Minimum Energy Efficiency Standards (MEES) in Private Sector housing: FPA response to BEIS consultation

We welcome the proposal to end landlords' exemption from meeting the EPC E rating if it would cost them money upfront. It is outrageous that existing legislation has for so long been rendered virtually useless by this exemption, especially since the demise of the Green Deal. Nearly half (45.7%) of households in privately rented F and G rated properties are living in fuel poverty. Whatever the size of their portfolio, landlords are running a business. They therefore need to meet minimum standards in order to operate in the private rented sector. Landlords have had a long period of notice, and improvement should be required on a short deadline. Homes not fit to live in are not fit to be rented out.

We do not believe there should be a cap on what landlords have to spend to meet the standard. In most cases the owners of F and G rated properties are making a killing on homes that are not fit for habitation, often in many other ways as well.

Question 2a Do you agree that a cost cap for improving sub-standard domestic private rented property should be set at £2,500? If you do not agree, what would be the most appropriate level to set the threshold?

We do not believe there should be any cost cap on the requirement to prevent a rented home destroying the health and welfare of those who live there. However, if there IS to be a cap, **£2,500 is ridiculously low**, and an unjustifiable climb-down from the originally suggested £5,000. It is not slum landlords, but tenants who require protection.

By the Government's own impact assessment, average annual household bill savings will be £95, under the £2,500 cost cap , while they would be £188 under a £5,000 cost cap - almost double. The figures given by Richard Harrington in an answer to a recent parliamentary question on savings for improving EPC ratings are even more significant: £510 per year for households moving from F to E, and £990 per year for households moving from G to E. To lose such substantial and life-saving benefits -- and the benefit in carbon savings -- year after year, for the sake of a one-off saving to landlords would be inexcusable.

Q3 - yes
Q4 No
Q6 Yes

Q7 Yes Updating this legislation is long overdue, and both tenants and the climate have been the losers. Making this work now is the responsibility of the government, which has created the problem by failing to act before now.

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

It is **essential to spell out very clearly**, to avoid any possible confusion or abuse of the new measures, that they **in no way remove or modify the HHSRS requirement** for landlords to ensure that all their homes are healthy and not hazardous. It must be **stated explicitly – and, crucially, publicised** -- that in relation to HHSRS it would be no defence for a landlord that they had an 'exemption' from the Energy Efficiency Regulations; and also that if the authority undertakes Work in Default to remedy a hazard, the works are undertaken at the owner's expense and costs are recoverable, if necessary by placing a charge on the property. This should be clear **whatever the property's EPC rating** – i.e. including E or above. Many if not all band E properties will have Category 1 Excess Cold Hazards and hence present a significant threat to tenants health. The process of producing EPC ratings is in need of improvement, and in any case, *whatever the EPC*, residents may in fact be suffering from dangerous cold, damp, and/or mould.

HHSRS needs to be strengthened and fully, proactively enforced, and not in any way undermined.

Enforcement of standards, from heating to structure and the quality of new builds, depends heavily on **local authorities, whose role has been severely undermined by cuts in funding**. Last week the National Audit Office reported that local authorities, which get four-fifths of their funding from the Treasury, have lost 49.1% of this funding since 2010, causing spending on regulation and safety to be cut by over 30% as of 2015. Resulting disasters include both fires, and thousands of deaths from fuel poverty every winter. Now the revenue support grant to councils is due to fall much further, from £7.2bn in 2016-17 to £2.3bn 2019-20, and one council has already in effect declared bankruptcy. Neither Environmental Health nor Trading Standards officers can function without funding. And without enforcement, regulations mean little.

Not only Environmental Health Officers but **tenants must have access** to clear, specific and unambiguous information about their rights to a warm home, including from well-informed, well-funded law centres and advice agencies. Tenants need legal aid and security of tenure in privately rented properties to make it realistic for them to take action and bring their own homes up to standard.

We believe the standard should be **upgraded to "C"** without delay: the levels of fuel poverty, and excess winter deaths in the UK are inexcusable. The system of going back to the same property repeatedly to upgrade it little by little is also inherently inefficient, and compounds the waste of resources produced by targeting one home while leaving its neighbours untouched.

