

# IMPROVING THE ENERGY PERFORMANCE OF PRS HOMES – CONSULTATION RESPONSE TEMPLATE



## Written Evidence Submitted by the British Property Federation

### British Property Federation

The British Property Federation (BPF) represents the real estate sector – an industry which contributed more than £100bn to the economy in 2018 and supported more than 2 million jobs. We promote the interests of those with a stake in the UK built environment, and our membership comprises a broad range of owners, managers, and developers of real estate as well as those who support them. Their investments help drive the UK's economic success, providing essential infrastructure and creating great places where people can live, work, and relax.

The BPF has a committee dedicated to sustainability issues, reflecting the priorities that its leading members place upon issues of resource efficiency, environmental enhancement, and climate change. We also convene 19 more committees touching on real estate sectors and issues spanning residential property, build to rent, and residential management, to name but a few. In response to the Department for Business, Energy & Industrial Strategy (BEIS) consultation on improving the energy efficiency of privately rented homes, we have sought views from across the private rented sector (PRS).

Please see **Question 1** for a summary of our overall response.

### **BPF Comments relating to questions posed within the BEIS consultation document (Question numbers directly relate to those within the [consultation document](#))**

#### Introduction

***Question 1:** We would welcome views on possible impacts of the policy on the size of the PRS sector, the effect this could have on vulnerable households, and suggestions to mitigate this effect where it does occur, including any evidence.*

1. Our answers to the questions contained within this consultation largely relate to existing and older building stock, for which the pathway to an EPC C is varied and differs based on the types, sizes and ages of these assets. For new build PRS housing, EPC C (and indeed A and B) is achievable and is being achieved by our members, who are institutional investors, owners and operators of private rented sector (PRS) housing. Therefore, few issues are anticipated with regard to the compliance of new build PRS housing to the upper EPC standards.
2. The BPF and its members are wholly supportive of the Government's intention to improve the energy efficiency of the PRS, with the eventual aim of decarbonising housing stock to comply with net zero emissions by 2050. Our members own and operate a variety of homes – from new build PRS such as Build to Rent, to older asset types including blocks of flats and semi-detached housing. Many of our members are also facing rightful pressure from investors to improve energy efficiency and decarbonise housing stock to achieve environmental, social and governance (ESG) investment strategy outcomes. BPF therefore **supports the Government's preferred policy option** set out in this consultation, **subject to minor amendments** outlined in the remainder of this answer and expanded on throughout our submission.

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## PROPOSED AMENDMENTS TO THE PREFERRED POLICY OPTION

3. **Pathway to Net Zero:** It is imperative that the Government set out the pathway to net zero that contextualises the role of the EPC framework. The current proposal only sets out the next hurdle for the PRS to achieve, without any further forward vision beyond that set target.
4. Under the current proposal, PRS landlords will have to retrofit to achieve an EPC C by 2025/2028 depending on tenancies. Without knowing when their properties must achieve an EPC B or an EPC A (and indeed anything beyond the EPC framework that, in its current form, does not achieve net zero emissions), landlords are forced to retrofit to meet a standard that then becomes inferior as the new standard is set. In practical terms, this means that a landlord could make improvements to a property to meet EPC C that are then required to be replaced **again** in order to achieve an EPC A or B by a future date not yet set.
5. The lack of a pathway increases the chance of abortive cost and work and has the potential to generate materials waste. It also means that landlords have no incentive to expedite their property's grade to an A or a B ahead of deadlines. If landlords had a clear pathway to an EPC grade A – and a void came along, they could weigh up the pros and cons of completing all retrofit works now to achieve the highest EPC grade ahead of time, versus multiple, more complicated retrofitting exercises closer to the compliance date. The lack of a pathway carries the above risks and actually works against achieving a higher standard across the PRS than otherwise would have been achieved under the proposed non-pathway scenario.
6. **Accounting for the diversity of housing stock:** Any EPC minimum standard must take into account the diverse range of asset types within the PRS. Not all buildings are the same and this means that the retrofitting required to meet EPC standards varies from a few simple installations to an essential whole-home retrofit for homes that are older and were built to outdated standards. This is particularly the case for listed buildings, which are often extremely difficult to retrofit to achieve EPC standards and are then resolved to seeking an exemption.
7. Our members who own and operate listed buildings want to improve the energy efficiency of their stock. They do not want to seek an exemption – but without an asset-specific approach to regulation that aligns planning regulations with the EPC framework, they are often left with no choice. Extra consideration should be given to listed buildings and whether an alternative approach that focuses on energy-in-use is better suited for them.
8. For some asset types, the ability to conduct works within the £10,000 cost cap will still remain challenging and exemptions will be required. Members are also of the view that the additional costs of rehousing tenants whilst works are undertaken should be included in any cap.
9. **Timeframe for compliance:** Our members are professional landlords and therefore work to retain tenants for as long as a tenant wishes to remain in their home. This results in a number of tenants continually renewing their leases, and therefore not vacating the property. It is foreseeable that between now and the proposed 'new tenancies' EER C date in 2025 that a small but significant number of tenancies will be renewed without a void (vacating) occurring to conduct retrofitting works. In order to minimise disruption and maximise the possibility of all tenancies coming to a natural conclusion before a required EER C, renewals should not count as 'new tenancies' and should be required to meet the minimum EER C as 'all tenancies' by 2028.

