

**30 June 2017**

## **ENERGY EFFICIENCY AND CONDITION STANDARDS IN PRIVATE RENTED HOUSING: COMMENTS BY THE SCOTTISH PROPERTY FEDERATION**

### **Introduction**

The Scottish Property Federation (SPF) is a voice for the property industry in Scotland. We include among our members: property investors including major institutional funds, developers, landlords of commercial and residential property, and professional property consultants and advisers. We are happy for our comments to be published and shared within the public sector.

### **General Comments**

The Scottish Property Federation (SPF) recognises the importance of seeking to mitigate the impact of climate change for the wider public interest of this and future generations. Better and more efficient use of energy is a key part of this agenda and a part in which we feel the property industry has in recent years played a significant role. New build properties now see energy efficiency as a priority and indeed a key factor in making a new property attractive to purchasers or occupiers.

Members recognise the need for better use of energy by building occupants and for buildings themselves to be more energy efficient. Our members feel that it is also important to recognise the need to continue to encourage economic development if sustainable economic growth of the level that is desired by the Scottish Government is to be met. However, we would not wish institutional investors or others to be dissuaded from committing funds by the existence of statutory requirements in Scotland which are in fact, or just as importantly perceived to be, more onerous than those elsewhere in the UK.

We agree that many ways exist to make the PRS more efficient, effective and economic. The catalyst needed to achieve these improvements is for individuals and businesses to change their behaviour and to prioritise practical changes to the use and consumption of energy within their building. Without the means to effectively measure actual energy impacts, often these cost-effective improvements are not in plain sight to those empowered to make the necessary steps to capitalise upon them.

### **Key Issues**

- Our members are fully supportive of all efforts to improve standards in private rented property, including energy efficiency.
- The landlord-tenant relationship is complex and the landlord may have little control over the actual energy consumer, the tenant.
- The ultimate responsibility for improving the energy performance of the building sits with the property owner. However, landlords and tenants need to agree to implement improvements to their property and this may not be straightforward as some tenants may be reluctant to engage even if their landlord is willing.
- The proposals could have major implications across the PRS, particularly in the individual landlord end of the market.
- Further detail and clarification as to how the repairing standard would be enforced is required.

## **Response to Consultation**

The SPF's response to the specific questions in the consultation is contained in the attached Annex.

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**ENERGY EFFICIENCY AND CONDITION STANDARDS IN PRIVATE RENTED HOUSING: COMMENTS BY THE SCOTTISH PROPERTY FEDERATION****PART 1****Scope**

**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?

**SPF Comments**

It should be recognised at the outset that while property condition can influence and benefit energy efficiency, it is not the property itself which consumes energy, it is the occupant. Even brand new modern homes, now designed to very high standards of potential energy efficiency, may not actually perform efficiently because of the way they are used and the demands placed on them by their occupants. Therefore policy-makers need to be aware that even if a major programme of retrofit is embarked upon in the private rented sector, then Ministers and Officials may not necessarily achieve the outcome in terms of reduced energy consumption that they desire.

There is also a practical tension that is likely to arise between tenant demands of landlords for reasonable energy efficiency related improvements, or indeed of landlords seeking to make such improvements, but requiring access to properties that may be let. For example, the green deal initiative when it was introduced suggested that the benefits of improvements would be achieved through lower energy bills yet these are the responsibility of tenants. Landlords were, however, responsible for taking out the loan and this likely lead to the lack of take-up of the scheme by the sector and its ultimate demise.

**Linking the standard to the Energy Performance Certificate (EPC)**

**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:

please explain why; and please set out your suggestions for how we could set the standard.

**SPF Comments**

Our members have accepted the proposal for the use of EPCs. However, we advocated the use of some form of operational assessment of buildings in introducing the s63 commercial regulations. The as-designed performance of buildings often does not match the operational (actual) performance of the building due to inefficiencies of use, building services being ill-tuned to occupancy patterns, poor

commissioning and maintenance. Such issues would inevitably accompany energy efficiency improvements, and we see post-occupancy appraisal as a necessary accompaniment to any retrofit activity to ensure that it delivers upon its intentions. Post-occupancy appraisal of actual energy use also motivates and empowers individuals to take ownership of their energy use, which will be vital to ensuring cost-related energy efficiency measures are more likely to be considered.

