



## **A response to the Scottish Government's consultation document Energy Efficient Scotland**

**27 July 2018**

### **Introduction**

As the representative body for Scotland's Local Authority Chief Housing Officers ALACHO welcomes the opportunity to respond to the Scottish Government's proposals for reducing and eventually eliminating fuel poverty.

Scotland's councils have a significant interest in this issue arising from:

- our role as strategic housing authorities with an interest in the functioning of the local housing market, housing conditions and their impact on housing needs and demands;
- the position of 26 out of 32 local authorities as social landlords providing a home for over 310,000 households throughout Scotland;
- our role in the regulation of the private rented sector and in supporting landlords and tenants to improve the quality of services and standards;
- Local Government's wider role in reducing fuel poverty including our duties relating to a "fairer Scotland";
- Our role in reducing greenhouse gas emissions; and
- The range of specific proposals set out in the consultation document that will impact directly on councils and the work they do to improve the lives and opportunities of local residents.

The consultation document addresses issues of both a strategic/long term nature and some more detailed operational issues. Individual local authorities and organisations directly involved in service delivery will be better placed to respond to the more detailed questions, in preparing this response we have tried to focus on the higher-level issues. We have not, however, responded to those questions relating to non-domestic buildings. Whilst we understand and support efforts to improve the energy efficiency of all buildings others are better placed to comment on these wider issues.

## **Our Response**

### **1. What are your views on our proposal for owner occupied and private rented properties to achieve the Long-Term Domestic Standard EPC Energy Efficiency Rating Band C by 2040 at the latest?**

We agree that the Scottish Government should set a clear target for the improvement of energy efficiency across the housing stock including a reasonable time scale for the target to be met.

We do not agree that the standard should be tenure dependent though we accept that it makes sense to set out specific pathways to achieving the standard that reflect the way in which each tenure operates within its wider financial and market context.

Our view is that the long-term goal should be for the whole of the housing stock to meet EESSH2 standards and for specific measures to remove from the stock homes that cannot be improved to meet at least an agreed minimum EPC rating. We would suggest that any home that can't be improved to at least D should, ordinarily, be considered unfit for habitation.

To the extent that some differentiation based on tenure could be appropriate, our view is that there should be a single standard for all rented homes.

However, we are also aware that setting higher and more costly standards for social housing tenants is now an established feature of the wider policy approach to social housing. In the light of this our view is that the Scottish Government should aim to achieve a long term standard of EPC rating Band C across the privately owned housing by 2030 at the latest.

### **2. Do you think we should allow for situations where a lower standard is acceptable?**

We agree that there should be arrangements in place for exceptions and abeyances where there are practical obstacles to meeting the standard by the target date and in particular where the impact of any proposed works on the occupier is likely to be damaging to their health or wellbeing.

However, we are of the view that the number of exemptions should be small, time limited and that we should move towards amending the Tolerable Standard to support the removal from the housing stock of those dwellings that cannot be improved to an acceptable minimum standard of energy efficiency.

### **3. Do you think we should allow for situations where a longer period for improvement is allowed? Please explain your answer giving examples.**

The time scale set out in the consultation document for achieving the proposed standards appear to be long enough to support solutions to most, if not all, of the exceptional circumstances that may arise. However, we would not expect an overly ridged approach to enforcement where progress towards compliance has been made and plans exist to complete any outstanding works.

It will also be important to ensure that enforcement works aimed at noncompliance in tenement or other shared property types is directed at those owners responsible for the delays rather than all owners in the building where some or most have been working towards getting the work carried out.

**4. We are proposing that the definition of a cost-effective measure is that it should pay back over its lifetime. What are your views on this definition?**

We agree that measures should be “cost effective” in the sense that the same outcome couldn’t be achieved by some other approach for less investment and that the definition should be one that is relatively easily understood. To this extent using a measure of “payback” seems reasonable but it would not necessarily be appropriate in relation to rented property where the approach should be one based on acceptable standards of service.

As we have already said, there should be a single standard for all rented properties, homes below this level should be removed from the rented sector, homes below an agreed minimum should be removed from the stock entirely.