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10. **Incorporating Fabric First:** The types of retrofits recommended (such as the fabric-first approach) may not work for some asset types, such as older blocks of flats which could be deemed uninhabitable due to minimum room size standards if fabric first solutions such as external wall insulation are mandated. It is likely that under the current preferred policy, PRS landlords who are required to install fabric-first approaches and do not have the certainty of a 30-year look-ahead to the net zero target at 2050, **will dispose of their older stock**. A proportion of this stock will then fall into the hands of owner-occupiers, and thus out of the scope of the Government's ability to regulate energy efficiency improvements – a counterintuitive result. Any mandating of preferred retrofit solutions must take into account the diversity of housing types within the PRS and adequately cater for those types that are not physically able to adhere to a fabric first approach.

### 11. We therefore propose the following key amendments to the Governments proposals:

- a. That an EPC C by 2025 for new tenancies and 2028 for all tenancies **is implemented alongside a pathway strategy that outlines, at a minimum, indicative dates for achieving EPC A and B** and any additional or alternative regulations that will be required to adhere to net zero emissions by 2050.
- b. That tenancy renewals are included in the 'all tenancies' category because renewals do not constitute a void and therefore the property remains occupied. Whilst not widespread, there is a sizeable number of tenants who are very happy and stable in their PRS homes and choose not to move for a decade or longer. This poses issues for landlords trying to conduct retrofitting works prior to 2025. By 2028, it is expected that a greater number of these properties will have experienced a void and thus works will be completed.
- c. That BEIS work with the industry to develop tailored support measures for the current proposal for varying asset types within the PRS. This could include:
  - i. **A flexible retrofitting approach** whereby fabric first is still the preferred option, but allowances are made for properties where this is deemed unviable.
  - ii. **To support i. above, the development of retrofitting guidance** that pertains to different asset types such as older blocks of flats and listed buildings, indicating best retrofitting options (alternative approaches to fabric first) to achieve maximum energy efficiency savings.
  - iii. **Identification and rectification of planning system alignments** to ensure that energy efficiency works can be sympathetically conducted for listed properties, which currently face regulatory hurdles for retrofitting solutions as simple as double glazing.
- d. That BEIS work with MHCLG to clarify the following matters:
  - i. **Regulated Tenancies.** Whilst it is our understanding that Regulated Tenancies will be included under 'all tenancies' and require an EPC C by 2028, consideration needs to be given as to how this will work practically given that there is no 'trigger point' (i.e., new lease/tenants) requiring certification. In addition, the demographics of tenants in Regulated Tenancies should be considered when applying the EPC framework to this tenancy type (further detail can be found in our answer to question 2).
  - ii. **The ability to conduct works as a leaseholder/freeholder.** There remains a lack of clarity as to how retrofitting works may be permissible for leaseholders who require freeholder consent.

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This is a critical issue and may prevent widespread retrofitting works from being undertaken, and risk large numbers of non-compliance.

12. Whilst we have made more detailed representations on the alternative dual metric policy proposal within this submission, we would take this opportunity to reiterate the potential consequences of promoting the use of EIRs as a route to compliance. Namely, that the installation of systems upgrades, in particular, through electric heating, could have implications for those affected by fuel poverty, given the higher running costs.
13. Finally, the onus for EPC compliance that is placed on the PRS must also be placed on owner occupiers if the United Kingdom is going to decarbonise its entire housing stock and meet our national net zero emissions targets by 2050. We note that the government is separately considering regulations relating to owner occupied properties and we would strongly support such action.

**Question 2:** *Do you foresee any impacts for protected groups? Please provide evidence to support your answer.*

14. We have, elsewhere in our submission, outlined some of the complications associated with carrying out improvement works in properties with Regulated Tenancies. We would add to these representations, that the age profile of those in such properties is on average older than the homes leased through Assured Shorthold Tenancies (ASTs). The average age of residents in Regulated Tenancies will typically be late seventies, with the youngest now in their fifties. These residents are likely to be more vulnerable and have a range of disabilities related to their age. Many will also be recipients of Local Housing Allowance. Older tenants often do not wish for intrusive works to be carried out. They tend to be accustomed to the properties in which they live and can find significant change to be distressing. The tenants are also inherently aware of the potential impact of improvement works on their rent payable.
15. Given the circumstances outlined above, and in relation not only to Regulated Tenancies, but any circumstance in which residents are considered vulnerable, we believe further thought should be given to the timescales for adapting such properties, and further, treating these limited circumstances separately to ensure the properties are improved in the most sensitive way to minimise impact on residents.

