

Chapter 7 : Making Scotland's Existing Homes more Energy Efficient – the Role of Regulatory Standards for Housing

Summary

- This chapter builds on the strategic options for improving the energy efficiency of housing by looking in more detail at the role of regulatory requirements.
- Many owners and landlords have already taken steps to improve the energy efficiency of their homes. However, despite the advantages of this in terms of warmer homes, reduced emissions and lower fuel bills, many others have not yet done so.
- The Climate Change (Scotland) Act includes wide-ranging enabling powers for introducing requirements to assess the energy performance of houses and/or requiring action to be taken based on those assessments.
- This consultation will assist the Scottish Government in forming its statement on how the powers will be used by starting to explore the form regulation might take and in what circumstances and timescales it should be applied.
- A number of mechanisms need to be in place before regulatory standards can be set and enforced. These include: a process for assessing the energy performance of the homes to which the standards are to be applied; agreement on the type and nature of improvements that the owner is required to carry out; arrangements for advising and/or assisting owners with carrying out improvements; a process for confirming the work has been carried out; and a process for placing sanctions on those that fail to undertake the required assessments and/or improvements.
- In order to minimise costs, it will be important to implement regulation so that it does not drive out investment under the UK Government's CERT scheme. The Scottish Government is pressing for future supplier obligations to be designed in a way that is compatible with the regulations of devolved administrations.
- Fuel poverty and energy efficiency policies mean that many more low income households enjoy better insulated homes than in the past. However, there may still be a considerable number of low income households affected by regulatory requirements for the energy efficiency of housing who may require support.
- The Scottish Government wishes to increase energy efficiency in all housing, including the private rented sector. Privately rented housing is much more likely to be rated "poor" than social rented or owner-occupied properties, with around one in six privately rented properties rated poor. We include discussion on options to improve energy performance in the private rented sector.
- The Home Energy Conservation Act 1995 (HECA) has been in place for over ten years, and it seems appropriate to consult on its future in Scotland. This will enable us to assess whether the arrangements for HECA remain fit for purpose in the context of the new relationship with local government, set out in the Concordat, and the powers and duties contained within the Climate Change (Scotland) Act.

Introduction

7.1 Chapter 6 of this consultation sets out the wide range of policies and programmes already in place to encourage and support householders and landlords to install energy efficiency measures in housing – such as the Energy Assistance Package, Home Insulation Scheme and provision for council tax discount schemes. This part of the Action Plan builds on those strategic options by looking in more detail at the role of regulatory requirements. It examines the potential role of the enabling powers for regulating for the energy efficiency of

housing introduced by the Climate Change (Scotland) Act. It examines particular options for improving standards in the private rented sector.

7.2 It is recognised that regulation of this kind would be a new approach for Scotland and that there are many issues to be considered before a workable approach can be developed. This consultation is the first step in examining these issues, and the Scottish Government is committed to working with key stakeholders in taking this forward. This chapter also considers the long-standing duties placed on local authorities by the Home Energy Conservation Act 1995 and reviews the role of these duties in the current context.

Why regulation needs to be considered as part of our strategy

7.3 Many householders and landlords have already taken steps to improve the energy efficiency of their homes. The Scottish Government will continue to prioritise the role of support and encouragement in enabling them to do so. However, despite the advantages of this, in terms of warmer homes, reduced emissions and lower fuel bills, many other owners and landlords have not yet done so. Some of the reasons why consumers do not always respond to what may be economically rational with regard to energy efficiency have been explored in Chapter 3.

7.4 The ambitious climate change targets set out in the Climate Change (Scotland) Act mean that we may not be able to rely solely on voluntary action by householders and landlords. Chapter 6 has shown that in order to achieve the 2020 and 2050 targets in the Act, the energy efficiency of Scotland's homes and the extent of use of low-carbon equipment need to increase very significantly in a relatively short period of time. This means that, as well as encouraging and supporting voluntary action, the Scottish Government may need to require householders and landlords to take action to make their homes more energy efficient by setting regulatory standards that houses must meet. Consultation on changes to building regulations for 2010 proposes regulatory measures which would lead to improvement in the energy efficiency of existing homes where extension of the property is proposed.¹¹⁴ However, there is a need to consider regulation to make existing homes more energy efficient on a far greater scale, if significant improvements are to be delivered.

7.5 The Climate Change (Scotland) Act includes wide ranging enabling powers for introducing requirements to assess the energy performance of houses and/or requiring action to be taken based on those assessments. These powers are described in Box 7.1. Scottish Ministers are required to report within 12 months from commencement of the relevant provision on how it will use them. They were introduced at a late stage of the Bill and there has been little engagement with stakeholders and the public about the wide range of issues that need to be considered in implementing regulation. Depending on the scope and nature of regulation that is introduced, this could have implications for many home owners and for landlords in both the social and private rented sectors. This consultation will assist the Scottish Government in forming its statement on how the powers will be used by starting to explore the form regulation might take and in what circumstances and timescales it should be applied. Meanwhile, the Scottish Government will continue to seek to achieve the required targets through voluntary action.

7.6 A partial Regulatory Impact Assessment (RIA) has been prepared which sets out the broad, indicative costs and benefits of some of the regulatory options that could be pursued (the partial RIA is published alongside this consultation). Before the Scottish Government

¹¹⁴ See also paragraphs 6.17 and 8.15 for other aspects of this consultation. Full details: Scottish Building Standards, 'Proposed Amendment to the Building (Scotland) Regulations 2004 - A review of standards and guidance in the Technical Handbooks on Section 6: Energy (incorporating minor changes to Section 3: Environment; Ventilation Guidance)', 2009 (www.sbsa.gov.uk/latestupdates/consul_energy09.htm).

applied any actual standards and specific requirements, a more detailed consultation and RIA would be prepared prior to the introduction of regulatory mechanisms through secondary legislation. It is likely that a significant lead-in time would be established before regulation was imposed in order to enable householders and landlords to prepare and plan for these new requirements and to take advantage of grants and other support on offer.

Box 7.1 Overview of the enabling powers in the Climate Change (Scotland) Act

1. Section 64 makes provisions for energy efficiency in living accommodation that are similar in most respects to those for non-domestic buildings in section 63. Subsection (7) defines living accommodation to complement the definition of non-domestic buildings, so that there is no overlap in the definitions. Living accommodation is defined as dwellings and their associated common parts, together with buildings of 50m² or more associated with the dwelling, to align with existing requirements to provide Energy Performance Certificates at the point of sale or rental.

2. The section requires the Scottish Ministers to make regulations providing for the assessment of (i) the energy performance of living accommodation, and (ii) emissions of greenhouse gases produced by or otherwise associated with living accommodation. It also requires the Scottish Ministers to make regulations requiring owners of such buildings to take steps, identified by the assessments, to improve energy performance and to reduce emissions.

3. Subsection (2) sets out some of the provisions which may be included in the regulations, including:

- living accommodation covered;
- persons who are required to obtain assessments;
- time periods for carrying out assessments;
- procedures and methodologies for assessing energy performance and emissions;
- persons who can carry out such assessments;
- the issuing of certificates following assessment;
- the form of any recommendations as to the improvement of the energy performance and reduction of emissions;
- the manner and periods within which steps must be taken with regard to such recommendations;
- the registration of certificates;
- the disclosure of information entered in the register;
- enforcement authorities;
- the keeping of records;
- enforcement of the regulations;
- and offences.

