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ASSESSMENT

Elmhurst Energy Response to:
“Domestic Private Rented Sector Minimum Level
of Energy Efficiency”

Prepared for: BEIS

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Domestic

Commercial

On Construction

1. Introduction

Elmhurst Energy is pleased that the Department for Business, Energy and Industrial Strategy (BEIS) is seeking a consultation to amend 'The Energy Efficiency (Private Rented Property) (England & Wales) Regulations 2015' in relation to domestic properties to remove the "no cost to the landlord" principle and, as such, we welcome the opportunity to respond to each question in turn.

The Consultation asked ten questions and Elmhurst's response to each of these can be found below. We hope you find our responses considered and useful for taking the Regulations forward in a progressive manner.

2. Questions and Answers

1) Do you agree with the policy proposal under consideration here to introduce a landlord contribution element where funding is unavailable to ensure improvements to Band F and G properties can be delivered (unless a valid exemption applies)? This would be subject to a cost cap.

If you do not agree, what are your objections, and how do you recommend the energy efficiency minimum standard should be achieved, given the current funding climate? Please provide reasons and evidence where available to support your views.

Elmhurst agrees it is responsibility of landlord to make improvements to the property on a self-funded basis and ensure that it achieves an EPC Band E - we believe there should be no financial cap to the landlord fulfilling this obligation.

However, if a cap is to be introduced, this should be in addition to any third party funding of which the landlord intends to take advantage.

If a cap is set, the amount is likely to be enshrined in law and will therefore require a further consultation to revise this figure, potentially resulting in unnecessary bureaucracy, confusion and potential delays in delivering the necessary measures.

We would also encourage the introduction of additional funding mechanisms, especially to lift fuel-poor families out of fuel poverty. We are encouraged by the ongoing consultations on Green Deal, ECO and the energy efficiency market and hope that our consultation response and ideas will form part of the Government's thinking and policy moving forward. This will help landlords to deliver energy-efficient homes, ultimately resulting in tenants and families living in healthier, warmer and more comfortable homes which are also cheaper to run.



2a) Do you agree that a cost cap for improving sub-standard domestic private rented property should be set at £2,500?

If you do not agree, what would be the most appropriate level to set the threshold? Please provide reasons and evidence where available to support your views.

It is responsibility of landlord to make improvements to the property and ensure that it achieves an EPC Band E - we believe there should be no financial cap to the landlord fulfilling this obligation

However if a cap were to be introduced then based on the cost-benefit analysis and the Government's own estimates (included within the consultation document), a cost cap of £2,500 would result in a landlord spending (net of ECO) an average of just £865 per property to achieve an EPC Band E rating. The average landlord contribution where progress is made towards a Band E (but not achieved) would be £1,025, net of ECO. However, if the proposed cap was increased to £5,000, the average contributions would be £1,700 and £2,100 respectively and would allow the landlord to deliver additional measures which will provide greater benefits to the tenant, including almost double the savings on their energy bills (i.e. on average, a £2,500 cap would produce a £95p.a. saving compared to a £188p.a. saving if the cap was set at £5,000).

Whilst we understand there must be a reasonable balance between the needs of the tenant and the cost to the landlord we should not lose sight of the fact that these are 'minimum standards' and we therefore need to encourage landlords to make their properties as energy efficient as possible, even beyond the current EPC Band E threshold and, ultimately, there is a Government 'road map' towards Band C rated properties in the future. The proposed financial cap of £2,500 is actually an artificial stop-gap and we should therefore actively encourage landlords to invest wisely in their properties. In many cases it may actually be more cost effective for the landlord to improve their property beyond the minimum Band E given that spending the minimum of £2,500 this year may be a false economy and costlier in the future. Cost caps tend to drive the market to meet only the minimum requirements so it is essential that Landlords have the full picture so that they can make informed decisions and invest wisely in their properties. By doing so, the tenant will gain maximum benefit this year, and not just when the next mandatory steps-up through EPC Bands D and C are put in place.

Landlords should be advised to carefully consider ALL recommendations included on an up-to-date EPC. There is a risk that landlords may only look at one EPC recommendation, obtain three quotes and exempt the property from MEES based only on the cost of a single, expensive recommendation (e.g. solid wall or floor insulation). However, cheaper measures which are also identified on the EPC, such as loft insulation, cylinder insulation, new heating controls/TRVs etc, could be delivered easily and within the proposed cap to progress towards an E, if not achieving it.