Q 10a It is shocking that in their cost-benefit analysis, the Government decided not to take into account either the increase in the value of the landlord's property, or the increased ability of tenants to meet their bill payments, as a result of energy efficiency works. This omission introduces a bias against deciding against a cap on spending, or implementing a higher cap that would save lives.

Q 10 b We do not believe these necessary improvements would have a significant effect on rents, which are fundamentally determined by what the market can get away with.

However, we do know of some situations where bringing homes up to E standard would require a major investment that the landlords in question really could not afford. We are thinking in particular of centuries-old stone buildings in the countryside, where the owners are not primarily landlords but small-holding farmers. These **rural properties can be freezing cold**, and are frequently heated at great expense by oil or coal, leaving residents in fuel poverty and causing serious risk to their health. The solution is not to exempt the properties or to cap the necessary spending but to ensure that legislation is accompanied by targeted **financial support from the government** to bring these properties – part of the UK's national heritage -- up to a living standard fit for the 21st century, where their owners are genuinely not able to do this.

WHAT OTHER PEOPLE IN EFPC SAID IN THEIR DEBATE ABOUT THIS

1. That as many of you as possible respond to the consultation, essentially using the template I circulated previously (reattached for ease).

2. No one disagrees that the cost cap of £2.5k is much too low. That must therefore be said - and said loud and clear.

3. Some of us are advocating a £5k cost cap (that has been the consistent position of this coalition). However, others are suggesting there should be no cost cap. **I am completely comfortable for some of us to argue for a £5k cost cap and others to argue for none at all.** From a campaigning point of view, it is often very useful for there to be a range of demands in the hope that the Government at least goes no lower than the lowest demand and hopefully gets nearer to the highest one.

4. However, the one thing I would beg is that no one calls into question the essential value of these regulations. If you do, there will be plenty of people in the less enlightened bits of Government (mostly Treasury) who will be simply delighted to seize on the fact the very organisations that led the fight for the minimum standard in the first place have started calling into question the value of it.

These regulations are NOT incompatible with HHSRS - quite the opposite. We must have it absolutely front of mind that, even if the HHSRS were enforced proactively (which it isn't), it would take 300,000 ad hoc individual inspections by Environmental Health Officers to tackle all of the F & G rated properties in the PRS. If the MEES regulations are properly amended in the way we advocate and work effectively, they instead will ensure the improvement of the vast majority of these properties, leaving hard-pressed EHOs to fulfil the myriad other important tasks that they currently struggle to find time and money to undertake.

The Government has never suggested that a landlord who has an exemption under the MEES regulations in circumstances where installation costs exceed the cost cap would in any way be protected by that if he/she were prosecuted for a Category 1 hazard. However, if people are particularly concerned about this, then they should seek a specific reassurance from BEIS in

their consultation response that landlords' responsibilities under HHSRS will in no way be diminished by the MEES regulations.

NEA welcomes the UK Government's proposals to simplify and improve the current PRS regulations by removing the 'no upfront cost' caveat. There is however a worrying lack of urgency on how quickly landlords will be required to use up to £5,000 of their own funds to bring properties up to EPC band E in time for April 2018.

> NEA urges BEIS to set out how they will foster closer co-operation with Ministry of Housing, Communities & Local Government to enforce housing standards overall. NEA also stresses the need to take wider steps to ensure local authorities play their key role in reducing domestic carbon emissions, reducing air pollution and facilitating public health responsibilities. NEA repeats its calls to resource and encourages civic leaders and local authorities to continue to take this local action.
> - NEA notes its support for setting a new target for the PRS to reach an EPC band C by 2030, bringing the whole PRS into line with the fuel poverty targets. NEA also urges the UK Government to clarify in its response that single-bed HMO tenancies will be included in the future PRS regulations once a suitable method has been ascertained for deeming an Energy Performance Certificate for these types of property.

