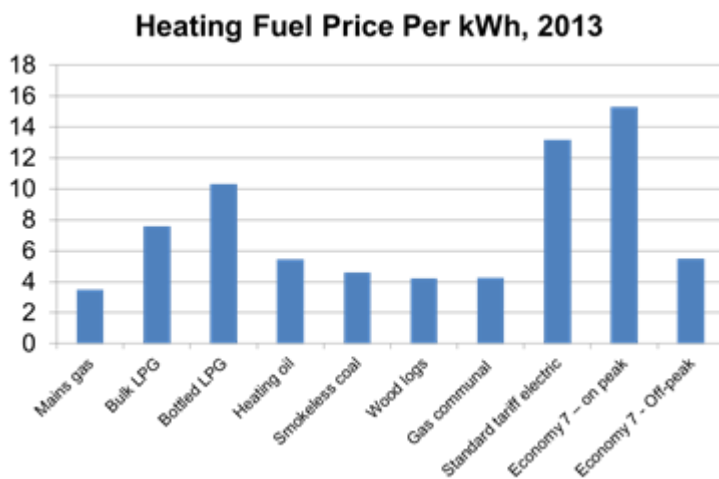
⁹ Consumer Tracker Survey, CFU, 2017, <http://www.cas.org.uk/publications/consumer-tracker-survey-2017>

¹⁰ *Taking the Temperature: a review of energy efficiency and fuel poverty schemes in Scotland*, CFU, June 2016, <http://www.cas.org.uk/publications/taking-temperature>

¹¹ Analysis by Richard Moore for the CFU, still to be published, of data from the Scottish House Condition Survey 2012-

Year	EPC ratings	Mains gas	LPG & Bot gas	Heating Oil	Solid fuel	Electric heating	Com-munal	Total (Sample)
2012 - 14	A/B rating (SAP 81 plus)	22 72.8 1.2	0 0.0 0.0	2 5.3 1.1	0 0.0 0.0	4 12.8 1.2	3 9.1 9.4	30 (85) 1.3
	C rating (SAP 69 to 80)	712 85.8 38.2	0 0.0 1.3	17 2.1 12.5	1 0.1 2.6	82 9.8 25.3	18 2.2 61.5	830 (2594) 34.5
	D rating (SAP 55 to 68)	901 82.1 48.4	2 0.2 8.1	58 5.3 41.6	7 0.6 25.6	123 11.2 38.0	7 0.6 24.3	1,098 (3832) 45.7
	E rating (SAP 39 to 54)	210 59.5 11.3	10 2.8 46.0	44 12.4 31.4	11 3.0 41.3	77 21.9 24.0	1 0.4 4.8	353 (1325) 14.7
	F rating (SAP 21 to 38)	18 23.2 1.0	8 10.4 37.7	18 22.7 12.6	4 5.6 16.7	30 38.2 9.2	0 0.0 0.0	78 (305) 3.2
	G rating (SAP 1 to 20)	0 1.9 0.0	1 10.3 6.9	1 8.0 0.8	4 25.3 13.9	8 54.5 2.4	0 0.0 0.0	14 (53) 0.6
	Total hholds	1,863	21	140	26	323	29	2,403
		77.6	0.9	5.8	1.1	13.4	1.2	100.0
	(Sample size)	(5935)	(78)	(679)	(133)	(1255)	(114)	(8194)

32. This table¹² illustrates the higher cost of electric heating compared with mains gas:



33. Significantly more detail is required on the proposed register (paragraph 75 of consultation) of minimum standards assessors, and on how the body approved by the Scottish Government, to

¹² BRE, *EPC Prices, Prices used by SAP/RdSAP for calculation of fuel costs, from January 2013*, available at www.bre.co.uk/filelibrary/SAP/2012/SAP-fuel-prices-January-2015.xls

maintain the register and quality-assure the assessors and the assessment process, would work in the interests of the consumer. As stated earlier, it is important that there is full professional and public confidence in the system of EPC assessments, and that it is not open to abuse and undue influence.

