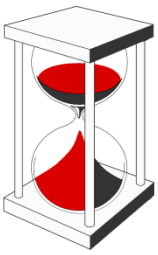

Association for the Conservation of Energy

Friends of the Earth

January 2011

Briefing

A minimum energy efficiency standard for private rented homes

Energy Bill, House of Lords, Grand Committee

Contents

Summary

Private rented homes are the worst maintained part of the housing stock and contain large numbers of vulnerable households and of those living in fuel poverty.

The sector accounts for 14.2% of the housing stock (or 3.1m homes in England[1]) and has a disproportionately large number of homes with the worst energy performance rating compared with other sectors.

According to the Government's own Fuel Poverty Advisory Group, 19% of private tenants live in fuel poverty[2].

Historically there has been little incentive for landlords to improve their properties because it is tenants, not they, who pay the fuel bills. It is therefore essential for Government to take a new approach to drive up standards of energy efficiency in the private rented sector. This will require some key legislative changes to be introduced in the Energy Bill.

A substantial coalition of thirty organisations is calling for the Government to introduce a legal minimum standard of energy efficiency for private rented homes and for it to be an offence to re-let a property which does not meet the standard, until it is improved. We therefore believe that the Energy Bill should contain the following provisions:

i. The establishment of a timetable for the introduction of a minimum legal standard of energy efficiency that a privately rented property must reach before it can be made available for rent.

ii. Setting a deadline of no later than 2016 after which it will be an offence for a landlord to let (or re-let) a property which is below an Energy Performance Certificate (EPC) Band E (ie those in Bands F and G), and a date before 2020 by which it will become an offence to let a property of EPC Band E or lower.

iii. The Secretary of State should have a power to require landlords to register their properties with the relevant local authority.

It is also essential that landlords have the financial help, greater incentives and information they need to improve their properties. Substantially raising the current level of Landlords Energy Saving Allowance would provide an additional incentive for landlords to act to improve properties of all standards.

The Government's Energy Bill proposals

While we are pleased that the gravity of this sector's problems has been recognised by Government, the measures proposed in the Bill are inadequate to address those problems, and are unlikely ever to come into force.

In **Clause 36**, the Energy Bill gives the Secretary of State a duty to conduct a review of energy efficiency in the private rented sector after the first year of operation of the Green Deal. A report of the review must be published before 1 April 2014. Dependent upon the outcome of the review the Secretary of State will have powers to make further regulations in two key areas. These powers will only be exercisable if the Secretary of State considers that further regulations will not decrease the number of properties available for rent.

[1] Figures and quotes from the English Housing Survey, Headline Report 2008-09
[2] Fuel Poverty Advisory Group *(for England),* Eighth Annual Report, 2009, published July 2010.

i. **Clauses 37-39:** Powers to give local authorities a duty (again from 1 April 2015) to issue a notice requiring landlords of properties falling below certain levels of energy efficiency to make "relevant energy efficiency improvements". In order to assist local authorities, the Government intends to grant them access to the EPC database. The Secretary of State may also give powers to local authorities to issue fines (of up to £5,000 per property) to landlords who do not comply.

ii. **Clauses 40-42:** Powers to allow tenants (from 1 April 2015 at the earliest) to request their landlords to make "relevant energy efficiency improvements" to their homes. "Relevant" improvements mean those for which a Green Deal (or other) finance package is available that will remove the upfront cost of installing the measures.

What the Bill should contain

Making the local authority duty (in Clause 37) conditional upon a review is unacceptable and pushes intervention back to the next General Election at the earliest. Even if the duty is implemented, the absence of a clear timescale for local authority intervention creates confusion and may lead to F- and G-rated properties continuing to be let for many years after 2015.

The Government's proposals in Clauses 37-39 for local authorities to issue notices to landlords requiring them to make energy efficiency improvements should be brought forward to 2012. This would allow local authorities greater autonomy to make progress at a pace of their choosing as resources, local priorities and market conditions allow, ahead of the introduction of a minimum standard from 2016.

Where a landlord has failed to comply with a notice from a local authority requiring energy efficiency improvements, the local authority should be given the power, as an alternative to issuing a fine (which might simply be passed on as higher rent), to carry out the relevant energy efficiency improvements themselves and impose a charge to recover the costs.

The proposal (in Clause 40) allowing tenants to request reasonable energy efficiency improvements is likely to have a negligible effect.

This power is unlikely to be used by anything other than a small minority of tenants. Many tenants without security of tenure will be extremely unlikely to make requests of their landlords as they will be fearful of retaliatory eviction (under Section 21 of the Housing Act 1988). This measure will make very little contribution to the mass roll-out of energy efficiency improvements in the private rented sector but may very well exacerbate tenant/landlord relationships and even lead to evictions.