**5. What are your views on the issue of air quality in relation to the Long-Term Domestic Standard?**

We have previously expressed concerns about the risk of unintended consequences from large scale and rapid investment in energy efficiency. In the light of this we are pleased to see that the issue of internal air quality is now getting the attention it deserves. We support the introduction of the ‘no detriment to air quality’ requirement to EESSH from 2025, our view is that this should also apply to standards in other tenures based on an approach similar to that proposed for EESSH2.

**6. The EPC Rating of a property can be affected by changes to the underlying methodology and to fuel price data. How do you suggest that the Programme takes account of this in setting the Long-Term Domestic Standard?**

In the interests or consistency across the sector our view is that it makes sense to adopt an approach similar to that proposed for EESSH2. We do not think that conversation tables need necessarily to be complicated though it would make sense to ensure that proper guidance and explanatory material is available and accessible for those likely to need it.

**7. What are your views on the proposal that all PRS properties meet EPC Energy Efficiency Rating Band C by 2030?**

As already noted above our view is that there should be a single standard for all homes. Failing that there should be a single standard for all rented homes.

On the assumption that the Scottish Government intends to hold to its current policy of enforcing higher standards at the expense of tenants in social housing, our view is that Band C by 2030 is the minimum acceptable for the private rented sector. Based on current trends however this will leave a significant number of households, including many with children, in fuel poverty for the foreseeable future.

**[Owner Occupiers: Encouraging Action] What are your views on our proposal for an initial period of encouraging action?**

In our view it’s unfortunate that the Scottish Government has backtracked on an earlier commitment to introduce regulations on energy efficiency for owner occupied homes. Aside from the inconsistency with the approach taken in relation to tenants in the social sector and the delay in reducing greenhouse gas emissions, little progress has been made in understanding how best to work with the private housing market to ensure that the necessary improvements are made.

Our view is that the policy framework should be clear from the start about what is required (C by 2030 as a minimum), how long owners have to act on their own accord and when mandatory standards will be introduced as well as the mechanism for enforcement.

Allowing a period for voluntary compliance is not unreasonable but owners need to know when it will end and what the next steps will be. To this end our view is that legislation should include the necessary powers now with a clear timetable for them coming into force.

**8. What information would be useful for householders to be able to access on how to achieve EPC Energy Efficiency Rating Band C before 2030?**

Owners need to be clear on:

- What standard will be required and by when;
- What the consequences of noncompliance are likely to be.

They will also need access to genuinely independent advice on options, costs and likely savings.

The owners likely to face the most problems with compliance are those with shared or common property elements including many living in tenement flats. These properties are likely to be in mixed tenure including both private rented and “holiday” lets as well as owner occupiers and are more likely to have pre-existing repair problems that may need to be addressed before energy efficiency measures can be taken.

Given the problems that many of these owners already face in simply carrying out basic day to day repairs it seems likely that they will face similar problems in completing energy efficiency works where common or shared property elements are involved. Some further thought needs to be given about how to support those willing owners in overcoming the problems caused by others unwilling or unable to participate in the necessary works.

**9. [Owner Occupiers: Mandatory Action] What are your views on our proposal to follow this initial period with mandating action?**

We agree that a two stage approach makes sense but as we noted in our response to Q8 our view is that the Scottish Government should be clear from the start when mandatory compliance will be required and how compliance will be enforced and what sanctions (if any) will be applied to those that fail to meet the standard in the long term.

**10. What are your views on our proposal that 2030 is the right point to start mandating action to achieve EPC energy Efficiency Rating Band C?**

As already noted it is our view that action from 2030 to ensure compliance by 2040 is too late. Our preference would be to aim for compliance by 2030 with mandatory requirements being introduced at the point of sale by 2025 at the latest.

**11. What are your views on our proposal for owner occupied properties to be subject to penalties for non-compliance?**

We agree that there needs to be clarity about the consequences of non compliance but we do not think that this is an area where either civil or criminal penalties have a role. Rather we are of the view that the point of sale or change of ownership should be the principle driver of change and consequences for non compliance should be imposed on the seller either through LBTT or in the longer term by preventing the registration of a change of ownership until compliance has been achieved or any appropriate exemption or abeyance approved.