**Question 3:** *We would welcome views on any possible long-term impacts of COVID-19 that could impact on making the required energy efficiency improvements from April 2025 and suggestions to mitigate this effect where it does occur, including any evidence.*

16. The long-term impacts of COVID-19 are hard to comprehend. Whilst we have no evidence to suggest that COVID-19 has impacted entrants into trade professions, it may be worth exploring the roll of the pandemic on the number of entrants into relevant trades and the compounding impact of Brexit and existing skill shortages. An adequate skills pipeline must be in place to ensure that there is enough labour to carry out widespread retrofitting.
17. Whilst EPCs do not assess and certify the small energy loads associated with a property, it is worth noting that the current trend towards greater homeworking will have implications for small and large energy loads. This may have implications for the suitability of the EPC methodology, which does not currently assess operational energy performance. We would link this consideration to a broader point within our submission that operational energy assessments may yield better results.

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## Chapter 1

**Question 4:** *Do you agree with the government's preferred new target of EER C as a minimum energy performance standard in the PRS?*

18. Yes. In the absence of a framework that focusses on in-use energy ratings, an EER C strikes a good balance between taking an ambitious track toward maximum energy efficiency and catering for what is realistic and practical with regard to the retrofitting steps required to meet a minimum EER C. However, as is outlined in the introduction and in the answers to the following questions, further consideration needs to be given particularly to the different types of assets (age and size related) in the PRS and the timeframe within which a **diverse range of housing types are expected to achieve the same EER standard.**
19. Extra support must be provided for specific asset types in order to meet the prescribed EER C by 2025/2028. BEIS and MHCLG should coordinate the development of retrofitting guidance for different asset types such as older blocks of flats and listed buildings, indicating best retrofitting options (alternative approaches to fabric first) to achieve maximum energy efficiency savings.
20. BEIS and MHCLG should also work to identify and rectify planning system alignments to ensure that energy efficiency works are able to be conducted for listed properties, which currently face regulatory hurdles for retrofitting solutions as simple as double glazing.

**Question 5:** *We would welcome your views on the pros and cons of these alternative metrics, in relation to our overall policy goals around reducing carbon emissions, fuel poverty, and energy bills; please provide evidence with your answer.*

21. We agree that the Final Energy Rating (FER) and Heat Transfer Coefficient (HTC) are not sufficient on their own to adequately regulate the transition from energy inefficient to energy efficient properties. The Primary Energy Rating (PER), however, aligns with the need to focus on in-use energy rather than theoretical performance. PER has potential to contribute to increasing the energy efficiency of the PRS in the future (and would sit well in a pathway to net zero 2050) but is not suited to the framework now, as it would be introducing a new, unfamiliar system, nor would it align with wider government policies.

**Question 6:** *Do you agree with the government's preferred policy scenario of requiring 'new tenancies' to reach EER C from 1 April 2025 and 'all tenancies' to reach EER C by 1 April 2028? If not, do you have alternative suggestions; please provide evidence with your answer.*

22. Yes, with a minor amendment to the definition of new tenancies. Tenancies that are 'renewed' (i.e., no void occurs, and the lease is resigned, with tenants remaining in a property) should be required to meet the minimum EER C as 'all tenancies' by 2028 and should not be counted as 'new tenancies.' It is foreseeable that between now and the prescribed 'new tenancies' EER C date in 2025 that a small but significant number of tenancies will be renewed, but without a void (vacancy) to conduct retrofitting works. Allowing three more years to retrofit in these cases will maximise the chances of a tenancy coming to a natural conclusion, letting landlords conduct retrofit works during a void and therefore not disrupting or rehousing tenants.
23. It is well understood that there is urgency around improving the energy efficiency of the PRS. As such, we would encourage BEIS to further engage with industry to provide additional levers of support for more

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difficult properties (older blocks of flats, listed buildings) in the prescribed timeframe. By the time that the new EER C target is mandated, industry will likely have less than four years to retrofit up to an EER C. As we have indicated throughout this submission having earlier sight of future regulatory ambitions will minimise the adverse impact of compliance dates.

24. Whilst it is our understanding that Regulated Tenancies will be included under 'all tenancies' and require an EPC C by 2028, consideration needs to be given as to how this will work practically given that there is no 'trigger point' (i.e., new lease/tenants) requiring certification. Furthermore, Regulated Tenancies will require rehousing tenants whilst works are undertaken – tenants who are statistically older, more vulnerable and experience more disadvantage. We recommend that BEIS conduct further engagement with MHCLG and industry on how Regulated Tenancies may or may not be able to comply with the EPC framework.