There is currently a shortage of EPC assessors who can assess New Build Homes to the new regulations, so this additional work is likely to add further resource pressure. Prior to launch of the new requirements, our members are firmly of the view that an Operational Assessment should be in place for at least 3 months to give adequate time to train assessors and for landlords to understand requirements as well as an accredited training programme.

**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?

#### **SPF Comments**

EPCs could be problematic in Scotland due to climatic differences. EPCs benchmark the potential performance of a building envelope but do not address how the building is really used (Scottish EPCs do make provision for an assessment of actual energy consumption but this does not influence the actual grading of the building). The landlord-tenant relationship does not appear to have been considered yet it could have a major practical bearing on the successful introduction of behavioural incentives to reduce energy use and enhance energy efficiency measures within buildings.

We see post-occupancy appraisal as a necessary accompaniment to any retrofit activity to ensure that it delivers upon its intentions. Post-occupancy appraisal of actual energy use also motivates and empowers individuals to take ownership of their energy use, which will be vital to ensuring cost-related energy efficiency measures are more likely to be considered.

#### **Setting the level of the minimum standard**

**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.

#### **SPF Comments**

Our members agree with this proposal.

### **Bringing in the standard of EPC E at point of rental and then at a backstop date**

**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.

#### **SPF Comments**

Our members agree with this. However, they suggest a phased approach to minimize the disruption to those settled in properties and the potential implications of landlords with multiple properties facing expenditure at one single cutoff date. This should allow all parties to become aware of their rights and responsibilities and smooth the rental transition.

There are practical issues such as landlords wishing to avert voids in occupancy, not wishing to impose burdens on tenants for any substantive works and a fear of loss of cash flow. In such a fragmented sector, with many single property-owning landlords who will have mortgages to cover, amongst other costs, then even a month or two's shortfall in rent will be a cost too far. Larger scale landlords will also have costs to consider but generally may be in a better position to effect energy efficiency improvements and invest in property condition, than those who operate on a smaller scale.

It should be noted that the landlord-tenant relationship is complex and the landlord may have little control over the actual energy consumer, the tenant. The ultimate responsibility for improving the energy performance of the building sits with the property owner. However, landlords and tenants need to agree to implement it for their property / building unit and this may not be straightforward as some tenants may be reluctant to engage even if their landlord is willing.

**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.

#### **SPF Comments**

If this date is to be adopted there must be adequate notice and training provided to those who will undertake and be involved in the Occupancy Assessments. It is vital that there is a clear trajectory and timeline.

**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.

#### **SPF Comments**

Our members are of the view that this appears to be a reasonable timescale.

### **Meeting the standard when there's a change in tenancy after 1 April 2019**

**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.

### **SPF Comments**

This would appear to be a sensible approach. However, the timescale indicated at b) could potentially mean that a Landlord could let the property out providing works were completed within 6 months. Our members have concerns as to how this would dovetail with the provisions set out in the Private Housing (Tenancies) (Scotland) Act 2016. They have also raised concern that 6 months may be too short in many cases.

Meeting the standard in all private rented properties by 31 March 2022 (the "backstop date")

**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:

- d) 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.
- e) 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.
- f) 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.

### **SPF Comments**

The SPF fully supports increasing standards. However, there may be instances of tenancies lasting beyond this date and members suggest an allowance is made for exceptions where tenants specifically state they do not want the upgrade done at any time during their occupancy.

Some of our members have questioned how meeting the standard by the 'backstop date' would be monitored. We are aware that the Energy Savings Trust holds a record of dwellings sold or rented to a new tenant after 1 December 2008. However, there may be landlords with a long-term tenant who do not obtain an EPC and do not do improvements. Our main concern is how 'rogue' landlords will be policed.