Therefore, while not opposing this measure, we believe it is essential that it is amended to give greater security to tenants making a request for improvements from their landlord.

Without a clear signal to landlords that it will be an offence to let F and G rated properties after 2015, many will simply wait for a request from their tenant or council before acting. In other words, voluntary action will be discouraged, rather than encouraged. The principles of good regulation are much better served by setting a legal minimum standard now, which will take effect from the start of 2016. This will give clarity from the outset, as well as allowing supply chains and new business models to be developed to serve the private rented sector.

Crucially, F and G rated properties are a health hazard. Regardless of the level of Green Deal take-up elsewhere in the private rented sector, none of them should be allowed to be let. In fact the

Government's own Impact Assessment[3] admits that the introduction of the Green Deal is unlikely to see a significant take-up of energy efficiency measures by landlords.

New Clauses 21ZA, 21ZB and 21ZC therefore establish a minimum standard of energy efficiency of EPC Band E for all properties that are rented out from 2016. New Clause 21ZA also gives the Secretary of State a duty to raise the minimum standard at least once before 2020.

New Clause 21ZB meanwhile introduces a sensible approach to dealing with impacts on rented housing supply by allowing the Secretary of State to make provisions suspending the minimum standard for one year in any given local authority area if there is evidence that it is leading to a shortage of rented properties in that area. This approach takes account of local housing markets rather than using housing supply as an excuse to block any action across the entire country.

Impact on fuel poverty of a minimum energy efficiency standard and the cost of meeting it

In December Consumer Focus published a report setting out an impact assessment of our minimum energy efficiency standard proposal. Two scenarios were investigated: the measures required (and their costs) to meet a minimum Band E standard by 2015; and the impact on measures and costs of raising the minimum standard to Band D by 2020.[4]

A minimum EPC Band E standard for private rented homes (i.e. a standard that removes all PRS properties from Bands F and G) would take 150,000 private rented households out of fuel poverty (25 per cent of all those private rented households currently living in fuel poverty). Raising this standard to EPC Band D by 2020 would take 302,000 private rented households out of fuel poverty (50 per cent of all private rented households currently living in fuel poverty).

The study also found that the cost of meeting the minimum standard is low and well within the levels of finance being associated with the Green Deal. In many cases it is low enough to be easily financed directly by the landlord with no impact on rents.

- **40 per cent** of F and G rated properties can be improved to EPC Band E for **less than £1,500 per property (at an average cost of £270 per property).**
- Of those in bands E, F and G, **two thirds can be improved all the way to Band D for less than £3,000 per property.**

This is consistent with an earlier Energy Saving Trust study[5] of F and G rated properties which found:

- **Most F and G rated properties can be improved up to Band E for less than £3,000**, with basic insulation and a modern heating system.
- **60 per cent** of F or G rated private rented properties **can be brought up to band E for less than £5,000.**

[3] Page 18, Energy Bill: Green Deal Impact Assessment, DECC, 2010
[4] Consumer Focus report. A private Green Deal: The case for minimum energy efficiency standards, 20 Dec 2010
[5] F & G banded homes in Great Britain, Research into costs of treatment, EST, June 2010.

The Energy Bill: Legislation for energy efficiency in the private rented sector

The need for a legal minimum energy efficiency standard

Millions of vulnerable people in Britain live in cold homes that make them ill and cost a fortune to heat. Living in a cold, damp home means an increased risk of illness and death among older people, young children and those with a disability.

- According to the Chief Medical Officer the annual cost to the NHS of winter related-diseases due to cold housing is £859m.
- Recent Government figures show there are now 4.5 million households in fuel poverty in the UK.
- Moreover, insufficient insulation and inefficient boilers means tonnes of CO_2 are needlessly pumped into the atmosphere: more than a quarter of the UK's emissions come from heating our homes and water.
- The situation is particularly bad in the private rented sector. People living in private rented homes are over four times more likely to be living in a cold home than people living in social rented homes.
- The private rented sector has a greater proportion of the most energy inefficient homes – those in Energy Performance Certificate Band G. They are twice as common in the private rented sector as in other sectors.
- According to the Government's own Impact Assessment for the Energy Bill, 42% of those living in the coldest private rented homes (those with an energy performance of Band F or G) are in fuel poverty.