4. Subsections (3) and (4) make provision about the enforcement authority provided for in the regulations. This includes the possibility of enforcement by more than one authority which would allow, for example, different approaches to the administrative task of confirming that an assessment had been obtained and the technical task of confirming that works carried out met the recommendations in the assessment. Subsection (5) allows the enforcement authority to levy charges to recover reasonable costs incurred in exercising the functions under the regulations.

5. Subsection (6) requires the Scottish Ministers to publish in a report, within 12 months of the coming into force of the section, what measures they will take to reduce emissions from living accommodation and when specifically they intend to make regulations to define the form of recommendations in certificates of assessments of energy performance and emissions, and how and when steps to implement those recommendations must be taken.

The mechanisms required to set up a regulatory regime for housing

7.7 A number of mechanisms need to be in place before regulatory standards can be set and enforced. These include:

- a process for assessing the energy performance of the homes to which the standards are to be applied and for recommending improvements;
- agreement on the type and nature of improvements set out in such an assessment that the owner is required to carry out;
- arrangements for advising and/or assisting owners with carrying out improvements;
- a process for inspecting the property after the owner has carried out the work to check that the required improvements have been carried out; and
- a process for placing sanctions on those that refuse to undertake the required assessments and/or improvements.

7.8 Box 7.1 above shows that the provisions in the Climate Change (Scotland) Act offer a broad enabling framework to allow the Scottish Government to introduce the various aspects of a regulatory regime. The powers do not, however, enable Ministers to regulate for the behaviour of occupants within the home, for example, in terms of the use of appliances. Other regulatory mechanisms cover the energy efficiency of appliances, and the issue of changing consumer behaviour is considered in Chapter 5. The enabling powers for the domestic sector provided for in the Act are broadly similar to those applicable to the non-domestic sector. While the needs and circumstances of these two sectors differ, consideration will be given to adopting a common approach, where this is appropriate.

Existing legal requirements

7.9 The introduction of regulatory requirements for the energy efficiency of housing will build on existing legal requirements in this area. When people improve the energy efficiency of their homes, building regulations require that the work complies with the energy and ventilation standards to prevent condensation. When windows and boilers are replaced they must meet the demanding efficiencies set out in the energy standards. When work is done that alters or dismantles an element of the building that is part of the insulation envelope, the level of insulation of the completed job must meet the standards.

7.10 The EU requirements on Energy Performance Certificates (EPCs) are also relevant. EPCs were first required for new-build housing where the building warrant was applied from 1 May 2007. Since December 2008, home owners wishing to sell their homes have been required to produce a Home Report, which is accompanied by an EPC. Landlords have been required to provide EPCs at the point of rental since January 2009. Owners selling their buildings but not through the Home Report have also been required to provide EPCs at the point of sale since January 2009. EPCs, described in Box 7.2, already provide an important incentive to encourage owners and landlords to make improvements, but there is no requirement for sellers or prospective purchasers to do so.

Box 7.2 Energy Performance Certificates

The EPC calculates the energy efficiency rating and environmental impact, in terms of carbon dioxide (CO₂) emissions, of a building based on standardised assumptions about the way that the building is used. Both energy efficiency and carbon dioxide ratings are shown in bandings from A to G, with A being the most energy efficient and least polluting. They include a list of lower-cost home improvement measures that will help save energy, reduce bills and cut carbon dioxide emissions. The performance of the building is benchmarked against the energy performance and emissions that would result if the recommended cost-effective improvements were to be carried out. The EPC also allows prospective owners and tenants to compare the performance with other dwellings.

7.11 It would appear sensible firstly to consider EPCs as the most obvious mechanism for undertaking the assessments of energy performance and emissions of greenhouse gases required to put in place regulatory standards. However, EPCs were not introduced for this purpose, and it is not certain that a calculation process intended to give home owners and tenants an indication of the energy efficiency of their home would suffice to underpin a system of regulation and enforcement. It is possible that the system for EPCs would need to be enhanced to achieve this new, additional purpose. This could have implications for delivery mechanisms.

Q 14: What research and/or consultation needs to be undertaken to determine whether or not the existing Energy Report/EPC regime would be sufficient to provide a basis for regulation?

7.12 Other relevant legislation includes the 'tolerable standard' (see paragraph 6.36). The Housing (Scotland) Act 2006 has extended the scope of the existing tolerable standard, a statutory standard which sets the minimum acceptable living conditions that anyone should expect of the house they occupy. The tolerable standard is driven by a view of habitability for the occupants, not the impact of the house on the wider community through its contribution to emissions. Houses need to have 'satisfactory thermal insulation' (as judged by the local authority in the light of guidance) to meet the tolerable standard. Local authorities will be able to take action where a house does not meet the tolerable standard.¹¹⁵ The level of insulation regarded as satisfactory in this context is likely to be much lower than that which is necessary to have a significant impact on energy efficiency and emissions. Guidance on the tolerable standard, issued by the Scottish Government, proposes that a house should fail this element of the standard only if it is capable of having roof insulation but has none.

7.13 The Scottish Housing Quality Standard (SHQS) was published by Scottish Ministers in 2004. Registered Social Landlords and local authorities are expected to ensure that their properties reach the SHQS, including its energy efficiency elements, by 2015. The SHQS now features in the Scottish Housing Regulator's Performance Standards. Performance Standards are statutory guidance in terms of section 79(1) of the Housing (Scotland) Act 2001. The SHQS is considered further in paragraphs 6.33 and 7.67 onwards.

Options for regulation

7.14 A number of issues need to be considered when setting enforceable standards for the energy efficiency of housing. These are considered in the following sections.

Which homes should be covered by regulation?

7.15 Regulation could be implemented by :

- applying standards to all homes;
- requiring standards to be applied when homes are put up for sale or rent;
- allowing exemptions for houses classed as hard to treat and/or historic buildings or those in conservation areas;
- applying standards to homes in particular targeted areas, perhaps as part of wider housing programmes; or
- applying standards to particular tenures.

7.16 Applying energy efficiency standards to all of Scotland's 2.4 million homes at the same time would, in theory, be the fastest and most direct way of raising the energy efficiency of Scotland's housing stock.¹¹⁶ However, unless standards were set at very basic level, such that most homes already met the standard, this would raise a huge number of practical difficulties. It is likely that the construction industry would be unable to deal with the demand for improvement work, costs would be inflated, and the agencies responsible for delivering energy assessments and ensuring these are enforced would be overwhelmed.

7.17 There are various ways in which the introduction of energy efficiency standards could be phased or targeted. This would mean that costs could be spread over a longer period, enabling the construction industry, enforcement authorities and the public to adjust to and cope with the requirements. Action could also be targeted where it is most needed and/or most effective.

¹¹⁵ In the context of defining this element of the tolerable standard, thermal insulation relates only to the capacity of the house to retain heat. It does not extend to the performance of the heating system or the interaction between the heating system and the building fabric.

¹¹⁶ There are 2.4 million dwellings in Scotland and 2.3 million households. See General Register Office for Scotland (GROS), 'Estimates of Households and Dwellings in Scotland', 2008 (www.scotland.gov.uk/Resource/Doc/1125/0085647.xls).