A new, up-to-date EPC is essential for the Landlord if they are to make good decisions. If older, out of date EPCs are used in conjunction with current costs/prices for measures the landlord is unlikely to obtain a true picture of the most cost-effective improvements which could be made to the property and therefore not obtain maximum value for money. The relevant factors which could impact on the landlord's ability to make the best decisions include:

- i) Methodology changes
- ii) Changes to the property
- iii) Fuel price increases
- iv) EPC rating may now be inaccurate (e.g. no longer an E, or could have improved under new methodology, such as the better performance of solid walls)

Ideally, Domestic Energy Assessors (DEAs) should be 'up-skilled' to Home Energy Advisors who would be able to provide bespoke advice to landlord detailing the best/most appropriate measures for the individual property. In this scenario the DEA would complete the energy assessment and, in a wholly independent capacity, advise the landlord on the best course of action (i.e. to ensure his contribution is spent in the most cost-effective manner to deliver maximum benefits to the tenant). Elmhurst is currently working with Each Home Counts to progress this concept.

2b) Do you agree that a cost cap for improving sub-standard domestic private rented property should be set inclusive of VAT?

Elmhurst believes that any cap should be set NET of VAT to ensure some certainty as to the value of a landlord's improvements and also not to potentially disadvantage the tenant should there be a change to the VAT rate at a future date.

However, if the decision is made to set the cap inclusive of VAT, the cap itself should be increased to £3,000 to maximise the value of the landlord's expenditure.

Further, consideration should be given to categorising improvements made to comply with MEES as repairs and maintenance to allow the Landlord to offset these against rental income. A larger CAP might be acceptable to Landlords should the inclusion of MEES improvement measure be included in Landlord's expenses off-set criteria.

3) Do you agree that a cost cap should not take account of spending on energy efficiency improvements incurred prior to 1 October 2017?

If you do not agree, what would be the most appropriate way of taking account of previous spending on measures which have failed to raise a property above EPC F or G? Please provide reasons and evidence where available to support your views.

Elmhurst agrees with this proposal.

4) Do you agree with the proposal that, where a landlord contributes to the improvement, the cost cap threshold should be inclusive of any funding which can be obtained through a 'no cost' finance plan (including a Green Deal finance plan), Supplier Obligation Funding (for example, ECO: Help to Heat or a successor scheme), or energy efficiency grant funding from a Local Authority or other third parties?

If you do not agree, please provide reasons and evidence where available to support your views.

Elmhurst does not support the introduction of a cap on the landlord's contribution.

However, if a cap is to be introduced, this should be in addition to the value of any other third-party funding the landlord intends to use, to ensure that the landlord is obliged to spend, as a minimum, the value of the cap.

If the landlord is looking for best value for money, some of the third-party funding options may actually be more expensive than employing local, independent contractors.

We understand that landlords can, in some circumstances, obtain no-cost energy efficiency measures through a range of sources/funding. In fact, Elmhurst actively encourages the introduction of more policies specifically aimed at the fuel-poor and, most essentially, the cost of these measures must be transparent.

5) Do you agree that it is not necessary to place a regulatory duty on energy suppliers, or their agents, to provide landlords with cost information relating to the value of energy efficiency improvements made to the landlord's property through a supplier obligation?

Elmhurst does not support the introduction of a cap on the landlord's contribution. However, if a cap is to be introduced, the landlord's contribution should be in addition to any other funding to which the landlord has access.

The complex, contractual scenario between energy suppliers and energy efficiency installers means that it may not always be possible to obtain details of the true costs of improvement measures and business confidentiality may also prevent transparency of these costs. As a consequence, Elmhurst is concerned that this will result in fewer properties being improved to their maximum potential.

Elmhurst is also concerned that the current lack of transparency could encourage potential fraud within the industry (e.g. contractors claiming £2,500 for a simple, cheap improvement measure).

