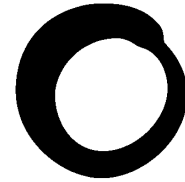




Association for the  
Conservation of  
Energy



**Friends of  
the Earth**

# **Energy Bill Report Stage Briefing**

**September 2011**

## **Minimum energy efficiency standard for private rented homes**

**Following a substantial campaign by a broad coalition of civil society organisations and charities the Government has amended the Energy Bill to include a new law which will, from 2018, require landlords to improve the energy efficiency of the coldest rented homes.**

**Friends of the Earth, Citizens Advice and the Association for the Conservation of Energy warmly welcomed this move. However, as it stands, the legislation will be too slow to come into force and currently contains some very significant weaknesses which will increase the complexity and cost of enforcing the new law and leave both tenants and landlords confused about their rights and responsibilities.**

**These problems can be easily rectified with a small number of simple amendments to the Bill at Report Stage which will: bring forward the start date to 2016, ensure properties must be improved to at least a minimum standard, include lettings agents and the marketing of sub-standard properties in the legislation, and protect tenants from retaliatory eviction.**

**The dramatic rise in household energy bills and fuel poverty figures over the summer show why the Government must not delay action on home insulation.**

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Friends of the Earth Limited company number 1012357, Trust company number 1533942, registered charity number 281681.

**“From 2016, any tenant or their representatives asking for their landlord’s consent to make reasonable energy efficiency improvements cannot be refused. From 2018, the rental of the very worst performing properties—those rated F and G—will be banned through a minimum energy efficiency standard.”**

Rt Hon Chris Huhne MP, 10 May 2011

Friends of the Earth, ACE and Citizens Advice warmly welcome the Government’s acknowledgment that renting out dangerously cold and draughty homes is unacceptable: landlords will have to improve these properties or face prosecution.

Rented homes include a large number of households in fuel poverty; many are so cold and poorly insulated that they are a health hazard and cost a huge amount to heat. The number of households renting privately in England has risen by 1 million since 2005, from 2.4 million to 3.4 million in 2010 – over 15% of the housing stock. Wales has 140,804 and Northern Ireland has 81,000 private rented properties – respectively 11% and 11.5% of the housing stock.<sup>1</sup>

The very worst properties (Energy Efficiency rating Band G) are more than four times as common in the private rented sector as in the social sector.<sup>2</sup>

There are about 680,000 private rented properties in England with the worst energy efficiency ratings of F and G. Over forty per cent of households in these homes live in fuel poverty.<sup>3</sup>

The vast majority of these properties can be improved to an energy efficiency rating of Band E at relatively low cost. Research by the Energy Saving Trust for Friends of the Earth shows that 37 per cent of F or G rate private rented homes could be improved to a minimum standard of Band E for less than £900 through cheap measures like loft and cavity wall insulation and draught proofing. The overwhelming majority (74%) would cost less than £3500 and just five per cent would cost more than £7,500 to bring up to a basic standard of energy efficiency.

The Government’s amendment of the Energy Bill at Committee Stage is the result of a high profile campaign by a wide coalition of almost 40 health and consumer organisations, green groups, children’s charities, councils and grassroots tenants’ rights groups, led by Citizens Advice, Friends of the Earth and the Association for the Conservation of Energy.<sup>4</sup>

The campaign has huge support in Parliament with over 180 MPs from across the political spectrum signing Early Day Motion 653 calling for a minimum energy efficiency standard from 2016.

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<sup>1</sup> English Housing Survey, Headline Report 2009-10, Living in Wales 2008 and *Building Sound Foundation*, Department for Social Development.

<sup>2</sup> English Housing Survey, Headline Report 2009-10.

<sup>3</sup> Page 54, Energy Bill: Green Deal Impact Assessment, DECC, 2010

<sup>4</sup> All Party Parliamentary Fuel Poverty & Energy Efficiency Group, Age UK, Association for the Conservation of Energy, Blackpool Residents Federation, Brent Private Tenants’ Rights Group, Brent Council, Bristol Council, Camden Council, Camden Federation of Private Tenants, Centre for Sustainable Energy, Chartered Institute of Environmental Health, Child Poverty Action Group, Citizens Advice, Consumer Focus, Crisis, Disability Alliance, End Fuel Poverty Coalition, Federation of Private Residents Associations, Friends of the Earth, Housing Law Practitioners Association, Islington Council, Macmillan Cancer Support, Manchester City Council, National Childbirth Trust, National Energy Action, National Home Improvement Council, National Pensioners Convention, North West Tenants & Residents Assembly, People & Planet, St Helens Community Empowerment Network, Scarborough Private Tenants Rights Group, Stop Climate Chaos, Town and Country Planning Association, UK Business Council for Sustainable Energy, UK Public Health Association, UNISON, WWF – UK, 38 Degrees.