7.18 One option is to introduce requirements at the point at which a property is sold or rented. (This kind of approach is applied through the Residential Energy Conservation Ordinance in Berkeley, California.¹¹⁷) In principle, this would tie in with the existing requirements for the production of Energy Performance Certificates. This might mean that properties would be required to meet a particular standard prior to sale or rent. Alternatively, obligations to improve a property could, in theory, be passed on to the purchaser (with a requirement to implement within a set period). This would have the merit of helping to avoid the marketing or sale of a property being delayed. However, it would require a means of tracking and enforcing this obligation on the purchaser. The prospect that the recommendations of EPCs would become mandatory may encourage householders to act on them even in advance of regulation actually being put in place.

7.19 Given that householders move infrequently – in the region of every 7-15 years - applying standards at the point of rent or sale would mean that energy efficiency improvements, and therefore emission savings, took place over a relatively long timescale. This approach would also tend to focus activity on homes or areas occupied by those who tend to move more often, which may or may not be those where most energy can be saved. For example, houses that change hands least tend to be owned by older people with lower incomes, who may be more likely to be in fuel poverty and in homes with poor energy performance. Focusing requirements at the point of sale or rental could also have unintended consequences such as delaying or discouraging a sale.

7.20 Another option is to focus regulatory requirements and their enforcement on particular areas, perhaps linked to wider housing improvement strategies and programmes. Any enforcement agency could draw on existing sources of energy efficiency data (e.g. from the Energy Saving Trust's Housing Energy Efficiency Database, HEED, which includes the register of domestic Energy Performance Certificates) or data on emissions or fuel poverty levels to target houses or neighbourhoods for more rigorous energy assessments. Enforcement could be linked to support and/or to the enforcement and assistance powers provided under the Housing (Scotland) Act 2006.

7.21 There is also the option to link standards to particular types of housing. Scotland's housing stock is extremely diverse, including in respect of its energy efficiency. Around 27% of dwellings in Scotland are considered to be hard-to-treat in that their design type is not readily amenable to standard insulation measures such as loft and cavity wall insulation. As mentioned in Chapter 6, such dwellings include high rise properties, those with solid walls (such as tenements and stone built cottages) or those with cavities that are unsuitable for filling and those with flat or mansard roofs.

7.22 Improving the energy efficiency of these dwellings will often be much more expensive and less cost-effective than for other dwellings. If regulations are limited to "low cost" improvements, for example costing £500 or less, this may mean that hard-to-treat dwellings are subjected less often to requirements for improvement. There is also potential to exclude such properties from regulatory requirements altogether, or to phase these in at a later date. However, it can be argued that properties that are expensive to improve are precisely those that require regulation because their owners are less likely to respond to other incentives. Given the large number of such dwellings in Scotland, it is likely that such a widely drawn exclusion would significantly reduce the impact of regulatory standards on emissions.

7.23 Similar issues may apply to dwellings that are built using traditional techniques, and particularly listed buildings and/or those located in conservation areas. A set of exemptions

¹¹⁷ See www.ci.berkeley.ca.us/ContentDisplay.aspx?id=16030.

may be needed to protect such dwellings from inappropriate regulation and from the promotion of well-meaning, but, for historic older buildings, counter-productive interventions designed for more recent structures (see Chapter 6, paragraphs 6.59-6.63 for discussion).

7.24 Another way of targeting the approach to regulation is to focus on particular housing tenures. The social rented sector is already subject, as a matter of policy, to the energy efficiency requirements of the Scottish Housing Quality Standard and the energy efficiency standards of this sector are better than other tenures. It has been argued that the private rented sector should face similar requirements on a legal footing. The potential to regulate for energy efficiency standards in the private rented sector is considered in more detail in paragraph 7.50 onwards.

Q 15: Should energy efficiency standards be applied to all homes, or should the option of targeting regulatory requirements be considered?

Q 16: What are your views on which types of homes and/or neighbourhoods should be targeted?

What standards should apply?

7.25 There is a range of options for the type of energy efficiency improvement works that could be required, including:

- requiring the installation of particular measures, such as loft and cavity wall insulation, where feasible for that building;
- requiring that the recommendations for cost-effective improvements set out on EPCs are implemented;
- requiring the achievement of a set performance level (e.g. a particular EPC rating).

7.26 The current legislation is framed in terms of implementing measures recommended by assessments of the energy performance of a house. However, there is potential to investigate whether or not secondary legislation could be used to specify that all homes are required to have installed certain basic energy efficiency measures, where homes are suitable, for example, loft and cavity wall insulation, energy efficient light bulbs, etc. Such measures have been the focus of Government promotional programmes for a number of years and are central to ongoing schemes such as CERT. It could therefore be argued that householders have had the opportunity to take advantage of schemes that have promoted these measures through free or low-cost installation offers, and that this means it is more reasonable to place demands on those who have failed to do so. This argument would be stronger if regulation was signalled in advance, enabling further households to take advantage before standards were introduced. Such measures are relatively low cost and have proven to be cost-effective, thus enabling owners to recoup the costs of installation over a short period.

7.27 An alternative approach is to require owners to implement the recommendations for cost-effective improvements set out in EPCs. This would mean that the required measures would be tailored more closely to the characteristics of the particular house that had been assessed. As noted in paragraph 7.11, this may require some changes to the EPC regime and delivery mechanism.

7.28 A further option is to link standards to a particular energy performance or emission level, for example, requiring houses to meet a certain EPC rating. This approach could mean that landlords and owners would face much more uncertain and potentially significant costs. To achieve higher EPC ratings, particularly in hard to treat properties, could require a combination of measures being applied which would create much longer pay-back periods. Costs would also vary significantly between different owners and landlords, depending on the

specific circumstances of each property. This approach could, however, lead to significant emissions reductions.

Q 17: What are your views on which energy efficiency standards should be applied?

Q 18: How regularly should these standards be reviewed?

Who should be responsible for managing the delivery of these requirements?

7.29 There is a range of options for managing the delivery of a system of regulation and enforcement of energy standards for housing. This could involve:

- creating a new agency;
- expanding the role of an existing agency; or
- offering this role to local councils.

7.30 There is the option of creating a new, dedicated national agency for the purpose of implementing the regulation of energy efficiency standards across Scotland. However, this would be likely to be a high-cost option and runs counter to the Scottish Government's desire to streamline and simplify the public sector landscape.

7.31 Alternatively, these responsibilities could be transferred to an existing organisation, with related functions, such as the Energy Saving Trust. This would need to be considered carefully with any potential enforcement agency to ensure that it was compatible with their existing functions and to explore any legal issues. For example, in the case of the Energy Saving Trust, a regulatory role may be incompatible with its independent advice-giving role.

7.32 Local authorities would have a number of potential advantages in respect of this potential role, in that they have existing local infrastructure across Scotland, and current responsibilities on enforcement in areas such as environmental health, housing disrepair and EPCs. Taking action to improve the energy efficiency of housing would also link with existing council responsibilities under the Home Energy Conservation Act 1995 (see paragraph 7.87) and the new duties on public bodies in the Climate Change (Scotland) Act. Any potential role for local councils would be the subject of detailed consideration with COSLA within the principles of the Concordat between the Scottish Government and local government.