**Question 7:** *Do you agree with increasing the cost cap to £10,000 inclusive of VAT as our preferred policy proposal? If not, please explain why not and provide evidence with your answer.*

25. Yes, increasing the cost cap to £10,000 inclusive of VAT is a necessary step to facilitate the increase in minimum standards. We would, however, note a couple of observations that BEIS may need to consider.
26. The first is that, even with a raised cost cap of £10,000 inclusive of VAT, a number of properties including some older stock and listed buildings will not be able to conduct works without exceeding the cap. Further thought should be given to a financial support mechanism, such as a specific retrofitting fund, which could aide those properties that have spent £10,000 but have not yet achieved a minimum EPC standard. This could be funded by revenue from compliance and enforcement of EPCs and could have the potential to reduce a significant number of anticipated exemptions.
27. The second is that in a short space of time (approximately two years) the financial element of complying with the MEES i.e., the expectations placed on building owners - has risen from no necessary contribution beyond available third-party funding (2018 position) to a revised cost cap of £3,500 (2019), with a further rise to £10,000 now being considered in 2020. Whilst it is correct that our domestic building stock should receive the necessary investment to improve energy efficiency and contribute to the net zero trajectory, we would emphasise the need for longer term thinking. This is to say that a building owner considering upgrade works in 2018 could have, with a clear view of future aspirations, been presented with an option to undertake a more wholistic, single set of works to reach EPC C within the 10-year renovation cycle up to 2028 (the backstop date for these proposals).
28. Whilst the consultation document does not explicitly pose a respective question, we would take this opportunity to query the intention to only allow landlord expenditure to be factored into the cost cap from 2023 onwards. Through the existing MEES regulations there has been a desire to encourage early action and we would be concerned that this proposal would disincentivise early action where possible and practical.
29. Further, the significant costs incurred in having to relocate tenants whilst works are undertaken to adhere to an EPC C should be considered for inclusion in any proposed cost cap. Whilst most retrofitting works can be undertaken during voids at the conclusion of tenancies, our members will inevitably have to undertake works whilst tenancies are live. This could be due to continued renewal of tenancies (i.e., no breaks or voids in between tenancy agreements, whereby the same tenant or party continues to renew a lease every 1-3 years depending on lease length).



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**Question 8:** *Should the £10,000 cost cap be adjusted for inflation?*

30. Yes, any proposed cost cap should be adjusted for inflation, but should only be reviewed periodically (perhaps every five years) so as to avoid disruption.

**Question 9:** *Should a requirement for landlords to install fabric insulation measures first be introduced? If yes, when, and how should such a requirement be implemented? If no, what are the alternative installation methods that maximise energy efficiency outcomes? Please provide evidence to support your answer.*

31. **Fabric first should be encouraged but not mandated.** Whilst we support the intent behind fabric first, and implementation of fabric first on buildings where it is best suited and viable, a fabric first approach presents difficulties for a large cohort of PRS homes.

32. A fabric first insulation requirement poses some significant challenges for the institutionally owned and operated private rented sector's older stock, which typically comes in the form of blocks of flats and smaller, semi-detached housing. It is likely that external wall insulation will lead to a reduction in lettable area. In some cases, where older properties have been built to different building standards, installing fabric first solutions such as external wall insulation will potentially make these properties uninhabitable due to them not meeting minimum room size requirements. A fabric first approach could also have implications for the capital pot available to the landlord to implement improvements in other properties, and whether the landlord considers offloading the property for fear of a double hit from lower rent and capital spent on upgrade works.

33. If fabric first is mandated, properties that fall into the description above are likely to be offloaded by landlords as they face retrofitting to create uninhabitable properties. Given the proposed requirements for fabric first measures, these offloaded properties are not likely to be bought to let but rather will be bought to occupy and will fall out of scope of energy efficiency regulations (unless similar regulations are implemented for owner-occupiers) which does not contribute to our common aim of decarbonising the UK's housing stock. We note that the government is separately considering regulations relating to owner occupied properties and we would strongly support such action.

34. An asset-specific approach should be taken whereby properties that are not able to implement a fabric first approach due to size or other perceived issues should be able to implement a range of other measures that will improve the EPC grade of the property. This could also help address the issues faced in retrofitting listed buildings, which are frequently incompatible with a fabric first approach. This approach should be supported by our proposal for retrofitting guidance as outlined in our answer to Question 1.

## Chapter 2

**Question 10:** *We would welcome views on the alternative of a dual metric target to reach both EER Band C cost metric and also EIR Band C carbon metric, with an increased cost cap of £15,000 inclusive of VAT.*

35. The dual metric alternative approach is likely to lead, as the consultation analysis indicates, to greater carbon savings and better tracking of meaningful carbon reductions when implemented properly. However, this must be weighed against the practicality of installing more complex measures at a greater cost. A circumstance in which a more stretching target results in a higher number of exemptions and greater difficulty in installing energy saving measures, will work contrary to the ambitions of the policy.