Whilst we also agree that significant efforts should be made to support and encourage owners to meet the new standard we do not agree that additional “financial incentives” should be made available. Or to be more specific we do not see why owners should be provided with financial support beyond the very limited

assistance provided to the social rented sector, which, to be clear has been investing over £100m a year in energy efficiency measures over the last five years with only limited and very targeted assistance from energy companies or the Scottish Government.

**12. What are your views on requiring all types of accommodation to meet the Long-Term Domestic Standard over time? Please explain your answer, giving examples of accommodation you think should/should not be required to meet the Long-Term Domestic Standard if relevant.**

Given the very fluid relationship between private renting (including HMOs), owner occupation and the “holiday let” sector and to a lesser extent agricultural and crofting tenancies it is our view that the long term domestic standard should apply to all residential accommodation. The only exception we would make to this is for those structure that are not intended to provide permanent accommodation.

**13. Please provide your views on our proposal that all homes with fuel poor households are able to reach EPC Energy Efficiency Rating Band C by 2030, where technically feasible and cost effective?**

Whilst we agree that priority for assistance and support should be given to those households in fuel poverty we have some concerns as to what “priority” would mean and how deliverable a higher physical standard for the homes they live in would be.

Such a target may discourage private landlords from letting to those on low incomes or benefits if they believe that there is a risk that they will be required to invest more in their properties as a result. Households in the private rented sector may also be discouraged from seeking help or advice for the same reason. Given the prevalence of poor energy efficiency in rural areas it is also likely that such an approach will have a disproportionate impact on rural housing markets. This will need some further examination before such a measure is introduced.

More broadly such an approach may serve to stigmatise the fuel poor not least by physically identifying the homes the live in by the additional measures that have been applied.

As previously noted our preferred approach would be to set a higher standard for all homes, across all tenures. This is the only approach that will ensure the removal of energy efficiency as a driver of fuel poverty.

**14. Please provide your views on our proposal that all homes with fuel poor households are to reach EPC Energy Efficiency Rating Band B by 2040, where technically feasible, cost-effective and possible within limits affordable to the public purse?**

Our answer to Q. 13 also applies here but we would also point out that turnover in all tenures will make monitoring and achieving this objective difficult. Whilst on average social housing tenants remain in their homes for around 10 to 15 years, the average length of tenancy in private renting is around two to two and half years and in owner occupation it varies depending on age and property type (owners of flats tend to move more quickly as do first time buyers) but generally between 11 and 15 years<sup>1</sup>.

As a result, most homes will have changed hands at least once in the period to 2040. In the PRS they are may have as many as ten tenants over that period.

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<sup>1</sup> <http://eyeonhousing.org/2013/01/latest-study-shows-average-buyer-expected-to-stay-in-a-home-13-years/>

As previously stated the best way to ensure that those on low income enjoy the same levels of energy efficiency as tenants in the social sector is to impose a single common standard across all residential properties based on EESSH2.

**15. In addition to what we have set out in paras 46-50, what should the Energy Efficient Scotland Assessment Short Life Working Group also consider? Please explain your answer.**

We have no specific comments on this part of the document.

**16. What are your views on whether the Long-Term Domestic Standard should be enforced at local or national level? Please explain your answer.**

As previously noted our view is that existing “market” based mechanisms including change of tenancy and purchase or sale is the best point at which to require compliance. We are certainly clear that civil or criminal penalties are not appropriate.

In the private rented sector, the most straightforward approach will be to include the energy efficiency requirement as part of the repairing standard and enforcing it through the First Tier Tribunal and, where a landlord persistently refuses to improve a property to remove him or her from the register. Unfortunately the terms of the Private Tenancies (Housing) (Scotland) Act 2016 act mean that such an action is likely to result in the tenant being evicted. This is also likely to be the outcome if the landlord sells the property rather than improves it.

In our evidence to the Local Government And Communities Committee on the 2016 act we warned that it provided a mandatory ground for eviction where a landlord sells a house or is removed from the register. This and other weaknesses in the current tenancy regime will need to be addressed if the enforcement of energy efficiency standards isn’t going to put many vulnerable tenants at risk of losing their home.

