

THE ENERGY EFFICIENCY (PRIVATE RENTED PROPERTY) (SCOTLAND) REGULATIONS 2019: CONSULTATION

RESPONSE FROM THE ENERGY POVERTY RESEARCH INITIATIVE AND COMMON WEAL

AUGUST 2019

INTRODUCTION

The Energy Poverty Research initiative (www.energypovertyresearch.org) was founded in 2017 as a step towards establishing a cross-sector centre for knowledge exchange and excellence in research. The EPR team consists of a group of experts in aspects of fuel poverty and energy policy, ranging from large scale generation to small scale distributed generation, demand reduction, energy efficiency, and devolution; and with a particular interest in the socio-economic impacts of energy policy on fuel poor and otherwise vulnerable householders.

As academics and practitioners we share the view that in an energy rich nation it is not acceptable that such a large proportion of households suffer daily the deleterious effects of energy rationing, or that they are forced to manage debts just to maintain a reasonable modern standard of living. We believe we have a duty to continually question our understanding of this modern societal inequality, and the methods and approaches we take to identifying and tackling it.

Common Weal (www.commonweal.scot) is a Scottish ‘think and do tank’ which promotes thinking, practice and campaigning on social and economic equality, participative democracy, environmental sustainability, wellbeing, quality of life, peace, justice and culture and the arts.

The views that follow are those of the Energy Poverty Research initiative and Common Weal. Our previous consultation responses are available from our websites.

AUTHORS

Dr Keith Baker is a Researcher at the Built Environment Asset Management (BEAM) Centre, School of Engineering and the Built Environment, Glasgow Caledonian University, a Co-founder of the Energy Poverty Research initiative, and a member of Common Weal's Energy Working Group.

Dr Ron Mould is a Co-founder of the Energy Poverty Research initiative and a member of Common Weal's Energy Working Group.

RESPONSES TO QUESTIONS

1. Do you think that the proposed approach to exemptions both within the Regulations (Regulations 11-13) and amplified in the Guidance (Chapter 4) provides you with sufficient clarity on meeting the standard or seeking an exemption to that standard? Please set out the reasons for your response.

Whilst in principle we support regulations to mandate all property owners to upgrade their buildings to minimum energy efficiency standards we have to strongly oppose any approaches based on using EPCs (as they stand) because they are not fit for this purpose. The evidence for this is discussed at length in our responses to related consultations^{1,2,3,4}, our policy paper options for decarbonising off-gas grid households⁵, and in our policy paper proposing an alternative approach to EPCs⁶.

Therefore, assuming a valid indicator were to be used in place of the current EPC, we are of the view that:

Regulation 11 is reasonable.

Regulation 12 should be removed. Maintaining a property to minimum standards is a reasonable condition of ownership. If a private landlord, who is gaining an income by renting a property,

cannot afford to maintain it to a minimum standard then the rental is simply not viable as a business, and so the business should be liquidated and the asset sold off. This would benefit both the environment and the housing market by releasing poorly maintained stock at lower market values to new owners able to invest in the necessary upgrades.

Regulation 13 could be simplified. For triggering upgrades, we support the simple system used for Residential Energy Conservation Ordinances (RECOs)^{3,7} whereby a change of ownership or tenancy starts a one-year clock which cannot be paused. We accept that, in Scotland, tenants' legal protections mean that a new landlord may be unable to improve the building until the tenants leave. However, this exemption is covered under Regulation 11 and so this regulation could be simplified to state that, in these cases only, this clock would be paused once the new landlord has provided evidence to confirm that either that the current tenants have refused permission or refused to respond after all reasonable steps to engage with them have been taken.

2. What are your views on the existing mixed nature of support (financial and advice) available to landlords and tenants? Include any additions or changes you think would assist.

The current landscape for delivering support services is mixed, fragmented, and varies across Scotland. Our analyses of indicators of fuel poverty and vulnerability across Scotland shows that, contrary to current assumptions, the access domain of the Scottish Indices of Multiple Deprivation (SIMDs) is most closely correlated with fuel poverty⁸. Based on our recently published research that presents an analysis of the support needs of over 7000 households in Renfrewshire⁹ and related publications¹⁰, this leads us to conclude that improving access to face-to-face and in-home support provided by 'trusted intermediaries' (specifically, staff based at local authorities, housing associations, Citizens Advice Bureaux, and community-based support projects) should be seen as critical for tackling fuel poverty.

