

**Business and Regulatory
Impact Assessment (Partial)**

Condition of Private Rented Housing in Scotland

Housing Sustainability Strategy Unit

April 2017



Scottish Government
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1. TITLE OF PROPOSAL

CONDITION OF PRIVATE RENTED HOUSING IN SCOTLAND.

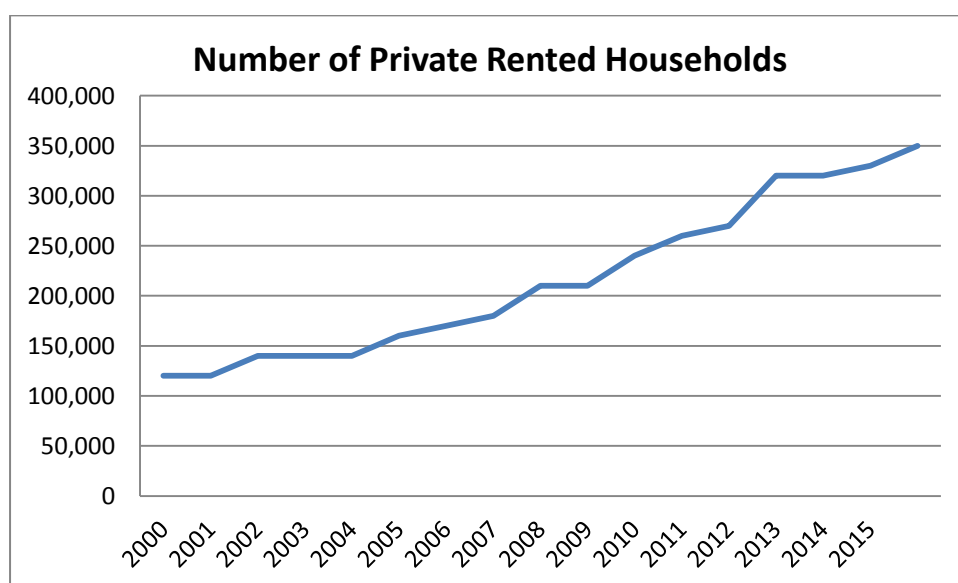
This partial Business and Regulatory Impact Assessment (BRIA) accompanies **PART 2 - CONDITION OF PRIVATE RENTED HOUSING IN SCOTLAND** of current joint Scottish Government Consultation. Part one considers proposals to regulate Energy Efficiency for Private Rented Sector (PRS) homes.

2. PURPOSE AND INTENDED EFFECT

Background

The Scottish Government's housing vision is for all people in Scotland to live in high quality sustainable homes. The vision for warm, high quality, affordable, low carbon homes is set out in the [Sustainable Housing Strategy](#) and a manifesto commitment promised to consult on a national standard for private rented homes to ensure a good basic standard of accommodation.

The private rented sector has grown significantly as a proportion of all housing since 2000. The most recent estimate is that there are 350,000 private rented homes in Scotland.



(Scottish Household Survey (2015) – Households by Tenure and Year)¹

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

In general, owner occupiers are in a better position to make informed decisions about the condition of their homes. It is reasonable for people living in rented accommodation to expect that housing standards ensure their homes are fit for human habitation and do not pose health risks. The Scottish Housing Quality Standard (SHQS) applies to houses rented by social landlords (local authorities and registered social landlords) and the Repairing Standard applies to houses rented by private landlords.

Objective

Responses to the Scottish Government's previous consultation on the sustainable housing strategy (Homes That Don't Cost the Earth) supported changes to rented standards. Respondents, particularly local authorities, were also concerned about the practicalities of enforcement and there were concerns about the possible impact on the supply of private rented housing, which could further increase the demand for social housing. Some stakeholders also identified safety issues that should be part of a rented housing standard, in addition to the physical condition and energy efficiency of homes.

