

Energy efficiency and condition standards in private rented housing

A Scotland's Energy Efficiency Programme Consultation



Ministerial Foreword



The Scottish Government's vision is for a private rented sector (PRS) that provides good quality homes and high management standards, inspires consumer confidence, and encourages growth through attracting increased investment.

We have been working hard to improve the PRS through a number of actions which will all be introduced and in force by early 2018. These include a new robust framework for the regulation of letting agents; a First-tier Tribunal Housing and Property Chamber to provide improved access to justice for both tenants and landlords; and a new modern private residential tenancy, which balances the needs of tenants and landlords.

This consultation continues our progress and sets out our proposals to make improvements to the physical quality of the accommodation in the PRS.

Most private landlords are delivering homes to modern standards and many have voluntarily improved the energy efficiency of their tenants' homes. They understand the need to keep their property in good condition, both for their investment and for the benefit of their tenants. However, it is entirely unfair that there are tenants living in some of the least energy efficient homes in Scotland, who therefore face higher energy bills and are at greater risk of being pushed into fuel poverty.

We are therefore seeking views on introducing a standard for the private rented sector. This will mean that tenants in the least efficient properties will, over time, be able to enjoy the same standard of accommodation as other tenants, making homes warmer and more affordable to heat. Our aspiration is to remove inadequate energy efficiency in properties as a driver of fuel poverty, and these minimum standards of energy efficiency will not only play an important role in helping deliver on our continued commitment to tackle fuel poverty, but also help meet Scotland's world leading climate change targets.

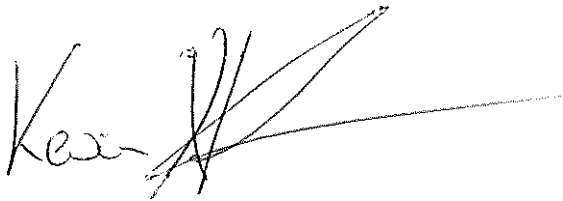
The Scottish Government has designated energy efficiency as a National Infrastructure Priority, the cornerstone of which will be the development and delivery of Scotland's Energy Efficiency Programme (SEEP). This consultation forms part of that wider framework which we will develop with partners across Scotland.

There will also be a role for incentives and standards to help improve owner occupied homes and we will consult on this from winter 2017/18, taking into account the responses to this consultation and on the wider development of SEEP.

We also want to see that the condition of PRS properties are at the right standard to help ensure a fair deal for all private tenants. So this consultation also seeks views on making changes to the repairing standard, which privately rented housing already has to meet, taking account of developments since the standard was introduced following the 2006 Housing Act.

The PRS has an important role to play in providing quality accommodation for the people of Scotland, and in supporting our world leading climate change ambitions. The condition of housing is crucial to people's health and wellbeing and can impact on household incomes. With more people living in the sector, we want to make sure that tenants have access to good quality homes. Our proposals seek to do just that and ensure that conditions and standards are appropriate across the sector.

We look forward to hearing your views on the proposals in this consultation.

A handwritten signature in black ink, appearing to read 'Kevin Stewart', with a long horizontal line extending to the right.

Kevin Stewart
Minister for Local Government and Housing

Executive Summary

This is a Scottish Government consultation paper that seeks views on improving the quality of private rented housing. It is in two parts - Part 1 proposes new minimum standards for energy efficiency to improve the least efficient properties, and Part 2 proposes amendments to the required condition standards to improve overall condition. These proposals will improve the living conditions of tenants in the worst performing properties, creating a more level playing field for tenants and landlords alike.

Background

This consultation forms part of the wider development of Scotland's Energy Efficiency Programme (SEEP) which is the cornerstone of delivering the Scottish Government's designation of energy efficiency as a National Infrastructure Priority. SEEP is a 15 to 20 year programme that will significantly improve the energy efficiency and greenhouse gas emissions levels of our homes and buildings, to help tackle fuel poverty and meet Scotland's climate change targets in a way that is socially and economically sustainable. The implementation of SEEP will deliver a range of benefits, including:

- making our homes warmer and places of work more comfortable;
- promoting more affordable energy for consumers;
- helping to tackle poverty;
- improving competitiveness of the Scottish economy by creating substantial market and supply chain opportunities; and
- contributing to meeting our climate change targets.

To achieve this transformational change and to realise our fuel poverty and climate change objectives, we will need to use all the tools available to us. That will mean taking a strategic approach, setting out clear targets and milestones. And delivering this by putting in place grants, financial support and incentives, a system of standards and regulations to create certainty and drive change, and developing a strong and robust supply chain. We are currently consulting on policy options to support the development of SEEP (<http://www.gov.scot/Publications/2017/01/2195>), and would encourage responses to that consultation (which closes on 30 May 2017).

Minimum energy efficiency standards have a key role within SEEP, helping to drive improvement and create market certainty for investment. Minimum standards will act to improve the worst performing properties over time, giving certainty to tenants over the quality of privately rented accommodation, and helping to ensure that they have access to homes that are warmer and cheaper to heat.

Minimum standards through the repairing standard also play a key role in ensuring that tenants in the private rented sector have access to a good standard of housing. The repairing standard was introduced under the Housing (Scotland) Act 2006. The Scottish Government has undertaken a review of standards across all tenures of housing and this has noted the scope for updating the repairing standard, to provide private tenants with a similar standard to that available in social rented homes.

Consultation on energy efficiency and condition standards

This consultation document meets our Programme for Government commitment to consult on the regulation of private rented sector housing to increase efficiency standards. Ministers also made a Manifesto commitment to consult on a national standard for private rented homes to ensure a good basic standard of accommodation.

This consultation is in two parts. Part one seeks views on proposals for an energy efficiency standard for private rented housing. Part two seek views on changes to the condition standard for private rented housing.

- **Part 1** consults on what the energy efficiency standard should be and how this is implemented and proposes that this rises over time. It asks whether a new minimum standards assessment should be introduced to help landlords know what to do, as well as using the existing energy performance certificate. It also examines the role for local authorities in enforcing the standard.
- **Part 2** consults on changes to the condition standard for private rented housing. It asks about elements that would help to harmonise standards across social and private rented housing, additional elements to ensure that homes are safe, and whether the scope of the standard should be widened to include some private rented homes that are not currently included.

Part 1 – energy efficiency improvements - tackling the worst properties first

In Part 1, we set out that we are considering placing a statutory minimum standard of energy efficiency in private rented sector housing. This will be enforced by local authorities.

Homes in the private rented sector are the least energy efficient of all housing tenures. Introducing a new energy efficiency standard for the private rented sector will benefit tenants living in the coldest homes. We are proposing to tackle the worst first, as the vast majority will already be at a higher standard.

In Part 1, we suggest the following:

- The standard will apply to privately rented properties **covered by the repairing standard**.
- The standard will be based on the **energy efficiency rating on the Energy Performance Certificate (EPC)**. The standard will be an **EPC band E initially** (affecting 30,000 properties), and will be **raised to a band D** over time (affecting a further 65,000 properties). We are also seeking views on raising the standard further.
- **Point of rental and backstop date:** the standard will initially apply to properties where there is a change in tenancy, and then to all properties (known as the “backstop date”).

- **Meeting the initial standard of E:** the standard will initially apply to properties where there is a **change in tenancy after 1 April 2019**. Where the EPC shows a band of F or G, the owner will need to have a **minimum standards assessment** carried out and lodged on the EPC register before renting out the property. The owner will have six months from the date of the assessment to carry out the work.
- **Backstop date: all properties** covered by the repairing standard would need to meet the energy efficiency standard by **31 March 2022** (the “backstop date”). Where a property has an EPC of F or G (and has not already complied with the energy efficiency standard at a change in tenancy), the owner would need to have a minimum standards assessment carried out by 30 September 2021, allowing a six-month period to carry out the required improvements ahead of the backstop date.
- **Raising the standard to EPC D at a later date:** similarly properties covered by the repairing standard would meet the higher standard at a change in tenancy **after 1 April 2022** if they have an EPC energy efficiency rating of D, and this standard would apply to **all properties by 31 March 2025**. The application of the standard of D at change in tenancy and by the backstop date would work in the same way as for the initial standard of E. Any increase in the standard from 2025 would be considered following future review of the implementation of the initial minimum standards.
- **Doing the work:** the owner of the property will be responsible for getting the improvements required by the minimum standards assessment done.
- **Fines:** local authorities will have the power to issue civil fines of up to £1,500 against any owner who does not comply with the standard.
- **Exceptions:** there will be some situations where an owner is not required to do all the improvements identified in the assessment, or will have a longer time to do so. There will be a cost cap of £5000, and we are seeking views on the existing incentives available to improve the energy efficiency of privately rented properties.

We will consult from winter 2017/18 on proposals to increase the energy efficiency of owner occupier housing, including seeking views on the use of minimum standards and incentives. We will also consult on condition issues affecting housing generally, including the tolerable standard and regular maintenance in tenements.

Part 2 – condition standards – what people should expect from rented homes

The repairing standard is the minimum standard for private rented housing. Private landlords should ensure that homes meet this standard throughout a tenancy. Because standards in different tenures have developed separately there are differences between what tenants are entitled to expect in social and private rented housing. We think that where possible housing standards should be consistent across tenures.

Since the repairing standard was introduced in 2007 there have been rising expectations of what is needed to ensure homes are safe. We made changes to the standard in the Housing (Scotland) Act 2014 to introduce new duties in respect of carbon monoxide detectors and regular electrical safety checks. This consultation will ask about other safety elements that we think should be considered.

Many of these changes will be happening anyway as landlords improve their properties and meet the reasonable expectations of new tenants, but we think that they should be set out in a statutory standard.

In Part 2, we suggest the following:

- **Changes to the repairing standard** to bring it closer to the standard required in social rented housing as part of a programme to bring housing standards closer together: meeting the tolerable standard, safe kitchens, food storage, central heating, lead free pipes, safe access to common facilities, safe and secure common doors, and adding oil and other fuels to existing safety standards for gas and electricity.
- Other **changes to the repairing standard** to make homes safer by reducing the risks from scalding, electrocution, asbestos, unwholesome water, or the impact of noise. Also whether homes should have fridges and freezers (or the capacity for fridges and freezers) so that people can preserve food.
- **Seeking views on widening the scope of the repairing standard** to include agricultural tenancies and some holiday lets.
- **A timescale for change** to minimise the cost and impact on landlords and tenants and to fit into other targets set by government.
- We suggest that existing measures for **enforcement** are sufficient, but that there should be clearer rules on exceptional circumstances.

Further policy development and consultation to inform regulations

Subject to the outcome of this consultation, Ministers will develop draft regulations for further consultation. Changes would be brought in through secondary legislation through the Scottish Parliament, which will be introduced in advance of the standards applying to allow landlords time to prepare.

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INTRODUCTION TO CONSULTATION DOCUMENT

1. This consultation asks for views on proposals to improve the energy efficiency and condition standards of privately rented housing in Scotland.
2. There are around 350,000 privately rented dwellings in Scotland. That's 14% of the country's homes, up from around 6% in 2003.¹ Private renting has become increasingly important as a housing option for many people in Scotland at different points in their lives.
3. It is vital therefore that tenants who rent privately have access to good quality and energy efficient homes and that these homes are fit for the future. Effective and proportionate regulation will help to deliver improved quality, but Scottish Ministers recognise that this must be affordable for landlords so they continue to invest in, and grow, the sector.

Part 1 – Minimum energy efficiency standards

4. Scottish Ministers have powers under Section 64 of the Climate Change (Scotland) Act 2009 to require the assessment of a property's energy performance, and for the owner to take action to improve the energy efficiency and environmental impact of a property.
5. Social housing providers are already working to improve the energy efficiency of their properties. The first milestone for the Energy Efficiency Standard for Social Housing (EESH) is due to be met by 2020. And the UK Government has set a minimum energy efficiency standard in England and Wales at EPC Band E for the private rented sector, coming into force from April 2018.
6. Part 1 of this consultation sets out proposals for setting standards in the private rented sector in Scotland under the Climate Change Act. The proposals were informed by a working group, which was set up in April 2013. It included representatives from private rented sector landlords, consumer, environmental, fuel poverty and local authority interests. More information on the working group is available on the Scottish Government website².
7. We will consult separately from winter 2017/2018 on the role of minimum standards in improving the energy efficiency of owner-occupied housing, alongside the use of grants and loans and other incentives.
8. The Scottish Government has designated energy efficiency as a National Infrastructure Priority, the cornerstone of which will be Scotland's Energy Efficiency Programme (SEEP). Improving the energy efficiency of our homes and buildings supports our efforts to reduce climate change emissions and tackle fuel poverty.

¹ Scottish Household Survey, 2015, available at <http://www.gov.scot/Publications/2016/09/7673>

² <https://beta.gov.scot/policies/home-energy-and-fuel-poverty/>

9. The Programme will operate over 15-20 years. Its benefits will include:
 - making our homes warmer and places of work more comfortable;
 - promoting more affordable energy for consumers;
 - helping to tackle poverty;
 - improving competitiveness of the Scottish economy by creating substantial market and supply chain opportunities; and
 - contributing to meeting our climate change targets.
10. Minimum standards will have a key role within SEEP, helping to drive improvement and create certainty for investment. They will act to improve the worst performing properties which have not yet been improved, despite the range of incentives and support on offer.
11. Other important elements of SEEP include considering what help might be available to building owners to improve their properties; what skills and consumer protection is needed to ensure confident and appropriate decisions in improving properties; and how local and national action can be used across domestic and non-domestic sectors to make best use of existing resources. We are currently consulting on policy options to support the development of SEEP, and encourage responses to that consultation (by 30 May 2017)³.

Part 2 – Amendments to the repairing standard

12. The Scottish Government’s strategy for the private rented sector in Scotland, *A Place to Stay, A Place to Call Home*, sets out a vision for private renting that provides good quality homes and high management standards, inspires consumer confidence, and encourages growth through attracting increased investment.
13. Scottish Ministers are committed to improving the standard of privately rented housing, with a Manifesto commitment to “*consult on a national standard for private rented homes to ensure a good basic standard of accommodation, driving out rogue landlords who exploit tenants in sub-standard accommodation*”.
14. The proposals in Part 2 of this consultation take forward this commitment by seeking views on making changes to the repairing standard, which sets out minimum condition standards for privately rented housing.

Next steps

15. Following the consultation we will analyse the responses and set out the Scottish Government’s response.
16. The proposals in Parts 1 and 2 of the consultation would need to be implemented through secondary legislation by the Scottish Parliament. Subject to the outcome of the consultation, there will be further consultation and engagement on the draft regulations and related guidance.

³ <http://www.gov.scot/Publications/2017/01/2195>

Part 1: Proposals for an energy efficiency standard for private rented housing

Outline of this part of the consultation

This part of the consultation looks at a minimum energy efficiency standard for private rented housing. In this part we:

- explore the need for setting minimum energy efficiency standards in private rented housing;
- set out the proposed scope of minimum standards;
- look in more detail at how the standard would work at the point of rental, and at a date by which time all properties would need to meet the standard;
- set out proposals for raising the minimum standard over time;
- explore what would be needed in a new assessment to support the introduction of standards; and
- seek views on the impact of these proposals.

Why do we need a minimum energy efficiency standard?

17. There have been significant improvements in the energy efficiency of Scotland's homes in recent years, with around 36% now having an Energy Performance Certificate (EPC) energy efficiency rating of band C or above. Nearly half of social housing has an EPC of at least C, while in owner-occupied and privately rented properties it's a third. We know that there have been calls for all properties to have a minimum EPC rating of C, for example in the recent report of the Fuel Poverty Strategic Working Group⁴.
18. The Scottish Government shares the aspiration of the Working Group to eliminate poor performance of a property as a driver of fuel poverty. That is why we have allocated over £650m since 2009 for these purposes, and have committed to allocating a further half a billion pounds over the next four years. But even with this level of public investment and the range of support on offer, more action is needed to improve the least efficient stock.
19. A higher proportion of private dwellings fall into the lowest EPC bands than is the case for social dwellings. Within that, the performance of the private rented sector is relatively worse than the owner-occupied sector: 28% of private rented dwellings (95,000) fall into EPC bands E, F and G, compared with 22% (329,000) in the owner-occupied sector and 10% (58,000) in the social rented sector. For the two worst EPC bands – F and G – the share is 9% (30,000 dwellings) for the private rented sector, compared with 5% (71,000 dwellings) for the owner-occupied sector and 2% (13,000 dwellings) for the social rented sector.⁵

⁴ <http://www.gov.scot/Publications/2016/10/2273>

⁵ For further analysis, see the section on the energy efficiency in the Scottish residential sector in the partial Business and Regulatory Impact Assessment.