If it is done properly, a new law to ensure that rented homes meet a basic energy efficiency standard will protect thousands of vulnerable families from fuel poverty and high energy bills – and bring health benefits for tenants currently living in cold homes. It will give certainty to landlords to enable them to plan and invest in their properties for the low-carbon future.

However there are a number of important ways in which the current proposal gives serious cause for concern and requires amendment at Report Stage if the legislation is to be effective.

### **The minimum standard must not wait until 2018 to be introduced**

***Please support amendment 6 tabled by John Leech MP which will introduce the measure in 2016.***

The new minimum standard could have considerable health, climate and consumer benefits. It is estimated that it could:

- lift 150,000 households out of fuel poverty,<sup>5</sup>
- save an average of £488 from the annual energy bill of the homes improved.
- save 1.87 million tonnes of CO2 annually.<sup>6</sup>
- cut the £145m currently spent by the NHS in England every year in treating illnesses caused by living in cold rented homes.<sup>7</sup>

All these benefits for consumers, the climate and the taxpayer will be unacceptably delayed if the introduction of the minimum standard is pushed back to 2018 rather than 2016 as over 180 MPs have called for. Seven years is an unnecessarily long time to wait – particularly as 2018 is two years after the date by which the Government has a legal obligation under the Warm Homes & Energy Conservation Act 2000 to end fuel poverty. Introducing the minimum standard in 2016 rather than 2018 would have zero cost to the Exchequer.

When asked in Committee why the Government had chosen to delay the introduction of the minimum standard until 2018, Greg Barker was unable to give any clear explanation:

*“Ultimately, the date is a matter of judgment and balance. I do not think that we would pretend that there is anything perfect about 2018; there are arguments in favour of setting an earlier date, and I am sure that some would argue for further delay.”*

The only apparent justification offered was the proportion of tenancies which would have turned over by 2018: *“Most tenancies, I am told, are 12 to 18 months, so by 2018, we expect that 80% to 90% of tenancies will have changed.”*

The Minister was unable to say why 80-90% tenancy turnover was the desirable proportion nor what the turnover by 2016 would be.

However, using the English Housing Survey Headline Report 2009-10, we have calculated that 80.3% of PRS tenants have lived in their current home for less than 5 years and 89.8 have lived in the property for less than 10 years. So while the Minister is correct that by 2018 there is likely to be an 80-90% turnover by 2018, an 80-90% turnover could also be expected by 2016. This means the only reason offered for a 2018 start date also applies to 2016!

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<sup>5</sup> <http://www.consumerfocus.org.uk/files/2010/12/A-private-green-deal.pdf>

<sup>6</sup> Which Way Up – Advance Headline Findings, Energy Saving Trust, Feb 2011

<sup>7</sup> The health costs of cold dwellings, BRE and CIEH, April 2011

## **Minimum energy efficiency standard for private rented homes**

This lack of evidence for 2018 only reinforces our existing concern that the 2018 introduction is too late, coming after the statutory target to end fuel poverty by 2016 and delaying the numerous benefits to vulnerable tenants and the taxpayers which we have previously set out.

In addition at Committee Stage the Government removed from the Bill provisions allowing local authorities to issue improvement notices to landlords from 2015. We believe this was a mistake, as the measure would have given councils useful flexibility to make progress ahead of the introduction of the minimum standard or where the local housing stock is especially poor. The removal of this power from the Energy Bill makes it even more important that the standard is introduced in 2016, rather than waiting until 2018.

We therefore do not believe that the Government is doing everything “reasonably practical” – as required by the Warm Homes Act – to meet its legal duty to end fuel poverty by 2016.

The independent Committee on Climate Change in its recent 3rd Progress Report to Parliament specifically called for “earlier introduction of regulation for the private rented sector” stating that “there is no reason to delay implementation of this aspect of the proposals.”

***New official fuel poverty statistics released this summer show the number of households in fuel poverty has risen to 5.5m households. Many energy companies also announced substantial price rises. It would be a tragedy if the Government’s response to this news was to delay a vital measure which would tackle fuel poverty and cut energy bills. Please support amendment 6 tabled by John Leech MP which will introduce the measure in 2016.***

### **F & G-rated properties might not have to be improved to meet the ‘minimum standard’ but could still be legally let at F or G after 2018**

***Please support amendment 4 tabled by John Leech MP to ensure that following the implementation of the minimum standard it will be illegal to let any property which falls below an E rating.***

This is a significant loophole in the legislation which could cause considerable confusion for tenants, landlords and local authorities and dramatically increase the complexity and cost of enforcing the new law.