If suppliers do not provide this cost information (N.B. – this must be market cost, not the cost of compliance with the relevant policy which drives the measures), the landlord or his Domestic Energy Assessor (DEA)/Home Energy Advisor (HEA) will not be able to make an informed choice as to the most appropriate/cost effective measures for the property and may therefore not get ‘best value’ for their contribution and, ultimately, the tenant will again lose out (see 4 above).

6) Where a landlord is intending to register a ‘high cost’ exemption, should the landlord be required to provide three quotes for the cost of purchasing and installing the measures, in line with the non-domestic minimum standards?

If you do not agree, please provide reasons and evidence where available to support your views.

Elmhurst agrees with this proposal as it will promote fairness, openness and consistency.

7) Do you agree with the proposal to limit the validity of any ‘no cost to the landlord’ exemptions (under Regulation 25(1)(b)) registered between October 2017 and the point at which a capped landlord contribution amendment comes into force?

If you do not agree, what are your objections, and how do you recommend that the minimum standard regulations be amended to ensure the energy efficiency improvements are delivered to such properties which might otherwise be left unimproved once the amended regulations came into force? Please provide reasons and evidence where available to support your views.

Elmhurst agrees with this proposal.

Any exemptions on the basis of ‘no cost to the landlord’ registered between October 2017 and the date the landlord’s contribution is introduced should be invalidated as this will result in tenants benefitting from warmer homes. The landlord should obtain an up-to-date EPC and get independent advice from a Domestic Energy Assessor to understand the best way forward to achieve compliance. They will then also better understand the various funding opportunities available to them.



8) Do you have views on whether the consent exemption under Regulation 31(1)(a)(ii) should be removed from the minimum standard regulations or retained?

Please provide reasons and evidence where available to support your views.

As MEES compliance is a legal obligation Elmhurst does not agree that the refusal of a third party (e.g. the tenant) to give their consent for the installation of measures should be a reason for exemption. Where a tenant refuses to co-operate and allow the landlord access to carry out works the landlord will be able to take legal action to compel the tenant to comply.

Elmhurst views a landlord's obligations under the MEES regulations no differently from their obligation under gas safety regulations. A landlord must ensure that the gas installation/appliances are safe and is required to obtain an annual gas-safety certificate. In situations where a tenant refuses to allow access to the property for this safety test to be completed there is no option for the landlord to register an exemption and we believe that MEES should be no different. In this scenario the landlord must take whatever legal steps are necessary to ensure that the requirements of the law are met.

Where the landlord wishes to use Green Deal as the vehicle for obtaining funding the tenant's co-operation will be needed (as the bill-payer) although the landlord cannot force them to agree. In this case the landlord should be expected to cover the cost of all necessary improvement works and the introduction of a spending cap will simply introduce another barrier to achieving the best possible energy efficiency of the property.

A 'loophole' would be created if unscrupulous Landlords realise they could avoid improving the property by bribing their tenant to refuse to agree to Green Deal finance.

9) Do you have any comments on the policy proposals not raised under any of the above questions?

Elmhurst believes that any improvement made to uplift a property to an EPC band E must have been made within the 12 months period prior to the date of exemption so as to prevent historical purchases (maybe by previous owners) be used to justify exemption, and to prevent 'rolling exemptions' where one purchase could be used to justify exemptions for many years to come.

Elmhurst is also concerned that the MEES regulations could lead to pressures on DEAs to falsify EPCs to show a Band E or above where this is not actually the case. Given the potential scope for fraud, the introduction of a suitable audit 'Smart Rule' would help to alleviate these concerns.



Consideration should also be given to the introduction of a 'whistle-blowing' scheme which would allow DEAs to report any concerns of suspected fraud in the marketplace. Elmhurst and PEPA would willingly work with BEIS to implement a scheme to identify landlords or agents who place pressure on DEAs to produce fraudulent EPCs and it is important that a mechanism is agreed for all stakeholders to work together.

BEIS may also wish to consider a voluntary scheme allowing DEAs to create or invalidate exemption certificates to help prevent coercion and fraud.

It is important that BEIS consider how current EPBD regulations impact on MEEs. An example would be the rules relating to incorrect EPCs being removed from the register and how this could affect landlords who have registered an exemption (e.g. the evidence needed for the exemption to be valid). Ideally, there should be a link between the EPC register and the exemption register so that exemptions do not remain after an EPC is cancelled (i.e. the landlord would be required to re-register their exemption once a replacement EPC has been obtained, if still appropriate).