Q1.13 What are your views on the existing advice and information provision by Scottish Government for landlords and tenants? What changes, if any, do you think are required?

34. Please refer to the CFU's response on the overall SEEP consultation for some general points about the provision of advice, information and support. Although that response had primarily homeowners in mind, many of its points are equally relevant to landlords needing help to invest in energy efficiency improvements.
35. Further research undertaken by the CFU this year¹³ has highlighted that in-home face-to-face energy advice is seen as a necessary service to alleviate fuel poverty for certain households. The research reported that tailored fuel poverty advice was of particular benefit for some consumers who are hard of hearing, unable to leave their home, vulnerable, experiencing mental health problems or who do not have English as a first language.
36. The CFU's recent new Consumer Tracker Survey 2017¹⁴ has found a lower level of awareness of energy issues such as switching options among people who rent their home. 16% of respondents, covering urban and rural areas, said that their energy supplier was their only option. People who gave this response were more likely to use electric heating, and more likely to rent their home. Together with recent new survey data from charities in the field such as Shelter, it suggests there may be a particular need for advice, information and support on energy, and energy efficiency, for tenants renting privately.
37. The CFU has also highlighted elsewhere the importance of separate advice tailored to tenants. A research report last year¹⁵ referred to experience in the social housing sector:

'As an example of how economic factors are a key determinant of fuel poverty, Housing Associations in Scotland already have the most energy-efficient stock of all tenures in Scotland (50 per cent of homes rated EPC 'C' or above, compared to 35 per cent in the housing stock as a whole) but the low average incomes of tenants mean that fuel poverty in the sector is higher than the Scottish average (39 per cent compared to 35 per cent). Consequently, increasing numbers of associations are complementing physical work with: advice on heating system use; income maximisation; accessing competitive energy tariffs. A number of Associations are involved in developing their own energy supply company as an alternative, lower-cost approach to energy provision'.

38. Another CFU report published at around the same time¹⁶ recommended:

¹³ *Facing Fuel Poverty: research on face-to-face actions to help consumers in fuel poverty in Scotland*, CFU, June 2017, <http://www.cas.org.uk/publications/facing-fuel-poverty>

¹⁴ See reference above

¹⁵ *Taking the Temperature*

¹⁶ *Hot off the grid: delivering energy efficiency to rural, off-gas Scotland*, CFU, June 2016, <http://www.cas.org.uk/publications/hot-grid>

‘Landlords should provide appropriate guidance and support to tenants to ensure effective use of systems to maximise heating bill reductions, provision of warmth and tenant satisfaction. This should include:

- *demonstrations and in-home explanations on how to use the system*
- *easy-to-understand and simple written instructions*
- *follow-up advice to ensure correct understanding*
- *greater support for vulnerable tenants e.g. elderly tenants*
- *advice for new tenants when moving into the home, as well as when new systems are fitted*
- *advice on the most appropriate tariff (and in some cases advocacy to resolve disputes with energy suppliers)’.*

39. Under SEEP, consideration should be given to a mandatory requirement on landlords to ensure that tenants are provided with some such advice, with pointers to official sources of further advice and information (such as Home Energy Scotland), which needs to be tailored towards the particular perspective and needs of tenants. Landlords should be assisted to find such sources of advice.

40. Advice given to tenants should also explain, in clear language, the requirements of the new regulations and what they, as tenants, should have the right to expect. Our understanding of current law is that private tenants have the right to install central heating or other energy efficiency measures (e.g. insulation), subject to their landlord’s consent, which cannot be unreasonably withheld. Indeed grants may be available to assist tenants to do this. However, under the proposed regulations, tenants need clearly to know that it is not their responsibility, but the landlord’s, to meet the statutory new minimum standards. Tenants should be protected as far as possible from any confusion on this, or from any attempts by landlords to encourage tenants to bear some responsibility and costs for upgrading the property to the new standards.

41. In 2015, the CFU published *Save energy, save money and stay warm: your guide to energy efficiency in tenements*¹⁷. Although not geared specifically to tenement-dwellers who are renting, it was a good example of advice tailored towards those in similarly specific housing circumstances.