The Minister has repeatedly stated that the “minimum standard” for PRS properties will be Band E (though this is not stated in primary legislation) and that this standard should rise over time.

Section 42 of the Energy Bill establishes that landlords of properties falling below the specified standard (ie Band E) will have to make energy efficiency improvements. However, there is no definitive obligation in the Bill to bring the properties up to Band E in every case. The legislation merely requires such energy efficiency improvements as can be financed by the Green Deal or ECO or by “such other financial arrangement as the regulations provide”.

Therefore the legislation allows a landlord with a dangerously cold F or G rated property to continue to let it legally simply because he has made improvements or taken out a Green Deal. In the absence of a simple statement that the property will have to be improved at least to Band E, the Bill gives no indication of what amount of improvement is necessary to ensure

that the landlord has improved the property sufficiently to meet his legal obligation. Landlords of F and G rated properties will know that they have to improve their properties, but the legislation gives them no idea by how much.

This is a significant loophole which means that what the Government have produced is not a minimum standard at all, but merely a requirement for landlords of poor properties to make improvements in a way that has yet to be specified.

Greg Barker MP has stated the legislation will mean: *“landlords will know what is required of them and when, and tenants will be provided with assurance that cold, draughty rental properties will be a thing of the past.”* Unless the Bill is amended, this will not be the case.

It has been suggested by DECC officials that landlords will have to do everything that could be covered by a Green Deal and/or ECO. However the amount of improvement which can be financed by the Green Deal will change over time as fuel prices change and tenants change – and may be different due to financing offers depending on which Green Deal provider is approached.

In many cases taking out a Green Deal – and/or accessing finance via the Energy Company Obligation (ECO) – will bring the property up to or beyond a Band E, but it might not. This is especially true of the 42% of F and G private rented properties in fuel poverty for whom the Green Deal will be less appropriate and who will rely on ECO. The amount of money available per household through ECO and the measures for which it is available are likely to change over time according to Government policy and priorities.

The impact of this loophole could be dramatic, with an unknown number of F and G rated properties being let perfectly legally. It could create a bureaucratic and enforcement administrative maze. Tenants will be confused about whether a landlord can or can't legally let the property. Landlords could similarly be confused about what they are required to do to meet their legal duty (and may therefore do nothing until they are threatened with prosecution). Local authorities will face the complicated and expensive task of policing and enforcing the law and will be called upon to prove (by means that are wholly unclear) whether F or G rated properties have been sufficiently improved to be legally let or whether they have not and should be prosecuted.

***We believe the minimum standard legislation should be transparent, simple and cheap to enforce. By amending the legislation so that properties below the specified minimum standard must at least be improved to that level, it will be clear to all whether a property can or can't be legally let. Please support amendment 4 tabled by John Leech MP.***

### **Tenants demanding energy efficiency measures from landlords must be given proper legal protection from eviction**

***Please support amendment 8 tabled by John Leech MP, which would enable the Secretary of State to provide tenants making energy efficiency requests of their landlords with protection against retaliatory eviction***

The Government has included a provision in the Energy Bill (Clause 45) which means that landlords cannot refuse consent for reasonable requests for energy efficiency measures. However we are concerned that many tenants will be deterred from making requests of their landlords for fear of being evicted if they do. This is known as “retaliatory eviction” and is made possible by Section 21 of the Housing Act 1988.

Work by Citizens Advice<sup>8</sup> and others shows that fear of eviction is an established barrier to many tenants asking for improvements and maintenance works in rented properties.

There is survey evidence supporting this:

- A 2000 survey by the ODPM<sup>9</sup> found 8% of private rented sector tenants surveyed were very dissatisfied with repairs and did not try to enforce their rights because they thought their landlord would end their tenancy.
- A 2007 survey of tenant relations officers and Local Authority Coordinators of Regulatory Services<sup>10</sup> found 100% of respondents (129 in total) reported that tenants were reluctant to make use of environmental health and tenancy relations officers services through fear of jeopardising their tenancy.
- According to a YouGov survey commissioned by Shelter in 2011, 7% of tenants who had had a problem with their landlord did nothing about it because they were scared of the consequences.<sup>11</sup>

Under the Housing Act 2004 tenants are now protected from retaliatory eviction when the landlord fails to protect their deposit. This principle should extend to tenants who make energy efficiency requests using the provisions in the Energy Bill. Without this, the Government would be encouraging tenants to demand energy efficiency measures from landlords without giving them protection from the potential consequences.