Support for proposed minimum energy efficiency standard

Thirty organisations, including AGE UK, Consumer Focus, Citizens Advice, Crisis, the National Childbirth Trust, Macmillan Cancer Support and Bristol and Manchester City Councils, are calling for a clear, legal minimum standard of energy efficiency for private rented properties to be introduced by 2016 so that those with the very worst standards of energy efficiency – so cold they are a health-hazard – cannot be re-let until they are improved.

The joint statement signed by all the organisations supporting the campaign can be read here: www.foe.co.uk/resource/briefings/joint_statement_warm_homes.pdf

An Early Day Motion (Number 653) has been tabled in the House of Commons. It calls on the Government to:

- set a minimum energy efficiency standard for private rented homes.
- make it illegal, from 2016, to let the worst private rented homes until they are improved.
- ensure all landlords get the guidance and financial help needed to bring properties up to scratch.

Over **one hundred and forty seven MPs** from across the political spectrum have now signed this EDM.

The Government's own **Fuel Poverty Advisory Group** also strongly supports this approach. Its 2009 Annual Report[6] stated: "Just as landlords are currently required to hold a valid Gas Landlord Safety Certificate, so landlords could be required to have a comparable certificate indicating that their property meets a certain standard of energy performance."

"FPAG favours a system of mandatory minimum standards for private rented properties based on Energy Performance Certificates, such that after a certain specified date it should be illegal to rent out F and G rated properties. Over time this minimum standard should be progressively raised."

The **Committee on Climate Change** has called for mandatory energy efficiency standards to be set in the private rented sector.[7]

London Mayor **Boris Johnson** recent stated[8]: "I agree that requiring landlords to meet energy efficiency standards when properties are re-let could be an important tool in improving the energy efficiency of the private rented sector in London. How these standards are communicated and enforced would be key to their success."

Legislation on the private rented sector in the Energy Bill

The Energy Bill, published on 9 December 2010, starts to set out the legislative framework for the introduction of the Green Deal. This could help many responsible landlords to improve their properties but many more landlords will not act without greater incentive. Improving the very coldest homes – those that are a health hazard - cannot be left to chance.

The Government has now recognised that special attention needs to be paid to the poor condition of private rented properties. This is welcome and recognises the broad concern shown on this issue inside Parliament and outside among civil society.

The Energy Bill contains provisions which could, if taken up, give the Government powers to improve rented homes. Disappointingly these measures as they stand are too weak and do not establish a clear, minimum standard that both landlords and tenants can understand and plan for the introduction of. Proposals to encourage tenants to demand energy efficiency measures from landlords are unlikely to be taken up and could drive landlords and tenants into conflict, perhaps even leading to evictions.

It is essential that the Government improves the current Energy Bill if it is to help protect tenants from fuel poverty, ill health and high fuel bills.

The rest of this briefing examines the proposals in the Energy Bill in detail and sets out our response.

1) Clause 35: The categories of private rented properties covered by the Bill

As currently drafted, Clause 35 limits the categories of domestic short term lettings which come within the provisions of Chapter 2 to those categories of tenants that are expressly included within the provisions of the Rent Act 1977 and assured shorthold tenants under the Housing Act 1988. While this undoubtedly captures the bulk of short term lettings it certainly does not capture all forms of private rented dwelling. Our proposed amendment to Clause 35 (see Annex 1) therefore expands the categories of tenancies/dwellings covered by the Bill. In particular, the amendment brings agricultural tenancies and houses in multiple occupation within the scope of the provisions.

[6] Fuel Poverty Advisory Group *(for England),* Eighth Annual Report, 2009, published July 2010.
[7] Meeting Carbon Budgets – ensuring a low-carbon recovery, 2nd Progress Report to Parliament, Committee on Climate Change, June 2010
[8] Written answer to question number 3606/2010 "Insulation for private tenants" provided on 23 November 2010

2) Clause 36: The Secretary of State will be required to conduct a review of energy efficiency in the domestic and commercial (ie business properties) private rented sector

This will happen after the first year of operation of the Green Deal (i.e. after the end of 2013). Following this review a report must be published before 1 April 2014.

Dependent upon the outcome of the review, the Secretary of State will have the *power* (but not a *duty*) to make further regulations. This power can only be exercised if the Secretary of State considers that regulations will increase the energy efficiency in the domestic private rented sector and not decrease the number of private rented properties for rent.

Should the Secretary of State decide, following the review, to use this power, he may make further regulations in two key areas. These regulations cannot come into force before 1 April 2015.

Response:

Regulation is needed

The Impact Assessment already states that the Green Deal alone will not see significant uptake of energy efficiency measures: "While the introduction of the Green Deal may go some way to overcoming this problem [of little incentive for landlords to invest in energy efficiency measures]…, it is likely that the take-up of cost-effective abatement measures will remain relatively low in the private rented market."[9] This constitutes a clear acknowledgment on the part of Government that their own analysis predicts very little will improve in the private rented sector in the first year of the Green Deal. There is therefore no justification for waiting for the outcome of a review before taking further action.