20. More and more people are renting privately. It has become the most common tenure for young households. But it is not only young single people living in this sector - around a quarter of households in the private rented sector have children in them. Households from across the income range are housed in the sector.⁶
21. As part of the development of Scotland's Energy Efficiency Programme, Ministers are considering the important role which setting minimum standards can play in driving forward the improvements needed. Not only will it ensure that the least efficient properties are improved within a reasonable amount of time, but it will create greater certainty for the sector – owners, installers, assessors and lending institutions – about the scale of the work needed and the pace of demand.
22. We have already set energy efficiency targets for social housing. In 2014 the Scottish Government introduced the Energy Efficiency Standard for Social Housing (ESSH). By the time of the first milestone in 2020 social rented property will be required to have the equivalent of a minimum EPC energy efficiency rating of 'C' or 'D', depending on its built form.
23. Private sector landlords already have to make sure their properties meet certain standards under the repairing standard (see Part 2 of this consultation), but this does not include energy efficiency. In comparison, tenants in the social rented sector as a whole enjoy warmer properties as social landlords are already working to meet the ESSH.
24. Making privately rented houses more energy efficient will help address fuel poverty by making them easier and cheaper to keep warm (with associated health benefits⁷ for occupants), and lower carbon emissions helping to tackle climate change.
25. The Scottish Government is separately considering the role of minimum standards in improving the least efficient owner-occupied properties, alongside other possible interventions such as the use of grants and loans or other incentives. We will consult on proposals to improve the energy efficiency in the owner-occupied sector from winter 2017/18.

⁶ For further details on the characteristics of households in the private rented sector, see the chapter on housing in the Scottish Household Survey, 2015, available at <http://www.gov.scot/Publications/2016/09/7673>

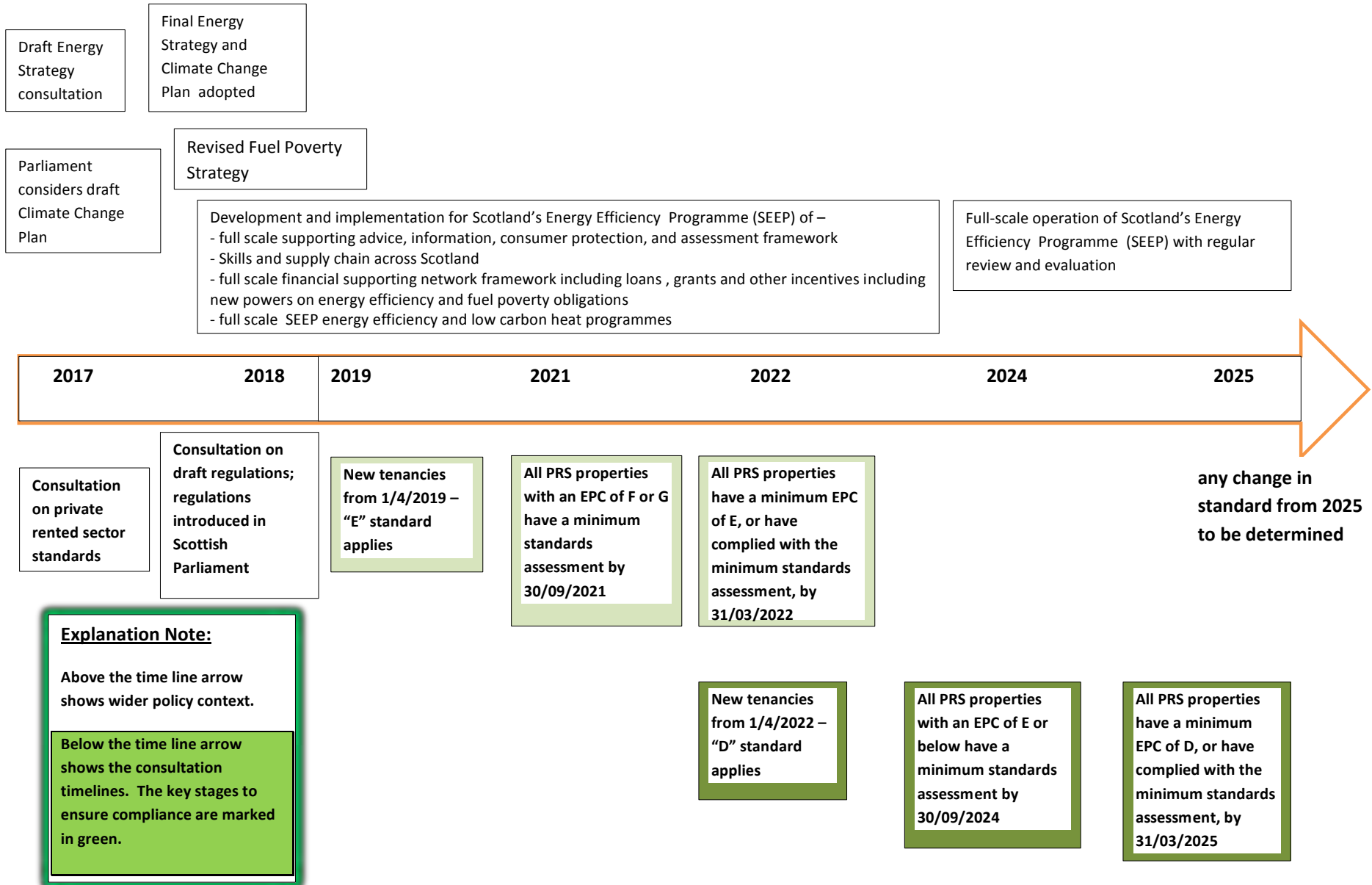
⁷ NHS Scotland is developing a Housing and Health Inequalities Briefing which will recognise the health impacts of cold and damp housing –see **Report of the Scottish Fuel Poverty Strategic Working Group, October 2016**, <http://www.gov.scot/Resource/0050/00508195.pdf> .

Overview of proposals

- **Scope:** privately rented properties **covered by the repairing standard** will need to meet a minimum energy efficiency standard. See Section 1 for further information.
- **Setting the standard:** the standard will be based on the **energy efficiency rating on the Energy Performance Certificate (EPC)** (see Section 2). The standard will be an EPC **band E initially** (affecting 30,000 properties) (Section 3), and will be **raised to a band D** (affecting a further 65,000 properties) over time (Section 10). We are also seeking views on raising it beyond this level (Section 11).
- **Point of rental and backstop date:** the standard will initially apply to properties where there is a change in tenancy, and then to all properties (Section 4).
- **Meeting the initial standard of E:** the standard will initially apply to properties where there is **a change in tenancy after 1 April 2019**. A change in tenancy is where a new tenancy agreement is required under the Private Housing (Tenancies) (Scotland) Act 2016 (which comes into force from December 2017), and a property meets the standard if it has a valid EPC showing an energy efficiency band E. Where the EPC shows a band of F or G, the owner will need to have a minimum standards assessment (which is a new assessment proposed in this consultation, see Section 7 for further information) carried out and lodged on the EPC register before renting out the property. The owner will have to bring the property up to the standard required by that assessment (which will normally be an EPC E) within six months of the date of the assessment. See Section 5 for further information.
- **Backstop date: all properties** covered by the repairing standard would need to meet the energy efficiency standard by **31 March 2022** (the “backstop date”). Where the property has an EPC rating of F or G (and is not covered by an exception following a change in tenancy – see Section 9) the owner would need to have a minimum standards assessment carried out by 30 September 2021, allowing a six-month period to carry out the required improvements ahead of the backstop date. See Section 6 for further information.
- **Raising the standard to EPC D:** properties covered by the repairing standard would meet the standard at **a change in tenancy after 1 April 2022** if they have an EPC energy efficiency rating of D, and this standard would apply to **all properties by 31 March 2025**. The application of the standard of D at change in tenancy and by the backstop date would work in the same way as for the initial standard of E. Any increase in the standard from 2025 would be considered following future review of the implementation of the initial minimum standards. See Sections 10 and 13 for further information.
- **Doing the work:** the owner of the property will be responsible for getting the improvements required by the minimum standards assessment done. See Sections 8 and 12.

- **Fines:** local authorities will have the power to issue civil fines of up to £1,500 against any owner who does not comply with the standard. See Section 9 for more information.
- **Exceptions:** recognising that in some cases there may be valid reasons why an owner cannot comply fully with the minimum standard, there will be some situations where an owner is not required to do all the improvements identified in the assessment, or will have a longer time to do so. We are proposing a cost cap of £5000, and we are seeking views on the existing incentives available to improve the energy efficiency of privately rented properties. See Section 9 for further information.

Timeline for compliance with the PRS Energy Efficiency Standard and Scotland’s Energy Efficiency Programme



Section 1 - Scope

26. We propose the minimum energy efficiency standard should apply to properties already covered by the repairing standard. This can include any type of privately rented tenancies including houses in multiple occupation (HMO)⁸. This is a standard which private tenants are entitled to expect from their properties, and landlords will already be aware of whether or not their property is covered by that standard. By aligning the energy efficiency standard with this it will be clearer to landlords and tenants as to whether or not their property would be covered by these standards.
27. The repairing standard does not currently apply to certain types of tenancy, including agricultural tenancies and some types of holiday lets. Part 2 of this consultation considers whether those types of tenancy should be brought within scope of the repairing standard. If that happens then the energy efficiency standard would also apply to those properties under this proposal.
28. If the tenancy is not covered by the repairing standard, or is already at the required minimum energy efficiency standard, the landlord will be under no obligation to improve the property's energy efficiency under these regulations.
29. In these situations, landlords may still choose to carry out improvements to their property to make them more energy efficient. More information on current sources of advice and assistance is included in Section 8 and we would encourage landlords to take advantage of any funding schemes available to carry out improvements.

Consultation question

Question 1.1- Do you think that only tenancies covered by the repairing standard should have to meet minimum energy efficiency standards? Yes/no/don't know.

If not, what other privately rented tenancies do you think should be included?

⁸ More information on HMOs is available at <https://beta.gov.scot/publications/licensing-multiple-occupied-housing-statutory-guidance-for-scottish-local-authorities/>

Section 2 - Linking the standard to the Energy Performance Certificate (EPC)

30. We propose that the standard should be linked to the EPC system⁹. Landlords and tenants should be familiar with the document and the assessment method, as EPCs are already required at a change in tenancy. The rating system is also currently used for setting standards that apply to socially rented housing.
31. EPCs were introduced to implement the requirements of the EU Energy Performance of Buildings Directive (EPBD). Since 4 January 2009 landlords have had to ensure that a valid EPC is available to new tenants for any property where there is a change in tenancy. For the purpose of the Directive, an EPC is valid for a period of 10 years.
32. The EPC methodology works out a rating for a property's energy efficiency and environmental impact, which is a numerical score between 1 and 100. These ratings are also grouped into bands from A-G, where G is the least efficient. The rating and band are determined by an assessment of the property's age, type and characteristics. This provides a mechanism by which to compare different properties and provide simple initial advice on how a property might be improved.
33. There are processes in place to ensure that new technologies and evidence are reflected in changes to the methodology over time, to maintain its currency and relevance. Using the EPC provides consistent methodology which is applied as a benchmark in a range of Scottish Government policies and programmes.
34. The Scottish Government believes that the current processes which support the EPC are an appropriate basis for regulation. However, we will take the opportunity offered by the development of Scotland's Energy Efficiency Programme to review how the methodology supports wider Scottish policy. We will identify areas where action to revise or enhance the current process would be beneficial to support use such as is proposed here. While the purpose of this consultation is not to explore in detail the workings of the EPC process as this is set by EPBD, feedback from this consultation will be fed into that process.

Consultation questions

Question 1.2 - We propose to link the minimum energy efficiency standard to the energy performance certificate as we think this is the most suitable mechanism. Do you agree? Yes/no/don't know.

If you answered no:

(a) please explain why; and

(b) please set out your suggestions for how we could set the standard.

⁹ See www.gov.scot/epc

Question 1.3 - (a) Do you think there are elements of the energy performance certificate assessment that would need to be altered to support a minimum energy efficiency standard? Yes/no/don't know.

(b) If so, what areas do you think would need to be changed and what evidence can you offer to support your view?

Section 3 - Setting the level of the minimum standard

35. The Scottish Government has set up Scotland's Energy Efficiency Programme (SEEP) to drive improvements in the energy efficiency of properties over the next 15-20 years, as part of the delivery of the Climate Change Plan. SEEP will deliver a range of measures, including developing appropriate financial support and incentives, and ensuring there is a strong and robust supply chain, to help owners to improve their properties. We think that minimum standards have an important role to play in underpinning these support mechanisms, both in driving action in the least efficient properties, and in creating certainty amongst property owners and the supply chain about the scale of the work needed.

Use of the energy efficiency rating to set the standard

36. The EPC provides both an energy efficiency rating and an environmental impact rating. We think that the standard should be set in relation to the energy efficiency rating of the property, which takes into account both energy use (for space and water heating, lighting, cooling and ventilation) and the cost of fuels. The calculation is based upon both simplified building data and standard assumptions on climate, occupancy and use of the building. This enables a robust and consistent output which allows direct comparison between different dwellings.
37. Action to improve the energy efficiency rating is something landlords and tenants are more familiar with (reducing energy use reduces running costs). This is also in line with the approach we have set out in the draft Climate Change Plan, which prioritises actions to improve energy efficiency in the years to 2025, before increasing focus on the decarbonisation of the heat supply. Measures implemented to improve the energy efficiency rating will, with few exceptions, also reduce greenhouse gas emissions.

The level of the minimum standard

38. We propose to set an initial standard of E from 2019, raising this to D within 3 years. This will ensure that action is taken to improve the worst performing properties first, while also setting out a clear direction for owners of rented properties that a higher standard will be required over the longer term. Section 10 provides more information on raising the standard to D.
39. We are aware that the Strategic Working Group on Fuel Poverty has called for SEEP to have a milestone of EPC C by 2025 to significantly reduce energy efficiency as a root cause of fuel poverty.
40. We share the Group's aspiration to eliminate poor energy performance of a property as a driver of fuel poverty, but think that there would be challenges in setting a mandatory target of C as a minimum standard, in relation to cost, technical considerations and the wider context of the climate change plan. SEEP is consulting on a range of issues, including seeking views on how to set clear targets and milestones for the lifespan of the programme, which would be delivered through a range of standards and incentives.

41. Section 11 considers raising the standard further beyond D in more detail.

Setting the initial standard at E

42. Around 9% of PRS properties (30,000 dwellings) are currently in EPC energy efficiency band F or G. By improving these properties first we will be taking action to improve the least energy efficient properties, which not only cost the most to heat, but which are also likely to pose the greatest threat to the health of their occupants from cold and damp. With the introduction of the standard at E initially, the worst properties can be improved while the rental, installation and assessment sectors gear up to be able to deliver the higher standard of D from 2022 (as set out in Section 10).
43. It is estimated that around 60% of households living in privately rented dwellings with an EPC of F or G are currently fuel poor.¹⁰ Of these 19,000 households, about 3,000 could currently be taken out of fuel poverty if the energy efficiency of their property were raised to an EPC of E. The remaining 16,000 fuel poor households would also benefit from lower fuel bills if their property were raised to an E, although the improvement they experience would not be enough to lift them above the threshold set by the fuel poverty definition, due to the impact of other factors, in particular income and fuel prices, in determining fuel poverty.
44. An estimated 63% of the 30,000 dwellings with an EPC of F or G are located in rural areas, and 82% were built before 1919. The greater rurality and age of these dwellings is correlated with other features which tend to make them less energy efficient – they are more likely to have stone walls (80%), be detached houses (39%) and less likely to use mains gas as their primary fuel source (1%) than dwellings in the private rented sector as a whole.¹¹ However, the original built form and access to the gas grid do not on their own determine the current energy efficiency of dwellings – the degree to which retrofit measures are installed is also important. For example, in the social sector, where there is a much stronger regulatory system than the private rented sector, the prevalence and depth of loft insulation, and the proportion of eligible walls that have received cavity insulation, is much higher.¹²
45. Our modelling also suggests that the cost of raising these 30,000 dwellings to an E is relatively limited – the average upgrade cost is estimated to be around

¹⁰ A person is living in fuel poverty if, to heat their home to a satisfactory standard, they need to spend more than 10 per cent of their household income on fuel - <https://beta.gov.scot/policies/home-energy-and-fuel-poverty/>. An independent panel is currently reviewing the definition of fuel poverty and is due to report in the summer.

¹¹ The comparative figures are: 82% of F and G, and 68% of E, F and G dwellings were built before 1919, as compared with 41% of all private rented dwellings; while 63% of F and G, and 39% of E, F and G dwellings are located in rural areas, as compared with 15% of all private rented dwellings. See the partial Business and Regulatory Impact Assessment for more details.

¹² See Section 1.3 “Background: Energy efficiency in the Scottish residential sector” in the partial Business and Regulatory Impact Assessment for further analysis.

£1,100, giving a total upgrade cost of £33 million.¹³ In some cases the cost of improvement work will be lower. In others, for example in traditional stone dwellings off the gas grid which are particularly hard to treat, it may be significantly higher. However, in Section 9 we set out our proposals for exceptions to the standard, which will ensure that measures are only installed where they are technically feasible and not excessively costly.

46. Modelling work suggests that the most common measures that may need to be installed to bring a property up to an E are loft insulation, replacing the secondary heating (where applicable) with a more efficient system, cavity wall insulation, room in the roof insulation and low energy lighting. However, in a very small number of cases more expensive measures may be required, e.g. solid wall insulation was modelled as being part of the least cost upgrade package in fewer than 1% of dwellings.¹⁴

Consultation question

Question 1.4 - 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? Yes/no/don't know.