### **Minimum standards assessment**

#### ***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.
- g) Please explain your answers, and provide alternatives where applicable.

### **SPF Comments**

Some of our members are of the view that £120 to £160 is too expensive, particularly for smaller landlords and suggest it should be similar to EPC cost and indeed if the EPC already provides recommendations to "improve the home's energy performance" they have questioned why the standards for an MSA cannot be met largely by currently qualified EPC operators?

One significant point of the cost of energy is the type of meter. If a landlord provides a property with a pay as you go meter, it doesn't matter how efficient the building fabric is, the tenant will still incur higher costs. Some of our members have suggested that there could be any weighting / identification of this on the EPC Assessment. In most cases the landlord might not be able to control this as it will be the utility company. Our members have expressed concern that any requirement to change meters is a cost which is not identified in the consultation.

**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.

### **SPF Comments**

As stated above the assessment should also include advice on occupier behaviour to ensure the investment in the improved property is used properly.

### ***Minimum standards assessor***

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

- h)** Do you think that a new role of a minimum standards assessor is needed? Yes/no/don't know.
- i)** If so, what additional skills beyond those of an EPC assessor would be needed?
- j)** How long do you think it would take to get this in place?
- k)** Who do you think should maintain the register of assessors?

Please explain your answers.

### **SPF Comments**

Yes. This should be a defined role, please see our comments at question 1.2. Our members are of the view that if its linked to the EPC then it should be the body maintaining the registers. If it should rest with the relevant Local Authority as a role it must be sufficiently funded and cannot be prohibitive in its charging / length of time to undertake.

### **Getting the work done**

**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?

### **SPF Comments**

Our members think that the Scottish Government needs to fund and co-ordinate the education of owners, tenants and landlords about the existing models and funding sources. Even the most experienced of property occupiers / owners / agents are becoming overwhelmed by consultations and initiatives, and confused about what is available and how it might be implemented.

It should be recognised at the outset that while property condition can influence and benefit energy efficiency that it is not the property itself which consumes energy, it is the occupant. Even brand new modern homes, now designed to very standards of potential energy efficiency, may not actually perform efficiently because of the way they are used and the demands placed on them by their occupants. Therefore, policy-makers need to be aware that even if a major programme of retrofit is embarked upon in the private rented sector, then Ministers and officials may not necessarily achieve the outcome in terms of reduced energy consumption that they desire.

Advice should be effective and proportionate. Given the relative resource constraints upon the majority of



landlords in the private rented sector, the majority of whom are single property landlords, it is difficult to avoid the presumption that local authorities and perhaps agencies will be called upon to offer advice, possibly to both landlords and tenants.

**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?

#### **SPF Comments**

Once management efficiencies and waste reduction strategies in energy use have been implemented, there will be a need to carry out some retrofit in rented properties. This, however, raises the issue of who pays versus who benefits. Various supportive structures are emerging which generate roadmaps of how improvements might be paid for but the fact remains that the usual rental period is around six months and landlords often calculate payback on energy efficiency improvements over a short timescale. What may be required is a change in the variables of cost/benefit equations – namely incentivising improvements via fiscal means.

Some members have also suggested targeting grant funding to the worst performing properties and tenants most in need. They also suggested tax benefits for costs incurred and refunds of costs to compliant landlords.

It is clear that landlords have not taken advantage of all available means of supporting investments in energy efficiency measures. The reasons for this shortfall in take up will vary but feedback from members suggests practical issues such as wishing to avoid voids in occupancy, not wishing to impose burdens on tenants for any substantive works and cash flow. It should be recalled that with such a fragmented sector, with many single property landlords who will have mortgages to cover, amongst other costs, then even a month or two's shortfall in rent will be a cost too far. Larger scale landlords will also have costs to consider but generally may be in a better position to effect energy efficiency improvements and invest in property condition, than those who operate on a smaller scale.

A key issue is that there is no improvement in the capital value of property as a result of work to improve energy efficiency. This link is not yet proven by the RICS. However, should the RICS firm up its evidence and regulatory guidance to its members on links between valuation and energy efficiency, then this position may change.