The decision to delay any decision on whether to use these powers until after a review means their introduction is highly unlikely before the next General Election at the earliest. The Impact Assessment states that: "Government is clear that regulation will only be introduced with a substantial foreshadowing period following a review of the sector."[10] With the review able to report as late as April 2014 it is impossible to see how regulations could be introduced before June 2015 (the date of the next election) without leaving very little time for landlords to comply and risking severe disruption.

Making powers conditional on a review reduces voluntary action by landlords

Making the regulation conditional on a review increases the likelihood that landlords will not act voluntarily before 2015. However setting a clear minimum standard now to come into force after 2015 would give landlords absolute clarity *now* that, from 2016, they will not be able to re-let a property with an F- or G-rating - allowing a significant time for preparation and encouraging voluntary uptake. Crucially the Government's own Impact Assessment admits that because the use of the powers to regulate is conditional on the outcome of the review: "one would not expect landlords to install energy efficiency measures in significant numbers as a direct result of the taking of these powers. For this reason it is assumed that there is no pre-emptive action by landlords."[11]

Setting a clear, timetabled minimum standard in legislation now, as we propose, would maximise the opportunity for voluntary compliance by landlords and minimise the need for enforcement action later. Unfortunately the Government's current legislation will achieve the reverse. A clear signal now will provide certainty for the market, allowing landlords to plan ahead, and supply chains and new

[9] Page 18, Energy Bill: Green Deal Impact Assessment, DECC, 2010
[10] Page 64, Energy Bill: Green Deal Impact Assessment, DECC, 2010
[11] Page 64, Energy Bill: Green Deal Impact Assessment, DECC, 2010

business models to be developed to serve the private rented sector. This will increase efficiency, minimise disruption and reduce costs.

For these reasons, while not seeking to remove or amend the review provisions in Clause 36, we propose, via an amendment to Clauses 37(1), to stop the introduction of further regulations being conditional upon the outcome of the review.

F and G rated properties are a health hazard and regulation will benefit disadvantaged groups

F&G rated properties are a health hazard. Housing people in them does not become more acceptable simply because greater or lesser progress has been made in reducing the overall number of them.

Even if "reasonable progress" can be shown to have taken place in the sector in the first year of the Green Deal (though as shown above the Government already believes this is unlikely), most of the action will have been taken by responsible, well-informed landlords at the top end of the sector, with almost no action taken among the worst-performing properties in greatest need of improvement.

In addition the Government's own Impact Assessment repeatedly reveals that disadvantaged social groups would benefit from regulation of energy efficiency in the private rented sector: "In particular the PRS is home to a high proportion of young households, and black or minority ethnic households, so any regulation to improve the standard of housing in this sector could be expected to improve the outcomes for those groups relative to others."[12]

It also notes that: "The PRS has a particularly high proportion of lone parents with dependent children...Improving the energy efficiency of the housing stock in the private rented sector could have a particular positive effect on this section of society, with benefits for single mothers."[13] And "regulation of private landlords would have a positive effect on the long term ill/disabled."[14]

Given these positive social benefits it is disappointing that, while Government has recognised that the private rented sector needs special attention, it is still not committed to introducing a clear, minimum energy efficiency standard for private rented properties.

New Clauses 21ZA, 21ZB and 21ZC (see Annex 1) therefore establish a minimum standard of energy efficiency of EPC Band E for all properties that are rented out from 2016. New Clause 21ZA also gives the Secretary of State a duty to raise the minimum standard at least once before 2020.

Addressing rented housing supply properly rather than blocking action on substandard homes

Finally, while it is of course appropriate to consider the effect of regulation on the supply of accommodation in the private rented sector, we firmly believe that the provisions in the Bill in relation to this are far too weak, imprecise and will simply block the regulation from coming into force. For instance, as currently framed, the Secretary of State could opt not to make further regulations merely on the basis of a *belief* that such regulations might result in a *handful* fewer properties being available for rent for a temporary period**.** We are therefore proposing what we believe is a much better approach, i.e. to insert in the Bill (in Clause 21ZB) a safety clause which gives the Secretary of State reserve powers to suspend the minimum standard for a limited time period of one year in a specified local authority area if there is evidence, following its introduction, that the supply a rented

[12] Page 61, Energy Bill: Green Deal Impact Assessment, DECC, 2010
[13] Page 84, Energy Bill: Green Deal Impact Assessment, DECC, 2010
[14] Page 85, Energy Bill: Green Deal Impact Assessment, DECC, 2010

properties is being negatively affected by the regulation. That way the regulations could continue to operate in other areas.