Please explain your answer.

¹³ Independent research was commissioned to model the costs and benefits of improving private sector stock in both the private rented and owner-occupied sector to different EPC levels, to inform the discussions of the Regulation of Energy Efficiency in Private Sector housing (REEPS) Working Group. This research was subsequently published at <http://www.gov.scot/Publications/2015/11/4536>. As described in the partial Business and Regulatory Impact Assessment which accompanies this consultation, the research output has been applied to the latest results from the 2015 Scottish House Condition Survey. For this reason, and also because this consultation relates only to the private rented sector, results presented here and in the impact assessments will differ from those in the independent research.

¹⁴ Modelling research, <http://www.gov.scot/Publications/2015/11/4536/6>, which has been applied to the latest (2015) Scottish House Condition Survey results.

Section 4 - Bringing in the standard of EPC E at point of rental and then at a backstop date

47. As set out above, modelling suggests that setting a minimum standard at E will affect 30,000 properties at a total estimated cost of £33 million, requiring 47,000 individual measures. We propose to phase the standard in, applying it first only where there is a change in tenancy and then to all privately rented housing. By initially phasing the need for work over several years this will minimise the risk of a “bottleneck” of work being required at a future date, provide certainty for the sectors involved in the work required, and ensure that the benefits to tenants and the carbon abatement begin earlier.
48. A change in tenancy provides a natural opportunity for landlords to take action to improve a property while it is empty, and landlords are already expected to ensure that their property meets the repairing standard from the start of a tenancy. For the standard to be delivered, landlords will need to be aware of their obligations; there will need to be assessment and installation processes in place; and there will need to be the appropriate supporting measures such as incentives, skills and supply chain capacity. Section 8 further considers the support available to landlords.
49. We think that a period of two years would be sufficient time for landlords to prepare to take action, or to take action ahead of the introduction of the standard taking advantage of existing incentives. We therefore propose that the standard would apply at a change in tenancy after 1 April 2019, which is two years from the start of this consultation.
50. But there will be some properties where there is no change in tenancy, such as houses in multiple occupation, or where there are long standing tenants – for example, around a fifth of tenancies in privately rented dwellings with an EPC of F or G are estimated to last for more than 10 years. We want to ensure that all tenants in the private rented sector live in warm houses, and so we propose to have a “backstop date” by which all privately rented housing would be expected to meet a minimum standard, whether or not there has been a change in tenancy.
51. We propose that this should apply by 31 March 2022, three years after the introduction of the standard at the point of rental. Modelling suggests that around half of the properties rented privately at 1 April 2019 with an EPC of F or G will have had a change in tenancy within three years, and so will already have been improved by the time of the backstop date. This would mean that around 13,000 properties would remain to be improved by this date.

Consultation questions

Question 1.5 - 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? Yes/no/don't know.

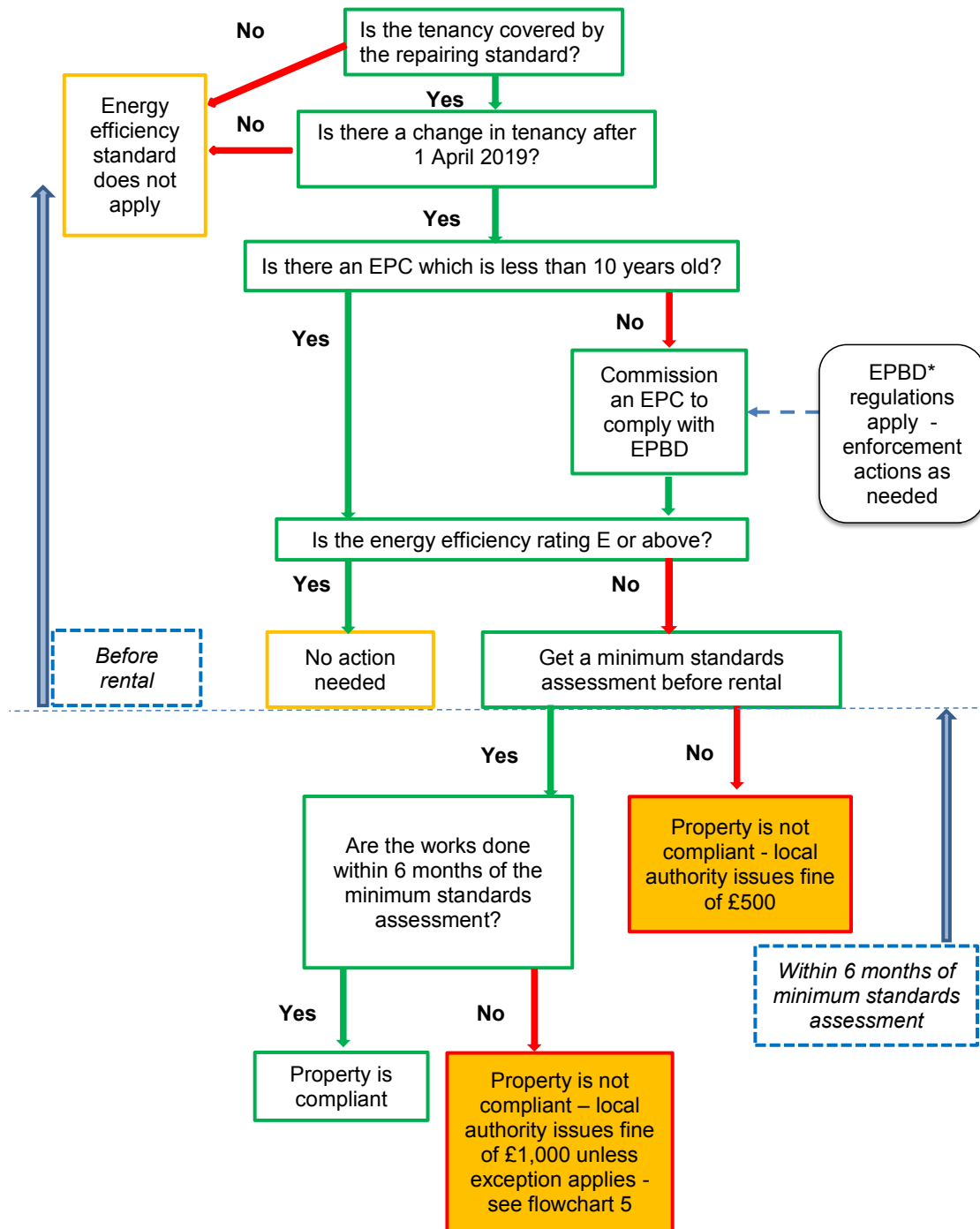
Question 1.6 - Do you think that 1 April 2019 is the right date to start applying the minimum standard of E when there is a change in tenancy? Yes/no/don't know.

Question 1.7 - Do you think that 31 March 2022 is the right date by which all privately rented properties would need to meet the minimum standard? Yes/no/don't know.

Please explain your answers.

Section 5 - Meeting the standard when there's a change in tenancy after 1 April 2019

Flowchart 1 - Meeting EPC energy efficiency band 'E' at change in tenancy



*EPBD = Energy Performance of Buildings Directive

52. Landlords already need to have a valid EPC available for a property offered for let when there is a change in tenancy. Under the Energy Performance of Building (Scotland) Regulations 2008 the EPC is valid for a period of up to 10 years, and must be lodged on the EPC register. There are existing mechanisms to enforce this requirement.
53. From December 2017 there will be new tenancy agreements under the Private Housing (Tenancies) (Scotland) Act 2016. We propose that the energy efficiency standard would apply where there is a new tenancy under these regulations.
54. If there is a valid EPC showing an energy efficiency Band E then the property will meet the standard, and the owner doesn't need to do anything else before a new tenant moves in. If the landlord wishes to make further improvements in any case then more information is available from Home Energy Scotland (see Section 8).
55. If the EPC assessment shows a Band F or G then the owner would need to take action to comply with the new standard.
56. In the first instance they might want to consider:
 - if the EPC is, for example, produced using an older edition of the Standard Assessment Procedure (SAP)¹⁵ methodology, checking to see whether a new EPC under current methodology would report the required band; or
 - if the EPC they have uses the version of SAP currently in use, contacting Home Energy Scotland or considering the recommendations report within the EPC to see if there are simple measures which would bring the property up to Band E. The landlord might want to carry these out and commission a further EPC to confirm this achieves the required rating ahead of rental.
57. Where the property doesn't achieve an EPC Band E, we propose that the owner will need to have a minimum standards assessment carried out and lodged on the register before the new tenancy begins. The assessment will identify the required improvement for the property, which will usually be to an EPC Band E. More information on the minimum standards assessment is set out in Section 7.
58. In practical terms it may be simplest to carry out the improvements identified by the assessment before the tenant moves in. But if the owner wants to rent the property first (for example in areas where there is high demand for properties, for cash flow considerations, or where there is a short term shortage of installers to carry out the work) then we propose they should have a period of six months from the date of the minimum standards assessment to carry out the improvements.

¹⁵ http://www.bre.co.uk/filelibrary/SAP/2012/SAP-2012_9-92.pdf

59. The owner can carry out the measures identified in the assessment, or any others they prefer, provided that a post-improvement EPC would show the rating required by the assessment. The owner will be responsible for providing proof that the property is compliant, for example through the production of a new EPC showing the required rating, or evidence that the measures identified in the assessment have been installed.
60. Section 9 considers situations where the owner would not be penalised for not carrying out the full improvement identified by the assessment.
61. This means that there will be additional responsibilities and costs on the landlord where the existing EPC shows a rating of F or G. There will be an additional minimum standards assessment to identify the required improvement; the cost of the works; and a new EPC showing the improvement required by the assessment where this is the route for proof. Section 8 provides more information on support for landlords to get the works done.

Consultation question

Question 1.8 - 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? Yes/no/don't know.

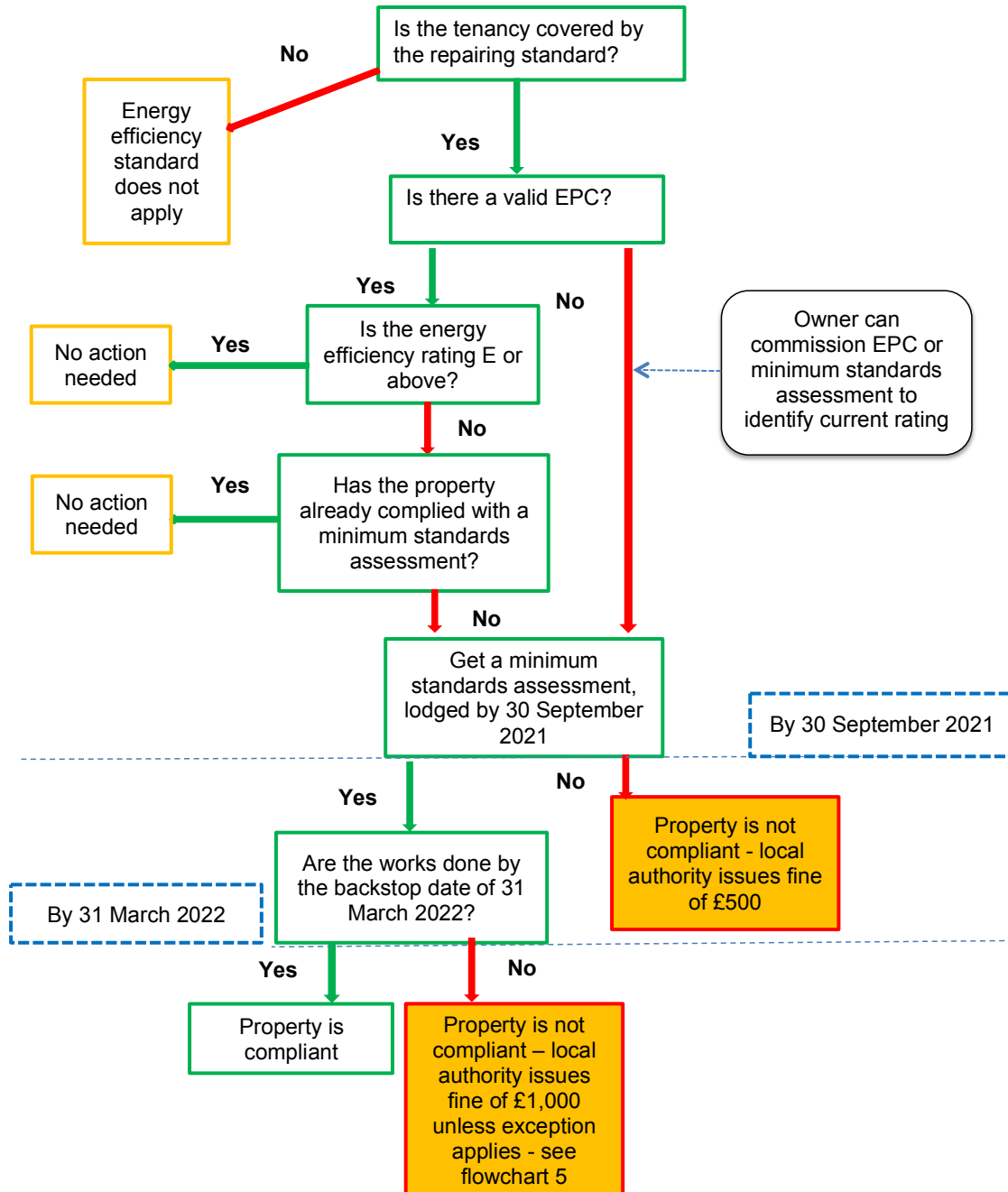
(b) do you think that we should allow a period of six months from the date of the minimum standards assessment to carry out the improvement identified by the assessment? Yes/no/don't know.

(c) do you think that the owner should have to provide a post-improvement EPC to prove that the necessary improvements have been made? Yes/no/don't know.

Please explain your answers.

Section 6 - Meeting the standard in all private rented properties by 31 March 2022 (the “backstop date”)

Flowchart 2 - Meeting EPC energy efficiency band ‘E’ at “backstop date”



62. We propose that there should be a date by which all tenancies covered by the repairing standard should need to meet the energy efficiency standard, so that tenants in the least efficient properties where there is no change in tenancy will also benefit from improvements.
63. Our modelling estimates that around 60% of the tenancies in existence on 1 April 2019 in dwellings with an EPC below E will end within a three-year period. So we are proposing that all privately rented properties should meet the minimum standard by 31 March 2022, whether or not there has been a change in tenancy since 1 April 2019, as over half of the properties would already have been improved under the proposals to apply the standard at a change in tenancy.
64. We propose that owners should still have a minimum of six months to bring their property up to standard where they have had a minimum standards assessment. This means that:
- if there is a valid EPC showing an energy efficiency Band E then no further action is required;
 - if a property has an EPC rating of Band F or G, the owner would need to have a minimum standards assessment carried out and lodged by 30 September 2021 (“backstop assessment” date);
 - the owner will have to carry out the required improvement by 31 March 2022 (6 months from the “backstop assessment” date).
65. In the majority of cases privately rented properties will already have an EPC by 30 September 2021 due to requirements under the Energy Performance of Building (Scotland) Regulations 2008 to provide an EPC at the point of rental since 4 January 2009. If the EPC shows a rating of E or above, and is valid under the 2008 Regulations, then it will prove compliance.
66. But in some cases a property may have been rented out continuously since before the introduction of the EPC requirements. Where there is no existing EPC for the property, the owner would need to know whether or not a minimum standards assessment is required. This would mean either commissioning an EPC or a minimum standards assessment. This is because the first stage in a minimum standards assessment would be to assess the property’s current energy efficiency rating where there is no EPC under the current methodology (see Section 7). Where this showed a rating of E or above, an EPC would be lodged for the property and no further action would be required.
67. Where an owner has already complied with a minimum standards assessment since 1 April 2019 they will not be expected to improve their property again for the backstop date.

68. Where a new EPC for a rented property is required after 1 October 2021, either because of a change in tenancy (where the EPC is now over ten years old) or where a property moves into the private rented sector, the standard would apply in the same way as a change in tenancy before 30 September - if the EPC shows a rating of F or G then a minimum standards assessment would be required, and the owner would have six months from the point of the assessment to carry out the improvements.
69. This means that there will be additional responsibilities and costs on the landlord. There may be a cost for an EPC where a property does not already have one under the Energy Performance of Building (Scotland) Regulations 2008 requirements to determine whether the property has an EPC of E or above; if the EPC shows a rating of F or G, then the landlord will have to get a minimum standards assessment to identify the required improvement, and carry out works to improve the energy efficiency to the required rating; and there may be the cost of a post-improvement EPC to prove compliance.

Consultation question

Question 1.9 - 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)?

Yes/no/don't know.