The Scottish Government set up a Common Housing Quality Standard (CHQS) Forum in 2015. The aim of the Forum was to enable discussion with and between stakeholders on key issues affecting house condition to inform recommendations by the Scottish Government for changes to housing standards. Papers from the forum are published online <https://beta.gov.scot/publications/common-housing-quality-standard-topic-papers/>

Scottish Ministers made a Manifesto commitment to consult on a national standard for private rented homes to ensure a good basic standard of accommodation. The changes proposed to the repairing standard in this consultation are intended to meet that commitment.

Taking account of CHQS Forum members' responses, it has been concluded that the best way forward is to consult in two phases. The first stage (this consultation) will consult on proposals to make changes to the repairing standard, some of which will bring in elements that are currently in the Scottish Housing Quality Standard (SHQS). Other proposed changes as outlined in the consultation document include additional safety elements. Consideration will also be given to the repairing standard being extended to include some other lets such as agricultural tenancies and will look at costs, timing and enforcement. The second stage (provisionally later in 2017) will go further and consult on condition issues affecting housing generally, across all tenures.

Changes to the repairing standard will help reduce levels of disrepair in Scotland's private rented housing stock. It will contribute to the Scottish Government's **Safer and Stronger** Strategic objective and will impact on the National Outcome:

- We live in well-designed, **sustainable places** where we are able to access the amenities and services we need.

Improving the condition of private rented homes in Scotland including the energy efficiency proposals outlined in part one of this consultation, will have wider positive impacts. It will contribute towards achieving the Climate Change target to reduce greenhouse gas emissions by 42% by 2020 and 80% by 2050. It will also be in line with RPP2 proposals and help reduce the number of families living in fuel poverty.

It is of course recognised that some elements currently in the repairing standard are not in SHQS, specifically those around safety relating to electricity, fires and carbon monoxide requirements. Although these elements are not included in SHQS, the Scottish Government believes that most social housing will already comply with them. Some additional safety elements as outlined in the consultation document are not currently required by SHQS and the intention is that this will be taken forward through engagement with the sector after the current review of the Energy Efficiency Standard for Social Housing (ESSH) is complete.

Rationale for Government intervention

Misaligned Incentives

The cost of improving Private Rented properties falls on landlords, while the benefits of these improvements (e.g. improved health, decreased fuel bills, and improved comfort) are received by tenants. In a theoretical, perfectly functioning rental market, rent levels would fully reflect the quality of a property, thus aligning the incentives faced by landlords and tenants. However, due to the presence of market failures, such as imperfect information, the quality of rental properties may not be fully reflected in the rent charged on them. Government regulation by increasing the minimum standard for rental properties will help to mitigate the problems caused to tenants by these misaligned incentives.

Imperfect Information

While poor housing standards can have negative impacts on occupants, a lack of information can make it difficult for tenants to make informed decisions about their housing options. One issue may be that landlords are likely to have more information about the quality of a property, perhaps due to some complex quality issues not being clear to tenants on first inspection when deciding which property to rent, or due to landlords having greater opportunity to understand quality issues, e.g. because they are responsible for undertaking repairs and maintenance, and will therefore be better placed than the tenant to know the quality of the materials and labour used. The relatively short length of tenure in the PRS increases this imbalance between the tenants' and landlords' knowledge about the condition of a property.

There is also evidence to show that the source of information can heavily influence the weight given to this information during a decision making process.² For example, research has found that receiving information from a trusted source is valuable to those considering energy efficiency improvements.³ Given this issue of imperfect information, government regulation backed by enforcement measures may help to provide tenants with greater confidence that any dwelling they rent will meet certain minimum standards, thus improving the functioning of the private rented sector.

Failures of Rationality

Empirical evidence suggests that people can have particular difficulties of weighing up the impact of factors which are spread over time. In the case of housing quality, the costs of improving quality are borne upfront while the benefits of undertaking these improvements (e.g. decreased maintenance costs, improvements to tenants health etc) will be spread over a longer future time period. This issue adds to the complexity of the calculation which landlords must make in order to decide whether it is worthwhile undertaking improvements; and this complexity may lead landlords to incorrectly conclude that undertaking improvements is not an optimal decision.