7.33 The legislation allows sufficient flexibility to allow for different approaches to the administrative task of confirming that an assessment has been obtained and the technical task of confirming that works carried out meet the recommendations in the assessment. It is therefore possible for more than one agency to be involved in the overall assessment process. The legislation enables the enforcement authority to levy charges to recover reasonable costs incurred in exercising the functions under the regulations. Whatever body is made responsible, it should be borne in mind that any improvements must comply with the building regulations and that responsibility for verification of the building regulations currently rests with local authorities.

Q 19: What are your views on the kind of organisation that should manage the enforcement of the standards?

When should regulatory standards be introduced?

7.34 Options for when regulatory standards should be introduced include setting a particular date well in advance to enable landlords and owners to plan for these new requirements, or to link the introduction of regulation to the progress being made through voluntary action. In other words, the timing of the introduction of regulation could be from a

given date, or linked to progress made, either in terms of the uptake of particular energy efficiency measures, the energy efficiency of the housing stock, or in terms of progress being made on our climate change targets. A further factor to be considered is the desire to ensure that the powers can be used in a way that does not prevent CERT funding being available. (This issue is explored in more detail in paragraph 7.39 below.) All of these factors need to be balanced against the urgent need to make progress towards our 2020 climate change targets and the potential contribution of regulatory standards for the energy efficiency of housing to this objective.

Q 20: What are your views on when regulation should be introduced?

Costs and Benefits

7.35 The actual costs and benefits of a regulatory scheme will depend on the final option chosen and the interaction of the various options for timing, coverage and enforcement, etc. explored above. Some of the factors that are likely to affect the costs of implementing future secondary legislation are:

- whether the requirements are created and enforced on a general basis or by targeting particular areas or categories of building;
- whether different approaches are taken to the requirement to assess and the requirement to improve, for example by making a general requirement to assess but only enforcing improvements in association with programmes of assistance;
- arrangements to subsidise or finance required works where necessary; and
- the enforcement authority or authorities designated by Ministers.

7.36 The secondary legislation required to implement regulation will be accompanied by a further costed regulatory impact assessment, which will examine the various scenarios produced by combinations of factors such as those described above.

7.37 The Partial Regulatory Impact Assessment developed for this consultation identifies a baseline case and ten options with varying levels of compulsion and options involving the phasing of improvements through an area-based approach. All options had negative Net Present Values ranging from -£255m to -£1,063m. This means that for all the options, including the base case scenario, the costs were assessed as outweighing the financial benefits based on an assumption that savings will typically persist for a ten year period.¹¹⁸ That means that the required measures could be justified largely in terms of their impact on emission reduction and/or by assessing fuel cost savings over a longer time period.

7.38 The option with the lowest costs relative to the associated benefits (with an NPV of -£255m) was the baseline case of requirements for EPCs with voluntary uptake of measures. However, this was also the option that delivered the lowest emission savings. Options with greater degrees of compulsion were associated with higher emission savings. The option that saved the most emissions would extend these requirements to all homes, whether or not they are made available for sale or rent. All options assume that the costs of measures are borne by building owners, i.e. that there is no subsidy from government for owners.

Relationship to activity under the CERT scheme

7.39 In order to minimise costs to home owners, landlords and the government, it will be important to implement regulation in a way that does not drive out investment under the UK Government's CERT scheme, which is regulated by Ofgem. As already detailed in Chapter

¹¹⁸ Cost-effectiveness has been defined in terms of simple payback; payback periods vary for the different options ranging from 4 to 10 years.

6, the CERT scheme is the largest scheme for domestic energy efficiency measures across Great Britain and is potentially equivalent to investment of at least £100m per annum to 2012 in Scotland.

7.40 We have been advised that “additionality” rules for CERT mean that CERT activity is not recognised for matters that are regulatory requirements. Ofgem seek to ensure that carbon savings delivered through CERT are genuinely additional and this would not be the case if such energy efficiency measures were required by regulation. In a situation where such regulations applied only in Scotland, then much CERT investment would flow to other parts of GB. However, CERT has been reviewed by the Department for Energy and Climate Change and is due to end in its current form in 2011. DECC has indicated that it is considering consulting on an extension or a new phase of CERT until the end of 2012. Future supplier obligations may be subject to different delivery arrangements.

7.41 Making use of the enabling powers for regulation at such time that the arrangements and rules for future supplier organisations are known would better enable us to seek to ensure that any implications for CERT (or future obligations) were minimised. Building on this consultation, and following further development of policy options for regulation, we will present these options for consideration by Ofgem for their views on the implications for CERT investment. The Scottish Government will press the case for future supplier obligations to be designed in a way that is compatible with the regulations of devolved administrations.

7.42 In the meantime, the Scottish Government could more actively promote current support for energy efficiency measures. Householders and landlords could be encouraged to make use of existing insulation schemes now, before the law required them to do so. This should help to drive uptake of measures by able-to-pay households. In this way, the prospect of forthcoming regulation could drive uptake of current schemes that rely on voluntary incentives. This should increase emission savings and reduce the number of households that it was ultimately necessary to enforce action upon.

Q 21: Should the Scottish Government seek to introduce regulation in a way that maximises CERT investment?

Support for low income home owners

7.43 Current programmes such as the Energy Assistance Package (EAP) prioritise fuel poor households for energy efficiency measures and build on earlier fuel poverty programmes. Tenants of social landlords, many of whom are on low incomes, generally enjoy better energy efficiency standards than those in other tenures and it would be the responsibility of their landlord to make any further required improvements. The progressive impact of fuel poverty and energy efficiency policies mean that many more low income households enjoy better insulated homes than in the past. Nevertheless, there may be a considerable number of households on low incomes, or who are vulnerable in other ways, that may be affected by regulatory requirements for the energy efficiency of housing.

7.44 In April 2006, new legislation was introduced to give local authorities a broader range of powers to tackle sub-tolerable housing and to help maintain and improve the standard of private sector properties. The powers give authorities the ability to help most home owners, and tenants in some circumstances, with matters relating to property condition. These powers could be used to support owners and tenants with energy efficiency related works. At a practical level this could mean offering information, advice and direct assistance, as well as grants and loans.

7.45 Where improvement and repair works are needed, it is likely to be technically and financially better to carry out energy efficiency improvements at the same time. There may be scope to design the arrangements for assistance and support for such works to encourage owners to deal with both types of work together, and indeed to initiate works sooner than might otherwise be the case in order to take advantage of such arrangements. Given that assistance with repair and improvement works is a local authority function driven by the authority's strategic approach to house condition in its area, such an approach would need to be developed in consultation with COSLA.

7.46 The extent of the impact of regulation is extremely difficult to estimate because this would depend on a wide range of factors many of which are considered in this consultation. These include:

- when the standards are introduced, and the progress made by voluntary schemes, particularly those targeted at those on low incomes, up to then;
- the impact on funding from CERT and any future supplier obligation;
- how ambitious the standards are, in terms of the requirements placed on owners and landlords; and
- the extent of any schemes to assist vulnerable and/or low income owners with the associated costs.