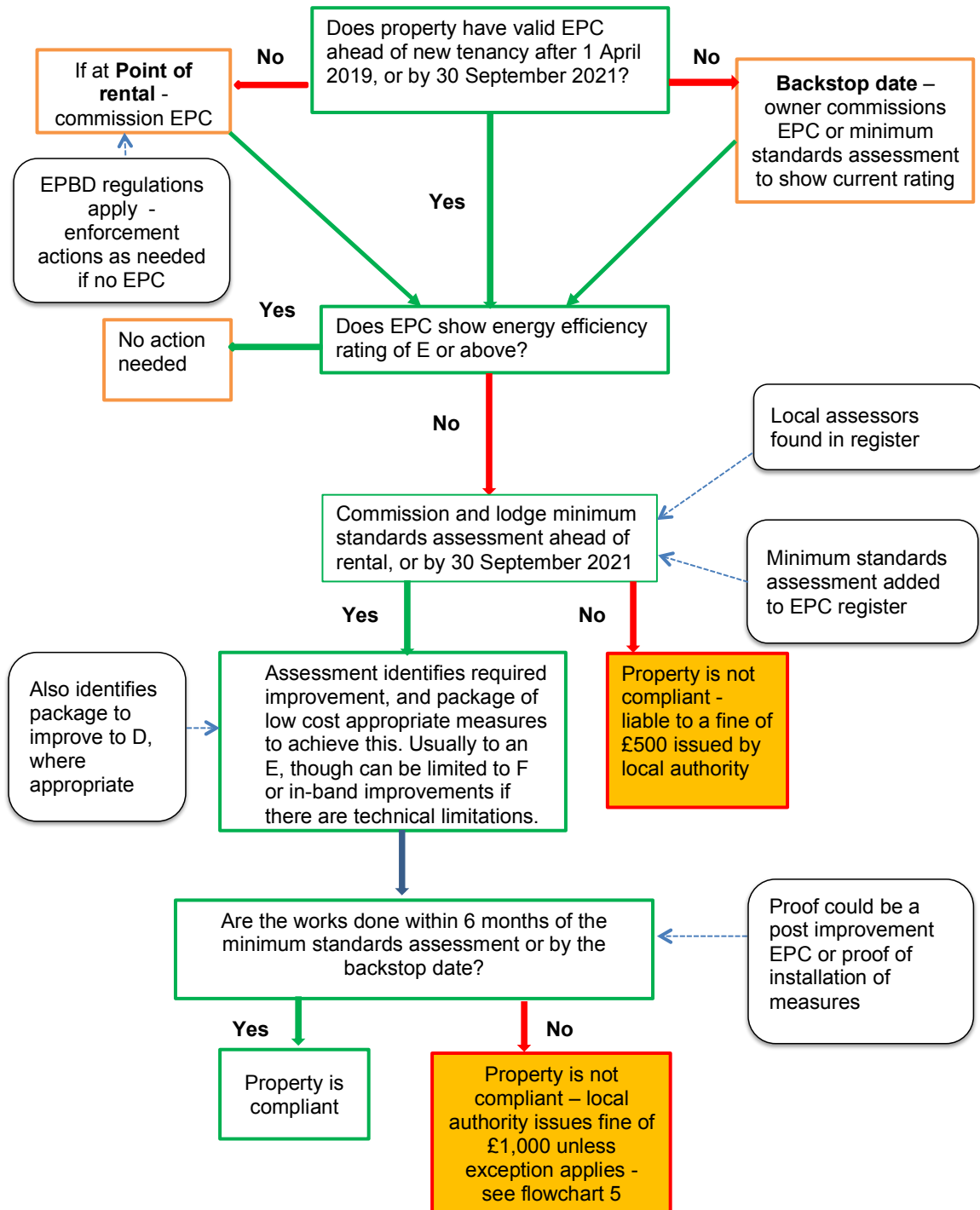
(b) do you think that we should allow a period of six months from the backstop assessment date to carry out the improvement identified by the minimum standards assessment? Yes/no/don't know.

(c) do you think that the owner should have to provide a post-improvement EPC to prove that the necessary improvements have been made? Yes/no/don't know.

Please explain your answers.

Section 7 - Minimum standards assessment

Flowchart 3 – Commissioning a minimum standards assessment (when minimum standard is EPC band “E”)



The assessment

70. As set out earlier, where a property has an EPC of F or G, the owner will need to get a minimum standards assessment which will identify the improvements needed to bring the property up to standard. As the output of the assessment is to aim for a specific EPC rating, we propose that the assessment should be based on the same methodology.
71. Currently, when an owner of a property gets an EPC they also receive a recommendations report, which offers further information on the building and the generic measures that can be applied to the property to improve its energy efficiency and environmental impact ratings. The report shows the improved ratings that would be achieved from applying these measures in the order they are presented.
72. The improvement measures that can be identified on an EPC as relevant to an existing dwelling are assigned by approved software tools based upon the building details input by an EPC assessor. The list of measures is published in Appendix T of the Standard Assessment Procedure (SAP) methodology document¹⁶ and are listed with fabric improvement measures first, followed by improvements to building services and the use of renewable technologies. While an EPC assessor may, where evidence exists, suppress individual improvement measures unsuitable for the dwelling, they cannot vary or define new improvements outwith those listed in SAP.
73. The existing EPC recommendations report provides a useful indication of what can be done to a property to improve its rating, but it is not intended to recommend measures to achieve a particular energy efficiency rating, and EPC assessors cannot tailor the package of measures to a specific property. As such we think that it will be necessary to introduce a new minimum standards assessment to identify the improvement needed to a property to meet the minimum standard.
74. The minimum standards assessment will use the current version of the SAP methodology. Where an existing EPC was carried out under an older version of the SAP methodology, or there is no EPC at the backstop date, the assessor would firstly complete an EPC for the property to determine its current rating. If this showed the rating to be E or above no further action would be required to meet the minimum standard. Where the rating was F or G, the assessor would continue the assessment to identify the required improvements.
75. The key features of the proposed minimum standards assessment are that:
 - It would set out the lowest cost package of technically appropriate measures to improve the energy efficiency of the property. In the majority of cases this will be up to an EPC of E, but where this is not technically feasible or appropriate for the property the assessment may identify a lower improvement. For example:

¹⁶ http://www.bre.co.uk/filelibrary/SAP/2012/SAP-2012_9-92.pdf

- an assessment may recommend that a G rated property be improved to an F; or
 - an assessment of a property rated as F might only identify improvements that raise the property's score within the F band. In this case the property will be compliant if it is raised to the specific rating (number) that the assessment identifies.
- It would also set out the package to bring the property up to a D, the next step in the standard (see Section 10). This will enable landlords to see the difference between the two packages, and potentially enable a decision to bring the property to a higher standard at that point. Where the property is only brought up to the initial standard of E, at the point at which the property needs to comply with the higher standard the owner would need to commission a new minimum standards assessment to be sure that the assessment would identify the appropriate package of measures, using the latest version of SAP methodology, taking account of the improvements made to bring the property up to the E.
 - The minimum standards assessment would use an average cost for each measure based on the figures used in the product characteristics database that supports the EPC process. There are regional variations across the country in the actual costs of works, but we need a consistent approach across Scotland to support the introduction of a national standard. This approach will give an indication of the potential cost of carrying out the recommended improvements, though owners will want to get quotations ahead of carrying out the works. There would be no limit to the cost within the assessment – there is more information on “excessive cost” in terms of carrying out the improvements in Section 9.
 - It would use the measures included in an EPC assessment (Appendix T of SAP). We propose that it would also be able to use other measures whose benefit can be modelled within the RdSAP methodology (the specification for the Reduced Data SAP assessment is defined within Appendix S of the SAP document¹⁷). For example, other Scottish Government programmes, such as Warmer Homes Scotland, currently include reconnection of cut off gas supply; and connection to District Heating Schemes.
 - The assessment would focus on improving the energy efficiency rating to an E (or D) where possible. For the vast majority of properties, the least cost package of measures which raises the energy efficiency rating to an E is likely to improve the environmental impact rating of the property, though our modelling suggests that for 7% of properties (around 2,100 homes) in current EPC bands F or G the package of measures would negatively impact on the property's environmental impact rating, for

¹⁷ See https://www.bre.co.uk/filelibrary/SAP/2012/SAP-2012_9-92.pdf - Reduced Data SAP (RdSAP) has been developed for use in existing dwellings based on a site survey of the property. It consists of a system of data collection together with defaults and inference procedures, as defined by the rules given in Appendix S of the current SAP document.

example where gas central heating is recommended for a property with no fixed heating system.

- The assessment will need to be carried out by a person who has a new qualification of “minimum standards assessor”. The assessor will offer an enhanced service over and above the EPC, offering more tailored advice as to what can be done, taking account of how appropriate and costly it is and if further investigation would be recommended before deciding on any particular actions. This new role will build upon the skills required of domestic EPC assessors, and the person would have to meet specific requirements in terms of skills, training and quality assurance. The assessor would have the skills to tailor the recommendations to recommend only measures which are technically feasible or appropriate to that property.
- Assessors would be registered on a register of minimum standards assessors, which would be maintained by a body or bodies approved by Scottish Ministers. These approved organisations would register and ensure that members are fit and proper persons who are qualified by their education, training and experience to carry out the duties of a minimum standards assessor.
- The assessment report would be recorded on the EPC register prior to rental (or by 30 September 2021 for the backstop date). It would not need to be updated or replaced until the next time the property was considered to be below standard (for example if the standard is raised over time).

Commissioning and registering the report

76. The owner will be responsible for commissioning a minimum standards assessor to carry out the assessment, and would be able to find a list of local assessors through the register of minimum standards assessors.
77. The assessor will lodge the report alongside the property’s current EPC on the EPC register. The owner can carry out the measures in the assessment, or any others they prefer, so long as the result is an improvement to the level required by the assessment.
78. Once the works are done the owner would need to provide proof, for example by commissioning a post-improvement EPC to show the property’s current rating meets the standard.
79. If there has been a change in methodology between the minimum standards assessment and the post-improvement EPC, which means that the measures on the minimum standards assessment do not achieve the expected improvements, the property would still be compliant provided the owner has done all the measures on the assessment.

Bringing in a new assessment

80. There will be an additional cost to landlords of the least efficient properties in commissioning this assessment. An EPC on average costs between £30 to £50. Based on initial discussions in 2016 with assessors and other bodies using EPC- style recommendations reports, we believe that a minimum standards assessment will cost in the region of £120 to £160, dependent on property size and location.
81. It will be important that the assessment and any supporting processes are available in advance of the start of the minimum standards, so that owners are able to commission and lodge assessments before the start of any new tenancies after 1 April 2019.
82. We would look to engage with assessors, building standards professionals and others to:
 - agree the measures to be included in the assessment and the outline processes involved, including discussing the likely fair costs;
 - develop proposals for a minimum standards assessment software tool;
 - agree and specify a schema to capture the outputs (recommendations) in the EPC register;
 - prototype, test and refine the tool;
 - develop and agree a specification of the role and training requirements for a minimum standards assessor;
 - rollout training; and
 - agree which bodies will be approved organisations.

Consultation questions

The assessment

Question 1.10 - 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 that proposal:

(a) that the assessment would use EPC methodology, since that is how we are proposing 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 would 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 in the RdSAP methodology. If you agree with this proposal, please provide suggestions for what these measures might be, and what costs should be used for these;

(f) that the assessment would cost in the region of £120-£160.

Please explain your answers, and provide alternatives where applicable.

Question 1.11 - 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? Yes/no/don't know.

Please explain your answer.

Minimum standards assessor

Question 1.12 - We propose to develop a new role of minimum standards assessor.

(a) Do you think that a new role of a minimum standards assessor is needed? Yes/no/don't know.

(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?

Please explain your answers.

Section 8 - Getting the work done

83. It will be the responsibility of the owner to bring the property up to standard within 6 months of the minimum standards assessment. It will be open to them to install the measures identified in the assessment, or any other measures they choose, provided that the property achieves the improvement identified in the assessment. Once improvements have been made, a new EPC showing the required band may be carried out and lodged on the EPC register to prove that the property meets the minimum standard.

Meeting the costs

84. Modelling suggests that 91% of private rented properties will already have an EPC band of E or above. Owners of properties which meet the standard will not have to make any improvements, though they may wish to contact Home Energy Scotland to help make sure their properties are as energy efficient as possible and to establish if any assistance or advice is available.
85. Where properties do not meet the standard, there will be a cost to carrying out the necessary assessments and improvement works to bring the property up to standard. The cost will be capped at £5000 (see Section 9), with modelling suggesting that on average the cost will be in the region of £1,100 to bring the property up to a standard of E. For this investment the tenants in the least efficient properties will be able to enjoy similar levels of efficiency as those in the vast majority of the private rented sector, and landlords will improve the attractiveness of their properties by doing so.
86. The owner is responsible for bringing the property up to standard, and so the cost will fall to them. As with any improvements in the private rented sector, landlords would have the option of increasing rents to cover the costs. Given the lifetime of measures, and the relatively low cost of improvements needed in the majority of properties, we do not anticipate that any increase in rents would be significant. Landlords would also have to take account of current market conditions in identifying the practicality of increasing rents, and tenants can appeal rent increases where these are unreasonable.
87. There is currently a range of support to help private landlords and tenants to improve the energy efficiency of their properties and reduce their fuel bills. In terms of financial support from the Scottish Government this includes:
- **HEEPS: Warmer Homes Scotland** provides help to improve properties in the private sector, including the private rented sector. It is targeted at the most vulnerable households and helps install energy efficiency and renewable energy measures. In 2017/18 Warmer Homes Scotland has a budget of £19m. Further information on Warmer Homes Scotland is available by calling Home Energy Scotland on 0808 808 2282.
 - **HEEPS: Loans** provides interest free loan funding to households in the private sector, including the private rented sector. Loans of up to £15,000 are available for installing a variety of measures such as solid wall insulation, double-glazing or a new boiler. Also, landlords with multiple properties are

entitled to up to £100,000 of loan funding to help them improve their properties. In 2017/18 £30m of loan funding is being made available through our HEEPs: Loans scheme. Further information on HEEPs: Loans is available by calling Home Energy Scotland on 0808 808 2282.

- **The Resource Efficient Scotland SME (Small and Medium Enterprises) Loans Scheme** provides interest free loans of £1,000 to £100,000 to Scottish businesses that fall within the European Commission definition of SME (including private sector landlords) to finance the installation of energy, resource and water efficiency measures; and loans at a 5% interest rate for the installation of renewable energy technologies where the applicant is planning to claim the Feed in Tariff (FIT) or Renewable Heat Incentive (RHI). Further information on RES SME loans is available by calling 0808 808 2268.
- **HEEPs: Area Based Schemes (ABS)** gives grant funding to local authorities to help develop and deliver larger scale fuel poverty and home insulation programmes. Funding is directed to private sector households including those in the private rented sector. In 2017/18 ABS has a total budget of £47m distributed across all of Scotland's councils. Local authorities select priority areas for delivering programmes and can supply further information if needed.

Sources of information

88. As well as funded support, private sector landlords and tenants can get free and impartial advice from **Home Energy Scotland (HES)** on energy saving, renewable energy and access to funding, including access to schemes provided by the UK Government such as the FIT and RHI. HES can direct people to loans and grants, as appropriate, and more information can be found online¹⁸ or by calling 0808 808 2282. The **Resource Efficient Scotland (RES)** programme, funded by the Scottish Government, offers free, specialist advice and support to businesses to implement energy, resource and water efficiency measures that will reduce carbon emissions and translate to cost savings. More information on RES can be found by calling 0808 808 2268.
89. As regulation falls within the broader development of Scotland's Energy Efficiency Programme (SEEP), we also wish to seek views specifically on what sort of advice, support, and financial and fiscal incentives for landlords or tenants are most appropriate. This includes existing grants and loans and, if appropriate, how we might use devolved tax powers to best support improved energy efficiency. We are keen to understand how all of these incentives can be used to help improve the energy efficiency of properties in the private sector.

¹⁸ <http://www.energysavingtrust.org.uk/scotland/businesses-organisations/landlords>

Consultation questions

Question 1.13 - What are your views on the existing advice and information provision provided by Scottish Government for landlords and tenants? What changes, if any do you think are required?

Question 1.14 - What financial or fiscal incentives support - such as grant and loans, tax or otherwise - would you find most useful to help to accelerate the installation of energy efficiency measures and help landlords meet any proposed standards?

Skills and consumer protection

90. The requirement of minimum standards is likely to lead to more demand for energy efficiency measures in the private rented sector and it is therefore important that landlords have confidence that work carried out will be done to appropriate industry installation and technical standards.
91. The landlord can choose who they want to carry out works they are paying for, but if they are accessing current Scottish Government schemes then this is restricted, at a minimum, to installers who are PAS2030 accredited.
92. SEEP is looking at how best it can be designed to help build consumer confidence in Scotland and what type of consumer protection framework should be adopted. In doing so we are looking at current best practice amongst existing schemes and programmes and are also analysing the recommendations of the Each Home Counts review¹⁹ to see if and how it could be applied in a Scottish context.
93. As part of the development of SEEP we will also be considering whether the supply chain in Scotland has the sufficient capacity and skills to deliver the increased number of installations needed to deliver SEEP's ambitions, including in support of minimum standards. The current SEEP²⁰ consultation is beginning to explore these issues, and we will feed any further evidence from this consultation into that process.
94. We also recognise that there may be specific issues for historic and pre-1919 buildings, which are stone-built and where more specialist skills may be required to bring them up to standard. Home Energy Scotland (HES), together with Historic Environment Scotland can provide advice. Historic Environment Scotland has carried out research on such properties and has developed a

¹⁹ [Each Home Counts: An Independent Review of Consumer Advice, Protection, Standards and Enforcement for Energy Efficiency and Renewable Energy](#)

²⁰ <https://consult.scotland.gov.uk/energy-and-climate-change-directorate/scotlands-energy-efficiency-programme/>

qualification²¹ covering how these more traditional buildings should be dealt with by installers and assessors.