Clearly there is an enormous challenge to improve property condition and energy efficiency across the PRS in general. The nature of the sector will not make it easy to address this problem.

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

#### **SPF Comments**

There is a risk that lack of capacity could lead to poorly installed products many of which have not been tested overtime could lead to significant housing maintenance and repair costs in the future i.e. poor ventilation and damp issues.

Members have real concern on the capacity of the contractors to meet the aims of completing the work to meet Band E by 2022. There is a risk that there will be insufficient numbers of appropriately trained industry workers available to carry out the work in the timescales that the legislation sets out. High quality of workmanship is essential, previous Green Deal initiatives lead to very questionable practices in the real world.

**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.

#### **SPF Comments**

Yes. It is vital that the practical difficulties in retrofitting these properties, where there is often conflicting policies and regulation, is fully understood.

**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.

#### **SPF Comments**

Many ways exist to make the PRS more efficient, effective and economic. The catalyst needed to achieve these improvements is for individuals and businesses to change their behaviour and to prioritise practical changes to the use and consumption of energy within their building. Measures should first ensure that existing systems etc are operating to their maximum efficiency before imposing capital expenditure for enhancements. Without the means to effectively measure actual energy impacts, often these cost-effective improvements are not in plain sight to those empowered to make the necessary steps to capitalise upon them.

#### **What happens if the property doesn't meet the standard?**

**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?

#### **SPF Comments**

There have been problems in relation to internal controls in the past e.g. Edinburgh Council. Members have concerns that such powers may be a cost too far for some homeowners, resulting in an increase in repossessions and the further negative consequences of the knock-on impact on the markets and lenders. There is also a risk that resource stretched local authorities will not have the capacity to carry out this work

**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?

#### **SPF Comments**

No. As already stated the landlord-tenant relationship is complex and the landlord may have little control over the actual consumer of energy, the tenant. The ultimate responsibility for improving the energy performance of the building sits with the property owner. However, landlords and tenants need to agree to

implement it for their property / building unit and this may not be straightforward as some tenants may be reluctant to engage even if their landlord is willing.

**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.

#### **SPF Comments**

No. Please see our response to question 1.19

#### **Enforcement – considering exceptions**

**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?

#### **SPF Comments**

Our members agree that flexibility should be built into the system.

**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?

#### **SPF Comments**

No comment

**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?

#### SPF Comments

As already stated there is a risk that resource stretched local authorities will not have the capacity to carry out this work.

**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.

#### SPF Comments

No comment

#### Raising the standard to an EPC D from 2022

**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.

#### SPF Comments

Our members are of the view that there should be a clear timeline and trajectory to allow them to be aware of what their obligations will be.

**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.

#### SPF Comments

As stated at question 1.14 some of our members have raised concern that there will be insufficient capacity to meet the aims of completing the work to meet Band E by 2022 and therefore it may be necessary to defer the aim to reach D until after E is successfully complete within the timescale to ensure high quality workmanship.

**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.

### SPF Comments

Many properties will be in Band D having carried out the transition and those in Band E are more likely to be difficult to upgrade cost effectively.

**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?

### SPF Comments

This does not make sense. If there are reasons that a property is exempted from meeting E it is unlikely to be able to make D standard.

### Raising the minimum standard beyond EPC D

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

### SPF Comments

Our members are of the view that it is important to assess the success of upgrade to E before committing to further targets beyond D. We agree that many ways exist to make the PRS more efficient, effective and economic. The catalyst needed to achieve these improvements is for individuals and businesses to change their behaviour and to prioritise practical changes to the use and consumption of energy within their property. This is often easier said than done and unfortunately there are often significant barriers to such action. Chief among these is the difficulty of measuring whole building energy use due to the split responsibilities and incentives in energy purchasing and use as between landlord and tenant. As already stated, without the means to effectively measure actual energy impacts, often these cost-effective improvements are not in plain sight to those empowered to make the necessary steps to capitalise upon them.