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36. Before we discuss the merits and limitations of a dual metric, we would question the practicality of moving to a dual metric in the short term. As we understand it (as per footnote 31 of the consultation document), new EPC formatting has removed the EIR from the physical EPC. Would this decision be reversed if the alternative policy scenario is favoured? We would also raise the question of whether the alternative policy option will cause data collection and analysis issues? This is to say some EPCs issued up to the point of these policies being laid will include EIR information whilst others (under the new certificate format) will not. This may make it more difficult to aggregate data in the future.
37. The requirement to achieve higher EERs (as per the preferred policy option) will likely require fabric improvements to a given property, as improving systems will be less effective on this metric. Whilst in some cases (especially older buildings, with certain leasing arrangements) it will be difficult to achieve significant fabric improvements, the cost to the landlord and occupant (by way of energy use) will be lower than those associated with system improvements.
38. Under the proposals for a dual metric it is likely that the initial focus of improvements will be to implement measures that focus on hitting the EIR target. The likelihood is that such measures will hinge on switching from gas boilers to heat pumps as the theoretical efficiency of the heat pump is better given the carbon factor of the grid continues to decrease. However, a focus on systems upgrades could have a number of unintended consequences and limitations.
  - a. As is rightly established in the consultation analysis, the implementation of a dual metric will increase the average cost per property by almost a third. This has implications for available capital to invest in the measures and may result in properties being offloaded.
  - b. There is a concern that a building with sub-optimal fabric and other inappropriate systems would translate to a high heating and hot water demand. When this demand is serviced by a heat pump, it could struggle to deliver the high load / high temperature output, which could result in an unintended consequence, in that the heat pump efficiency struggles to meet the theoretical performance resulting in significantly higher end-user costs and risk to lettings if people can't afford to stay in said properties.
  - c. As the EER is based on cost not energy, using a heat pump in the calculation could make the EER element worse as the cost of electricity is higher.
39. With regard to the suggested £15,000 cost cap, we believe it would be a wholly necessary element of the alternative dual metric approach. Taking into consideration the complexities of upgrading certain buildings, the cost of temporarily rehousing residents to do so, and the need to implement (currently costly) zero carbon heating technologies, it is unlikely that appropriate measures could be implemented within the envelop of a lower cost cap.
40. Whilst it is right that we make best use of the legislative structures that are available to us and that have over time driven positive change, there is a risk that chopping and changing regulations with no longer-term trajectory or certainty that any changes will be permanent (or semi-permanent) could undermine the objectives of the policy. Thought must be given to the end goal and how best to reach it. Adopting a dual metric approach may result in a regression of understanding and engagement with the MEES regime, which is already low amongst some elements of the market.
41. A dual metric approach is not without its merits, ultimately our members wish to own and operate homes that are environmentally and economically sustainable. There is an acceptance that existing homes will need to be upgraded both in terms of fabric measures and energy systems into the future, but the best



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way to ensure the correct market response is to give certainty on what will be required long-term (i.e. a 20/30 year roadmap) so that upgrades can be made in line with investment and management decisions.

**Question 11:** *Should government introduce an affordability exemption? If so, we would welcome views on how such an exemption should be designed and evidenced, and any potential impacts on the PRS market.*

42. As this question applies to smaller or buy-to-let private landlords, we have not sought to comment and have no formal view.

**Question 12:** *What should the eligibility criteria be for an affordability exemption if it is introduced, and how can the criteria accommodate fluctuations in a landlord's finances and/or in the value of a property? Please provide evidence to support your answer.*

43. See answer to question 11.

**Question 13:** *Should we incorporate TrustMark into energy performance improvement works? If not, please explain why not and provide evidence with your answer.*

44. The quality of retrofitting services, works and solutions is vital. Alongside enforcement, installer standards can play a crucial part in assured quality solutions. A variety of standards exist and are used by the industry – including the Government's preferred standard, TrustMark. We support the incorporation of quality standards – be that a selection of quality standards or solely TrustMark – into the EPC framework.

45. If the Government only incorporates TrustMark into the EPC framework, time will need to be provided for industry to migrate from other quality standards and align with TrustMark quality standards so as not to effect supply chains, conducting of works and mitigate any other unintended consequences.

46. Mandating quality standards rather than recommending them is the preferred mode of incorporation. Issuing recommendations will not remove the issue of unaccredited installers offering sub-standard, low-cost interventions, and will not therefore improve standards in the portion of the sector that is currently falling short. It is however important if quality standard accreditation is made mandatory, that the cost implications are carefully considered. The consultation document notes that being accredited through the TrustMark framework will come at an additional cost. Should this be passed on to building owners/clients, there will be an additional barrier to being compliant with these regulations.

**Question 14:** *What role can the private rented sector play in supporting the rollout of smart meters and what are the barriers and possible solutions to achieving this?*

47. We would be pleased to connect BEIS with our members to further discuss how we might better integrate smart meters into the EPC framework and more broadly incentivise uptake of smart meters with both landlords and tenants. There are some teething problems with smart meter installations, with some properties still not able to have them installed and a lack of understanding amongst both tenants and smaller landlords as to the benefits of smart meters. A potential solution to support the rollout of smart meters could include clear mentions in our sector's tenancy agreements about the installation of smart meters. A clear benefit of smart meters is the minimisation of energy usage disputes at check out and check in, where meter readings are undertaken to determine prior tenants' energy use and billing period resetting.