Consultation questions

Question 1.15 - What impact do you think the introduction of minimum standards would have on local supply chains for energy efficiency works?

Question 1.16 - 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? Yes/no/don't know.

Please explain your answer.

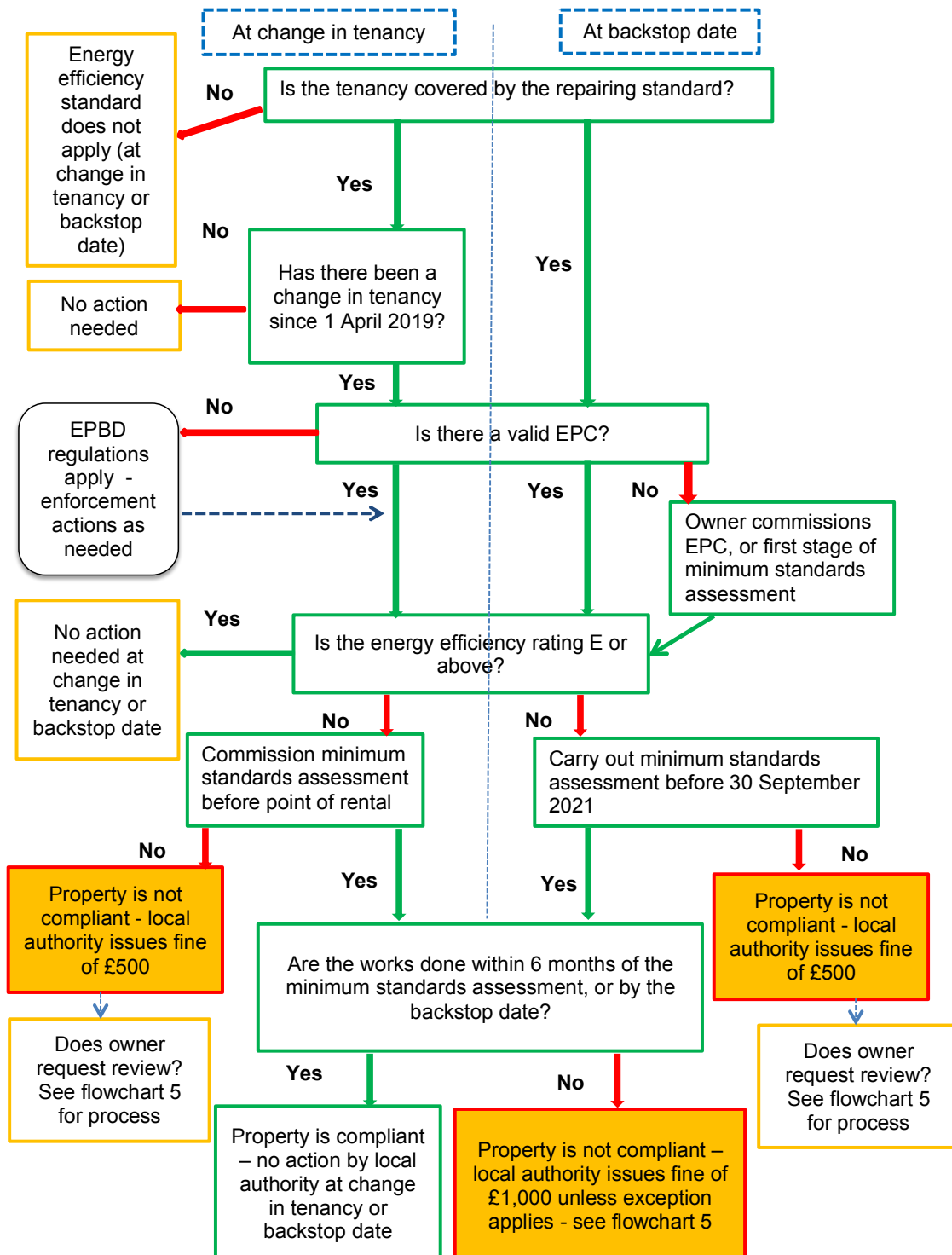
Question 1.17 - Do you think there are additional consumer protection safeguards the Scottish Government should consider for the private rented sector? Yes/no/don't know.

Please explain your answer.

²¹ "The Award in Energy Efficiency Measures for Older and Traditional Buildings" at SCQF level 6 raises awareness of energy efficiency measures for older, traditional or vulnerable buildings built prior to 1919. <http://www.sqa.org.uk/sqa/68730.html>

Section 9 - What happens if the property doesn't meet the standard?

Flowchart 4 – Proposed process for enforcement by local authority



95. If the owner doesn't ensure that the property meets the standard as set out in Sections 5 and 6 we propose that there should be a penalty, and we think that local authorities should be responsible for enforcing this. They already have powers in relation to the private rented sector, including new powers of third party reporting for breaches of the repairing standard, and there may be opportunities to build on existing systems to enforce an energy efficiency standard in the future.
96. We think that the local authority should be able to issue a civil fine against the owner of a property that has an EPC rating of F or G of:
- £500 for failing to have a minimum standards assessment at the point of rental, or by 30 September 2021 (equivalent to the fine for failing to have an EPC); and
 - £1000 for failing to carry out the improvement required by the minimum standards assessment within six months (equivalent to the maximum fine for failing to comply with a repairing standard enforcement order).
97. If the landlord disputes the fine, they will be able to ask the local authority to review the decision. And if the fine is not paid, the local authority can take court action to enforce it.
98. To issue a fine in these situations, the local authority will need to know:
- where there has been a change in tenancy – there may be a tenancy deposit lodged, or a change in council tax records, that would help identify a change in tenancy;
 - what properties are covered by the repairing standard ahead of the backstop date – landlord registration processes should identify all the privately rented properties in the area;
 - the EPC rating of these properties – local authorities have access to the EPC register and can access reports on new EPCs for rental purposes; and
 - the required level of improvement identified by a minimum standards assessment – we propose that the minimum standards assessment would also be lodged on the EPC register.
99. Local authorities also have processes in place for landlord registration which could support the identification of properties over time. And they already have a role in enforcing the repairing standard, which provides another opportunity for being aware of properties to which the standard may apply. For example, where a tenant raises a complaint about a property not complying with the repairing standard, either with the local authority or directly to the First-tier Tribunal, the local authority may wish to consider whether the property is also compliant with the minimum energy efficiency requirements.

Consultation questions

Question 1.18 - Do you think that local authorities should be responsible for enforcing the standard? Yes/no/don't know.

If not, why not, and what alternative would you suggest?

Question 1.19 - Do you think that the penalty for not complying with the standard should be a civil fine against the owner? Yes/no/don't know.

If not, why not, and what alternative would you suggest?

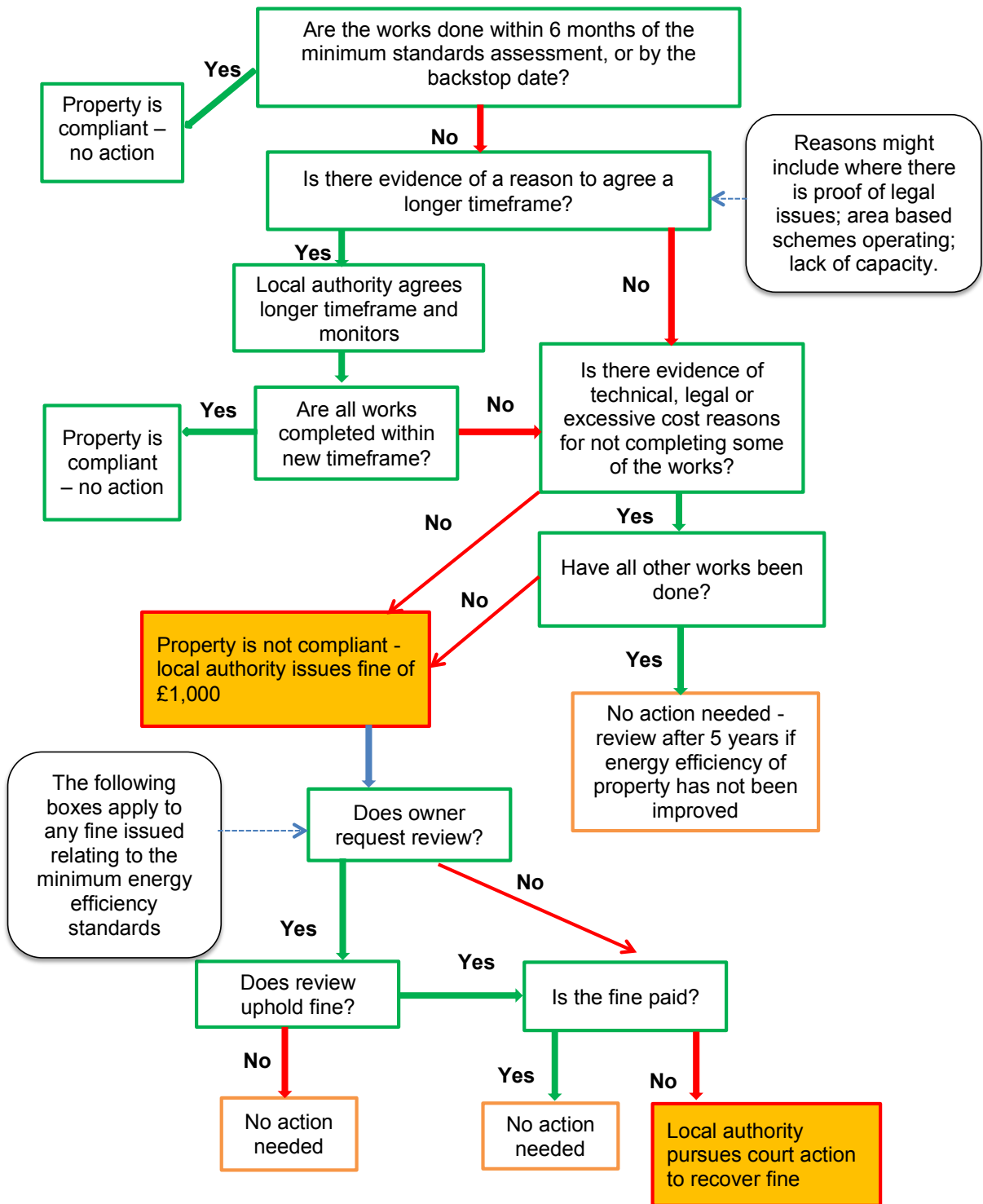
Question 1.20 - We have proposed the following fines:

- £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? Yes/no/don't know.

Please explain your answer.

Flowchart 5 – Enforcement – considering exceptions



Exception - longer timeframe for compliance

100. We think that it should be open to the local authority to give the owner a bit longer to carry out the required improvements before issuing the fine in the following circumstances:

- where there are legal reasons why the work cannot take place within six months of the minimum standards assessment, for example where a sitting tenant refuses to grant permission to carry out the work or assessment, particularly at the application of the backstop date, or where there are protected species that cannot be disturbed at the time to enable improvements to be made;
- where a property will be part of an agreed local authority led area based scheme which will bring the property up to the required standard but will not complete within the six-month period; or
- where there is evidence of a lack of capacity in the local workforce to carry out the assessment in time, or to complete the work within six months of the minimum standards assessment. Given the lead in time to the introduction of the standard this is expected to be a limited issue as owners will be aware of the requirement and should be working to ensure properties are improved in time.

101. In these situations the local authority should agree a revised timescale for the completion of the works, and take enforcement action when that period has elapsed if there is not proof of the required improvements having been made, or evidence of a need for a further extension.

Exception - lower level of improvement carried out than that required by the assessment

102. We also think the regulations should allow for some situations where the owner is only able to carry out some of the improvements in the minimum standards assessment.

103. Technical – there could be situations where it becomes apparent after the assessment that a recommended measure isn't appropriate for the property, for example when a more invasive inspection discovers something which could not have been known during the initial assessment, or where there are protected species which cannot be disturbed to undertake work on specialist advice.

104. Legal – the owner may not have permission to carry out all the works identified by the assessment, for example where listed building consent is subsequently refused for some of the measures, or if other owners do not agree to work to communal elements.

105. Excessive cost – we propose that the cost of improving the property to comply with the minimum energy efficiency standard should be not more than £5000.

- Our modelling suggests that the average cost to bring a property up to an EPC band E is £1,100, and only 200 of the private rented properties with an EPC band lower than E (0.7% of that group) would be above a cost cap of £5000.
- While one option is for the minimum standards assessment to recommend only a package of measures up to the cost cap of £5000, this would potentially limit the number of measures that are recommended in any assessment. Instead, we think that the landlord should be responsible for providing evidence of real-life costs for the package of recommended measures being above £5000. This would have the advantage of being able to take account of any incentives available to the landlord for the required works.
- We propose that the £5000 should include the cost of the energy efficiency measures identified by the assessment, and the cost of the minimum standards assessment but not of gaining planning permission or any incidental work (such as redecorating or condition works). The landlord would be expected to carry out the improvements identified within the assessment that fall within the £5000 cost cap.

106. In the cases of technical, legal or excessive cost situations, the owner should carry out all the other improvements identified in the assessment and provide proof to the local authority to support the decision not to install the others. This proof might include, for example, an expert report on the presence of bats (technical grounds) where this prevents a measure from being installed in that property; a letter from the local authority refusing listed building consent for some of the measures (legal grounds); or quotes from three registered firms showing estimates above £5000, along with evidence of costs of the measures which have been installed (excessive cost grounds).

Review of exceptions applying to a property

107. Where a property has been granted a longer timeframe to carry out the works, the local authority should monitor compliance with this to ensure that the property is brought up to standard within the agreed timeframe.
108. Where there is a legal, technical or excessive cost reason why the full improvement cannot be made, we propose that this should remain valid for a period of not more than 5 years, as these issues may resolve within that time. We think that we should explore the possibility of the EPC register including a field to show where a property is compliant with the standard, even though it is at a lower standard than required by the assessment. This would enable tenants to access information on their property and for local authorities to keep track of which properties require enforcement action.
109. If the property has not been improved as set out in the minimum standards assessment within 5 years, a further minimum standards assessment should be carried out. Section 10 considers what happens when the standard is raised over time.

Condition works

110. In some cases properties will require additional works before energy efficiency improvements can be made. This could be a condition issue, for example where a faulty roof should be improved before installing insulation, or something which is found on further inspection, such as the presence of asbestos where a professional advises that this be removed.
111. We are proposing the standard applies to properties which have to meet the repairing standard, and so there are likely to be other enforcement mechanisms and duties on the landlord to undertake those improvement works. We therefore do not think that these costs should be included in the cost cap, or that there should be an exception from meeting the standard because these works need to be carried out first. But we would welcome views on whether or not it would be appropriate to allow a longer timeframe for compliance to allow these additional initial works to be undertaken.

Consultation questions

Question 1.21 - 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 you think the landlord would need to provide for each?
- (c) should there be other situations, such as the completion of condition works?

Question 1.22 - 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?

Question 1.23 - 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?

Question 1.24 - What opportunities do you think there are to combine enforcement of minimum energy efficiency standards with other action in the private rented sector?

Please explain your answers.