3) Clause 37: Action by local authorities to target energy inefficient properties

The Secretary of State may regulate to give local authorities a *duty* (from 2015) to issue written notices to landlords of properties which fall below a certain level of energy efficiency (this level will be determined in secondary legislation), requiring them to make "relevant energy efficiency improvements" to their property.

While not part of the primary legislation, the Impact Assessment states that Government intends for F or G rated properties to be targeted and that it will give Local Authorities access to the EPC database. Councils will then be expected to use other data (e.g. council tax) to locate privately rented F- and G-rated properties.

For these purposes, "relevant energy efficiency improvements" will be deemed to be those measures that can be financed at no upfront cost using the Green Deal, ECO or other finance measure. The Secretary of State will specify the period within which the required improvements must be started or completed by the landlord (the length of this period will be set out in secondary legislation).
The landlord would have to undertake the work unless he could prove that he was covered by one of the listed exemptions. The Bill states that there will be exemptions for landlords to be established in secondary legislation, though these will include circumstances where the landlords cannot secure the appropriate consent for the work (this is assumed to include consent by any sitting tenant) or where the measures would reduce the value of the property. Other exemptions could be listed.

By regulation, the Secretary of State will be able to give powers to local authorities to issue fines to landlords who do not comply. This could be a fine of up to £5,000.

The legislation will not specify that the measures have to bring the property up to a minimum standard of E. DECC claim that in practice in many cases the measures will take the property higher than Band E and that there are unlikely to be many cases where the measures requested by the local authority will not bring the property above F & G.

Response:

Greater uncertainly for landlords and no timetable for action

This measure does represent a step forward in Government's willingness to address the problem of poor private rented homes and does not place the responsibility on tenants to act, but is overall disappointing, less effective than our proposal and, as it stands, does not really represent a step forward from merely giving local authorities access to the EPC database and allowing them to continue using their existing powers under the Housing Health & Safety Rating System (HHSRS).

The Energy Bill legislation will not give landlords long-term certainty in advance about what their legal duty is or when they will be required to act. They do not know *now* whether or not local authorities will be given a duty to act post-2015. Equally, *post-2015* they will have no prior warning of when the local authority is likely to make a request of them or what that request might be. This means that, although a small minority might react by taking their property out of F or G in advance, the vast majority will be encouraged to wait and see. This will considerably delay action.

Local authorities will have to take two actions: first issue a request, and then monitor action and enforce compliance. It will be perfectly legal for landlords to let an F & G rated property until the local authority gets round to issuing them with a request. In the absence of a clear timetable for local authorities, this could be as late as 2020 or beyond. A landlord will not be committing an offence by letting and F or G rated property until he has been issued with a request by the local authority, failed

to take action on that request, not claimed an exemption for that property and been taken through a court or tribunal process.

The measure should be brought forward to 2012 and used to give local authorities an effective tool to make progress on improving the worst of their local private rented sector housing stock at a pace that is appropriate to local circumstances ahead of the introduction of the sector wide minimum energy efficiency standard we propose.

Not a minimum standard

There is no guarantee that as the Bill is written properties will be brought out of Band F or G by the local authority's request. Indeed, given that the Secretary of State may determine in regulation what level of energy efficiency is to be deemed "too low" and therefore requiring improvement, there is no guarantee that, despite the intention set out in the (non-binding) Impact Assessment, properties other than G rated ones will be required to be improved by the regulations.

The Bill does not currently allow for the local authority to carry out works in default (where the local authority carries out the work and bills the landlord) as an alternative to issuing a fine. This flexibility is important to ensure as many properties as possible are actually improved rather than simply issuing penalties to landlords, and is something which has been called for by the Local Government Association.

For these reasons, we are seeking to amend Clause 37 of the Bill in order to bring forward the date for the introduction of local authority improvement notices to 1 April 2012. The amendment also defines as EPC Band E the minimum level of energy efficiency which private rented properties must meet if they have been issued with such a notice.

Is the penalty enough?

The threat of a £5,000 fine may not be enough to compel compliance by landlords (and could just be recouped through rents). If some landlords choose simply to pay the fine (or perhaps increase the rent to pay it), the property in question will not be improved and will remain excessively cold. Government has responded to this scenario by suggesting that Local Authorities would then have the option of starting action under their existing HHSRS powers. This will result in a circular process, whereby, in order to make any further progress, the local authority will be forced back into using HHSRS. We are therefore proposing, via an amendment to Clause 39, to increase the maximum penalty to £10,000 for each private rented tenancy.