In 2008, Grant Shapps, Conservative Housing Spokesman, now Housing Minister, declared his opposition to retaliatory eviction in an interview with Environmental Health News:

*“Retaliatory evictions are completely unacceptable and I throw my weight behind EHN’s campaign...It is absolutely wrong and inappropriate.*

*“There are two competing thoughts in my mind. One is the desire not to make it over-complicated because the more legislation you pile on the more expensive it is to be a landlord and ultimately the more expensive it is to rent...Then again we need sufficient protections in place to make sure retaliatory evictions do not happen.”<sup>12</sup>*

In 2008 one hundred and one MPs, including Vince Cable, Lynne Featherstone, Andrew Stunell and Danny Alexander, signed Early Day Motion 727 expressing concern that some landlords use provisions under section 21 of the Housing Act 1988 to evict their tenants to avoid meeting their responsibility to carry out repairs and essential maintenance. The Motion went on to urge the Government to take steps to prevent retaliatory eviction by placing restrictions on the use of Section 21.

The Clause 45 provisions in the Energy Bill encourage tenants to demand energy efficiency improvements and the Green Deal from their landlord. It is therefore essential that tenants be given legal protection when they do so.

<sup>8</sup> [http://www.citizensadvice.org.uk/press\\_20070613](http://www.citizensadvice.org.uk/press_20070613)

<sup>9</sup> CLG (ODPM) Survey of English Housing: Whether tenants tried to enforce right to repair and reasons for not doing so (data for 1999/2000)

<sup>10</sup> Local Authorities Coordinators or Regulatory Services and the Association of Tenancy Relations Officers, survey conducted by Crosby, Formby and District Citizens Advice Bureau, 2007

<sup>11</sup> Shelter YouGov survey 17 June 2011

<sup>12</sup> Grant Shapps, Environmental health News, 10th October 2008, <http://www.cieh.org/eh/eh3.aspx?id=15408>

In response to amendments tabled during Committee Stage by Tessa Munt MP, the Government set up a Stakeholder Working Group to look at the evidence around retaliatory eviction. Tessa Munt asked the Minister to include an enabling provision on the face of the Energy Bill, so that a solution could be introduced without delay in secondary legislation. Greg Barker replied that this was CLG's area of responsibility and once the evidence had been assessed a solution would be sought.

***We believe that the case for action is clear and an amendment to the Energy Bill must be made so that the Government can implement a solution in Secondary Legislation once the Working Group finishes its work. Please support amendment 8 tabled by John Leech MP.***

**The legislation should cover the marketing of private rented properties below the minimum standard and include letting agents acting on behalf of landlords**

***We ask MPs to support amendments 2, 3 and 5 tabled by John Leech MP, which would ensure that landlords and their agents can be prosecuted for marketing F or G rated properties.***

Section 42 of the Energy Bill does not mention letting agents or contain any reference to marketing rented properties. Excluding letting agents is a missed opportunity significantly to increase compliance with the regulations and reduce the cost of enforcement. There are far fewer letting agents than landlords, with each representing many different landlords. If a letting agent were liable for prosecution, they would ensure that all the properties on their books were compliant with the regulations before they took them on and would have a strong stake in making landlords aware of the minimum standard in advance of it coming into force.

Caroline Lucas MP and Tessa Munt MP tabled amendments in Committee which would have made it an offence to market (as well as actually to let) an F or G rated property and would have ensured that the law applied to letting agents as well as landlords. In responding to the amendments, Greg Barker MP stated that: *"I am sympathetic towards the sentiment of those new clauses, which seek to strengthen further regulations in that area. However, that aspect of the new clauses is unnecessary. The requirement prohibiting landlords from letting their properties unless they comply with the minimum energy efficiency standard will bite on landlords and anyone acting as their agent, including letting agents or estate agents. That is absolutely implicit within the Bill, and no letting agent will want to market properties that have not met the requirements."*

However the following day he effectively reversed his position and merely stated that landlords could "not circumvent the legislation by engaging an estate agent or letting agent" and that they would still be liable if they did. This is not the same as saying that it would be an offence for a letting agent to let an F or G rated property on behalf of a landlord. It is clear therefore that, on their own, the Energy Bill provisions will not bite on letting agents. Only landlords will be liable for letting an F or G rated property.