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48. We would note the work being done by the Coalition for the Energy Efficiency of Buildings (CEEB) under the umbrella of the Green Finance Institute. The BPF alongside others, is contributing to the development of a Green Rental Agreement (GRA) template to be publicly available in due course. A precondition for using the GRA will be to have Smart Meters installed for the gathering and analysis of energy data. This could be a mechanism through which building owners and occupiers are incentivised to install Smart Meters.

**Question 15:** *We would welcome views on whether the PRS Regulations may need to be tightened further for the 2030s? Please provide evidence with your answer.*

49. If the government's intention is to meet the legal requirement to reduce emissions to net zero by 2050, significant decarbonisation will have to occur across the economy and in particular in the built environment, which currently constitutes 30-40% of UK emissions (depending on the scope you include).

50. Whilst our answer to this question is tentatively yes, we would have to query the question itself. The focus of our attempts to decarbonise the built environment from a regulatory perspective should be more closely aligned with in-use energy performance. We note that this trajectory is apparent in the non-domestic sector. The current PRS regulations – whilst successful driving some change – are demonstrably limited by way of methodology, particularly with respect to the use of default input values. Understanding the actual energy performance of a building and implementing fabric and systems improvement measures accordingly will deliver better results.

51. Should the government be wedded to the PRS Regulations into the 2030s, they will naturally need to be tightened. Retrofitting properties to an EPC C will not sufficiently address the efficiency limitations of our existing housing stock.

52. Importantly, if the PRS Regulations are to be tightened, this should be considered now, not in 2 years-time, or 5 years-time, but in conjunction with this consultation.

### Chapter 3 - Compliance

**Question 16:** *What are the other steps government could take to increase awareness and understanding of the PRS Regulations?*

53. As outlined in our response to question 1, the Government must set out the pathway to net zero via the EPC framework to improve awareness and understanding of how the EPC framework is maturing to meet net zero emissions by 2050. The current practice and indeed this consultation only set out the next hurdle for the PRS to achieve, without any further forward vision beyond that set target.

54. The industry would benefit from guidance that helps landlords who have specific assets, such as old blocks of flats, or listed buildings, through the retrofit process – outlining the best choice retrofit solutions that would maximise improvements in energy efficiency.

55. In addition, further work needs to be undertaken to ensure planning system alignment with the requirements of the EPC regulations. This is particularly poignant for listed buildings, where even some of the simplest retrofitting solutions (such as double glazing) do not comply with the relevant permissions and therefore cannot be implemented. Whilst the protection of heritage features and heritage buildings

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is vital, greater consideration should be given to energy efficiency improvements rather than the common current practice which is to seek an exemption.

56. One of the biggest challenges in understanding and interpreting the PRS Regulations is navigating the separate pieces of legislation overseen by two distinct Government departments (MHCLG and BEIS) that set out the requirements for properties to have an EPC vs the requirement for a property to meet the PRS Regulations. We have previously and would again, emphasise the need to bring these two sets of legislative responsibilities together.

**Question 17:** *Is the introduction of a PRS property compliance and exemptions database necessary to help local authorities to proactively enforce minimum energy efficiency standards? If yes, should we include the per-property registration fee within the cost cap? If not, what alternatives to a PRS property compliance and exemption database would you suggest?*

57. A property compliance and exemptions database would be a welcome streamlining of reporting and a useful point of information for landlords, local authorities and government departments, so long as it is implemented in a way that does not increase the administrative burden of any involved parties. It should be a new consolidated route for enforcement activity not an additional reporting burden for building owners. If a registration fee is deemed necessary, it should be included in the cost cap. For a significant portfolio, even a low-level fee would translate into a significant outlay.

**Question 18:** *Do you agree that government should set a maximum total registration fee for landlords with a very large portfolio? If yes, how many properties should qualify as a “very large” portfolio? What should the maximum fee be? If you do not agree to a maximum total registration fee proposal, do you have alternative suggestions?*

58. Yes. Our members have hundreds, often thousands of properties within their portfolios. The costs involved in facilitating greater energy efficiency are significant enough without having to pay an additional registration fee per property. We would suggest that a ‘very large’ portfolio would constitute 50 properties or more.
59. In addition, our members would benefit from a streamlined registration process, whereby they could register multiple or all properties rather than having to complete paperwork for each property.