In order to address this fundamental problem, we are strongly of the view that the Scottish Government should establish a publicly owned Scottish National Energy Service that would serve as a coordination hub (including a data management hub) for staff based at the aforementioned organisations. Our full proposals for the SNES will be detailed in a new policy paper to be published later in 2019¹¹.

However, the privately-rented sector poses particular problems for improving household energy efficiency and tackling fuel poverty, in that fuel poverty rates are comparably high within the PRS but the lack of regulation and problems such as absentee landlords present barriers for tackling it that do not exist for other tenures.

As illustrated by the consultation document, there are currently a number of forms of support available to landlords and tenants in the PRS, and a number of different routes to accessing support. As a minimum, these forms and routes to support should be made accessible through a single centralised portal. This raises the question of whether PRS landlords should be treated more akin to owner-occupiers (with policies emphasising incentivisation) or businesses (with policies emphasising regulation). Bearing in mind our previous comments, we would argue in favour of the latter, and so it would seem reasonable to use Resource Efficient Scotland as the umbrella 'brand' for managing such a portal. A further step would then be to require all property management and letting agents to signpost the portal to all their landlords. This would improve access to this information, eliminate 'not knowing' about available support as a reason for delaying making any necessary upgrades and, as a consequence of the latter, enable the identification and targeting of absentee landlords and their tenants.

In the case of tenants of absentee landlords, more needs to be done to identify those who are also fuel poor or otherwise vulnerable and target them for bespoke support, which would include legal support. The nature of the personal data required for this supports our case for a publicly-owned Scottish National Energy Service, and the benefits of integrating legally-qualified staff at CABs within such a support network.

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

The PRS needs a rapid shake up that should be seen as an easy win for the Scottish Government, and one which is likely to be popular with the public if it can successfully help tackle the problems of rogue and absentee landlords. Therefore, whilst we strongly oppose the use of EPCs as the key mechanism for mandating energy efficiency upgrades, we also strongly support bringing regulation of the sector in line with that for Registered Social Landlords as soon as possible (we would support a target of 2025 or even earlier for convergence).

The resulting rate of improvement will be partially dependent on the rate of turnover of tenancies, but the rationale that introducing an earlier date for triggering upgrades at change of tenancy followed by a 'backstop' date for all PRS properties to tackle the worst properties first (as also applied for the proposals outlined in the Scottish Government's proposals for introducing the repair standard) appears sound¹².

4. How long in advance of the regulations coming in to force should local authorities take account of expenditure outlay on measures which are intended to meet the standards set, and what information would you expect to provide to local authorities to seek an exemption based on the cost cap proposed.

We do not support the use of a cost cap for the reasons previously discussed, and we have serious concerns over the resource costs to local authorities for determining exemptions under this approach.

Exemptions for landlords whose tenants are refusing to allow upgrades should require simple evidence. Ideally the landlord or property manager should be able to provide written evidence of the tenants' refusal, but where this is not possible it should be possible to confirm non-

compliance by the tenants refusing an inspection from a local authority officer. This should meet the requirements of Regulations 11 and 13.

However, as exemptions under the cost cap will be dictated by the calculations made for producing an EPC we have serious concerns that the Scottish Government's proposals will leave LAs open to a wide range of challenges over the appropriateness and energy efficiency gains (or otherwise) calculated for different measures (see our answer to Q1). We are strongly of the view that the Scottish Government has significantly under-estimated the financial, resource and time costs due to the inevitable legal challenges from using EPCs in this manner, and the impacts this will have on local authorities. For this reason, our proposals for an alternative EPC, the Scottish National Energy Company, and our proposed Scottish Energy Development Agency¹³ include the establishment of a devolved Scottish energy regulator, which would be better placed to deal with contested claims for exemptions.

5. What are your views on the proposed penalties, in terms of the impact they will have on achieving compliance with the Regulations and ensuring the completion of carry out improvement works across the Private Rented Sector.