42. For the Scottish Government to address this section fully, it would be helpful to examine and provide evaluation evidence of existing official sources of advice to landlords and tenants, to see how they could be improved. In our general SEEP response and in previous reports¹⁸, we have commented on the need for full monitoring and evaluation of all aspects of energy efficiency and fuel poverty programmes.

Q1.14 What financial or fiscal incentives support – such as grant and loans, tax or otherwise – would you find most useful to help accelerate the installation of energy efficiency measures and help landlords meet any proposed standards?

¹⁷ <http://www.cas.org.uk/publications/save-energy-save-money-and-stay-warm-your-guide-energy-efficiency-tenements>

¹⁸ *Taking the temperature* (see reference above)

43. Our recent research report¹⁹, submitted with the CFU's overall SEEP consultation response, looked at financial and fiscal incentives. It focused on owner-occupiers, but some of its findings on attitudes towards regulation and incentives may also be relevant to landlords.

44. For owner-occupiers, we found that a Council Tax incentive would be the most attractive of the options considered. This would not be applicable in the case of landlords, as it is generally their tenants who are responsible for paying the Council Tax. If the Scottish Government considers, following the consultation, that incentives should be offered to landlords, then loans would be an option, but perhaps combined with some other form of incentive having similar features to those which we found could encourage home owners to invest in energy efficiency improvements.

Q1.15 What impact do you think the introduction of minimum standards would have on local supply chains for energy efficiency works?

45. We have no comment to make, beyond our general response on this in the SEEP consultation.

Q1.16 Do you think it would be helpful for assessors and installers to have a traditional buildings qualification that raises awareness and understanding of energy efficiency measures for older, traditional or vulnerable buildings built prior to 1919?

46. Consumers, including landlords and tenants, need to have full confidence that assessors and installers are professionally qualified and accredited for the particular building types with which they are involved. Pre-1919 stock does have specific requirements and therefore there needs to be a pool of assessors and installers who are demonstrably fully experienced and competent in such requirements, in response to local demand. We also note that private rented sector dwellings in the lower E, F or G-rated bands are more likely to be older pre-1919 stock²⁰. They are also more likely to have stone walls²¹.

Q1.17 Do you think there are additional consumer protection safeguards the Scottish Government should consider for the private rented sector?

47. Our general position on consumer protection and redress, as set out in our earlier SEEP consultation response, applies equally to the private rented sector.

48. The CFU recommends that there should be additional safeguards for tenants – specifically a clear, independent route for tenants to raise comments or complaints about their landlords, and to seek redress against any adverse impacts they may suffer as a result of energy efficiency measures taken by their landlords.

¹⁹ *Consumer participation in energy policy: research project*, Ipsos MORI and Involve for the CFU, May 2017

²⁰ BRIA, p.13 – 68% of private rented dwellings rated E, F or G were built before 1919, compared with 41% of all private rented dwellings (drawing on Scottish House Condition Survey 2014-15)

²¹ Also on p.13 of BRIA – 70% of private rented dwellings rated E, F or G have stone walls, compared with 41% of all private rented dwellings (drawing on Scottish House Condition Survey 2014-15)

Q1.18 Do you think that local authorities should be responsible for enforcing the standard?

49. Given their existing role, explained in paragraph 95 of the consultation, for regulating the private rented sector, then this appears a sensible option. They would require the resourcing necessary to be able to undertake the new role effectively.

Q1.19 Do you think that the penalty for not complying with the standard should be a civil fine?

50. Yes, although the questions of what should happen, in the case of persistent non-compliance, and whether tenants should be protected in some way from non-compliant properties, may also need to be considered.

51. Rent Penalty Notices have been suggested as a possible alternative enforcement mechanism, and this could be explored further. They are said to be effective in encouraging landlords to act quickly, and to give added enforcement benefits on the side of the tenants.

Q1.20 We have proposed the following fines: £500 for failing to have a minimum standards assessment; £1000 for failing to carry out the works within six months of the assessment. Do you think these proposed fines are appropriate and proportionate?