**Question 19:** *Should government seek primary powers to place a requirement on letting agents and online property platforms to only advertise and let properties compliant with the PRS Regulations? If not, please explain why not and provide evidence with your answer.*

60. Yes, after the regulations have come into force from 2025/2028, it would be appropriate for letting agents and online property platforms to only advertise and let properties that are of a minimum EPC C standard. In fact, the letting agent and online property platform markets are an incredibly valuable mechanism through which compliance can be sought. Careful thought should however be given to situations in which this could affect pre-launch marketing for new build properties which are not yet completed and do not yet have an EPC - this is an important part of the marketing process for a new building.

**Question 20:** *Should government remove the seven to twenty-one day exemption period on landlords making all reasonable efforts to provide a valid EPC prior to a property being marketed or let? If not, please explain why not and provide evidence with your answer.*

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61. We understand that there can often be a delay between the EPC assessment being undertaken and the report being received, which could cause delays in marketing or letting a property, and so this exemption could be helpful in certain circumstances.

**Question 21:** *Should government increase the level of the fixed civil penalty fine for offences under the EPB Regulations (currently set at £200)? If yes, how high should the fine be?*

62. At present, a £200 fine does not present enough of a deterrent for rogue landlords who are willing to forego their obligations. BPF would support a moderate increase to the fine, provided that all proceedings go directly toward initiatives to support the decarbonisation of the PRS.

### **Enforcement**

**Question 22:** *Should government enable LAs to inspect properties for PRS compliance? If not, please explain why not and provide evidence with your answer.*

63. We are unsure as to what the LA officers will be able to gain from inspecting properties. It is unlikely a local authority officer would be able to assess energy efficiency or compliance by inspecting a property.

64. We would also suggest this would require tenant/occupant permission for a measure that is intended to address owner/landlord compliance, and therefore there is an issue of divergent incentives.

65. The consultation document suggests that the inclusion of this proposal is based on feedback received from local authorities, notably that they would like to have increased enforcement powers for properties where there is suspicion that it is in breach of the regulations. We presume such circumstances would arise when a property is not found on the EPC register nor the exemptions register. Or perhaps where a tenant has raised concerns over compliance. In such circumstances we presume the LA would contact the property owner to query compliance or non-compliance. Given these initial steps, we are unsure to what degree inspection of a property would further the LA's understanding of a potential breach. It is unlikely that an LA office would be able to assess energy efficiency upon an inspection. Equally, if an inspection were undertaken and determined a breach, any ultimate breach notice or penalty would nevertheless need to be issued to the building owner, reverting back to the initial step. We would suggest that this policy may lead to unnecessary disruption for the tenant with little to no benefit for enforcement.

**Question 23:** *Should government permit local authorities to use EPC Open Data for some phases of PRS enforcement? Please provide evidence with your answer.*

66. Local authorities should be permitted to use EPC Open Data for some phases of PRS enforcement. The regulations are only as good as their enforcement. Better data accessibility and transparency is crucial to enforcement and to detailed analysis for the purpose of adapting and optimising the process. We believe building owners and landlords should also have access to the EPC Open Data for the sake of ensuring data accuracy.

**Question 24:** *Should there be a requirement for post-improvement EPCs (and for the cost to be included within the cost cap)?*

67. We agree that requiring post-improvement EPCs would benefit the process of enforcement and elevate the quality of the relevant data available to stakeholders. The consultation document correctly states

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that many building owners will undertake post-improvement EPCs for assurance reasons as it stands, and this should be encouraged across the market.

68. Consideration does however need to be given to the scenario in which some EPCs can go down a band after improvement works due to the inaccuracy of the original EPC which may have used a different version of SAP.
69. We agree that the cost of a post-improvement EPC should be included within the cost cap.

**Question 25:** *Should a valid EPC be in place at all times while a property is let?*

70. The guidance and regulations pertaining to when an EPC is required would benefit from greater clarity and certainty. As it currently stands a property with an EPC that expires whilst a tenant is in place, will not need a new EPC until a trigger point of either renewal or new lease imposition. For the integrity of EPC data and for enforcement procedures we would agree that this proposition should be explored.
71. As discussed elsewhere in our submission, careful thought should also be given to how this requirement might interact with regulated tenancies where a regulated tenancy property has been let to the same tenants since before the requirement to have an EPC applied – these properties are therefore let but are not legally required to have an EPC and therefore to meet the PRS Regulations.

**Question 26:** *How can the most consistent set of recommendations in the EPC be assured? Does using only the most recent SAP methodology allow this?*

72. The recommendations provided through an EPC are inextricably linked to the methodology used to determine them and the associated assessment practices. The updates to the methodology over time are a necessary condition of improving the accuracy and usefulness of the EPCs. To this effect it is important to allow this iterative improvement. However, as outlined in the consultation document, this still poses consistency issues over time. What we believe may be a useful amendment to the methodology, is to apply a 10-year rolling average (updated annually) for emissions factors in the SAP calculation based on emission factor projections. This would be more representative of anticipated emissions over the validity period of the EPC and would avoid a potentially misleading jump in EPC rating and inconsistency in recommendations over time.
73. The length of time between updates to SAP and emission factors encourages short-term thinking and the selection of technologies that may only be appropriate for a short period of time rather than the life of the system. Currently this is relevant to gas CHP, which demonstrates significant improvements over Part L and good EPC ratings, but if current and future emission factors were applied, would no longer demonstrate savings anywhere near those currently being calculated; alternative and potentially more cost-effective solutions would result in increased emission reductions and be lower in cost to run.
74. Efforts to ensure consistent recommendations would also be well placed on appropriate and accurate input values i.e., accurate assessment of the building, its fabric, and its layout. Accreditation and review of assessor performance may help with this.