Peter to Jacky - You are also right to highlight the pressing need to update HHSRS guidance, ensure PRS tenants/EHO/trading standards/advice agencies know how these two areas must work in tandem. This is particularly true if the EPC standards are ratcheted up because the number of F/Gs is actually quite small. We would support further work on this and could probably find someone willing to resource it. Your colleague is also right to highlight wider need to improve quality or EPCs (and their assessors) where I am also concerned about the limited extent of auditing that sits behind this.

Max – 10.10

The Gov's own analysis in their impact analysis, as well as that from Citizen's Advice, finds that it is unlikely that rents will either be increased significantly or properties removed from the rental market as a result of the proposed changes.

On 9 March 2018 at 18:34, Jacky Peacock <Jacky.Peacock@advice4renters.org.uk> wrote:
Absolutely agree that we will all want to express support the prohibition of letting F & G rated properties, and our submission will include a note that if they are intent on proceeding with a cost cap, then the £2,500 is much too low and it should be at least £5k.

Jacky's original view: The new Regs should, as proposed, remove the 'no cost' from the current Regs, but this should not be replaced by any 'cost cap' because both the Regs as they stand, and the cost cap proposal are incompatible with the HHSRS.

For example, if a local authority prosecutes a landlord for non-compliance with an Improvement Notice to remedy a Cat 1 Hazard of Excess Cold, (which has to be the potential action for the vast majority of F or G rated homes) the landlord's Defence that they had 'exemption' from the Energy Efficiency Regs would not have any standing; and if the authority undertakes Work in Default to

remedy this Hazard, the works are undertaken at the owner's expense and are recoverable, if necessary by placing a charge on the property.

David Weatherall
Head of Policy
Energy Saving Trust
So I wouldn't support any exemption for these properites. But i certainly would support additional financial help. its really important that the most expensive-to-improve homes dont get left at the bottom of the G band because they cant be improved within the cost cap. Targeted financial support for the hardest-to-improve homes should be something we are calling for, i think.

Dave Timms FOE Like many others I would rather there isn't a cap at all (and will say so in my response) but the choice in front of us is the one in the consultation - to oppose the £2500 cap and call for £5,000 as the best on offer for now. Once we have the system in place, I'll happily join others in calling for the cap to be removed.

As Jenny says, Govt has never suggested that HHSRS and the MEES conflict, being above F/G or exempt from MEES would not exempt from HHSRS. In fact they compliment each other as she sets out.
The suggestion that landlords will sell up rather than improve properties has been used to justify opposing every attempt to improve standards in the sector. In my view it is massively exaggerated -- Dave Timms, really doesn't get it.

Dr Stephen Battersby MBE
Independent Environmental Health & Housing Consultant - ex president of CIEH and one of main authors of HHSRS
my line is that there should not be a cost cap. We could be in a situation where there remains a serious hazard as the result of deficiencies and that it will be the occupier who then bears the cost until the local authority takes any action which they could do even if the hazard is rated as Category 2. The cost cap and the Regs are as you say incompatible with the HHSRS and Part 1 of the Housing Act 2004 for this very reason. I also have some concern anyway that the quality of EPCs is variable and that is based on experience.

As the two pieces of legislation are separate (just as the Building Regs are) they should not be confused, and in fact the Regs will be enforced by the Trading Standards authority (which is the upper tier outside unitary authorities). Exemption from the Regs has no bearing on Part 1 of the 2004 Act and as you point out there is no cost limit if the LHA carries out work in default. It has to be made clear that having an EPC that indicates the property is in Band G [should this read E?] does not mean there cannot be action from the LHA under Part 1 of the 2004 Housing Act as there may still be deficiencies contributing to excess cold (or damp and mould), so the cap is a nonsense. What worries me is that some officers may think that if the EPC indicates that the property is better than bands F&G they cannot take action, this is wholly wrong, but I can see and have in fact heard of this view being expressed.

As this is my thinking that I will put into a submission, you can see that I agree with you.

Regards

Steve

Brenda Boardman
By combining the 2015 regulations within the HHSRS and strongly reinforcing the duties of the local

authorities, there should be meaningful action on all F and G-rated privately-rented sector properties,