**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.

## **SPF Comments**

Ambition to upgrade above D should be a review carried out once the success of upgrading to E is complete. By 2022 renewable energy may well be produced on a much more local basis and changes in technology may offer other means of achieving better outcomes than what are currently under review.

This also raises the issue of who pays versus who benefits. Various supportive structures are emerging which generate roadmaps of how improvements might be paid for but the fact remains that the average rental period is around six months and landlords often calculate payback on energy efficiency improvements over a short time horizon. While such roadmaps (e.g. green leases) are helpful, what may be required is a change in the variables of cost/benefit equations – namely incentivising improvements via fiscal means. Once again education is important.

### **Assessing impact**

**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).

## **SPF Comments**

Scotland's economy remains firmly in 'the slow lane' and cost is understandably a markedly more important factor in considering, renewable or energy efficiency building improvements than perhaps would have been the case previously. A minimum standard could seriously damage an already fragile market as home owners seek to sell on older properties. This would also affect the new build market as the sellers of older properties try to move to new properties or take advantage of part-exchange. Banks could also be affected by a rise in repossessions from home owners who are unable to meet the costs. Universally imposed standards would have the universal effect of immediately reducing values – causing problems for borrowers and lenders alike.

Retrofitting of existing stock will be challenging for a number of reasons. The impact will be felt most by the small landlords, assessors and local authorities. New Build to Rent developments should be built to the required standards anyway and landlords with existing portfolios will be better able to manage any improvement programme.

There are a number of landlords with small housing portfolios and thus small margins of profit with which to undertake costly improvements. Very few, will have access to funds to allow them to carry out major repairs. The range of measures likely to be recommended by EPCs will include expensive proposals (like boiler replacement), which would be an issue for such landlords. Without financial support, small landlords will have to shoulder a significant impact to their cashflow. For most, the rent is likely to cover the mortgage, with a small surplus to cover reactive repairs and maintenance.

There is also the difficulty of carrying out repairs with sitting tenants. Small landlords will also lose out on essential rental income for as long as a property is empty, pending completion of works. There is a strong risk that such landlords would be forced to sell their properties, which will reduce supply, and put even

greater pressure on rent levels.

The worst properties are likely to be those held by 'rogue' landlords that already operate 'under the radar', and are likely to continue to do so.

**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.

#### **SPF Comments**

No comment

**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.

#### **SPF Comments**

No comment

#### **Reviewing the standard**

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

#### **SPF Comments**

No comment

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

#### **SPF Comments**

No comment

## **PART 2 Condition of Private Rented Housing in Scotland**

### **The Repairing Standard**

**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.

#### **SPF Comments**

Our members fully supportive of all efforts to improve standards in private rented property, including energy efficiency. Our members have therefore asked for further detail and clarification as to how the repairing standard would be enforced. The proposals could have major implications across the PRS, particularly in the individual landlord end of the market.

All properties should be safe and meet a minimum standard, which should be built into any standard. However, a landlord should not be asked to change a kitchen purely to meet these standards for aesthetic reasons.

### **Proposals for changes to the repairing standard**

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

#### **SPF Comments**

Our members are firmly of the view that a clear definition of safe kitchens should be provided in any minimum standard. The private rented sector comprises a range properties without a common specification. We would like more detail and evidence from the Scottish Government on the research it has done around the age, condition and size of properties in the private rented sector before introducing a one-size fits all policy.

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

#### **SPF Comments**

Please see response to question 2.2

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

#### **SPF Comments**

A property should have guidance but our members are of the view that the choice should rest with



the tenant.

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

#### **SPF Comments**

No comment

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

#### **SPF Comments**

Our members have asked for a clear definition of what is viewed as a Fixed Heating system.

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

#### **SPF Comments**

No comment

**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.

#### **SPF Comments**

Our members support this. However, for this to occur in tenements of mixed tenure of both renting and owning then all properties would need to agree to this.

Some of our members have suggested that the point of ownership of mixed tenure, lead served properties, should be reviewed with Scottish Water who should be responsible for upgrading potable supplies to an entry point to each property.