Equity Impacts

Scottish Government figures show that 33% of those living in the private rented sector are in poverty after housing costs (compared to 35% of those in the social rented sector), which indicates that minimum standards to protect vulnerable households are as important in the private rented as in the social rented sector⁴. Furthermore, the CHQS Forum identified the importance of consistency between standards as they apply to social and private let properties, particularly as the lack of a common standard can be an obstacle in organising repair and maintenance in mixed-tenure buildings. As a first step the Scottish Government is proceeding to consult on proposals for changes to the repairing standard to ensure tenants living in private lets enjoy the same standard of accommodation as those in social let properties. In the longer term, consideration will be given to wider standards being developed to apply across all tenures.

Health Impacts

A Scottish Government research report found that a wealth of studies have consistently documented statistically significant associations between poor housing conditions and poor health and that improvements to housing conditions can positively impact both physical and mental health.⁵

² "MINDSPACE – Influencing Behaviours Through Public Policy", available at <https://www.instituteforgovernment.org.uk/publications/mindspace>

³ Consumer Research commissioned by the Department for Energy and Climate Change (2011) shows that after requests for lower costs, having access to convincing information about benefits and information from a trusted source are the main reasons given for what would encourage people to make their homes more energy efficient.

⁴ Scottish Government – Poverty Equality Analysis (2016) available at <http://www.gov.scot/Topics/Statistics/Browse/Social-Welfare/IncomePoverty/CoreAnalysis/povertyanalysis>

⁵ "A Select Review of Literature on the Relationship Between Housing and Health", available at www.gov.scot/Resource/Doc/1035/0104565.doc

3. CONSULTATION

Within Scottish Government

Two virtual forums were set up to consider how best to take forward the commitment in the Sustainable Housing Strategy to publish proposals for a common cross-tenure housing standard. The Scottish Government Forum included members from across a range of policy areas including Building Standards, Water quality, Health Protection and Agricultural Holdings, the Scottish Housing Regulator and Historic Scotland were also represented on the group. Members were invited to comment on a range of topics and comments received helped inform the final proposals set out in part 2 of the joint consultation.

Business / Stakeholders

Membership of the Stakeholder Forum which ran along-side the Scottish Government Forum included a wide range of interests, it included representatives from Scottish Land and Estates, Scotland's Housing Network, Scottish Association of Landlords, Electrical Safety First, National Federation of Roofing Contractors, City of Edinburgh Council and other interested parties. Members of this group were also invited to comment on a range of topics, valuable contributions from several stakeholders have helped inform the final proposals set out in part 2 of the joint consultation.

Public Consultation

This BRIA will be published along-side the joint consultation as outlined in paragraph one. It will support part 2 - Condition of Rented Housing in Scotland and provide members of the public with the opportunity to submit comments during the consultation period. Comments received will inform how the proposals will be taken forward.

4. OPTIONS

Do nothing option

To "do nothing" option would mean failing to take action to improve the physical condition of private rented housing in Scotland. If action is not taken, it will mean that tenants living in private rented housing will not benefit from the all the condition elements currently required in social housing or the additional safety elements as identified by the CHQS Forum.

Other options

The CHQS Forum identified a number of options aimed at improving conditions in both rented and privately owned houses. It is considered wise that this should be approached in stages with this consultation covering issues affecting private rented housing and a second consultation, later this year, looking at standards affecting housing generally - this is likely to consider issues such as difficulties faced by those living in mixed tenure blocks.

In this consultation we will consider and seek views on proposals for changes to the repairing standard to -

- include some elements that currently only apply to social housing,
- consider some additional safety elements which were identified by the Forum,
- seek views on whether the repairing standard should apply to agricultural tenancies and some other kinds of lets, and
- look at issues about costs, timing and enforcement

Future engagement with the social rented sector will develop changes to the SHQS to better align the requirements of the two standards.

There will be a second consultation later in 2017 on condition issues affecting housing generally.