Section 10 - Raising the standard to an EPC D from 2022

112. We think that minimum standards have an important role to play in improving the living standards of tenants, supporting action to tackle fuel poverty and contributing to Scotland's climate change targets.
113. The proposals we've set out so far will improve the least efficient properties first. But if we are to meet the challenges above, these standards will need to be raised over time.
114. We know that landlords will want to have as much certainty as possible about the future requirements on their properties. In some cases it may be more cost effective to carry out a few more measures now to meet a higher standard than to make incremental improvements over a number of years.
115. And so we are setting out our intention that the standard would be raised to an energy efficiency rating of D at the point of rental from 1 April 2022, and that this would apply to all privately rented properties by 31 March 2025.
116. As set out in Section 3, the draft Climate Change Plan prioritises action to improve energy efficiency to 2025, at which point it assumes continued action on energy efficiency and increased focus on decarbonisation of the heat supply. We think it makes sense to raise the energy efficiency standard to the next EPC rating, a D, to these timescales as well. This would give the same three year timescale for improvements to a D as to an E – by setting out the increased standard now we think that this would encourage owners to make improvements to the D to “future proof” their properties ahead of the 2022-2025 timescale, which will mean that not all properties will need to be improved in that time.
117. The total number of dwellings estimated to require upgrading to an EPC of D from their current rating is 95,000 – 30,000 currently have a rating of F or G, and 65,000 have a rating of E. Of these 95,000 households, 53%, or 50,000 households, are estimated to be in fuel poverty. Raising the energy efficiency of their dwellings from E, F or G to an EPC of D would currently lift 12,000 households above the fuel poverty²² threshold, while the depth of fuel poverty of the remaining households would also be reduced.
118. The cost of meeting a D for the stock whose initial EPC is an F or G can be affected by whether landlords upgrade directly to an EPC D rather than first upgrading to an EPC of E and then D, because the least-cost package of measures in moving directly to a D may be different to the least-cost package of moving first to an E and then to a D. Setting a clear trajectory therefore gives landlords an opportunity to choose the most cost-effective way of achieving the higher level of energy efficiency which will ultimately be required. Furthermore, any disruption to landlord and tenant from upgrade work in the

²² A person is living in fuel poverty if, to heat their home to a satisfactory standard, they need to spend more than 10 per cent of their household income on fuel. <http://www.gov.scot/Topics/Built-Environment/Housing/warmhomes/fuelpoverty> . An independent panel is currently reviewing the definition of fuel poverty and is due to report in the summer.

worst performing properties can be minimised by doing the work to meet these standards in a single stage rather than spreading it over multiple stages.

119. Modelling work estimates that the average upgrade cost to raise these dwellings from their initial EPC of E, F or G to an EPC of D is £2,100, giving a total cost of £200 million. Assuming that landlords take advantage of knowing the trajectory to move directly to an EPC D at lowest cost, the additional upgrade cost of setting a trajectory to D rather than stopping at E is therefore around £170 million, at an average of £1,800 per dwelling.
120. Our modelling shows that most common measures in moving from an EPC E to an EPC D are low energy lighting, hot water tank insulation, floor insulation, cavity wall insulation and loft insulation. There is a somewhat greater uptake of more expensive measures: for example, solid wall insulation is modelled as being part of the least-cost package of measures for around 6% of dwellings.
121. The new standard would be introduced in the same way as the initial standard. It would apply at any change in tenancy from 1 April 2022, with owners of properties with an EPC below D having to have a minimum standards assessment for the property ahead of rental, and a period of six months to improve the property. And, all privately rented housing would need to have an EPC of D by 31 March 2025, with any property with an EPC below D to have had a minimum standards assessment carried out by 30 September 2024.
122. The fines and exceptions set out in Section 9 would also be retained. If a property with a valid exception to meeting the E standard is then rented out after 1 April 2022, there is no automatic assumption that the property cannot be brought up to the new standard, as the package of measures required may be different to those for an E and therefore not be covered by an exception. In these cases the owner would be expected to carry out the works required to bring the property up to the D standard, unless proof of a further exception is provided.
123. The £5000 cost cap will apply for works to improve the property to an EPC D. This would mean that, where the property has an energy efficiency rating of E, the owner would require to improve the property to a D within a maximum cost of £5000.
124. There may be situations where even after the backstop date for EPC E of 31 March 2022, the property only has an EPC of F or G, either because the minimum standards assessment recommended a lower level; there was an exception allowing a lower level than E by 31 March 2022 (under the technical, legal or excessive cost provision sets out in Section 9); or because the property has come into the private rented sector since 1 April 2022.
125. In these situations we propose that the cost cap would be cumulative, and would include the £5000 allowed for bringing the property up to E. This would mean that, where the property's EPC rating is F or G, the exception to the D standard would only apply where the total cost of works (including any works

previously done towards the E standard following a minimum standards assessment) is in excess of £10,000.

126. Our modelling suggests that around 2.2% of the 65,000 properties which currently have an EPC of E, i.e. around 1,400 properties, would cost more than £5000 to upgrade to a D. Moreover, around 14.9% of the 30,000 dwellings which currently have an EPC of F or G, i.e. around 4,500 properties, would cost more than £10,000 to upgrade to a D. We therefore estimate that around 5,900 properties, or 6% of the 95,000 dwellings which currently have an EPC below D, would not be upgraded to a D, although they would have to be install those upgrades which fall within the cost cap.

Consultation questions

Question 1.25 - Do you think that we should set out now the minimum energy efficiency standard after 2022? Yes/no/don't know.

Please explain your answer.

Question 1.26 - 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? Yes/no/don't know.

Please explain your answer.

Question 1.27 - When increasing the standard to EPC D, we propose that the cost cap will be £5000 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.

Question 1.28 - 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?

Section 11 – Raising the minimum standard beyond EPC D

127. The Strategic Working Group on Fuel Poverty has called for SEEP to have a milestone of EPC C by 2025 to significantly reduce energy efficiency as a root cause of fuel poverty.
128. We share the Group's aspiration to eliminate poor energy performance of a property as a driver of fuel poverty. But we think that there would be challenges in proposing a mandatory target of C as a minimum standard – both for cost and technical reasons, but also in terms of how this would fit with the longer term priorities of the Climate Change Plan.
129. To bring properties up to EPC levels higher than D, owners would need to consider more expensive and invasive measures. Research modelling for all private sector housing showed that the cost of improving EPC levels increased the higher the starting point of the EPC of the dwelling. The average cost of improving properties from EPC E to D was £1,100 compared to £600 to improve properties from EPC G to F. Although average costs for improvements beyond a D to are not available, it is reasonable to assume these would increase further, as more expensive measures would be required to meet this level.
130. For all private sector stock, the research modelling showed a higher proportion of more expensive measures were required for properties to reach a Band D compared to Band E, such as solid wall insulation, floor insulation, boiler upgrades and others. Although corresponding results are not available beyond a D, it is reasonable to assume that higher proportions of more expensive measures would be required to meet a level of C.
131. In considering whether to set a higher standard, we also need to fully understand the approach that is to be taken to decarbonise the heat supply, which will be set out in a future Climate Change Plan. We want to avoid, wherever possible, a situation where property owners upgrade their heat supply to comply with an energy efficiency standard, only to find out that this needs to be replaced by an alternative heating system only a few years later to meet the climate change targets. As the standard increases, these types of measures are more likely to be used.
132. As set out in Section 3, we propose to set the initial standard with reference to the energy efficiency rating to help towards Ministers' aspirations to remove poor energy efficiency as a driver of fuel poverty – but over the longer term it may be appropriate to consider linking a minimum standard to the environmental impact rating of the property (which provides an assessment of its carbon emissions), as this would reflect the direction of travel of the Climate Change plan.
133. Minimum standards will make an important contribution to achieving our climate change targets, but they are not the only tool available to Ministers in driving improvements. Through SEEP the Scottish Government is seeking to create

clarity and certainty for property owners and the market, and is committed to keeping under review the role and level of minimum standards in helping to achieve our objectives.

134. As set out in Section 13, we therefore propose that any increase in the standard beyond an EPC of D should be considered once there is further information on the longer term proposals for heat supply in the next Climate Change Plan, and once further work has been done to understand the feasibility of the measures needed to reach these standards. Policy decisions regarding long-term heat decarbonisation are not expected to be made by the UK Government until the next parliament i.e. from 2020.

Consultation questions

Question 1.29 - What do you think the main benefits would be of introducing a minimum standard higher than D?

Question 1.30 - 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?

Please explain your answers.

Section 12 - Assessing impact

135. As set out above, the introduction of the minimum energy efficiency standard will mean additional costs to owners of properties where the EPC is below the required standard, as they will need to get a minimum standards assessment; potentially a post-installation EPC to prove compliance; as well as the cost of the works. There will be no requirement to carry out works above a cost cap (see Sections 9 and 10), and financial incentives may be available for some of the work (Section 8 provides information on what is currently available).
136. There will be benefits to tenants in warmer housing which will be easier to heat, and this could be reflected in the attractiveness of the properties, thus benefiting landlords.
137. Local authorities will have a new enforcement role, although there are likely to be opportunities to build on existing processes for enforcement action within the private rented sector.
138. Certainty of work can benefit the workforce, and we would welcome views on the economic impacts in rural areas in particular.
139. To support this consultation we have carried out several impact assessments including a partial Business and Regulatory Impact Assessment (BRIA). As well as setting out that our modelling suggests average upgrade costs of £1,100, or £33 million in total, to meet the E standard, the BRIA also notes that upgrading privately rented dwellings to an E will produce average annual fuel bill savings of around £320, or £9.6 million in total.²³ Over a 40-year horizon, these fuel bill savings are projected to more than pay for the upgrade costs for the vast majority of dwellings, producing an average net benefit of around £5,200, or £155 million in total, in present value terms. In addition to the reduction in fuel bills, society will benefit from annual carbon savings of 0.04Mt.
140. Our modelling also estimates that upgrading dwellings from an E to a D will produce average annual fuel bill savings of around £180, or £17 million in total, as against an average upgrade cost of £1,800, or £170 million in total. Calculated over a 40-year horizon, the average net benefit in present value terms is projected to be around £1,100, or £102 million in total. In addition to the reduction in fuel bills, society will benefit from annual carbon savings of 0.08Mt.
141. As well as the partial BRIA we have also published an interim Equalities Impact Assessment. We welcome views on our assessment of the impact of the proposals which we set out in these documents, and encourage all relevant

²³ The costs used for assessing the net present value of the impact of regulations include an allowance for “hidden costs”, such as the hassle factor of clearing lofts, etc., as well as assessment and EPC costs, in addition to the costs of the measures themselves. An allowance is also made for the benefits to be lower than modelled, by applying “in-use factors” to cover the possibility of producing lower savings in reality than modelled, and comfort taking factor for the possibility of carbon savings being lower than modelled due to households taking some of the benefits of greater energy efficiency as greater thermal comfort. Full details on the methodology used are set out in the accompanying partial Business and Regulatory Impact Assessment.

parties to respond to the consultation. We will also consider whether there are specific impacts on the groups identified in these assessments, or on children or young people (to inform a Child Rights and Wellbeing Impact Assessment), as part of the consultation phase.

142. We also considered the requirements of a strategic environmental assessment (SEA) for minimum energy efficiency standards in private sector housing. The screening process determined that plans for minimum standards were unlikely to have significant environmental effects and that an SEA was not required²⁴.

Consultation questions

Question 1.31 - 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).

Question 1.32 - 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 this consultation document 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.

Question 1.33 - 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 consultation document may have on children's rights and welfare. We would particularly welcome comments from groups or charities that work with young people.

²⁴ Available at <http://www.gov.scot/Topics/Environment/environmental-assessment/sea/SEAG>

Section 13 – Reviewing the standard

143. The current SEEP consultation is seeking views to help design the programme’s monitoring and review framework, and this will drive the framework for monitoring and review of the minimum standards.
144. To monitor the implementation of new energy efficiency standards we will use information from the Scottish House Condition Survey, the EPC register and feedback from local authorities on the rates of compliance and the reasons for non-compliance or exceptions.
145. This information, along with the outcome of any monitoring and review processes within SEEP, we propose will be used to review the implementation of the standard at the E and D levels to identify if there are any improvements that could be made to the process, and to consider whether the standard should be raised further in future, within the context of the wider contribution of standards to the Climate Change Plan and the development of a new long term strategy for tackling fuel poverty.
146. Any decision to raise the standard after 2025 would be taken within the context of this monitoring and review process. As with the introduction of the standard to E and then D, we would look to provide a clear indication well in advance of any future standard to allow the various sectors to prepare.

Consultation questions

Question 1.34 - Do you have any suggestions for the monitoring and review framework?

Question 1.35 - Do you have any other comments on the proposals set out in Part 1 of this consultation?

Part 2 - Condition of Private Rented Housing in Scotland

Outline of this part of the consultation

This part of the consultation looks at condition standards for private rented housing. In this part we:

- provide a short background covering:
 - the Scottish Government's Manifesto commitment,
 - the work of the Common Housing Quality Standard Forum,
 - current standards for house condition (including the repairing standard for private rented housing) and
 - plans to consult on standards affecting housing generally later this year;
- seek views on proposals to minimise the impact of changes to the repairing standard by allowing landlords sufficient time to factor improvements into their planned investment in their stock;
- seek views on proposals to use existing routes of enforcement;
- seek views on changes to the repairing standard to bring it closer to the standard required in social rented housing:
 - meeting the tolerable standard (minimum standard for all housing),
 - safe kitchens,
 - food storage,
 - central heating,
 - lead free pipes,
 - safe access to common facilities,
 - safe and secure common doors, and
 - adding oil (and other fuels) in line with existing safety standards for gas and electricity;
- seek views on changes to the repairing standard to make homes safer by reducing the risks from scalding, electrocution, asbestos, unwholesome water, or the impact of noise, and also whether homes should have fridges and freezers (or the capacity for fridges and freezers) so that people can preserve food;
- seek views on extending the scope of the repairing standard applying to private rented housing to include some types of rented housing that are currently not included; and
- seek views on the impact of these proposals.

Section 1 – Background

147. The growth of the private rented sector in recent years from 170,000 homes in 2005 to 350,000 in 2015 has been impressive with the sector providing a valued housing option for many. Private tenants have of course as much of a right to live in warm, safe and good quality homes as residents of any other tenure of housing.
148. Scottish Ministers made a Manifesto commitment to consult on a national standard for private rented homes to ensure a good basic standard of accommodation. The repairing standard, introduced by the Housing (Scotland) Act 2006, already exists to provide minimum standards of accommodation. The means to enforce the repairing standard have been strengthened by the Housing (Scotland) Act 2014. Since the repairing standard was introduced there have however been changing expectations of what constitutes a safe and good standard of accommodation which in many cases landlords have responded to voluntarily. The changes proposed to the repairing standard in this consultation are intended to meet that manifesto commitment and ensure that every private tenant is able to live in a good quality house that meets a basic standard across a range of different elements.
149. For people to live in warm, high quality, low carbon homes, continuing action is necessary to improve the physical condition of housing in Scotland. The Scottish House Condition Survey shows a high level of disrepair in private rented housing.²⁵

Percentage of private rented sector housing	
Any critical disrepair	61%
Critical and urgent disrepair	37%
Critical urgent and extensive disrepair	4%
Below tolerable standard	5%

150. Many types of disrepair do not require immediate action, although the total costs of repair can increase if they are left untreated and may affect the health and safety of occupiers. In addition, disrepair can make it harder to meet targets for fuel poverty and climate change because they prevent or reduce the value of energy efficiency improvements.

²⁵ Scottish House Condition Survey: Key Findings 2015, Part 6: Housing Conditions, <http://www.gov.scot/Publications/2016/12/1539/336000>

Housing standards

151. There are several different standards applying to housing in Scotland. These have developed separately over time. These include:

- The **tolerable standard** is the basic minimum standard for all housing. It is a condemnatory standard – any house that is below tolerable standard is not acceptable as living accommodation. Local authorities have a general duty to secure that all houses in their district which do not meet the tolerable standard are closed, demolished or brought up to the standard within a reasonable period.
- The **Scottish Housing Quality Standard (SHQS)** is the minimum standard for social housing. Under the Scottish Social Housing Charter, social landlords are expected to ensure that the houses they rent comply with this standard. Part of SHQS is that social houses must meet the tolerable standard.
- The **Energy Efficiency Standard for Social Housing (ESSH)** which has a first milestone for social housing to meet by the end of 2020.
- The **repairing standard** (see next section).

Section 2 – The repairing standard

152. The repairing standard in the Housing (Scotland) Act 2006 applies to homes let under private rented tenancies. The legislation excludes agricultural tenancies of various sorts from the repairing standard. Private tenants can enforce the repairing standard by applying to the First-tier Tribunal for Scotland (Housing and Property Chamber). Local authorities also have powers to report breaches of the repairing standard to the Tribunal.

153. A house meets the repairing standard if:

- it is wind and watertight and reasonably fit for human habitation,
- the structure, rainwater goods, fixtures and fittings are in a reasonable state of repair and in proper working order,
- installations for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order,
- furnishings and appliances provided by the landlord are safe (this now includes a mandatory electrical safety inspection), and
- it has fire and smoke detectors and carbon monoxide alarms.

154. The following table summarises some key features of the repairing standard:

	Repairing standard
Regulation	Set out in legislation and landlords must have regard to building regulations and Scottish Government guidance
Relation to tolerable standard	Some overlap – e.g. structure must be in good condition but some elements, such as drinking water quality not included
Disrepair	Structure and exterior, installations, fittings and fixtures should be in a reasonable state of repair
Energy efficiency	Not part of the repairing standard but a minimum standard for energy efficiency in private rented housing is proposed (see Part 1 of this consultation)
Rights of complaint and appeal	Application to the Housing and Property Chamber of the First-tier Tribunal

155. Responses to the Scottish Government's consultation on the Sustainable Housing Strategy,²⁶ published in February 2013, supported changes to rental standards, including the repairing standard. Some stakeholders also identified safety issues that should be part of a rented housing standard, in addition to the physical condition and energy efficiency of homes. At the same time other respondents, particularly local authorities, were concerned about the practicalities of enforcement. There was also concern about the possible impact on the supply of private rented housing, and knock-on impact on the demand for social housing.