52. The form and level of any penalties should be set in the light of experience of similar regimes in Scotland and other jurisdictions, and should be kept under regular review after monitoring and evaluation of evidence of their effectiveness.

Q1.21 We have proposed some specific situations where owners should have longer than six months to bring their properties up to the minimum standard. Do you have any comments on these proposed situations in relation to (a) the proposed reasons; (b) what evidence the landlord would need to provide for each; (c) should there be other situations, such as the completion of condition works?

Q1.22 We have proposed some situations where we think owners should not be penalised for not carrying out the full improvement identified by the minimum standards assessment. Do you have any comments on these in relation to: (a) technical reasons; (b) legal reasons; (c) excessive cost reasons; (d) the proposal that this would remain valid for a period of not more than 5 years?

53. The consultation proposes an exception to the six-month timescale if there is evidence that the landlord has faced a lack of capacity in the local workforce. A similar situation, which often occurs, where a property owner has arranged for works to be undertaken, but has then been let down by contractors, may also need to be considered. An approach adopted in some other areas of legislation (e.g. tax) is to include a generic 'reasonable excuse' provision, sometimes accompanied by clauses setting out specific situations which are not allowed to be considered as reasonable excuses.

54. We agree that sitting tenants, especially those who are vulnerable and/or facing difficult circumstances, may have valid reasons to object in some way to measures proposed and/or applied by the landlord in response to the regulations. We have already proposed above the need for a clear, independent route for tenants to seek advice, support and redress; and it may be that such an independent mechanism could also accommodate and resolve situations in which tenants and landlords have a different view on measures and/or timescales.

55. Where landlords submit evidence of technical, legal or excessive cost reasons for not undertaking minimum improvement measures, there ought to be a process for local authorities (or other enforcement body) to verify and challenge such evidence where appropriate. There should also be some process between and across local authority areas to sample and check such exceptions. This would help to ensure consistency of approach across Scotland, to enable lessons to be learned between authorities, and to support enforcement officials.

56. If it were decided to set D as the initial minimum standard, rather than E (see earlier sections), then the £5,000 cost ceiling should also be reviewed.

Q1.23 For local authorities to be able to enforce and monitor the proposed minimum standards (a) what processes do you think local authorities will need to have in place for (i) normal compliance; (ii) monitoring extended periods for compliance; (iii) monitoring situations where not all of the improvements are made; (b) what implications would this have for local authorities?

57. This question, particularly in the details of registration of landlords, tenancies, properties, EPCs and other evidence, is more for property experts and local authorities themselves to answer.

Q1.24 What opportunities do you think there are to combine enforcement of minimum energy efficiency standards with other action in the private rented sector?

58. As implied in our introduction to this consultation response, the CFU and CAS would support moves to improve standards generally throughout the private rented sector. If opportunities could be taken to resource and implement a new, integrated approach which combines minimum standards of energy efficiency with other property standards, that would be welcome and would probably also make sense from the perspective of those who are regulated.

Q1.25 Do you think that we should set out now the minimum energy efficiency standard after 2022?

59. This depends upon the initial minimum standard to be adopted (see earlier sections) and initial timescales for compliance. As already indicated, it should be made clear to property owners and others what the long-term trajectory and destination are. On the other hand, future regulation needs to be refined and set in the light of experience and evaluation of how the initial phase works in practice, and in the light of changes to the external context – for example possible changes in the international and UK understanding/targets on climate change, political changes and priorities, consumer attitudes, unforeseen events/developments and so on.

60. Experiences and lessons from the social housing sector (the EESSH standard) should also be taken into account.

61. A balance may need to be struck between future certainty, and practical flexibility. As indicated elsewhere in our responses, SEEP needs to communicate more clearly to the public what a 'good' standard is – C, for example – and this will imply that this is to be SEEP's next destination beyond D, but it may be prudent not to fix the longer-term regulatory milestones too rigidly at this stage.