Sectors and groups affected

Making changes to the repairing standard which applies to all privately let properties will directly affect all private sector landlords and their tenants. It is also likely to impact on local businesses

- Private landlords will be obliged to take steps to ensure compliance with any new elements added to the Repairing Standard.
- Tenants living in private rented accommodation will benefit from living in homes which have been improved to meet with new elements which go beyond the current standard.
- Local businesses will benefit as they are likely to be contracted to carry out the required works associated with improving house condition. This could include job opportunities.

Steps taken in this first phase will also lead the way for proposals for changes to the SHQS and in the longer term, the wider housing sector. It will initiate change in the private rented sector and start to address at least some issues of disrepair in mixed tenure tenements.

Benefits

It is proposed that the repairing standard should be extended to include a requirement that all private let properties meet the tolerable standard which is a condemnatory standard, all houses that are below the tolerable standard are unfit for human habitation and should not be used for living accommodation. Local authorities have a general duty to ensure that all houses used as living accommodation in their area meet the tolerable standard. However there is no specific requirement in the repairing standard for landlords to ensure that private rented housing meets the tolerable standard. The most recent estimate in 2015 is that 5% of private rented homes were below the tolerable standard, but these may not be being used as living accommodation. Making the tolerable standard part of the repairing standard would help ensure that houses for private rent meet the most basic threshold of fitness for

human habitation. This would empower tenants to apply for assistance to the First-Tier Tribunal (Housing and Property Chamber).

Views are invited on the tolerable standard being included in the repairing standard and other possible changes to the repairing standard relating to –

- Safe kitchens
- Food storage
- Central heating
- Lead free pipes
- Safe access to common facilities
- Safe and secure common doors
- Thermostatic mixing valves
- Residual current devices
- Asbestos surveys
- Private water supply risk assessment
- Capacity for fridges and freezers
- Safe oil systems
- Sound insulation

By taking steps to include some or all of these elements in the repairing standard, the private rented housing stock will improve over time to the benefit of tenants who will experience improved living conditions and landlords who will be taking steps to safeguard investment in their properties.

Costs

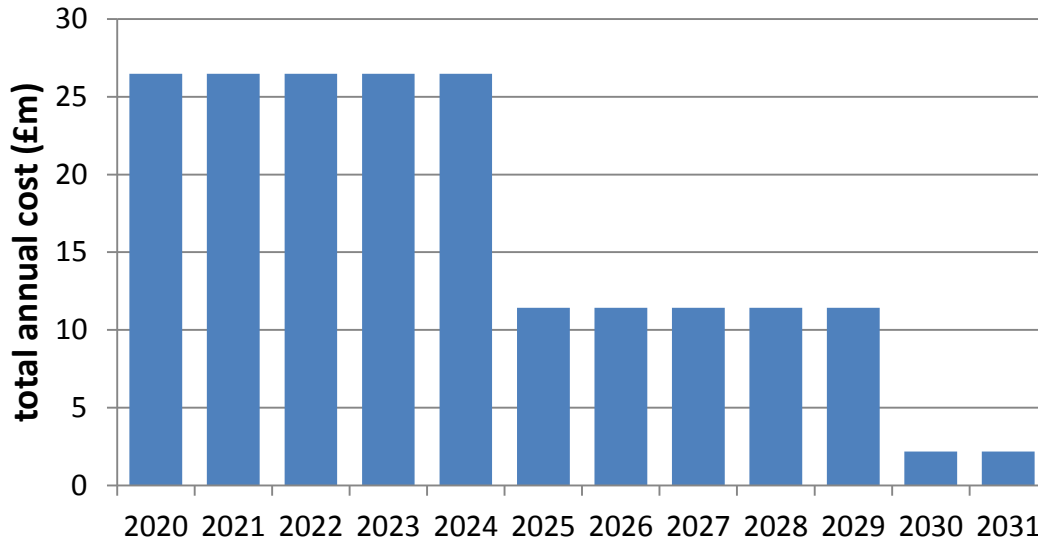
Estimated costs relating to changes to the repairing standard

The following table is an estimate of the financial impact of the elements of rented housing standards on which we seek views in this part of the consultation. It should be stressed that these are very rough estimates and actual costs are likely to vary. It does, however, help to suggest where the cost impact is likely to be highest. The timeframe is the lead-in time to allow landlords to spread the costs and include work in planned maintenance and improvements. There were an estimated 350,000 private rented homes in Scotland as at September 2016. The actual cost would vary between properties, with no cost to homes that already meet the standard.