**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.

#### **SPF Comments**

Our members are concerned that it would be difficult to establish if there is an issue with lead to the property or in the greater distribution network. They have questioned how many instances of lead poisoning due to water contamination have been recorded across Scotland in last 4 years and how

many of these lived in rented accommodation in order to assess the extent of the risk.

**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.

### **SPF Comments**

Again, our members have indicated that a definition of this is necessary and have indicated that it would be difficult to control common areas. There should be restrictions imposed for instance as result of design or type of building and its listed status. There is also a risk that tenements accessed by Victorian Stairs with a single handrail on one side are unsafe and that traditional spiral tenement stairs are deemed unsafe.

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

### **SPF Comments**

Please see our response to question 2.10.

**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.

### **SPF Comments**

No comment

**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.

### **SPF Comments**

Most baths have two taps, which cannot be fixed with mixing valves. This would therefore require the replacement of the whole bath with a single tap mixer.

**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.

### **SPF Comments**

Yes. As part of the current inspection and good practice regime.

**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.

### **SPF Comments**

If communal work is required or work which impacts on common areas this should only be done if carried out co-operatively with all owners.

**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.

### **SPF Comments**

No comment

**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.

### **SPF Comments**

It may be that the tenant will prefer to use their own white goods rather than having to arrange for storage during the tenancy.

**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.

### **SPF Comments**

It may be that the tenant will prefer to use their own white goods rather than having to arrange for storage during the tenancy.

**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.

### **SPF Comments**

Yes

**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.

**SPF Comments**

No

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

**SPF Comments**

No comment

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

**SPF Comments**

No comment

**Extending the repairing standard**

**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.

**SPF Comments**

No comment

**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.

**SPF Comments**

People have a choice whether to let/stay in holiday lets including caravans, lodges, bothies, in these, and in most cases, fuel costs are included in the rent. Our members are therefore of the view that

these types of properties should not be included.

### **Timing, costs and enforcement**

**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.

### **SPF Comments**

Yes

**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.

### **SPF Comments**

Yes. One size does not fit all and therefore there is a requirement for flexibility in the processes.

**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.

### **SPF Comments**

Yes. Please see our earlier comments at question 1.30 on a requirement for review of changes in technologies, climate etc which may mean different decisions will be made 10 years from now.

**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.

### **SPF Comments**

Yes. However, it is likely that the First Tier Tribunal could be overwhelmed given the additional pressures placed on it by the Private Housing (Tenancies) (Scotland) Act 2016, which is a strong concern to our members.

**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.

### SPF Comments

Yes

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

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

### SPF Comments

No comment

### Assessing impact

**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.

### SPF Comments

Our members have strong concerns that the costs set out in the BRIA for repairs falls far short of the likely sums involved.

Retrofitting of existing stock will be challenging for a number of reasons. The impact will be felt most by the small landlords, assessors and local authorities. New Build to Rent developments should be built to the required standards anyway and landlords with existing portfolios will be better able to manage any improvement programme.

There are a number of landlords with small housing portfolios and thus small margins of profit with which to undertake costly improvements. Very few, will have access to funds to allow them to carry our major repairs. The range of measures likely to be recommended by EPCs will include expensive proposals (like boiler replacement), which would be an issue for such landlords. Without financial support, small landlords will have to shoulder a significant impact to their cashflow. For most, the rent is likely to cover the mortgage, with a small surplus to cover reactive repairs and maintenance.

There is also the difficulty of carrying our repairs with sitting tenants. Small landlords will also lose out on essential rental income for as long as a property is empty, pending completion of works. There is a strong risk that such landlords would be forced to sell their properties, which will reduce

supply, and put even greater pressure on rent levels.

The worst properties are likely to be those held by 'rogue' landlords that already operate under the radar, and are likely to continue to do so.

**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.

#### **SPF Comments**

No comment

**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.

#### **SPF Comments**

No comment

**What more can be done to support and encourage private landlords to invest in:**

- a. maintaining and improving their properties condition; and**
- b. the energy efficiency of their properties?**

#### **SPF Comments**

No comment