Q1.26 Do you think that the next standard should be to meet an EPC of D at point of rental from 1 April 2022, and in all privately rented properties by 31 March 2025?

62. We would comment similarly to Q25, and also again note that this depends on what is set as the initial minimum standard.

Q1.27 When increasing the standard to EPC D, we propose that the cost cap will be £5,000 for properties with an EPC of E, and £10,000 for properties with an EPC of F or G (which would include any spend made to improve the property previously following a minimum standards assessment). Please tell us your views about this proposed cap.

63. Again, this depends on whether E or D is set as the initial minimum standard.

Q1.28 What are your views on the provisions in general for exceptions to the D standard, including that a property which has an exception from meeting E should not automatically be excepted from meeting D?

64. We support the approach set out in the consultation.

Q1.29 What do you think the main benefits would be of introducing a minimum standard higher than D?

Q1.30 We think that any increase in the standard beyond D would bring new challenges in the form of cost, technical considerations and alignment with the Climate Change Plan. (a) Are there other new challenges you are aware of; (b) How do you think we could address these challenges if we raised the minimum standard beyond energy efficiency rating of D?

65. See our responses to Q25 above. A standard of C by 2025 was adopted by the Strategic Working Group on Fuel Poverty, of which the CFU was a member. Paragraph 129 of the consultation notes that average costs (and benefits) of improvements beyond D are not yet available. It would be desirable for that further research to be undertaken to inform ongoing policy development. In the meantime, in the absence of such evidence, we can understand the cautious approach set out in the consultation, and also understand the need (mentioned in paragraph 131) to bear in mind the uncertainty of potential future measures to decarbonise the heat supply, and the effect these may have on decisions by property owners about energy efficiency investments. Notwithstanding these reservations, as already stated, even in the absence of fixed future regulatory milestones, SEEP should communicate clearly to the public that C is a 'good' standard, an aspiration and future destination. Thought should be given to what may encourage property owners to go beyond regulatory minimum standards, at the time at which they are investing.

Q1.31 Please tell us about any potential economic or regulatory impacts, either positive or negative, that you feel the legislative proposals in Part 1 of this consultation document may have, particularly on businesses (including landlords).

66. From our perspective on this subject, the consumer of the housing service is the tenant, and it is important that the benefits, costs and impacts for the tenants are fully explored and clearly set out. It should be an important objective and benefit of the regulations to reduce fuel poverty, and improve the well-being, of tenants.

67. The consultation estimates²² that the total number of rental dwellings requiring upgrading from an E, F or G rating to a D rating is 95,000; that around 50,000 of these households are in fuel poverty;

²² para. 117

and that 12,000 of these will be lifted out of fuel poverty as a result of the regulations, with the remainder having their fuel bills, and depth of fuel poverty, reduced.

68. The detailed analysis provided in the Partial Business and Regulatory Impact Assessment (BRIA) is helpful. It suggests that the average annual fuel bill savings per household, if E, F and G-rated households were to be upgraded directly to D, would be £280. As noted earlier in this response, it is not clear whether – and if so to what extent – this figure takes account of landlords attempting to pass on possible rent increases or other one-off costs associated with the regulations. We have recommended in the introductory section that this possibility should be considered and monitored in more detail – although we would also note here that this cost-benefit calculation for tenants may be further complicated by any social security benefits to tenants on the lowest incomes, helping to offset rent costs (and with additional possible consequences here for the public-sector benefits bill).
69. The BRIA then notes that over a 40-year timescale the fuel bill savings associated with a direct upgrade to D ratings provide an average (net present value) benefit of £2,780, after also taking the costs to the landlord into account.
70. We note that the modelling in the BRIA, and therefore the estimated benefits, have assumed that fuel prices remain constant in real terms over time, i.e. to grow at the same rate as inflation²³. If fuel bills were again to increase above inflation, as has happened in many recent years²⁴, then it is not clear what effect if any this would have on the savings and benefits predicted in the model. It would be helpful to illustrate the modelling under a range of alternative scenarios for energy prices.
71. A possible added benefit of the regulations²⁵ applies to mixed-tenure housing. Landlords of the rented properties have sometimes been known to cause a barrier, or delay, to improvements sought by the owners (whether social landlords or private owners) of the other properties. The application of the regulations could help to unblock this difficulty.
72. The regulations should deliver the general benefit of improving the quality of private rented properties – especially if the energy efficiency standards are linked to the Repairing Standard and to other requirements covering the private rented sector – and should increase the levels of investment into Scotland’s housing stock, under the overall SEEP theme that energy efficiency is now a National Infrastructure Priority.