It is in the interest of all parties to ensure that any MEEs improvements to the property are over and above the landlord's normal maintenance obligations. Any sum of money spent on repair/maintenance must produce an improvement to the RdSAP score (e.g. servicing/repair does not count if this doesn't increase the property's EPC rating). In addition to this, all improvements should comply with current Building Regulations.

10a) Do you have any evidence or comments regarding the consultation impact assessment (including views on any of the assumptions we have made to support our analysis), which could inform the final stage impact assessment?

Refer to response to (9) above.

10b) Do you have any evidence or information on the potential for these proposals to impact on the PRS market, including any potential for landlords who are required to act by the minimum standard regulations to pass through costs to tenants after making improvements to their properties?

Elmhurst considers the impact assessment included within the consultation document to be very disappointing. Most notably, only 30% of F & G properties will achieve an E rating and this is clearly a missed opportunity.



In the February 2018 edition of The Warren Report, the chairman of the British Energy Efficiency Federation, Andrew Warren, noted that, on the government's own estimates, less than a third of dwellings currently rated as EPC Band F or G are likely to be upgraded to the modest Band E if a landlord cost cap of £2,500 is introduced. This is a significant concern given that it is now government policy to seek to bring every home up to a Band C rating within the next 17 years.

As domestic MEES will not realistically take effect until 1st April 2018, we have no actual evidence of the likely impact on the PRS market. However, we should be mindful of how the concept of MEES is promoted and 'sold' to both landlords and tenants so as to avoid possible, negative perceptions. For example, the Green Deal route may appear unattractive to some tenants as, although the home they live in may be warmer, they might feel it unfair that they are paying for the landlord's improvement measures, particularly if this increases the value of the landlord's asset. Also, as with any perceived cost that is 'forced' upon landlords, some landlords might react by attempting to increase the rent they charge and, again, the tenant may suffer as a result.

It is important that the benefits of MEES are promoted to tenants in a positive manner so that they begin to really value energy efficiency when choosing which property to rent (e.g. because the property will be cheaper to run and will be more comfortable for their family). Elmhurst is concerned that this message is currently not really understood by many prospective tenants' therefore letting agents and property managers need to do more to educate tenants on how to choose the right home for them.

A further concern is that some landlords may decide to sell their properties as a result of the perceived, added cost/burden imposed by MEES. These homes might be bought by owner occupiers, thus reducing the much-needed supply of private rented property, and also moving the least energy-efficient properties into the owner-occupied market which doesn't currently have any incentives or regulations to make dwellings more energy efficient.

10c) Can you provide any evidence on the likely costs associated with the compilation of evidence in advance of registering an exemption on the PRS Exemptions Register?

In order to register a valid MEES exemption the Landlord must first obtain an up-to-date EPC from a DEA which confirms the energy rating of the property and this will incur cost to the landlord.

For the exemption to be valid the landlord must provide evidence of three quotations from contractors/installers demonstrating the cost of energy-efficiency measures, and confirming that the cost of installing the measures would exceed the landlord's contribution cap. This could be time-consuming for the landlord and some contractors/installers may charge to provide the required quotation.



In reality, we should look to minimise the number of opportunities to register an exemption otherwise the true costs of failing to improve the energy-efficiency of these properties will be borne by the families occupying the worst performing homes in the UK. Ideally, we should focus on ways to make it easier for the landlord to comply with the MEES regulations than it is to register an exemption. We believe that an up to date EPC and independent advice from a Home Energy Advisor, coupled with a clear route to the quality installation of cost-effective measures, is the best way to implement the MEES regulations.

Elmhurst recommends that future Government policies are based on the actual financial cost of installing energy-efficiency measures, rather than the predicted carbon savings, and we are keen to see the introduction of additional funding opportunities which will encourage landlords to make improvements to their properties. If the MEES 'journey' is made as simple and painless as possible for the landlord this should help maximise the opportunities for improvements to be made, actively discourage landlords from seeking exemptions and, ultimately, minimise the number of missed opportunities to provide much needed improvements to the poorer housing stock.

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