We are of the view that the proposed financial penalties are far too low and unlikely to change the behaviours of absentee landlords and / or those with large property portfolios. As a minimum, the penalties should reflect the costs of any necessary upgrades plus the additional costs to tenants of not making them. We are strongly of the view that a much bigger stick is needed for these landlords, which could be extended to include banning them from acquiring new rental properties and tenants until all their stock has been brought up to standard.

We are also strongly of the view that the revenue from these fines should be ring-fenced for recycling to energy efficiency and fuel poverty services delivered by local authorities.

Again, we have serious concerns over the

additional staff, time and resource burdens that enforcement will place on local authorities, and argue that it would be significantly simpler and more cost-effective to centralise the necessary processes.

REFERENCES

- 1: Baker, K.J., Mould, R., & Morgan, G., 2019. Energy Efficient Scotland consultation.: Joint response from the Energy Poverty Research initiative and Common Weal. Available at: <https://commonweal.scot/policy-library/energy-efficient-scotland-consultation>.
- 2: Baker, K.J., Mould, R., Morgan, G., & Wright, I., 2019. The Future of Heat for Off-gas Buildings – A call for evidence. Joint response from Common Weal, Glasgow Caledonian University, and the Energy Poverty Research initiative. Available at: <https://commonweal.scot/policy-library/future-low-carbon-heat-gas-buildings>.
- 3: Baker, K.J., Mould, R., & Wood, G., 2018. Energy Efficient Scotland Consultation: Making our homes and buildings warmer, greener and more efficient. Response from the Energy Poverty Research initiative. Available at: <http://energypovertyresearch.blogspot.com/p/consultation-responses.html>.
- 4: Baker, K.J., Mould, R., & Wood, G., 2018. Consultation on the Energy Efficiency Standard for Social Housing post-2020 (ESSH2). Response from the Energy Poverty Research initiative. Available at: <http://energypovertyresearch.blogspot.com/p/consultation-responses.html>.
- 5: Baker, K.J., Mould, R., Dalzell, C., McAlpine, R., & Shafi, J., 2019. Carbon-free, Poverty-free: Heating options for rural Scotland. Policy paper for Calor by Common Weal, Glasgow Caledonian University, and the Energy Poverty Research initiative. June 2019. Available at: <https://commonweal.scot/policy-library/carbon-free-poverty-free>.

- 6: Baker, K.J., & Mould, R., 2018. Energy Performance Certificates - An Alternative Approach. A Common Weal policy paper. Available at: <https://commonweal.scot/policy-library/energy-performance-certificates-alternative-approach>
- 7: Emmanuel, R., & Baker, K.J., 2012. Carbon Management in the Built Environment. Routledge. June 2012.
- 8: Baker, K.J., Mould, R., Dalzell, C., McAlpine, R., & Shafi, J., 2019. Carbon-free, Poverty-free: Heating options for rural Scotland. Policy paper for Calor by Common Weal, Glasgow Caledonian University, and the Energy Poverty Research initiative. June 2019. Available at: <https://commonweal.scot/policy-library/carbon-free-poverty-free>
- 9: Baker, K.J., Mould, R., Stewart, F., Restrict, S., Melone, H., & Atterson, B., 2019. Never try and face the journey alone: Exploring the face-to-face advocacy needs of fuel poor and vulnerable householders. Energy Research and Social Science, Vol. 59, (2019) pp. 210-219.
- 10: See: <http://energypovertyresearch.blogspot.com/p/publications.html>
- 11: Baker, K.J., & Mould, R., 2019. An NHS for Fuel Poverty: The case for a Scottish National Energy Service. A Common Weal and Energy Poverty Research initiative policy paper, in draft.
- 12: As per the consultation at: <https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-paper/2017/04/energy-efficiency-condition-standards-private-rented-housing-scotlands-energy-efficiency/documents/00516474-pdf/00516474-pdf/govscot:document/?inline=true/> and our response at: https://drive.google.com/file/d/1xpja_k2Ng9S-3GBXn65arWBIH7XWdziR/view
- 13: [1] Baker, K.J., Morgan., G., Mould, R., & Wright, I., 2019. Powering Our Ambitions: The role of Scotland's Publicly Owned Energy Company and the case for a Scottish Energy Development Agency. A Common Weal policy paper. Available at: <https://commonweal.scot/policy-library/powering-our-ambitions>