A minimum standard is proposed for commercial rented properties, so why not domestic ones too?

The approach taken for domestic private rented properties contrasts with commercial rented properties (Clause 43), where commercial rented properties falling below a specified minimum energy efficiency standard "may not be let" until they are improved to a level above the minimum standard. It is unclear why this approach has been taken for the commercial sector but not the domestic sector.

4) Clause 40: Requests by tenants for 'relevant energy efficiency improvements'

The Secretary of State may regulate to allow tenants (from 1 April 2015) to request their landlords to make "relevant" energy efficiency improvements to their homes. "Relevant" improvements for these purposes mean those for which a Green Deal finance package or Energy Company Obligation finance (or some other finance package) is available. Landlords may not then "unreasonably" refuse such a request.

The Bill sets out that there will be exemptions for landlords to be established in Secondary Legislation though these will include circumstances where the landlords cannot secure the appropriate consent for the work (this is assumed to include consent by any sitting tenant) or where the measures would reduce the value of the property. Other exemptions could be listed

If the landlord *does* refuse a request, the Energy Bill states that the tenant will be able to take the case to a court or tribunal, to be determined. We understand that the Government's preferred option is for the tenant to be able to seek redress via a Residential Property Tribunal. The court or tribunal would then rule upon the reasonableness of the request. If the request is determined to be reasonable, the court or tribunal can then order the landlord to undertake the work requested.

The penalty for failing to comply with a ruling is not specified.

Response:

We believe that, even if tenants are given this new power, it is unlikely to be used by anything other than a tiny minority of them and, worryingly, could perhaps encourage some tenants into a situation where they would face eviction.

Tenants do not know what their existing rights are, so we find it extremely unlikely that they will learn about this new one. And even if they know about it, how will they know whether they are making a reasonable request?

Many tenants do not have secure tenure and are rightfully fearful of retaliatory eviction (under Section 21 of the Housing Act 1988) if they make a demand of the landlord.

If the demand is refused the onus is on the tenant to make a complaint to a Tribunal (which in itself is an expensive, bureaucratic and time-consuming process). It is doubtful that any tenant would go through with this.

The measure forces tenants into direct conflict with landlords, with no increase in their security. It provides no clarity for landlords about their legal duty, which means that, despite their best intentions, landlords will not know what action to take until such time as their tenant makes a request of them. In other words, they will not be able to predict whether a tenant might make a request and what that request might be. So why do anything until absolutely necessary?

The one positive aspect of this measure is that it is looking for a mechanism to encourage landlords to improve properties which are not just F&G-rated. This is a laudable aim but this proposal will be entirely ineffective (and possibly dangerous) without greater protection for tenants against unjustified eviction. Other incentives, such as increasing the Landlords Energy Saving Allowance tax break are essential and would act to encourage landlords to improve properties of all standards.

Summary of amendments on the private rented sector (full list and notes in Annex 1)

- Expand the categories of private rented tenancy covered by the legislation.
- Bring forward, to 2012, the Government's measure for local authorities to issue notices to landlords requiring relevant energy efficiency improvements, make it a duty rather than a power and remove its conditionality on the outcome of the review in clause 36.
- Landlords receiving a notice from a local authority will be required to improve that property at least to a minimum energy efficiency level of Energy Performance Certificate (EPC) Band E. This level must be increased again before 2020.

- The maximum penalty for non-compliance is increased to £10,000 per tenancy and local authorities are given the option to carry out the energy efficiency improvements themselves and impose a charge to recover the costs.

- From 2016 a minimum energy efficiency standard is introduced whereby it simply becomes an offence to let or market to let a domestic private rented property which falls below EPC Band E (ie those in EPC Bands F and G) until it is improved to Band E or above. This minimum standard must be raised before 2020.

- A fine of up to £10,000 can be imposed for marketing or letting a property which does not meet the minimum standard and/or the local authority can choose to carry out works and recover the costs.

- A carefully defined suspension clause is introduced to allow the Secretary of State to suspend the minimum standard in a specific local authority area for a period of one year if there is evidence that it is leading to a shortage of rented properties in that area.

- The new clauses also allow for exemptions from the minimum standard (for example if the necessary consents aren't available) and the Secretary of State must establish an appeals process.

- Finally the power to make regulations allowing tenants to make relevant energy efficiency requests of a landlord is no longer conditional upon the outcome of a review.