Q1.32 In relation to the Interim Equality Impact Assessment, please tell us about any potential impacts, either positive or negative, that you feel the proposals in Part 1 of the consultation may have on any groups of people with protected characteristics. We would particularly welcome comments from representative organisations and charities that work with groups of people with protected characteristics.

Q1.33 To help inform the development of the Child Rights and Wellbeing Impact Assessment, please tell us about any potential impacts, either positive or negative, that you feel the proposals in Part 1 of this

²³ Partial BRIA, last para. on p.23

²⁴ ‘Between 2003 and 2016, after adjusting for inflation, the average annual domestic gas and electricity bill for direct debits – the most common payment method – in Scotland increased by 88% and 44% respectively’ – *Energy in Scotland 2017*, Scottish Government, <http://www.gov.scot/Topics/Statistics/Browse/Business/Energy/EIS/EIS2017>

²⁵ Partially noted in the BRIA, p.18, at para.1.4.5

consultation document may have on children's rights and welfare. We would particularly welcome comments from groups or charities that work with young people.

Q1.34 Do you have any suggestions for the monitoring and review framework?

Q1.35 Do you have any other comments on the proposals set out in Part 1 of this consultation?

73. The proposals will benefit tenants in the private rented in sector in general, including in particular those with protected characteristics, and with young families.

74. We made comments and suggestions in our response to the overall SEEP consultation about the need for rigorous monitoring and evaluation frameworks in all aspects of energy efficiency and fuel poverty programmes.

Part 2 – condition of private rented housing in Scotland

Please note that we have not covered all the questions in Part 2 of the consultation – only those most relevant to the housing issues which arise within CAS and the network of Citizens Advice Bureaux in Scotland.

Q2.1 Do you think that ensuring a house complies with the tolerable standard should be part of a private landlord's duties under the repairing standard?

75. Yes, it should be a private landlord's duty to ensure that a property they are renting complies with the tolerable standard.
76. In 2016/17, Citizens Advice Bureaux (CABs) in Scotland advised clients on 10,731 new issues related to private rented sector housing. The most common specific type of advice given was that related to repairs and maintenance with 2,228 issues. A further 858 issues related to the suitability of private rented accommodation.
77. Whilst the majority of properties let on the market are fit for rental, bureaux frequently report cases relating to poor quality of accommodation or a refusal to carry out repairs.

An East of Scotland CAB reports of a client who has rented a flat through a letting agent for the past six months. The flat is very damp and the landlord has been consistently advised of this. The flat had been inspected by a property maintenance company who had reported that it was not fit for purpose at this time due to condensation. The client and his girlfriend both feel that their health has been affected and had submitted photos of clothing and furniture which had been damaged by the persistent damp. They have found alternative accommodation and want to know if they are still bound to pay their rent when they move.

A West of Scotland CAB reports of a client who lives in a private rented property. There are blocked drains to the private septic tank which has been the case for over a year so that her back garden and those of her neighbours are overrun by the raw sewage. The client has spoken to the landlord who claims the client has caused the blockage and must pay for it. The landlord is visiting this week to discuss increasing the rent.

An East of Scotland CAB reports of a client who is renting a flat from a private landlord. The property has a major leak with water coming through the ceiling each time it rains, filling a bucket every two hours. The client has informed the landlord many times over the past two months, but no repair has been done.