7.47 The costs of compensating low income owners for the costs of required energy efficiency measures could be considerable. Households should recoup the costs of more cost-effective energy efficiency measures within a reasonably short period. However, costs for more expensive measures, such as solid wall insulation, would be far higher and take much longer to pay back. There is a danger that the prospect of a generous system of support associated with legislation would deter owners and landlords from taking up measures in advance of regulation, or that the costs of such support result in less ambitious standards being set. Given restrictions on public expenditure, the provision of any support to underpin the costs of regulatory standards will need to compete with other priorities for public spending. The Scottish Government, along with partners, may look at ways to assist with the required measures that will not be delivered through any supplier obligation and where households cannot afford to pay and are living in fuel poverty. However, due to the significant sums involved, it is assumed that those who are able to pay will invest or borrow to undertake work.

7.48 Cost will not be the only barrier to uptake for some households. Some may be reluctant to undertake the required measures because of non-financial factors such as concerns about disruption, reluctance to allow officials into their house, or a belief that the required measures (e.g. cavity or solid wall insulation) are inappropriate for their house.

Q 22: What support should be provided to low income and/or vulnerable households to enable them to meet the required standards?

7.49 This part of the consultation has outlined some of the many issues that affect how the Scottish Government could seek to take forward the broad enabling framework for introducing legal requirements for the energy efficiency of housing that is now in place. Specific issues in relation to options for the private rented sector are considered in the next part of this chapter. Your views will be important to enable us to start exploring the form regulation might take and in what circumstances and timescales it should be applied. This will assist the Scottish Government in forming its statement on how the powers in the Climate Change (Scotland) Act will be used.

OPTIONS FOR THE PRIVATE RENTED SECTOR

Introduction

7.50 The Scottish Government wishes to increase energy efficiency in all housing, including the private rented sector (PRS). Privately rented housing is much more likely to be rated "poor" on the NHER scale than either social rented or owner-occupied properties, with around one in six PRS properties rated poor. The 'Review of the Private Rented Sector' recently suggested that it may not be the tenure that is itself to blame, but rather the types of properties prevalent in the PRS.¹¹⁹

7.51 However, there is some evidence that energy efficiency is worse in the PRS than in other tenures, even for the same building types. For example, pre-1919 detached homes in the PRS have an average NHER of 2, whilst in the owner-occupied sector they have an average NHER of 3.5. Likewise, pre-1919 tenements have an average NHER of 5.5 in the PRS, compared to 6 for owner occupiers. Only in post-1982 tenement flats are PRS properties of a higher average standard than other sectors (8.6 compared to 8.4).¹²⁰

7.52 Tenants in the PRS are more likely to be in fuel poverty than residents in other tenures, with 53,000 fuel poor households in this sector. It is often argued that many private landlords have less incentive than owner occupiers to improve energy efficiency, because the tenants pay the fuel bills and so they benefit from energy efficiency improvements.

7.53 During the passage of the Climate Change (Scotland) Bill, we undertook to consult on a proposal that the Repairing Standard, which relates mainly to privately rented housing, should be amended to incorporate the energy efficiency requirements of the Scottish Housing Quality Standard (SHQS). This undertaking is fulfilled here. We also put forward other possible options, as described below.

Addressing energy efficiency improvements through the Repairing Standard

7.54 The first matter to be considered is whether the appropriate route for improving energy efficiency in PRS houses would be to include relevant requirements in the Repairing Standard. Alternatives are discussed below. In order to consider whether to use the Repairing Standard, it is necessary to consider the nature of the Standard and how it is enforced.

How the Repairing Standard works

7.55 The Repairing Standard was introduced by the Housing (Scotland) Act 2006. It brought together and extended the previous statutory and contractual repairing obligations of private landlords. A landlord has to ensure that certain requirements (see Box 7.3) are met.

7.56 Although the Repairing Standard does not explicitly address energy efficiency as such, the addition of "satisfactory thermal insulation" to the criteria of the tolerable standard, which applies to all houses, will have an effect on some of the least energy efficient properties in the PRS, although it requires only a minimal level of loft insulation and no cavity wall insulation. Tenants may be able to enforce the tolerable standard criteria through the Repairing Standard, with its "reasonably fit for human habitation" requirement.

¹¹⁹ The Scottish Government, 'Review of the Private Rented Sector', 2009 (www.scotland.gov.uk/Publications/2009/03/23153136/0).

¹²⁰ See Scottish House Condition Survey (2004/5, 5/6 and 2007).

Box 7.3 The Repairing Standard criteria

- the house is wind and water tight and reasonably fit for human habitation;
- the structure and exterior of the house are in reasonable repair and proper working order;
- the installations for the supply of water, gas and electricity and for sanitation, space heating and heating water are in reasonable repair and proper working order;
- any fixtures, fittings and appliances provided under the tenancy are in reasonable repair and proper working order;
- any furnishings provided under the tenancy are capable of being used safely for the purpose for which they are designed; and
- there is satisfactory provision for detecting and giving warning of fires (ie, smoke alarms).

7.57 A landlord has a duty to ensure that a house meets the Repairing Standard at the start of, and throughout, a tenancy. The latter duty applies only where the tenant notifies the landlord of required work or the landlord becomes aware of it in some other way. If the landlord fails to carry out work within a reasonable time, the tenant may apply to the Private Rented Housing Panel (PRHP). A case accepted by the PRHP is heard by a Private Rented Housing Committee (PRHC), which decides whether the landlord has failed to comply with the repairing duty.

7.58 If this is the case, the Committee must issue a repairing standard enforcement order requiring the landlord to carry out work. If an enforcement order applies to a house, it is a criminal offence for a landlord not to comply with it or (without permission) to rent out the house. If a landlord fails to comply, the PRHC may issue a rent relief order, reducing rent paid by up to 90%. If a landlord will not, or can not, do the work, the local authority may carry it out and recover its costs from the landlord.

7.59 Local authorities and other social landlords have to comply with the Repairing Standard with regard to some houses they let that are not Scottish secure or short Scottish secure tenancies (e.g. tied houses). However, their tenants do not have recourse to the Private Rented Housing Panel, since other means of redress are in place.

Enforcing energy efficiency standards through the Repairing Standard

7.60 If energy efficiency standards became part of the Repairing Standard and were not met in a property, it would be up to the tenant to ask the landlord to carry out the necessary work and then to apply to the PRHP if the landlord failed to do so. In the case of the existing Repairing Standard criteria, it is usually obvious to a tenant if there is a breach of the Standard. While a tenant will be able to consult the Energy Performance Certificate (EPC) for the house, it might not be obvious if the house failed to meet detailed energy efficiency requirements, so the tenant might have to seek expert advice, especially if the EPC were old. Some tenants might therefore be more reluctant to take action than they would be on the existing criteria.

7.61 Other tenants might welcome the empowerment of being able to take action to improve the energy efficiency of their house, particularly as estimated savings of cavity wall insulation and top-up loft insulation (where these can be done) are around £115 and £45 a year respectively (most of which will be from heat saved in winter).¹²¹ On the other hand, the short-term nature of most private tenancies means that the benefit to an individual tenant's fuel bills is also likely to be short-term, reducing the incentive for a tenant to take action.