As regards marketing to let, the Minister also shifted his position to state merely that there could be an opportunity in secondary legislation to create an offence of marketing an F or G rated property. He went on to say that DECC would look at this issue in consultation but that he was "not in a position to commit". This means that it could end up being perfectly legal for a letting agent to market numerous F or G rated properties – leaving hard-pressed local

authorities to chase up each individual tenancy agreement after it has been signed and perhaps after the tenant has moved in.

Since Committee Stage DECC officials have now stated that the Consumer Protection from Unfair Trading Regulations 2008 will prevent both landlords and letting agents from marketing F and G rated properties. However, despite repeated requests, officials have been so far unable to give any indication as to which sections of these regulations might be relevant. Our own analysis of the Regulations leaves us far from convinced.

***It is important that landlords and their agents can be prosecuted for marketing F or G rated properties. If Ministers can give a clear indication of the way in which the Consumer Protection from Unfair Trading Regulations will do this, then the Energy Bill will require no further amendment. However, in the absence of this information we ask MPs to support amendments 2, 3 and 5 tabled by John Leech MP.***

### **The Energy Performance Certificate register should record the contact details of the landlord**

***Please support amendment 23 tabled by Luciana Berger MP to achieve this.***

It is vital that landlords be given accurate and early information about the new legislation. It is also important that as many of them as possible are made aware of the Green Deal and the Landlords Energy Saving Allowance (the £1500 per property tax break for energy saving measures which has traditionally had very low levels of take-up – just 0.2% of landlords in 2007/8). This will increase voluntary early take-up of the Green Deal in the sector and reduce the need for enforcement of the mandatory improvements regulation later.

During Committee Greg Barker MP confirmed that the Energy Performance Certificate would in future record the tenure of the property. Where the property is a rented one the EPC should also record the name and address of the landlord. These details should also be made available to local authorities so that they can be used to provide accurate and reliable information to landlords about energy efficiency programmes, funding sources, tax breaks and the like.

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## Minimum energy efficiency standard for private rented homes

### Annex 1: Energy Bill amendments on the private rented sector, with explanatory notes

Amendment number	Tabled by	Clause no.	Amendment	Notes
2	John Leech	42	Page 27, line 37, after 'landlord', insert ', or his appointed agent,'.	Ensures letting and estate agents acting on behalf of a landlord are also covered by the legislation.
3	John Leech	42	Page 28, line 4, after 'may not let', insert ', let on behalf of the landlord as his appointed agent or market to let'.	Makes it an offence to let an F or G rated property acting on behalf of a landlord and makes it an offence to market an F or G rated property to let.
4	John Leech	42	Page 28, line 7, at end insert 'such that the property shall not fall below the level of energy efficiency specified in subsection (1)(c).'	Ensures that the improvements carried out to a property which falls below a specified level of energy efficiency (ie those rated F or G initially) must at least be improved so they no longer fall below that standard (ie they are no longer F or G rated).
5	John Leech	42	Page 28, line 13, after "let the property", insert 'and "market to let"'.	Ensures that marketing a property to let is properly defined in the regulations
6	John Leech	42	Page 28, line 33, leave out '2018' and insert '2016'.	Brings forward the date on which the Domestic energy efficiency Regulations will come into force
7	John Leech	45	Page 30, line 36, leave out '2016' and insert '2013'.	Brings forward the date on which the Tenants energy efficiency improvements regulations will come into force
8	John Leech	46	Page 31, line 4, at end insert— '(e) any protections to be afforded to a tenant making a request under the regulations, including, if the Secretary of State considers it appropriate, the circumstances in which no notice under section 21(1)(b) or (4) of	Gives the Secretary of State the power to include in the regulations protection for tenants by limiting the circumstances under which a Section 21 notice for eviction of a tenant can be served once a request has been made by the tenant for

Amendments continue overleaf

**Minimum energy efficiency standard for private rented homes**

8 continued			<p>the Housing Act 1988 may be given pending the outcome of the request.</p> <p>(1A) In determining whether it is appropriate to make provision under subsection (1)(e), the Secretary of State shall take into account the advice of any relevant body or bodies.'</p>	<p>relevant energy efficiency measures.</p> <p>Also ensures that the Secretary of State must consider the advice and views of relevant bodies.</p>
23	Luciana Berger	74	<p>Page 55, line 43, at end insert—</p> <p>'(2A) The Secretary of State may in addition require the register referred to in subsection (1) to record information on—</p> <p>(a) the tenure of each property; and</p> <p>(b) in the case of a domestic PR property, the name and address of the landlord.'</p>	<p>Ensures that the Energy Performance Certificate database will record the tenure of properties and where the properties is privately rented it will record the name and address of the landlord</p>