78. CAS supports the quality of upkeep and minimum standards for the private rented sector being increased to match those set for social landlords²⁶. It is not a satisfactory situation to rent properties that are in poor state of repair just because it is a private let. The Scottish PRS market must strive to achieve the high standards that many of its landlords already achieve to ensure that renters get the best quality of living conditions, and increasing the repairing standard is a step towards achieving that.

Q2.2 Do you think that private rented housing should meet a minimum standard for safe kitchens?

Q2.3 If this is introduced, what exceptions (if any) do you think would be needed?

Q2.4 Do you think that private rented housing should have a minimum standard for food storage space?

Q2.5 If this is introduced, what exceptions (if any) do you think would be needed?

Q2.17. Do you think that the repairing standard should be amended to include capacity for a fridge/freezer in order to ensure people are able to store food (option 1)?

Q2.18. Do you think that private landlords should be required to provide cookers, fridges and freezers (option 2)?

79. We have changed the order of questions to group these together, as they all relate to kitchen facilities.

80. Yes, private rented housing should meet a minimum standard for safe kitchens, food storage space and capacity for a fridge/freezer. Landlords should also be required to provide cookers, fridges and freezers unless the property is clearly let as unfurnished.

81. One common issue faced by CAB clients seeking advice about repairs and maintenance in the private rented sector is that the kitchen facilities are inadequate, or that no equipment is provided. This causes practical barriers for tenants being able to move into their new home, despite in many cases having already paid a deposit and advance rent.

A West of Scotland CAB reports of a client who has moved into a property he saw advertised online. The property has no heating, has damp and fire damage. It does not have any facilities for cooking. The client was originally asked for a £200 deposit but the landlord reduced this to £100. His rent is £275 per month, but he hasn't paid the first month yet. His first month's rent has also been reduced to £175. The client is worried it may be a scam as the landlord is not registered, although he has signed a tenancy agreement. He is also the only tenant in the block and the other flats are all unlocked and in an unliveable condition.

²⁶ Commission on Housing & Wellbeing Consultation 2014 – Response from Citizens Advice Scotland, November 2014
<http://www.cas.org.uk/system/files/publications/CAS%20Response%20on%20Housing%20and%20Wellbeing.pdf>

A West of Scotland CAB reports of a client who has recently moved into a two-bedroom private let. There is only a sofa and a mattress in the property. The client was seeking help to make a Community Care Grant application to pay for furniture.

82. Whilst Community Care Grants through the Scottish Welfare Fund are available for purposes including paying for white goods and furniture for people unable to afford them when moving into an unfurnished flat²⁷, as a limited discretionary fund, there is a limit to what it can consistently cover in every case.

83. In terms of exceptions, whilst some should be included as suggested in the consultation document, these should not be so broad as to exempt properties which cannot be fitted with basic kitchen facilities due to structural issues. In these cases, there are questions over whether the property is suitable to be rented as a home in the first place.

Q2.6 Do you think that private rented housing should have a fixed heating system?

84. Yes, where this reduces heating costs for consumers and/or increases efficiency. We would expect that this will be the case in the majority of circumstances, particularly if minimum requirements are an EPC of D.

Q2.8 Do you think that private rented housing should be free of lead pipes from the boundary stopcock to the kitchen tap?

85. As part of our remit as the consumer representative organisation for the Scottish water sector, the CFU works with other members of the Scottish Government's Lead in Water Action Group towards developing a strategy to reduce or eliminate lead in drinking water.

86. The CFU would welcome a move towards privately rented houses being lead-free. This would eliminate risk to those consuming the water, particularly young children and pregnant women. However, financial assistance may be required by property owners who do not have the means to replace lead pipes in order to comply. Currently, some but not all local authorities offer grants to give financial support to individuals wishing to replace their lead pipes. Should the duty to replace lead pipes be included in the regulations, then grants should be made available to private landlords across all local authorities.

Q2.9 If it is not possible to establish whether or not there are any lead pipes from the boundary stopcock to the kitchen tap, do you think a water quality test should be carried out before the tenancy commences?

87. Water quality tests should be carried out before the first tenancy agreement is signed. If there are lead pipes on the premises, the tenant should be notified as soon as possible.