7.62 Although the enforcement of the Repairing Standard through the PRHP is a much easier means of redress for tenants than the system prior to September 2007 of taking action in the sheriff court, there are still limitations to tenants' taking action, including a lack of

¹²¹ See Energy Saving Trust, July 2009 (www.energysavingtrust.org.uk).

awareness of tenants' rights (an issue that the Scottish Government intends to address, as stated in our 'Review of the Private Rented Sector'). In 2008, 115 Repairing Standard cases were taken to the PRHP. Even when knowledge about the PRHP increases, relying on tenants to enforce energy efficiency requirements through the Repairing Standard is likely to mean that progress towards bringing all privately rented houses up to a particular level would be slow. The speed of progress is likely to depend upon energy prices, advice provided, promotion of any energy criteria, the determination of individual tenants and the readiness of landlords to comply with standards voluntarily (with good landlords more likely to carry out work, while the less responsible are less likely to do so, given the means of enforcement).

7.63 As explained in paragraph 7.40, an "additionality" rule applies to CERT programmes. Subsidies currently available from energy suppliers for energy efficiency measures could be lost for certain measures if they were considered to be a legal requirement. If, following this consultation, it were considered appropriate to include energy efficiency criteria in the Repairing Standard (or some other legal requirement), Ofgem would need to be consulted on whether there would be any way to do so without driving out CERT investment.

Alternatives to using the Repairing Standard to address energy efficiency

7.64 Given that Ministers will be required to regulate energy efficiency in housing generally, the question arises of whether there should be specific action in relation to the PRS. There are arguments against taking a piecemeal approach to different types of private housing, particularly since privately-owned houses can move between owner occupation and private renting.

7.65 Even if it were considered appropriate to address the sector early, the broad enabling powers in the Climate Change (Scotland) Act may be a better instrument than the Repairing Standard. If the PRS were to be addressed specifically, these broad enabling powers could be used in a different way for this sector, such as addressing the PRS earlier, requiring work to be done on the first change of tenancy or by a certain date, or having specific rules (such as a need to obtain the tenant's consent). There could also be a more effective method of enforcement and a route to target measures at the houses with the worst energy performance.

7.66 In addition, there are some recent developments which should lead to improvements in the sector in any case. The Scottish Government has taken steps to encourage landlords to undertake energy efficiency works, such as giving access to loans, and we are developing better information for the sector. We also support the development of landlord accreditation. The introduction of the Energy Performance Certificate (EPC), discussed in Chapter 6, should also raise awareness of energy efficiency among tenants, as well as giving them more information, including an energy efficiency rating between A and G and an indication of lower cost measures that could be taken to improve the energy performance. Landlords may be encouraged by this to upgrade their properties to make them more marketable, especially in areas of high supply. However, where there is a long-term private let (more common in rural areas), an EPC may not be issued for years.

Options for addressing energy efficiency improvements through the Repairing Standard, if it were decided to do this

7.67 If it were decided to use the Repairing Standard to address energy efficiency, it would then have to be decided what would be the appropriate energy efficiency standards to include. As mentioned above, it has been proposed that the Repairing Standard should incorporate the energy efficiency requirements of the Scottish Housing Quality Standard (SHQS). The following considers the nature of those requirements and other options,

including the Scottish Core Standard for Accredited Landlords on energy efficiency, insulation and heating.

Energy efficiency criteria in the Scottish Housing Quality Standard

7.68 As discussed in 7.13, social housing providers are aiming to meet the SHQS by 2015. The Standard covers many physical aspects of a house, including energy efficiency. The energy efficiency criteria are:

Effective Insulation:

- Cavity insulation where technically feasible and appropriate;¹²²
- 100 mm loft insulation where appropriate;¹²³ and
- insulation of hot water tanks and pipes (and cold water tanks as an ancillary measure).

Efficient Heating:

- A full house central heating system that has an acceptable efficiency rating¹²⁴ or similarly efficient heating system that is developed in the future.

Additional energy efficiency measures:

- Additional energy efficiency measures, where technically feasible, necessary to achieving a minimum NHER rating of 5 or SAP rating of 50. (Note: we have revised the SAP equivalency rating to 50 for mains gas central heating systems and 60 for all other heating systems.)

7.69 It can be seen that the addition of the SHQS energy efficiency criteria to the Repairing Standard criteria would change the nature of the Standard completely. The current criteria are worded in general terms and are focussed on repair issues. They take account of the fact that the PRS provides a wide range of housing meeting the needs of tenants in a wide range of economic situations, while ensuring that reasonable standards of accommodation and safety are met. The SHQS criteria are far more detailed and prescriptive. They would require many landlords to carry out work, such as installing or

¹²² Where insulation is being installed, it must meet the standard required by the building regulations, as calculated by using the elemental method. It is recognised that loft insulation will be subject to settlement over time, but the original insulation is required to meet the minimum 100 mm quality standard. Insulation is required except where the exposed pipe will always contribute to the heating requirement of the room or space in which it is situated. In some types of housing, it is not possible to install cavity wall insulation; in other cases installation may be inappropriate because cavity wall insulation would lead to other problems such as water penetration and dampness.

¹²³ 100mm is the minimum existing insulation which will meet the standard, but where insulation is being installed it must meet any other relevant standard.

¹²⁴ Definition of "full" house central heating: whole dwelling or rooms representing more than 50% of the floor area of the dwelling with heating controlled from a single point. Heating must be fixed heating appliances or distribution network. Portable heating should not be taken into account in defining a full house central heating system. Direct appliances, e.g. direct room heaters, will be deemed inefficient if more than 20 years old. An inefficient central heating system is defined here as being:

- a solid fuel boiler with an annual seasonal efficiency of 55% or less
- a natural gas boiler with an annual seasonal efficiency of 55% or less
- an oil-fired boiler with an annual seasonal efficiency of 65% or less
- a gravity or semi-gravity heating system more than 20 years old.

An inefficient electric storage heating system is defined here as being:

- free-standing large volume storage heaters more than 20 years old
- free standing compact storage heaters more than 20 years old
- electric fan-assisted storage warm air heating more than 20 years old
- electric wired under-floor heating, set in solid floors, more than 20 years old
- electric ceiling heating more than 20 years old.

For additional advice on the efficiency of boilers, landlords may wish to refer to the SEDBUK (Seasonal Efficiency of Domestic Boilers in the UK) ratings.

replacing central heating. The Scottish Government plans to issue revised guidance on the SHQS to make interpretation easier.

Advantages and difficulties of adding the SHQS criteria

7.70 The addition of the SHQS criteria to the Repairing Standard would have the advantage of setting high standards of energy efficiency for a sector that has a relatively high proportion of energy inefficient houses. Although the proposal would set the same target date for the PRS, landlords would have a very short time to meet it on a compulsory basis; social landlords have been able to plan and work towards achievement of the target for five years already, although it is clear that a significant minority have not planned SHQS works as well as they should have and some of these face resourcing problems.

7.71 The prescriptive and technical nature of the SHQS criteria might make it particularly difficult for a tenant to identify the failure of a house to meet these requirements, making it even more unlikely that they would make an application to the PRHP.

7.72 Another potential difficulty with this proposal relates to the term “technically feasible”. The majority of privately-rented dwellings are flats, where action that can be taken by an individual owner, without the participation of other owners, is limited. In many cases cavity wall insulation is not possible or is significantly more expensive, for instance, if there is a need for scaffolding. Many privately-rented rural properties are also hard to treat.