**Question 27:** *Should listed buildings and those in a conservation area be legally required to have an EPC?*

75. We do not believe it is feasible for the proposed EPC C (EER) standard to apply to listed buildings. Our members who own and operate listed buildings want to improve the energy efficiency of their stock. They

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do not want to seek an exemption – but without an asset-specific approach to regulation that aligns planning permissions with the EPC framework, they are often left with no choice. Compliance with an EPC C is going to be difficult for most listed buildings.

76. Extra consideration should be given to listed buildings – whether an alternative approach that focuses energy-in-use is better suited for them, or whether additional targeted retrofit funding ought to be provided above the £10,000 cost cap to facilitate more listed buildings being able to achieve EPC C at a shared expense. Nonetheless, it could be useful for listed buildings to require an EPC certificate (without application of the minimum C requirement) so that the Government has a database of the existing listed buildings and their rating in order to inform future energy efficiency policy options.

**Question 28:** *Should government seek primary powers to increase the maximum fine level to £30,000 per property for each breach of the PRS Regulations? If yes, should it be adjusted for inflation? If not, what would be an alternative, appropriate maximum fine level? Please provide evidence with your answer.*

77. It is difficult to assess the validity and appropriateness of a £30,000 per property fine level without having seen it in action. Further, given the lack of enforcement of these regulations to date, there is little evidence to refer to when assessing the effectiveness of a financial penalty. We consider the suggested increase in fine level for non-compliance to be appropriate alongside the suggested rise in the cost cap.

78. However, we wholeheartedly agree that LAs should work with landlords of non-compliant properties to get those properties improved, resorting to the use of a financial penalty only after other engagement has failed. Further, given the suggested level of fines, there may be cause for some form of appeals process to address instances of legitimate unintended non-compliance. A £30,000 penalty in the instance of a genuinely unintentional breach would appear high.

**Question 29:** *Should government introduce powers for tenants to request that energy performance improvements are carried out where a property is in breach? If yes, how could a redress mechanism be devised?*

79. It is important that tenants are afforded the appropriate protection of these regulations, and that in instances where building owners/landlords are wilfully in breach of them, there is a mechanism by which compliance can be sought. In the case of our members, they actively seek to engage with their tenants and would undertake installations of energy saving measures wherever practical and possible.

80. We would again highlight the lack of enforcement of these regulations to date and would suggest that prior to considering a tenant right of recourse, the government should assess the impact of concerted enforcement action. If a proportion of landlords remain non-compliant, the use of tenant powers could be a useful route for action. Again, it may be necessary to install some element of arbitration if these proposals are carried forward.

81. The consultation document notes that “anecdotal feedback from the BEIS Enforcement Pilots indicates that the first route to LAs becoming aware of a potential breach of the PRS Regulations is often when a tenant makes a complaint about a non-compliant landlord.” If this is the case, we would emphasise that the focus should be on making the enforcement regime work effectively. Under the circumstances identified above, the LA will be able to enforce on the landlord according to the tenant complaint and by retrieving available EPC data as it stands.



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**Question 30:** *Should government introduce some form of local authority disclosure or benchmarking where a property is in breach of PRS Regulations?*

82. There may be some merit in disclosure of properties that are wilfully and consistently in breach of the regulations. Assuming such information would be open to the market, it will arm prospective tenants with important information about the property they may be seeking to occupy. The system would however have to be robust enough to ensure that compliant properties do not end up within the disclosure, for instance where a valid exemption is in place. We understand that to date identification of compliant/non-compliant properties has not been straightforward and therefore incorrect disclosure of non-compliance should be carefully avoided.

### **Exemptions**

**Question 31:** *Do you agree that the updated exemption regime should come into force on 1 April 2025? If yes, do you agree that the property compliance and exemptions database should be opened six months prior to commencement of exemptions? If not, please explain why.*

83. We agree that the exemptions regime should come into force in line with the first compliance date. This is likely to avoid confusion. We would however suggest that the database is opened a year prior, to allow sufficient time for exemptions to be lodged where property owners with very large portfolios will be assessing their building stock and lodging valid exemptions that in some cases need to be sufficiently evidenced.

**Question 32:** *Should the 'new landlord' temporary exemption be simplified so that it applies to any person who has become a landlord within the last six months? Please provide evidence with your answer.*

84. Yes.