88. The CFU would welcome the inclusion of a duty for property owners to provide (potential) tenants with clear and concise information on:

²⁷ Scottish Welfare Fund – community care grants – Advice for Scotland
<https://www.citizensadvice.org.uk/scotland/benefits/help-if-on-a-low-income/scottish-welfare-fund-s/scottish-welfare-fund-community-care-grants-s/>

- Status of lead pipes in the premises;
- Whether or not there is a plan to remove lead pipes, should there be any; and
- Guidance on how tenants can manage any residual risk regarding drinking water (e.g. letting the water run for two minutes before using it).

89. Testing would not necessarily need to be done before every new tenancy, but each set of new tenants would need to be told about any lead pipes, and about the two-minute rule, until lead pipes are replaced.

90. We believe that the above measures would increase awareness of the existence of lead pipes, and provide consumers with the necessary information in order for them to make an informed choice such as regarding whether or not they want to rent the property.

91. The CFU would welcome further discussion on plans to enforce these measures.

Q2.16 Do you think that the repairing standard should be amended to include a duty on landlords of private rented properties with a private water supply, covering (a) risk assessment of the supply, and (b) annual water quality testing?

92. We consider regular testing of private water supplies to be good practice in order to help to protect from harm consumers who ingest private water. We therefore support the inclusion of a duty on landlords of private rented properties to carry out both a risk assessment of the supply and annual water quality testing. Early indication of issues regarding private water quality should be addressed as quickly as possible, therefore in addition to risk assessment and testing, the standard should also include reference to the relevant authority that will ensure that remedial action has been undertaken by landlords of private rented property following identification of a problem.

Q2.19 Do you think that the repairing standard should be amended to include a specific reference to safety of heating systems using other fuels in addition to gas and electricity?

93. Yes – we believe that there should be appropriate standards and protections for consumers using all fuels. For example, our recent work on district heating recommended that appropriate consumer protections and technical standards should be introduced in this market²⁸. Safety requirements for heating systems should apply to all heating systems. Advice on how to use heating systems should also be required, and would play a part in ensuring heating systems are used in a safe manner.

Q2.23 Do you think that agricultural tenancies, rented crofts and small landholdings should be subject to the repairing standard?

94. Yes, agricultural tenancies, rented crofts and small landholdings should be subject to the repairing standard.

95. Extending the repairing standard to agricultural tenancies, including crofts and landholdings, would be consistent with a desire to increase the quality of upkeep and minimum standards for the private rented sector to match those set for social landlords. Additionally, as a number of agricultural

²⁸ *Different Rules for Different Fuels: exploring consumer protection in the district heating market*, CFU, June 2017, <http://www.cas.org.uk/publications/different-rules-different-fuels-exploring-consumer-protection-district-heating-market>

tenancies are 'tied' properties – set aside for employed farmworkers – there is the additional complication for tenants that their landlord is the same person as their employer, which can make it harder to raise concerns about the standard of accommodation.

Q2.27 Do you think that the timetable for changes should be linked to wider government milestones on climate change?

96. Yes, however the timetable for changes to standards should also be linked to milestones related to the eradication of fuel poverty. This would allow for these changes to be coherently aligned with, and complementary to, SEEP and Local Heat and Energy Efficiency Strategies, and support both the decarbonisation of Scotland's housing stock by 2050, and the eradication of fuel poverty.

Q2.28 Are the current enforcement routes via the housing tribunal appropriate for the proposed new measures in the repairing standard?

97. Yes, the Housing Tribunal should continue to enforce the repairing standard.

98. Citizens Advice Scotland welcomed the movement of private rented sector cases from the civil court to the Housing Tribunal as part of the Housing (Scotland) Act 2014²⁹, and it would be appropriate for this to continue to be the enforcement route for the enhanced private-sector repairing standard.

²⁹ Housing (Scotland) Bill – written evidence from Citizens Advice Scotland, March 2014
http://www.cas.org.uk/system/files/publications/Housing%20Bill_CAS%20Written%20Evidence.pdf