New Measure	Estimated cost per property (£)	Estimate of stock not currently covered	Timeframe (years)	Annual cost to Private Landlords (£m)
Tolerable standard	2000	5%	10	3.5
Safe kitchens	500	2%	10	0.35
Food storage	1,000	5%	10	1.8
Central Heating	4,000	1%	5	2.8
Lead free pipes	1,000	4%	5	2.8
Safe access to common facilities	500	5%	10	0.88
safe and secure common doors	50	25%	5	0.88
Thermostatic mixing valves	100	75%	12	2.2
Residual current devices	200	50%	5	7.0
Asbestos surveys	100	75%	10	2.63
PWS risk assessment	200	4%	5	0.56
Capacity for fridges/ freezers	200	2%	10	0.14
Safe oil systems	100	2%	5	0.14
Sound insulation	250	5%	5	0.88
Total				26.48⁶

We think that the changes proposed in this part of the consultation reflect the existing best practice of many landlords and that the associated costs are relatively low, in comparison to on-going liabilities for repairs and maintenance, provided that sufficient lead in time is allowed for landlords to build improvements into scheduled maintenance and investment in property. Our intention is to engage with stakeholders where there is support for new standards to agree a reasonable lead-in period for changes to come into force. It may be appropriate to have different timescales for different elements, provided that this is not unduly complex

⁶ This annual figure will decrease overtime, see chart below. We estimate that the total figure over the 12 years after the introduction of the changes to be around £194m.



The chart shows how these costs might be spread if the changes to standards were introduced from 2020. This would be different if elements were introduced at different times or if timescales for elements were changed – so that costs could be spread over a longer period and the annual impact reduced.

5. SCOTTISH FIRMS IMPACT TEST

In the private rented sector, landlords are expected to ensure that the homes they let meet a statutory repairing standard at the start of a tenancy, and at all times during a tenancy.

- The repairing standard includes the requirement that a house is wind and watertight and in all other respects reasonably fit for human habitation.
- Section 22 of the Housing (Scotland) Act 2014 inserted new duties into the Repairing Standard including (i) electrical safety inspections to be carried out at five year intervals and (ii) carbon monoxide detectors to be installed where fixed combustion appliances are present.

Private landlords will be obliged to take steps to ensure compliance with any new elements added to the repairing standard.

Engagement with CHQS Forum members helped shape the consultation. Continued engagement with stakeholders (including members of the CHQS Forum) will be vitally important as proposals are considered to introduce new elements to the Repairing Standard to ensure tenants living in private lets (i) enjoy the same standard of accommodation as those in social let properties and (ii) benefit from additional safety element requirements .

We will specifically engage with representatives of private landlords to seek views on the timescales for introducing new elements to the repairing standard so that, as far as possible, work needed to meet the standard can be factored into planned programmes of maintenance. We are also seeking views on integrating timescales with wider government targets, such as our targets for tackling carbon emissions.

During the consultation period, the Scottish Government will be hosting some events to provide an opportunity for face to face discussions on the consultation document in general and more specifically about the questions posed within.

Competition assessment

Private landlords will be required to take steps to ensure compliance with any additional elements to the Repairing Standard. To comply, they will be required to ensure any work carried out on properties is carried out to a high standard by reputable contactors. Where private landlords rent out a few properties in the same area, small local businesses are most likely to benefit from related works. Where private landlords rent out a significant number of properties located in several locations, medium or larger enterprises may be employed. Contracts may go out to tender giving a range of businesses the opportunity to bid for the work.

The nature of the work is unlikely to impact on competitiveness of Scottish companies within the UK or elsewhere in Europe. The following competition assessment questions have been considered and it is felt unlikely that any new measures will have a significant impact on competition.