20 January 2011

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ANNEX 1

Amendments to be moved in Grand Committee to Chapter 2, and explanatory notes

Clause 35	
Page 22, line 8, leave out "let" Page 22, line 9, at beginning insert "let" Page 22, line 9, after second "tenancy" insert "or an assured shorthold agricultural occupancy" Page 22, line 11, at beginning insert "let" Page 22, line 12, at end insert "or a protected occupancy for the purposes of the Rent (Agriculture) Act 1976" Page 22, line 12, at end insert-- "( ) let under any of the types of tenancy contained in Part 1 paragraphs 1 to 9 of Schedule 1 to the Housing Act 1988; ( ) a house in multiple occupation under section 254 of the Housing Act 2004; or ( ) such other categories of dwellings as the Secretary of State considers should be included in the regulations"	These amendments expand the categories of tenancy covered by the legislation to include tenancies of dwellings let to full time agricultural workers (but not including agricultural holdings). Expands the categories of domestic occupiers to include those tenancies currently excluded by Schedule 1 of the Housing Act and also Houses in Multiple Occupation. It allows the Secretary of State to include other definitions of tenancy should that be necessary or desirable at a future date.
Clause 37	
Page 23, line 17, in the heading to Clause 37 substitute "Duty" for "Power"	Gives the Government a duty to introduce regulations requiring local authorities to issue notices to the landlords of domestic private rented properties falling below a certain level of energy efficiency, requiring relevant energy efficiency improvements to that property -rather than simply leaving it to the Secretary of State's discretion.
Page 23, line 18, leave out subsection (1)	Stops the introduction of the measure being conditional on the outcome of the review established in the previous clause.
Page 23, line 26, leave out "may make	Brings forward the date for the introduction of

regulations" and insert "shall make regulations to come into force no later than 1 April 2012 setting a minimum energy efficiency level for domestic PR properties and" Page 23, line 32, leave out "level of energy efficiency" and insert "minimum energy efficiency level" Page 23, line 36, at end insert "and as will ensure the domestic PR property meets the minimum energy efficiency level provided for by the regulations"	the local authority improvement notices to 1 April 2012 and ensures that, where a local authority issues a notice to a landlord requesting relevant energy efficiency improvements, those improvements will ensure the property is brought up to a minimum level of energy efficiency.
Page 23, line 41, at end insert ",and (c) provide for the establishment of a national or local register of domestic PR properties for the purpose of distributing information relevant to this Act to landlords of domestic PR properties and their tenants and for other purposes relevant to this Act"	Gives the Secretary of State the power to establish a local or national register of privately rented properties for the purpose of distributing relevant information to landlords and tenants, and for other purposes designed to help increase the energy efficiency of private rented properties.
Page 24, line 4, after "regulations" insert— **"**"minimum energy efficiency level" means Band E or above expressed in accordance with Regulation 11(1) (a) of the Energy Performance Regulations or any higher level set in accordance with sub-section (7)**"**	This defines as EPC Band E the minimum level of energy efficiency which private rented properties must meet if they have been issued with a notice to make relevant energy efficiency improvements by a local authority. It also allows the minimum level to be raised in accordance with the timetable in the new sub-section 7 (see below).
Page 24, line 20, leave out "subsection (6)" and insert "subsection (5)" Page 24, line 21, leave out subsection (8) and insert— "( ) The Secretary of State shall no earlier than 1 January 2016 and no later than 31 December 2019 make at least one further increase to the minimum energy efficiency level."	Ensures that the minimum energy efficiency level is increased from Band E at least once between 2016 and 2020.
Clause 39	
Page 25, line 7, leave out "may" and insert "shall"	Gives the Secretary of State a duty to make the regulations set out in this clause.
Page 25, line 9, at end insert "including in particular where a notice has been served under this clause which requires a landlord to make relevant energy efficiency improvements provision that, if at the end of the	Allows local authorities to carry out the required relevant energy efficiency improvements themselves and recover the costs from the landlord, either in addition to, or instead of imposing a fine for non-compliance with a notice. .