For owner occupiers, limits to the ability to market a property that fails to meet the necessary standard or the application of a penalty via LBTT (preferably on the seller but potentially on the buyer) should be considered. Given the average length of stay in owner occupation it is likely that most of the sector will have turned over at least once by 2030 (or 2040 if that option is chosen).

**ALACHO has no remit in relation to the non-domestic sector and for that reason we have expressed no view on questions 17 to 24**

**25. What additional data would help building owners in the delivery of the Energy Efficient Scotland Programme? How would this be used?**

The principle challenge faced by home owners (other than affording the necessary works) seems to be awareness of the issues and options for energy efficiency work and confidence in suppliers to carry out works to the necessary standard.

These are largely the same issues that owners face in carrying out basic repairs particularly where there are common or shared building elements.

The most comprehensive free and independent source of information on common and shared repairs is that provided by the Under One Roof web site. One option that should be explored is to support the development of the site to provide better coverage of energy efficiency measures.

Issues relating to confidence in and competence of the construction industry should be explored with those working in Trading Standards and industry bodies.

**26. What additional data would be helpful to others in the delivery of the Energy Efficient Scotland Programme? How would this be used?**

We have no particular comment to make on this question.

**27. We will investigate the benefit in providing new online resources or tools to support building owners to access and use data to help them improve their properties. What particular types of resources or tools would you find useful and why?**

We welcome the commitment to explore the provision of new online resources provided the risk of duplication is avoided. Our view is that the Under One Roof site is already well established as reliable and independent and could be supported to develop a better range of advice on energy efficiency. More generally though our view is that further research into the needs and preferences of owners should be undertaken to provide a fuller answer to this question.

**28. In addition to the above, we welcome any specific comments or observations you may have on the future use of the data that is gathered from energy assessments.**

Provided that the risks associated with the cold calling and fraud can be avoided we think there is merit in examining the approach taken in England and Wales to making energy efficiency data publicly available.

**29. What are your views on the implementation and enforcement of existing legislation relating to energy efficiency and heating of buildings in Scotland?**

This question is rather to widely drawn for us to be able to provide a useful response however, we would make the point that the current arrangements for the management of common and shared property are frequently problematic when it comes to carrying out essential maintenance to keep tenements wind and water tight. They are likely to be even more problematic where energy efficiency work is required to common or shared elements. A further review of the law in this area should be considered.

There is also a risk that some new build properties currently under construction won't meet the standards in place after 2040. A review of current building regulations may be helpful, at the very least house builders selling new homes that won't meet future standards should be required to advise owners of this and of the action they may have to take to meet the standard.

**30. What changes may be needed (if any) to the existing legislation to ensure that the Scottish Government, local authorities, and any other relevant bodies or persons, have the powers and duties necessary to support the Energy Efficient Scotland Programme?**

Changes in relation to the buying and selling or renting of residential properties that fail to meet specified standards may be required at some point in the future. Based on the proposed approach, particularly in relation to owner-occupiers we do not think that a change in the law is required at this stage.

In relation to rented homes and the private rented sector in particular the Scottish Government should make it clear how it intends to enforce compliance with the standards. In this context we would recommend an extension of the private rented sector repairing standard as the most appropriate approach.

We are also of the view that further consideration should be given to amending the tolerable standard to ensure that homes that cannot be improved to meet a minimum energy efficiency standard are removed from the stock.

**31. What other elements of the Programme may require new or amended legislation to enable the Energy Efficient Scotland Programme to operate?**

We have no specific comment to make on this

**32. Which organisation(s) should be responsible for delivering any new legal requirements?**

Where possible existing organisations and approaches should be used. For example, as already noted, the private rented sector repairing standard and the existing enforcement and sanctions regime will be the most appropriate to enforce the proposed energy efficiency standards in the private rented sector.

In relation to owner occupation the point of sale or significant improvement may be the most appropriate approach, suggesting that building standards teams could enforce standards they are required in relation to the approval of a building warrant. Trading standards may be the best route to enforce standards on sellers of second hand homes. In any event every effort should be made to ensure that compliance is driven through existing processes (the point of sale, let or improvement for example) rather than by creating wholly new sanctions or a new body to enforce them.

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