7.73 Most private landlords are not, unlike social landlords, in a position to be able to demolish and rebuild houses that do not meet the SHQS - though in areas of high demand this is clearly not possible, even for social landlords. With the current outlook for new build resources for social housing it would not seem likely that wide-scale demolition and rebuild would be an option in any case. Disproportionate cost would be a key issue if a legal duty were imposed on the PRS but not on social rented housing (where disproportionate cost can also be a reason to be exempted from meeting some aspects of the SHQS). The PRS accounts for only about 8% of housing in Scotland and the proportion of the total stock that would be improved as a result of such a proposal is only about 4% (see the partial Regulatory Impact Assessment for assumptions).

7.74 It should also be pointed out that the annual gas checks that privately rented houses are legally required to undergo would be unlikely to pass central heating systems at the upper end of the age permitted by the SHQS, although in practice if a boiler is 10 to 15 years old it may not be efficient enough to pass the SHQS.

Energy efficiency and the Scottish Core Standards for Accredited Landlords

7.75 It is interesting to compare the SHQS criteria with the standards on energy efficiency, insulation and heating in the relevant Scottish Core Standard for Accredited Landlords (as published by Communities Scotland in 2006). This is one of the Core Standards required to be met by landlords and agents accredited by the voluntary scheme Landlord Accreditation Scotland (LAS). The Scottish Core Standard on energy efficiency, insulation and heating states:

The property should provide a satisfactory level of thermal insulation and incorporate, where necessary and practical:

- draught insulation of doors and windows (or secondary or double glazing);
- lagging of immersion heaters and hot water pipes;
- cavity wall insulation;
- loft insulation to a depth of 250 mm;

- the landlord should advise tenants to replace conventional light bulbs with low energy bulbs; and
- where available, the landlord should provide tenants with an NHER rating for the property and the indicative fuel costs associated with this [but since January 2009 there is a legal requirement for landlords to provide an Energy Performance Certificate (EPC) when a dwelling is let].

The landlord should provide an efficient, safely designed and economical-to-run central heating system or an open fire with back boiler feeding room radiators or a space-heating appliance in each apartment in the accommodation and in the bath or shower room(s):

- Landlords should not provide portable bottled gas heaters, paraffin heaters or the like as a source of heating.

The accommodation should be provided with an energy efficient hot water supply.

7.76 These standards, which landlord organisations and other supporters of accreditation consider achievable by responsible landlords, are written in a style similar to that of the Repairing Standard and allow more options on energy efficiency than the SHQS does. Their application would, in practice, be quite similar to the effect of the SHQS criteria and in some ways set a slightly higher standard. (A table comparing the two standards is in the partial Regulatory Impact Assessment, which accompanies this consultation.)

7.77 We consider that, if energy efficiency standards were to be added to the Repairing Standard, it is worth considering the addition of the Scottish Core Standard criteria as an alternative to the SHQS criteria. However, further clarification of “economical-to-run central heating system” might be needed to make this aspect of the standard enforceable if it were included as part of the Repairing Standard.

Other options

7.78 There may be other options for enforcing energy efficiency measures through the Repairing Standard, such as making it a condition that improvements suggested in the most recent EPC are carried out, or requiring that improvements are carried such that a property reaches at least, say, a “D” rating. However, this may not be achievable for hard to treat properties, except at considerable expense.

Financing energy efficiency work in the private rented sector

7.79 In deciding whether there should be statutory requirements for energy efficiency levels in the PRS, account should be taken of the ability of the sector to finance this.

7.80 The Scottish Government’s 2009 ‘Review of the Private Rented Sector’ found that 95% of private landlords were private individuals, couples or families. Together they own three quarters of registered properties, though three quarters of all private landlords own just one property. The current growth in “accidental” landlords is likely to increase the number of one-property landlords further. Only half of the landlords surveyed stated that rents were sufficient to cover their costs and give a reasonable return. Most private rented properties are being bought with mortgages or loans. The majority of private landlords are thus small-scale and debt-funded.

7.81 The Landlord's Energy Saving Allowance (LESA) allows private landlords to claim an allowance against income tax or corporation tax of up to £1,500 per property when they

install energy efficiency measures. The eligible installations are loft, cavity wall, solid wall, hot water system and floor insulation, and draught proofing. Using LESA means that a private landlord can improve a property (and its EPC) at a reduced cost. In addition, as detailed in Chapter 6, the Scottish Government allows private landlords to access Energy Saving Scotland - Small Business Loans, which provides small and medium-sized businesses with interest-free loans from £1,000 to £100,000 to help finance a wide range of energy-saving measures. The Energy Saving Trust is promoting knowledge of the incentives available to private landlords.

7.82 Also, private tenants may be eligible for assistance in installing energy efficiency measures such as loft and cavity wall insulation under the Energy Assistance Package. This can include standard energy efficiency improvements provided through the energy companies' CERT insulation programmes, and, for the most fuel-poor, enhanced measures from the Scottish Government which may include insulation and heating measures. Obviously, landlords cannot make tenants apply for assistance.

7.83 There is a lack of knowledge among private landlords of options to source funding for energy efficiency measures. The EST will provide an integrated programme of advice and support for landlords through the ESSacs. This will include:

- Promotion of this programme through material distributed by the ESSac network and through specific channels such as:
 - Local authority landlord forums
 - Contact with landlords via landlord registration databases
 - Letting agents
 - The Scottish Landlords Association and the Scottish Rural Properties Business Association.
- Advising landlords on their LESA options.
- Advising and supporting them in claiming any CERT funding for which they may be eligible.
- Securing CERT funding for larger private sector landlords.
- Offering interest-free loans from Energy Saving Scotland small business loans.

7.84 This approach will mimic, for landlords, the simplicity and accessibility of the “one stop shop” approach that the ESSacs offer to consumers and simplify their experience in achieving maximum support for their investment.

7.85 Despite these sources of support, some private landlords with limited resources may still find it difficult to finance major energy efficiency works. There would thus be concerns that adding the SHQS or Scottish Core Standard energy criteria requirements to the Repairing Standard could lead to a reduction in accommodation available in the sector. This would have serious implications for the availability of housing for a wide range of tenants, including homeless people, given the increasingly important role of the PRS as a key source of housing supply. It is also possible that, while fuel bills would be lower, the costs of energy efficiency work could be passed on in the form of higher rents.

7.86 This consultation includes a partial Regulatory Impact Assessment (RIA) (published separately) on the proposals set out above. We invite comments on the RIA, as well as replies to the consultation questions below.

Q 23: Should Scottish Ministers seek to regulate to raise energy efficiency standards in the private rented sector ahead of other tenures, or should it introduce requirements that cover all tenures at the same time?

Q 24: Should any regulation of energy efficiency standards in the private rented sector be tackled through the mechanism of the Repairing Standard, or through the broad enabling powers introduced in the Climate Change (Scotland) Act?