- Will the measure directly or indirectly limit the number or range of suppliers?
- Will the measure limit the ability of supplier to compete?
- Will the measure limit suppliers' incentive to compete vigorously?
- Will the measure limit the choices and information available to consumers?

Our view is that the answer is no to each of these tests.

There is the potential for job creation opportunities to undertake related works.

Test run of business forms

If any new business forms are required as may be the case in relation to safety elements, appropriate professional bodies will be involved in drawing up such forms.

6. LEGAL AID IMPACT TEST

Private landlords will aim to gain the co-operation of tenants before any required works are undertaken. It is considered unlikely that there will be a significant increase in tenants raising complaints and therefore it is unlikely there will be any significant impact on the legal aid fund. If tenants have reason to be unhappy with their landlord, the normal route of complaint is through the First-tier Tribunal for Scotland (Housing and Property Chamber). This would continue to be the case.

7. ENFORCEMENT, SANCTIONS AND MONITORING

The Repairing Standard is well established with existing enforcement, sanction and monitoring requirements. For private tenants, standards can be enforced through the First-tier Tribunal for Scotland (Housing and Property Chamber).

It is possible some proposed changes may require primary legislation. In particular, this may be necessary if the repairing standard is to be extended to include agricultural tenancies and some other kinds of lets.

We think the current First-tier Tribunal for Scotland (Housing and Property Chamber) enforcement route is sufficient.

8. IMPLEMENTATION AND DELIVERY PLAN

Post-implementation review

It may be appropriate that individual changes to the repairing standard, be delivered at different times. As illustrated in the table above, this could range from five to twelve years. Elements such as 'safe and secure common doors' and 'private water supply risk assessments' may be expected within five years but it would seem reasonable that 'thermostatic mixing valves' be installed at the same time as bathroom furniture is due to be replaced – approximately every twelve years. Stakeholders will be involved as the implementation and delivery plan is developed.

Procedures for post implementation review will be determined by the outcome of the consultation, stakeholders views will be considered as these procedures are developed.

The second stage consultation, likely to launch later this year, will go further and consult on condition issues affecting housing generally, across all tenures.

9. SUMMARY AND RECOMMENDATIONS

The recommendations in PART 2 - CONDITION OF RENTED HOUSING IN SCOTLAND of the consultation were developed following discussions with CHQS Forum members. It concluded that to better align housing standards across tenures would help improve the quality of housing in Scotland. This consultation is the first phase in addressing the issue – it considers advancing the alignment of standards as they apply to rented housing by proposing a range of changes to the repairing standard. It will be followed by a second consultation phase later in 2017 to look at wider house condition issues.

Summary of costs and benefits

In general, we consider private landlords could build improvements into scheduled maintenance and investment plans. This would of course be dependent on sufficient lead in times being set well in advance. Where there is support for new elements being added to the repairing standard, stakeholders views will be invited on reasonable lead in periods for changes to come into force.

The estimated costs attached to adding additional elements to the repairing standard are detailed in the table on page 10. This identifies new measures and estimates costs which private landlords may incur to bring their properties up to the amended standard. Private landlords could expect to spend in total in the region of £194m over a twelve year period following the introduction of changes to the repairing standard, allowing longer timescales for changes would reduce these costs. It must be emphasised that these are rough estimates and actual costs are likely to vary. Costs for individual landlords will vary with the extent that the homes they rent already meet the repairing standard.

There will be a range of benefits as a result of improving the standard of the lowest quality PRS properties – both to the tenants and landlords of the affected properties. Tenants may experience benefits in terms of both mental and physical health as a result of living in higher quality housing, and may also experience benefits from greater equality, decreased fuel costs and improved comfort. Landlords may experience benefits from taking steps to safeguard their investment by improving the quality of their rental properties.

10. DECLARATION AND PUBLICATION

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:



Date:

31/3/2017

KEVIN STEWART MSP

MINISTER FOR LOCAL GOVERNMENT AND HOUSING

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