Common housing quality standard forum

156. The Scottish Government set up a Common Housing Quality Standard Forum in 2015 that saw contributions from a range of interested parties including from the private rented sector. The role of the Forum was to enable discussion with and between stakeholders on key issues affecting house condition including where it may make sense to better align existing standards. The views of stakeholders in the Forum has informed the proposals in this consultation. Papers from the forum are published online.²⁷

²⁶ Scotland's Sustainable Housing Strategy: Analysis of Responses to 'Homes that Don't Cost the Earth' Consultation, section 3, <http://www.gov.scot/Publications/2013/02/4438/5>

²⁷ Common Housing Quality Standard, at <https://beta.gov.scot/publications/common-housing-quality-standard-topic-papers/>

Section 3 – Consultations on condition standards

157. The Scottish Government is consulting on issues raised by the Common Housing Quality Standard Forum in two phases:

- This consultation on changes to the repairing standard including:
 - adding some elements that are currently expected in social housing by the Scottish Housing Quality Standard:
 - meeting the tolerable standard,
 - safe kitchens,
 - food storage,
 - central heating,
 - lead free pipes,
 - safe access to common facilities,
 - safe and secure common doors, and
 - safety of installations using oil and other fuels similar to existing safety standards for gas and electricity;
 - adding some additional safety elements in both standards which were identified by the Forum, to reduce the risks from:
 - scalding,
 - electrocution,
 - asbestos,
 - unwholesome water,
 - the impact of noise;
 - whether homes should have fridges and freezers (or the capacity for fridges and freezers) so that people can preserve food;
 - whether the repairing standard should apply to agricultural tenancies and some other kinds of lets; and
 - issues about costs, timing and enforcement.
- There will be a second consultation from winter 2017/2018 on other condition issues which affect housing. These are raised in the report on the Common Housing Quality Standard Forum²⁸ and may include:
 - changes to the tolerable standard,
 - whether there should be a new standard for common parts and interest applying to owners in tenements,
 - duties on owners in tenements to maintain housing, such as building reserve funds and mandatory building condition surveys.

²⁸ Common Housing Quality Standard: topic papers, <https://beta.gov.scot/publications/common-housing-quality-standard-topic-papers/>

Social housing standards

158. One of the aims identified by the Common Housing Quality Standard Forum was that standards for rented housing across tenures should be harmonised where appropriate. Some of the proposed changes to the repairing standard will bring in elements that are currently in the SHQS.
159. This consultation applies only to the private rented sector. We recognise that there are also some elements in the repairing standard that are not in SHQS, specifically:
- A higher standard for smoke and fire alarms
 - Carbon monoxide detectors, and
 - Five yearly electrical safety inspections.
160. Although these elements are not currently expected under SHQS, feedback from the Scottish Federation of Housing Associations and the Scottish Fire and Rescue Service suggest that most homes in the social rented sector would already comply with these elements. Because landlords will have had to carry out improvements to meet SHQS they will have had to install additional measures to comply with building regulations – so, for example, any new boilers installed to meet energy efficiency standards in SHQS or EESSH will have required installation of carbon monoxide detectors.
161. Consequently, harmonisation of rented housing standards will require changes to SHQS. The Scottish Government's view however is that changes to SHQS should be developed through separate and appropriate engagement with the social rented sector. We propose that any such discussions be undertaken after the current review of the Energy Efficiency Standard for Social Housing (EESH) is complete.

Section 4 – Proposals for changes to the repairing standard

Compliance with the tolerable standard

162. The tolerable standard is the minimum standard in Scotland for houses that are part of a building. The tolerable standard is a condemnatory standard. Houses that are below tolerable standard are unfit for human habitation and should not be used for living accommodation. Few houses fall below this standard – the most recent estimate is 5% of private rented homes were below tolerable standard in 2015,²⁹ but these should not be being used for living accommodation. Local authorities have a general duty to address housing that is below tolerable standard in their area. The repairing standard does not include the tolerable standard, although there is a considerable degree of overlap with elements that are required under the tolerable standard. The elements of the tolerable standard are set out in the following table.

Elements in the Tolerable Standard	Comparable element in the Repairing Standard
Structurally stable	Structure and exterior of the house in a reasonable state of repair
Substantially free from rising or penetrating damp	House is wind and water tight and in all other respects reasonably fit for human habitation; sanitary defects include dampness ³⁰
Satisfactory provision for natural and artificial lighting, for ventilation and for heating	Sanitary defects include lack of ventilation or lighting
Satisfactory thermal insulation (i.e. loft insulation)	No comparable element
Adequate piped supply of wholesome water available within the house	Sanitary defects include absence of adequate water
A sink provided with a satisfactory supply of both hot and cold water within the house	Installations in the house for the supply of water and water heating are in a reasonable state of repair and in proper working order; sanitary defects include absence of readily accessible water
A toilet available for the exclusive use of the occupants of the house and suitably located within the house	Installations in the house for sanitation are in a reasonable state of repair and in proper working order;

²⁹ Scottish House Condition Survey – Key Findings 2015, paragraph 230, <http://www.gov.scot/Publications/2016/12/1539/336000>

³⁰ Housing (Scotland) Act 2006, sections 13(2) and 70(1)

Elements in the Tolerable Standard	Comparable element in the Repairing Standard
A fixed bath or shower and a wash-hand basin, with a satisfactory supply of hot and cold water suitably located within the house	Sanitary defects include lack of sanitary arrangements or of other conveniences
An effective system for drainage and disposal of foul and surface water	Drains, gutters and external pipes are in a reasonable state of repair and in proper working order; sanitary defects include inadequate drainage of courts, yards or passages
The electrical wiring and components are adequate and safe to use	Installations in the house for the supply of electricity are in a reasonable state of repair and in proper working order
Satisfactory facilities for cooking of food	No comparable element
Satisfactory access to all external doors and outbuildings	Sanitary defects include inadequate paving

163. We propose that the tolerable standard should be made a part of the repairing standard so that it is clear that a private landlord should ensure that a house for rent must meet the most basic threshold of fitness for human habitation and to provide tenants with a right to apply for assistance to the First-Tier Tribunal (Housing and Property Chamber).

Consultation Question

Question 2.1 - 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? Yes/no/don't know.

Please explain your answer.

Safe Kitchens

164. In social housing tenants should be able to use the kitchen facilities safely, in particular –

- There must be sufficient space between the cooker and the sink to prevent the risk of electrocution
- The kitchen must be wide enough to cook without the risk of being jostled by someone else in the kitchen
- Tenants should be able to access cupboards and appliances safely

- There must be room around the cooker so that someone using it cannot be hit by an opening door

165. We think that it is reasonable to expect a similar standard for private rented housing, though this may be an area where some exceptions are needed – for example it may not be possible to extend the available space in galley kitchens in modernised tenements without undertaking major structural work.

Consultation Questions

Question 2.2 - Do you think that private rented housing should meet a minimum standard for safe kitchens? Yes/no/don't know.

Question 2.3 - If this is introduced, what exceptions (if any) do you think would be needed?

Food storage

166. There is a minimum standard for the amount of food storage space in kitchens in social housing. They must have at least 1 cubic metre of food storage space either in the kitchen itself or immediately adjacent to it. This space does not include fridges, freezers, open shelves, drawers and spaces under sink units. In some cases social landlords have struggled to meet this element of the standard, especially in older tenement blocks where kitchens have been built into fairly small spaces within the existing structure. This is another area where we think that some of the physical constraints on space in some older kitchens would have to allow for exceptions.

Consultation Questions

Question 2.4 - Do you think that private rented housing should have a minimum standard for food storage space? Yes/no/don't know.

Question 2.5 - If this is introduced, what exceptions (if any) do you think would be needed?

Central heating

167. The tolerable standard does not require homes to have central heating systems. The minimum requirement is an electric socket in each apartment capable of servicing a plug-in electrical heater.

168. In the private rented sector any heating system must be in proper working order, but the repairing standard does not require a private landlord to install a heating system in a house that was rented without one. Under the tolerable standard the minimum requirement is an electric socket in each apartment capable of servicing a plug-in heater. We do not think it is necessarily helpful to be too specific about the design of the heating system because there is a wide range of systems and a risk of unintentionally excluding future technological development. In addition it is possible for modern Passivhaus designs to provide efficient thermal comfort through insulation alone. However, we think it may be useful to specify that there should be a system of some sort. We suggest that this should be a fixed installation rather than portable appliances.

Consultation Questions

Question 2.6 - Do you think that private rented housing should have a fixed heating system? Yes/no/don't know.

Question 2.7 - If this is introduced, what exceptions (if any) do you think would be needed?

Lead free pipes

169. A supply of wholesome water is part of the tolerable standard. Lead can make drinking water unwholesome. The current permitted level under Drinking Water Quality Regulations is 10 micrograms of lead per litre.³¹ However, current thinking of the World Health Organisation is that no level of lead is safe. Social housing must be free of lead pipes from the boundary stop-cock to the kitchen tap (the supply pipe). In the private rented sector, we could aim for a similar standard. Alternatively, if "lead free" cannot be vouched or demonstrated at start of a tenancy, the quality of water could be tested by a requirement to carry out a water quality test before a new tenancy commences.

Consultation questions

Question 2.8 - Do you think that private rented housing should be free of lead pipes from the boundary stopcock to the kitchen tap? Yes/no/don't know.

Question 2.9 - 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? Yes/no/don't know.

³¹ Water Supply (Water Quality) (Scotland) Regulations 2001 (SSI 2001/207), Schedule 1, <http://www.legislation.gov.uk/ssi/2001/207/schedule/1/made>

Safe access to common facilities

170. Various elements of the standard for social housing cover access to bin stores, lifts, common drying areas etc, but these could be summed up in a general principle about being able to use common facilities safely. We propose to include a similar element in the repairing standard. In general these will not be the exclusive responsibility of a private landlord so this is another area where there would be a need for clear rules on exceptions.

Consultation Questions

Question 2.10 - Do you think that private rented housing should meet a minimum standard for **(a)** safe access and **(b)** safe use of common facilities provided with the tenancy? Yes/no/don't know.

Question 2.11 - If this is introduced, what exceptions (if any) do you think would be needed?

Safe and secure common doors

171. Entry systems for common front doors prevent casual loitering and vandalism and allow tenants to exercise some control over who gains access to the property. There is evidence that visible security measures, particularly at the point of entry, do discourage burglaries.³²

172. The Scottish Fire and Rescue Service recommends that thumb-turn locks are fitted to common doors in all above ground flatted properties to make it easier for residents to exit their building without having to find the appropriate key in the event of an emergency.

173. Any such measures would be subject to the agreement of other owners in a flat.³³

Consultation Question

Question 2.12 - Do you think that private rented housing should meet a minimum standard for safe and secure common doors? Yes/no/don't know.

³² Home security and place design: some evidence and its policy implications, <http://www.securedbydesign.com/professionals/pdfs/Home-Security-and-Place-Design.pdf>

³³ Note that under the Tenement Management Scheme a majority decision permits the installation of a system to allow entry to be controlled from each flat.

Thermostatic mixing valves

174. Children and older people are particularly vulnerable to scalding damage from hot water. Thermostatic mixing valves (TMVs) are installed behind taps to mix hot and cold water to a pre-set temperature. Building Regulations for new domestic buildings call for the temperature of hot water delivered to baths and bidets to not exceed 48°C. The installation of TMVs is one way that this can be achieved. TMVs are not currently required under the repairing standard.

Consultation Question

Question 2.13 - Do you think that baths and bidets in private rented housing should be fitted with thermostatic mixing valves (or similar measures)? Yes/no/don't know.

Residual current devices

175. A Residual Current Device (RCD) is a life-saving sensitive safety device that switches off electricity automatically if there is a fault. RCDs offer a level of personal protection that ordinary fuses and circuit-breakers cannot provide. Fitting one or more RCDs into the consumer unit (fuse box) can protect an occupier against electric shock and reduce the risk of electrical fires. Installation of an RCD is recommended as good practice in Scottish Government guidance to private landlords.³⁴

Consultation Question

Question 2.14 - Do you think that electrical installations in private rented housing should be fitted with residual current devices? Yes/no/don't know.

Asbestos

176. Asbestos is usually safe if in a good condition and sealed and undisturbed. If asbestos is removed or disturbed work should be carried out by qualified specialist contractors. Because of the dangers of carrying out work on properties with asbestos, we consider that there should be a general duty on all landlords to carry out surveys to ascertain if asbestos is present in houses and to ensure that any work carried out in an area where asbestos has been identified is carried out by a qualified specialist.

³⁴ Guidance on Electrical Installations and Appliances in Private Rented Property, paragraph 43, <http://www.gov.scot/Topics/Built-Environment/Housing/privaterent/landlords/repairing-standard/guidance-electrical>

Consultation Question

Question 2.15 - A qualified specialist must be employed for any work that involves removing or disturbing asbestos. Asbestos surveys ensure that a landlord knows when a qualified specialist must be used. Do you think that asbestos surveys should be carried out in private rented housing? Yes/no/don't know.

Private water supplies

177. Private water supplies (PWS) are those which are not provided by Scottish Water and are the responsibility of their owners and users. Approximately 42,000 properties in Scotland have a private water supply and we estimate that around 6,300 of those are private rented properties. The drinking water quality standards for PWS are set out in the Private Water Supplies (Scotland) Regulations 2006 which are enforced by local authorities.
178. PWS come from a wide variety of sources including surface water and the quality of these supplies is therefore very variable and generally much poorer than that of supplies provided by Scottish Water. The Drinking Water Quality Regulator for Scotland highlighted in her 2015 report that 14.7% of supplies were found to be contaminated with *E. coli*. At present, landlords of properties with a private water supply are not required to demonstrate the quality of the water or to carry out a risk assessment of the supply.
179. We propose to include a new provision which will require landlords to have a risk assessment for the private water supply and that the quality of the supply is checked at least annually to demonstrate that it meets the standards in the 2006 Regulations. This will then ensure that tenants are not exposed to health risks from a drinking water supply which does not meet the required standards.

Consultation Question

Question 2.16 - 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? Yes/no/don't know.

Cookers, fridges and freezers

180. There were 133,726 emergency food supplies given by food banks operated by the Trussell Trust in Scotland in 2015/16, and there are other food banks that are not included in the Trussell Trust's statistics. The UK Parliament is considering a Private Members' Bill which would require landlords to ensure that rented accommodation contains adequate appliances, equipment and utensils for cooking food, if they have a tenant in receipt of Universal Credit or Housing Benefit.³⁵ This Bill is a response to concerns that people who need to use food banks do not have facilities to cook or store it.
181. The repairing standard does not require landlords to provide cookers, fridges or freezers. Help with providing cookers, fridges and freezers is available from the Scottish Welfare Fund, administered on behalf of the Scottish Government by local authorities. This fund provided 19,370 grants for cookers and 17,880 grants for fridges and freezers at a total cost of £5.85 million in 2015/16.
182. The tolerable standard says that homes must have "satisfactory facilities for the cooking of food within the house." Scottish Government statutory guidance is that this does not require the presence of cooking appliances, but the house must have the capacity to support such activity safely. This means that there must be an appropriate power source and a space for a cooker.³⁶
183. We consider that there are three options:

Option 1: amend the repairing standard to include capacity for a fridge and freezer (i.e. space and appropriate power source). This would ensure that fridges and freezers could be provided to allow people to store food. We think that very few homes lack this capacity and that this would have minimal impact but it reinforces the central importance of everyone having a home where they can make their own meals.

Option 2: introduce a statutory requirement on private landlords to provide cookers, fridges and freezers for all tenants in receipt of Housing Benefit and Universal Credit which could have a significant impact on landlords. It would be cumbersome to administer because of the turnover of tenants, interferes with tenants' choice, could be vulnerable to abuse and is potentially very expensive. We consider that this impact would be disproportionate to the need.

Option 3: do nothing. This would be the position that neither of the previous options are appropriate.

³⁵ <https://services.parliament.uk/bills/2016-17/housingstandardspreparationandstorageoffoodbytenantsinreceiptofuniversalcreditorhousingbenefit.html>

³⁶ Implementing the Housing (Scotland) Act 2006, Parts 1 and 2: Advisory and Statutory Guidance for Local Authorities: Volume 4 Tolerable Standard – Chapter 12 Facilities for Cooking Food, <http://www.gov.scot/Publications/2009/03/25154751/13>

Consultation Questions

Question 2.17 - 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)? Yes/no/don't know.

Question 2.18 - Do you think that private landlords should be required to provide cookers, fridges and freezers (option 2)? Yes/no/don't know.

Oil (and other fuels)

184. Private landlords both have a general responsibility to ensure heating systems are working properly and that gas and electrical supplies are safe. We think that a reference to installations for the supply of oil and other fuels should be included in the repairing standard.

Consultation Question

Question 2.19 - 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? Yes/no/don't know.

Sound insulation

185. Noise from neighbours can have a significant impact on people. There is no requirement to provide noise insulation from internal sources of noise from other people, objects or activities in neighbouring properties. The amount of impact noise transmitted through floors increases considerably when soft floor covering such as a carpet is removed to be replaced by a hard floor finish.