Q 25: If the Repairing Standard is used to regulate energy efficiency standards in the private rented sector, should this be done:

- a) by adding the energy efficiency criteria of the Scottish Housing Quality Standard to it;**
- b) by adding the energy efficiency criteria of the Scottish Core Standards for Accredited Landlords to it; or**
- c) by some other means?**

FUTURE OPTIONS FOR THE HOME ENERGY CONSERVATION ACT

7.87 The Home Energy Conservation Act 1995 (HECA) has now been in place for over ten years and it seems appropriate to consult on its future in Scotland. This will enable us to assess whether or not the arrangements for HECA remain fit for purpose in the context of the new relationship with local government set out in the Concordat and the new powers and duties contained within the Climate Change (Scotland) Act reflecting the growing importance of climate change as a driver for energy efficiency.

Background

7.88 In 1996, HECA introduced a new duty on Scottish local councils to prepare reports on energy conservation measures “considered practical, cost-effective and likely to result in significant improvements in the energy efficiency of residential accommodation in its area”. Subsequent to the Act, local authorities agreed strategies and targets to achieve significant improvements in the energy efficiency of their housing stock, across all tenures, over the ensuing 10 years to 2007. Now that local councils have come to the end of the period covered by their strategies, and in the light of the Concordat this is an opportune time to consider the future of this work.

Reporting arrangements

7.89 Local councils are required to complete HECA progress reports every two years which must address certain specific topics:

- improvements in energy efficiency (Gigajoules, GJ);
- reductions in carbon dioxide (CO₂) emissions;
- policies (if any) for taking personal circumstances into account;
- cost of improvement measures.

In addition, local councils may also report on certain discretionary items, for example, the number of jobs created and savings in fuel bills.

7.90 For each of the reporting periods, the Scottish Government has provided local authorities with a spreadsheet for calculating the energy efficiency improvements installed within the housing stock in their area to assist in the process. The reporting duty relates to energy conservation in all housing stock within the local authority area, across both private and social housing sectors, and it is often challenging for local authorities to provide meaningful data for private sector housing. In order to report on a consistent basis across the ten year period, new build and demolitions have not been included, which over time makes the results less comprehensive.

Achievements and limitations of HECA

7.91 The fifth HECA progress report, covering the period 2005-2007, has recently been published and contains further information on the background to HECA and progress made.¹²⁵ This report shows that over the 10 year period, 23 of the 32 authorities have improved their energy efficiency performance by over 15% on their baseline figure; the other 9 authorities have improved their energy performance by more than 10%.

¹²⁵ See www.scotland.gov.uk/Housing/hecareport.

7.92 HECA progress reports indicate that the development of fuel poverty strategies by local authorities and the publication of social landlords' plans to achieve the Scottish Housing Quality Standard have had a significant impact on energy efficiency improvements reported under HECA. This raises the question of whether or not HECA is a significant driver for energy efficiency improvements, or whether it is simply a reporting and accounting mechanism for improvements achieved through other initiatives. The new relationship with local government signalled by the Concordat supports the streamlining of reporting arrangements and emphasises the role of Single Outcome Agreements¹²⁶.

7.93 HECA has served to raise the profile of energy efficiency within local councils and many of the "HECA officers" employed by some local councils undertake important work on energy efficiency in their area. However, energy efficiency improvements have varied considerably across authorities and the administration and reporting requirements for HECA are generally regarded as unwieldy.

7.94 There are also other sources of data on the energy efficiency of housing. At a national level, the Scottish House Condition Survey provides a robust and statistically reliable source of data on the energy efficiency and fuel poverty characteristics of the housing stock that feeds into strategic planning. Certain information at local authority level can also be provided from SHCS. The Home Energy Efficiency Database will also provide an increasingly important source of data on local energy efficiency activity as it grows and develops. Given these other sources of information on housing energy efficiency this may call into question the relevance of data collected under HECA.

Q 26: Do local councils consider HECA to be important in ensuring that the energy efficiency of all housing stock is a priority for the council?

Q 27: Does the information gathered under the HECA process make a significant contribution to planning local activity on energy efficiency?

New duty on local councils

7.95 The Climate Change (Scotland) Act introduces a new duty for public bodies that requires them, when exercising their functions, to act in a way that contributes to the delivery of the emission reduction targets set out in Part 1 of the Act, and also to act in a way that it considers is sustainable. Councils, COSLA and the Scottish Government are working hard to deal with fuel poverty and reduce greenhouse gas emissions in order to tackle the threat of climate change. The fact that all of Scotland's councils signed up to the Climate Change Declaration is testament to that. This new duty should further encourage local councils to undertake emission reduction activities in a range of areas, including in relation to housing.

Integrating plans and strategies into the local housing strategy

7.96 In line with the Scottish Government's commitment to reduce the reporting requirements of local government, housing and related strategies have been rationalised. The local housing strategy (LHS) is now the sole strategic document on housing,

¹²⁶ The Concordat between the Scottish Government and COSLA agreed in November 2007 set out the terms of a new relationship between the Scottish Government and local government. A central element was the creation of a Single Outcome Agreement (SOA) between the Scottish Government and each Community Planning Partnership (CPP) (initially each council). In preparing their SOA, each CPP examines trends and issues in their own area and establishes local priority outcomes in that context. Each of these local outcomes is aligned with at least one of the 15 National Outcomes (e.g. "we reduce the local and global impact of our consumption and production").

homelessness and support issues. The scope of the local housing strategy has been broadened and it now addresses the prevention and alleviation of homelessness, meeting housing support needs and fuel poverty issues. This will help facilitate the effective integration of strategic planning on these closely-related issues.

7.97 Guidance on LHS has noted that the Scottish Government was to consult on options for reform of reporting requirements under HECA, as contained here, and that this may in due course be included within the local housing strategy. It further states that regardless of the outcome of the consultation on HECA, local housing strategies are expected to cover improvements in household energy efficiency, and the links with related areas such as fuel poverty and climate change.

Future options

7.98 The Home Energy Conservation Act has raised the profile of the need for improvement of the energy efficiency of housing and many local councils have undertaken important work under this umbrella. More than ten years from its inception, it is unclear whether or not HECA is still a significant driver for local action on energy efficiency. It is also unclear how useful the data collated under HECA is in terms of planning local activity and, if it is useful for particular councils, whether legislation is necessary to require all councils to collate this data. Other data sources are regarded as more reliable for national planning purposes. The reporting requirements related to HECA could therefore be repealed, and/or guidance issued to indicate that further reporting was not required by the Scottish Government.

7.99 Reporting requirements on local councils' strategic action to improve energy efficiency could be fully incorporated into requirements for local housing strategies, alongside councils' work on fuel poverty and other housing activity in all tenures. Local councils' activity on emission reductions could be reflected, where appropriate, in Single Outcome Agreements within the context of the national performance framework. All this would take place within the context of the new duties placed on councils by the Climate Change (Scotland) Act which should act as a driver for action on emission reduction across a range of areas of local government activity, including housing, and build on action under the Climate Change Declaration.

7.100 Alternatively, it is open for the Scottish Government to work with COSLA, local councils and other stakeholders to prepare guidance for councils that would continue reporting requirements under HECA into the future. Your views are welcome on these options and the points above reflected in the specific questions below.

Q 28: Should HECA remain as a distinct duty on local councils or should it be incorporated within local housing strategies with local action on energy efficiency reflected, as appropriate, within Single Outcome Agreements?

Q 29: If HECA is retained, what steps, if any, should be taken to improve its effectiveness?