period for compliance in the notice the landlord has failed to comply with the notice in whole or in part, the local authority may enter the property and carry out relevant energy efficiency improvements that the local authority considers necessary to ensure the domestic PR property meets the minimum energy efficiency level and recover from the landlord any costs and expenses reasonably incurred by it in doing so"	
Page 25, line 18, leave out "£5,000" and insert "£10,000 for each domestic PR tenancy."	Increases the maximum penalty to £10,000.
Before Clause 40	
Insert the following new Clause--- "Domestic minimum standard regulations (1) The Secretary of State shall make regulations for the purpose of securing that a landlord of a domestic PR property which falls below a minimum standard of energy efficiency (as demonstrated by the energy performance certificate) as is provided for by the regulations shall not let or market the .property until such time as the landlord can demonstrate that the property meets the minimum standard for a domestic PR property. (2) Regulations under this section are referred to in this Chapter as "domestic minimum standard regulations". (3) For the purposes of domestic minimum standard regulations— "energy performance certificate" has the meaning given by the Energy Performance Regulations; "landlord" and "local authority" have the meaning given by the regulations; and "minimum energy efficiency standard" means Band E or above expressed in accordance with Regulation 11(1)(a) of the Energy Performance Regulations or above (or any higher	From 2016 a minimum energy efficiency standard is introduced whereby it simply becomes an offence to let or market to let a domestic private rented property which falls below EPC Band E (ie those of EPC Bands F and G) until it is improved to Band E or above. This minimum standard must be raised from Band E at some point before 2020.

level set in accordance with sub-section (5)); (4) The Secretary of State may by order amend the definition of "energy performance certificate" in subsection (3). (5) The Secretary of State shall, no later than 31 December 2019, amend the regulations to raise the minimum energy efficiency standard. (6) Domestic minimum standard regulations shall come into force no later than 1 January 2016."	
Insert the following new Clause— "Further provision about domestic minimum standard regulations: England and Wales (1) Domestic minimum standard regulations may in particular include provisions about (a) exemptions from any requirement imposed by or under the regulations; (b) the making of an order by the Secretary of State to suspend the regulations for periods not exceeding one calendar year within any local authority area provided the Secretary of State- (i) is satisfied in respect of every calendar year suspension of the regulations that there is evidence that the regulations have resulted in a significant shortage in the supply of domestic PR property in that local authority area; and (ii) publishes the order and the reasons it was made and the evidence on which it was based. (2) Provision falling within subsection (1)(a) includes, in particular, provision about exemptions relating to any necessary permissions or consents."	The Secretary of State is given the power to make regulations setting out exemptions from the minimum energy efficiency standard, for example in circumstances where the landlord cannot obtain the necessary consent or permission. The Secretary of State may make provisions to suspend the minimum standard in a specific local authority area for a period of one year if there is evidence that it is leading to a shortage of rented properties in that area. The Secretary of State has to publish the evidence for his decision.

Insert the following new Clause— "Sanctions for the purposes of domestic minimum standard regulations: England and Wales (1) Domestic minimum standard regulations shall include in particular provisions for the purpose of securing compliance with requirements imposed on landlords by or under the regulations including granting powers to local authorities to carry out relevant energy efficiency works to domestic PR properties under the regulations and recover the costs from the landlord (2) Provision falling within subsection (1) includes, in particular, provision— (a) for a local authority to enforce any requirement imposed by or under the regulations; (b) about the sanctions for non-compliance with a requirement imposed by or under the regulations; (c) about the sanctions for the provision of false information in connection with such a requirement; including in cases falling within paragraph (b) or (c), the imposition of a civil penalty by a local authority (3) The regulations will make provision for a civil penalty not exceeding £10,000 to be imposed on any person who markets or lets a domestic PR property which does not meet the minimum standard regulations on or after 1 January 2016. (4) The regulations must also include provision for a right of appeal to a court or tribunal against the imposition of the civil penalty. (5) Provision falling within subsection (4) includes, in particular, provision— (a) as to the jurisdiction of the court or tribunal to which an appeal may be made; (b) as to the grounds on which an appeal may be made; (c) as to the procedure for making an appeal (including any fee which may be payable);	A fine of up to £10,000 can be imposed for marketing or letting a property which does not meet the minimum standard and/or the local authority can choose to carry out the energy efficiency works and recover the costs. An appeals process must be established.

(d) suspending the imposition of the penalty, pending determination of the appeal; (e) as to the powers of the court or tribunal to which an appeal is made; (f) as to how any sum payable in pursuance of a decision of the court or tribunal is to be recoverable. (6) The provision referred to in subsection (5)(e) includes provision conferring on the court or tribunal to which an appeal is made power— (a) to confirm the penalty; (b) to withdraw the penalty; (c) to vary the amount of the penalty; (d) to award costs. (7) If the Secretary of State considers it appropriate for the purpose of, or in consequence of, any provision falling within subsection (5)(a), (c), (e) or (f), domestic minimum standard regulations may revoke or amend any subordinate legislation in so far as the subordinate legislation extends to England and Wales. (8) In this section "subordinate legislation" has the meaning given in section 21(1) of the Interpretation Act 1978."	
Clause 40	
Page 26, line 4, leave out subsection (1)	The power of the Secretary of State to make regulations is not dependent on the outcome of the review in clause 36.