186. There are statutory provisions on noise levels in antisocial behaviour legislation. These include prescribed levels of permitted noise and take account of the complexities of measurement and underlying noise factors.³⁷ However, if people are going about their normal day to day activity and the resulting noise problem is due to poor sound insulation then an abatement notice is unlikely to be served.

Consultation Questions

Question 2.20 - Do you think that the repairing standard should be amended to include flooring materials to reduce sound transmitted to other homes? Yes/no/don't know.

³⁷ Guidance on Noise Nuisance, <http://www.gov.scot/Publications/2004/10/20151/45699>

Question 2.21 - What (if any) other measures to reduce sound transmission should be considered?

Other elements

187. The following question is intended to capture views on any other elements that ought to be considered for inclusion in the repairing standard.

Consultation Question

Question 2.22 - Do you think anything else should be added to the repairing standard?

Section 5 – Extending the repairing standard

188. The following changes would extend the scope of the repairing standard to cover houses that are not currently required to meet it.

Agricultural tenancies

189. Currently, agricultural tenancies, rented crofts and small landholdings³⁸ do not have to meet the repairing standard. This is because a house on these tenancies is considered to be part of the “fixed equipment” on the farm and is not rented out to the tenant as a house in its own right – instead, it is factored into the rent for the farm as a whole. The tenant is usually responsible for maintenance and repairs to the house and the landlord is responsible for replacing worn fittings. It should be noted, that the repairing standard does not apply to work that a tenant is required to do under a tenancy (provided that the term of the tenancy is at least 3 years).

190. There are over 6000 agricultural tenancies in Scotland but we do not collect statistics on how many of these fall below the repairing standard. However, there is evidence that housing standards in some agricultural tenancies are much lower than in the private rented sector. Clearly there are a range of issues which need to be explored further prior to considering a minimum standard for condition. Ministers are, however, mindful of potential condition issues and are committed to undertake research.³⁹ This is likely to take place through public consultation in the first half of 2017.

Consultation Question

Question 2.23 - Do you think that agricultural tenancies, rented crofts and small landholdings should be subject to the repairing standard? Yes/no/don't know.

Holiday lets

191. The repairing standard applies to any tenancy except prescribed types of tenancies (such as secure tenancies for social tenants and agricultural tenancies). The legislation says that the definition of a tenancy “does not otherwise include any occupation under an occupancy arrangement,” and defines an occupancy arrangement as “an arrangement other than a lease under which a person is entitled, by way of contract or otherwise, to occupy any land or premises.”⁴⁰ A typical sort of occupancy arrangement would be an agreement to take in a lodger.

³⁸ As prescribed by s. 12 of the Housing (Scotland) Act 2006

³⁹ Official Report of the Rural Affairs, Climate Change and Environment Committee for 10 February 2016, <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10368&mode=pdf>

⁴⁰ Housing (Scotland) Act 2006, section 194

192. There is, however, a question on whether or not a holiday let is a tenancy or an occupancy arrangement. A holiday let cannot be an assured tenancy (the type of tenancy used for private rented housing) or the new private residential tenancies, but in both cases it is listed as a type of tenancy.⁴¹ The Courts in England have considered cases of contrived holiday lets to try to get round rent controls, especially in London, where a particular issue seems to have been with people having lets for “working holidays”. We understand that in some cases the Private Rented Housing Panel (now the First-tier Tribunal for Scotland (Housing and Property Chamber)) has held that a property let as holiday accommodation is subject to the repairing standard.
193. The present situation is unsatisfactory because we cannot give a definitive statement as to whether or not a holiday let is subject to the repairing standard. We would like to make this clearer.

Consultation Question

Question 2.24 - Do you think that we need to clarify whether holiday lets (or certain types of holiday lets) should be subject to the repairing standard? Yes/no/don't know.

⁴¹ Housing (Scotland) Act 1988, Schedule 4; Private Housing (Tenancies) (Scotland) Act 2016, Schedule 1. See also Rent (Scotland) Act 1984, section 23A(4).

Section 6 – Timing, costs and enforcement

Timing

194. We think that the changes proposed in this part of the consultation reflect the existing best practice of many landlords and that the associated costs are relatively low, in comparison to ongoing liabilities for repairs and maintenance, provided that sufficient lead in time is allowed for landlords to build improvements into scheduled maintenance and investment in property. There are some exceptions to this – for example, it could be costly for landlords of agricultural tenancies to bring them up to the existing repairing standard.⁴² The time required would vary for different elements. For example, private landlords were given one year to meet a requirement for carbon monoxide alarms whereas social landlords were given ten years to meet SHQS.
195. We think that the lead-in time should be at least 5 years. It may be appropriate to have different timescales for different elements, provided that this is not unduly complex.
196. For example, in paragraph 174 above we identify thermostatic mixing valves as a measure to improve safety in bathrooms. The measure is required in new buildings and the estimated additional cost for including them is £80 plus £10 a year in maintenance costs (prices in 2005).⁴³ This would be more expensive to install retrospectively. We estimate the notional life of a bath as 12 years,⁴⁴ over this period it may be reasonable to expect bathroom furniture to be replaced and for safety improvements to be installed at the same time.

Costs

197. The following table is an estimate of the financial impact of the elements of private rented housing standards on which we seek views in this part of the consultation. There is more detail about each of these proposed measures in the rest of this consultation. It should be stressed that these are very rough estimates and actual costs are likely to vary. It does, however, help to suggest where the cost impact is likely to be highest. The timeframe is the lead-in time to allow landlords to spread the costs and include work in planned maintenance and improvements. There were an estimated 350,000 private rented homes in Scotland as at March 2015. The actual cost would vary between properties, with no cost to homes that already meet the new elements of the standard.

⁴² See paragraph 190 above.

⁴³ Scottish Building Standards Agency, Final Regulatory Impact Assessment (Ref: 2005/47): Amendments to Guidance under the Building (Scotland) Regulations 2004 – Standard 4.9 (Danger from Heat), <http://www.gov.scot/Resource/Doc/980/0027528.pdf>.

⁴⁴ The Scottish Secure Tenants (Compensation for Improvements) Regulations 2002 (SSI 2002/312), Schedule, <http://www.legislation.gov.uk/ssi/2002/312/schedule/made>

198. For some elements the costs will vary between properties. For example, full installation of a new consumer unit protected by a residual current device could cost £300 but if an existing fuse box can accommodate the installation it could be brought up to standard for £100, so that the average cost will lie between these figures.

New element	Estimated cost per property (£)	Estimate of stock not currently covered	Timeframe (years)	Annual cost to Private Landlords (£m)
Tolerable standard	2000	5%	10	3.50
Safe kitchens	500	2%	10	0.35
Food storage	1,000	5%	10	1.75
Central Heating	4,000	1%	5	2.80
Lead free pipes	1,000	4%	5	2.80
Safe access to common facilities	500	5%	10	0.88
safe and secure common doors	50	25%	5	0.88
Thermostatic mixing valves	100	75%	12	2.19
Residual current devices	200	50%	5	7.00
Asbestos surveys	100	75%	10	2.63
PWS risk assessment	200	4%	5	0.56
Capacity for fridges/ freezers	200	2%	10	0.14
Safe oil systems	100	2%	5	0.14
Sound insulation	250	5%	5	0.88
Total				26.48

199. The chart below shows how these costs might be spread if the changes to standards are introduced from 2020. This would be different if elements are introduced at different times or if timescales for elements were changed – so that costs could be spread over a longer period and the annual impact reduced. If the annual costs are projected over the indicated timespans for each element in the table, the total cost over a twelve year period would be £194 million.

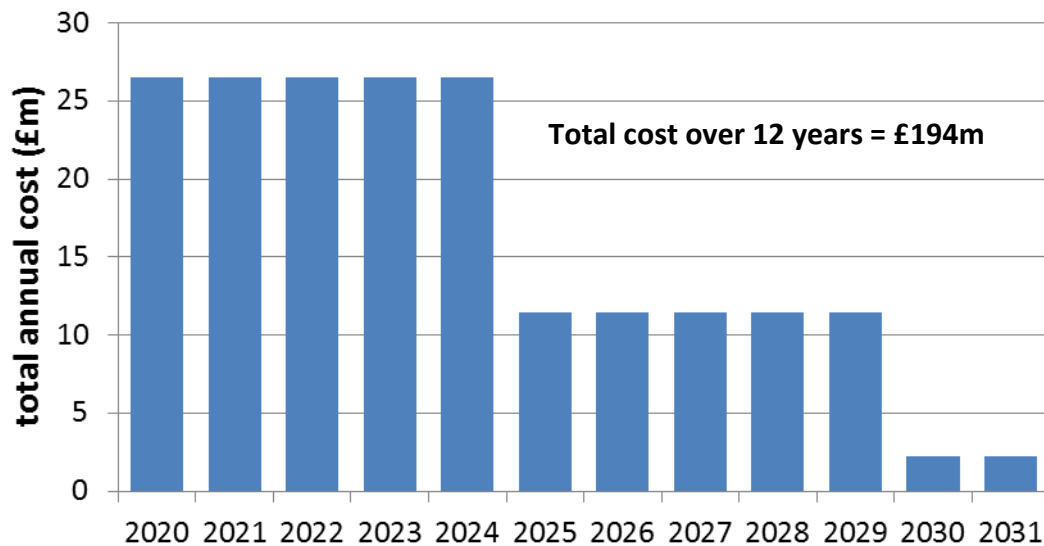


Chart: modelled costs for changes to the repairing standard

Consultation questions

Question 2.25 - Do you think that there should be a lead-in time of at least 5 years for landlords to comply with any changes to the repairing standard? Yes/no/don't know.

Question 2.26 - Do you think that different lead-in times for different measures would cause any difficulties for **(a)** landlords or **(b)** tenants? Please tell us what difficulties you think could be caused.

Alignment with other targets

200. It may be sensible to link targets for new standards to other targets driving work on existing houses, in relation to energy efficiency and climate change (providing that this is consistent with the minimum lead-in times needed for each element):

2020 Climate Change target of 42% greenhouse gas emission reduction⁴⁵
First milestone for the Energy Efficiency Standard for Social housing (EESH)⁴⁶

2022 Backstop for private rented housing to meet the EPC band E⁴⁷

2025 Backstop for private rented housing to meet EPC band D⁴⁸

2030 Step-change in provision of energy efficient homes⁴⁹

2050 Climate Change target of 80% greenhouse gas emission reduction⁵⁰
Second EESH milestone
Largely decarbonised heat sector⁵¹

Consultation Question

Question 2.27 - Do you think that the timetable for changes should be linked to wider government milestones on climate change? Yes/no/don't know.

⁴⁵ Climate Change (Scotland) Act 2009, section 2

⁴⁶ The Energy Efficiency Standard for Social Housing (EESH) - Background and guidance for social landlords, <http://www.gov.scot/Publications/2014/03/3154/0>

⁴⁷ See paragraph 51 in Part 1 of this Consultation.

⁴⁸ See paragraph 115 in Part 1 of this Consultation

⁴⁹ Infrastructure Investment Plan 2011, <http://www.gov.scot/Publications/2011/12/05141922/10>

⁵⁰ Climate Change (Scotland) Act 2009, section 1

⁵¹ Low Carbon Scotland: Meeting our Emissions Reduction Targets 2013-2027. The Second Report on Proposals and Policies (RPP2) – paragraph 5.2.3, <http://www.gov.scot/Publications/2013/06/6387/7>

Enforcement

201. The repairing standard can be enforced through the First-tier Tribunal for Scotland (Housing and Property Chamber). Private tenants can apply to the Tribunal for assistance. The Tribunal can issue a repairing standard enforcement orders (RSEO).
202. It is a criminal offence to fail to carry out work required under an RSEO or to enter into a tenancy whilst an RSEO is in place. An offence is only committed where the landlord fails to comply with the RSEO without reasonable excuse, and the landlord cannot be guilty of the offence until the First-tier Tribunal has decided that the landlord has failed to comply with it. However, the Tribunal can enforce an RSEO by restricting rent or by referring the case to the local authority to carry out work and recover costs from the owner. An outstanding RSEO is also noted in the landlord register and can be taken into account in the application of the “fit and proper person” test. We think these enforcement routes are sufficient. In Part 1 of this consultation we propose to introduce civil fines for non-compliance with the energy efficiency standard, we are not proposing any additional fines for other elements of the repairing standard.⁵²
203. The First-tier tribunal took over the functions of the Private Rented Housing Panel from December 2016. The following table shows that the number of applications to the Private Rented Housing Panel in relation to the repairing standard is relatively low. We expect applications to the First-tier Tribunal to increase in the future because of new powers for local authorities to raise breaches of the statutory repairing standard directly with the Tribunal on behalf of vulnerable tenants,⁵³ and because of greater security of tenure provided by new private residential tenancies.⁵⁴

Year	Number of applications in relation to the repairing standard
2012	232
2013	257
2014	273
2015	355

Consultation Question

Question 2.28 - Are the current enforcement routes via the housing tribunal appropriate for the proposed new measures in the repairing standard ? Yes/no/don't know.

⁵² See paragraph 96 in Part 1 of this consultation.

⁵³ Section 22 of the Housing (Scotland) Act 2006 as amended by section 25 of the Housing (Scotland) Act 2014 (1 December 2015 to 1 April 2016, depending on area) – 53 applications by local authorities were made between 1 December 2015 and 31 January 2017.

⁵⁴ Part 5 of the Private Housing (Tenancies) (Scotland) Act 2016

204. The repairing standard for private landlords contains an exception for work that cannot be done because the landlord cannot get consent, or where tenants are responsible for work,⁵⁵ and guidance for landlords also recognises other situations – for example, where a landlord has professional advice from an electrician about the placement of smoke alarms. We think that these existing provisions should be revised to specify exceptions where work is technically infeasible or the costs are unreasonably excessive, or where the necessary consents are withheld.⁵⁶ This would also be consistent with the existing rules on exceptions for social landlords.⁵⁷

Consultation questions

Question 2.29 - Do you think that rules on exceptional circumstances (where landlords are not required to comply with the repairing standard) should be revised to ensure situations such as technically infeasible work, unreasonable costs and withheld consents are covered? Yes/no/don't know.

Question 2.30 - Do you have any other views on the measures proposed in relation to:

- (a) costs
- (b) timing
- (c) enforcement?

⁵⁵ The exception for the tenants being responsible for the work only applies where that is by virtue of the terms of the tenancy and where that tenancy is for a period of not less than 3 years and the tenancy is not determinable at the option of either party within 3 years of the start of the tenancy.

⁵⁶ Similar exceptions for private landlords are also considered in relation to the proposed energy efficiency standard in Part 1 of this consultation, see paragraph 101 in Part 1 of this consultation.

⁵⁷ Guidance for Social Landlords on Exemptions and Abeyances in Connection with the Scottish Housing Quality Standard, <http://www.gov.scot/Topics/Built-Environment/Housing/16342/shqs/annexi>.

Section 7 – Assessing impact

205. Alongside this consultation document we have published a partial Business and Regulatory Impact Assessment, and an interim Equalities Impact Assessment. We welcome views on our assessment of the impact of the proposals which we set out in these documents, and encourage all relevant parties to respond to the consultation. We will also consider whether there are specific impacts on the groups identified in these assessments, or on children or young people (to inform a Child Rights and Wellbeing Impact Assessment), as part of the consultation phase.

Consultation questions

Question 2.31 - Please tell us about any potential economic or regulatory impacts, either positive or negative, that you feel the legislative proposals in Part 2 of this consultation document may have, particularly on businesses.

Question 2.32 - 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 2 of this consultation document 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.

Question 2.33 - 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 2 of this consultation document may have on children's rights and welfare. We would particularly welcome comments from groups or charities that work with young people.

Responding to this consultation

We are inviting responses to this consultation by 30 June 2017.

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You can view and respond to this consultation online at: <https://consult.scotland.gov.uk/better-homes-division/energy-efficiency-programme> You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 30 June 2017.

If you are unable to respond online, please complete the Respondent Information Form (see "Handling your response" below) to:

Private rented sector standards consultation
Scottish Government
1H South
Victoria Quay
Edinburgh
EH6 6QQ

It would be helpful to have your response by email or using the electronic response form. The electronic response form can be accessed at the following website address: <https://consult.scotland.gov.uk> . You can also email your response to SEEP-PRSstandards@gov.scot.

Handling your response

If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

Everyone who responds should be aware that the Freedom of Information (Scotland) Act 2002 applies to the Scottish Government. We would therefore have to consider any request made to us under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>.

If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

Private rented sector standards consultation
Scottish Government
1H South
Victoria Quay
Edinburgh
EH6 6QQ

Scottish Government consultation process

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk> . Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>).

Responses will be analysed and used as part of the decision-making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review;
- inform the development of a particular policy;
- help decisions to be made between alternative policy proposals; and
- be used to finalise legislation before it is implemented.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Next steps

The Scottish Government will review responses to the consultation and the issues raised during engagement with stakeholders to inform our proposals for bringing forward legislation to introduce a minimum energy efficiency standard for privately rented housing, and to amend the repairing standard.



Scottish Government
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