

Scottish Government - Proposals for a Heat in Buildings Bill: Consultation

Response from Propertymark

March 2024

Background

1. Propertymark is the UK's leading professional body for estate and letting agents, property inventory service providers, commercial agents, auctioneers and valuers, comprising over 17,800 members representing over 12,800 branches. We are member-led with a Board which is made up of practicing agents and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry-leading training programme and mandatory Continuing Professional Development.

Overview

2. The Scottish Government have launched a consultation to make stakeholders aware of their proposal to make new laws around the heating systems that can be used in homes and places of work. The Scottish Government's plans include:
 - Reconfirm that the use of polluting heating systems will be prohibited after 2045; and as a pathway to 2045.
 - Require those purchasing a home or business premises to end their use of polluting heating systems within a fixed period following completion of the sale.
 - Introduce a new law that will require homeowners to make sure that their homes meet a reasonable minimum energy efficiency standard by 2033.
 - Require private landlords to meet this minimum energy efficiency standard by 2028.

Questions

The Heat in Buildings Standard – covering heating and energy efficiency

Question 1: To what extent do you support our proposal to prohibit the use of polluting heating systems in all buildings after 2045?

3. Propertymark somewhat supports your proposal to prohibit the use of polluting heating systems in all buildings after 2045. We welcome the Scottish Government's ambitious aim in achieving Net Zero by 2045, which is an earlier target than many international nations who have pledged to meet Net Zero. Integral to reducing emissions from buildings will be reducing

the use of polluting heating systems such as gas and oil boilers, liquid petroleum gas and direct emissions heating systems and replacing them with cleaner heating systems or zero direct heating systems. For example, include heat pumps and heat networks.

4. We appreciate that the target is for a ban on polluting heating systems for all residential and non-domestic properties by 2045. However, to achieve this, we believe the Scottish Government should introduce some milestone interim targets to provide greater clarity on the extent to which the aim is being achieved. We also believe that there should be a target prohibiting the development of new build property with polluting heat systems to ensure that that developers of new property do not have to make changes when developing close to the introduction of the ban.
5. Recognising the unique challenges that communities in remote and Scottish islands face in terms of efficient heating systems, we welcome the acknowledgement that the Scottish Government propose to only exclude main heating systems, provide additional time to those using bioenergy, and we strongly recommend that the Scottish Government give additional time to those homes and business were there is no alternative clean heating systems available to them. It might also be appropriate to give exemptions to those areas that continue to struggle to find alternative solutions.
6. Scotland's island and rural communities have an additional challenge in the safe storage and security of energy. We welcome the Scottish Government's view to allow polluting systems as a back-up. However, greater consideration must be given to improving energy security and storage for Scotland's most remote locations and improving local energy infrastructure to reduce the reliance of fossil fuels as a back-up.
7. An additional challenge includes the up-front cost of adopting renewable energy efficiency measures which often include high upfront investment costs and competition from fossil fuels. While we appreciate the technological advancements, increasing market competition, and numerous financial support mechanisms, the cost-of-living crisis and the increased costs for some groups including residential landlords and the most vulnerable households has made improving energy efficiency challenging. We welcome the Home Energy Scotland Grant and Loan Scheme¹, which allows grant funding of up to £7,500 for households to make energy efficiency improvements with a rural up lift topping up grants to £9,000 for rural, hard to heat

¹ [Home Energy Scotland Grant and Loan - Home Energy Scotland](#)

and off-grid properties. While on the one hand the Private Rented Sector Landlord Loan is a welcome option,² given the scale of the economic challenges facing landlords from the Cost of Living (Tenant Protection) (Scotland) Act 2022³ and the high cost of mortgage rate, we believe landlords should either have access to grant funding or the interest of the loan scheme should be set at 0%. Currently the loans have an annualised percentage rate of 3.5% and an administration fee of up £250.

Q2. To what extent do you agree that we should introduce a minimum energy efficiency standard to be met by private sector landlords by the end of 2028 (even if they are already using clean heating)?

8. Propertymark responded positively to the Scottish Governments proposals on EPC reform⁴ and therefore we somewhat agree that the Scottish Government should introduce a minimum energy efficiency standard to be met by private sector landlords. However, we feel that the proposal to meet these standards by 2028 will be too challenging for some landlords and could result in some landlords exiting the market, reducing supply and for those properties that remain would result in increased rents. We think this impact would be felt hardest in the Scottish islands and rural communities where homes are not only hard to heat, but the supply of PRS property is already at its most challenging.
9. We are looking forward to the Scottish Government publishing its summary of responses to EPC reform and making a statement on their proposed action. Given the potentially positive, but nonetheless radical proposed changes to EPC measures in Scotland, we believe this could be an additional barrier to adopting Minimum Energy Efficiency Standards for the PRS and that landlords and property agents would require additional time to adjust to the changes and decarbonise their properties accordingly.
10. The UK Government recently announced scrapping the proposed MEES targets for England and Wales whereby new tenancies would have to meet EPC C by 2025 and existing tenancies would meet EPC C by 2028. These targets were scrapped by the UK Government due to the financial challenges being faced by landlords. Scottish landlord and not immune to these financial challenges from increased mortgage and building costs and are likely to experience greater financial challenges from previous rent control measures. Accordingly, we think that landlords

² [Private Rented Sector Landlord Loan · Home Energy Scotland](#)

³ [Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022 \(legislation.gov.uk\)](#)

⁴ [Energy-Performance-Certificate-reform-consultation-response-from-Propertymark.pdf](#)

would require additional time to meet the proposed targets. However, we would be very happy to support the Scottish Government with engagement with our property agent members in Scotland, to strike a balance between what is fair and achievable to landlords and how the PRS can contribute towards the Scottish Government's aims.

Q3. To what extent do you agree that we should introduce a minimum energy efficiency standard to be met in owner occupied homes (which still have a polluting heating system) by the end of 2033?

11. We somewhat agree with the proposal to introduce Minimum Energy Efficiency Standards for the owner-occupied sector. We note that the Scottish Government are not considering MEEs for non-domestic properties due to the different sizes and construction method to produce non-domestic buildings. While we agree with this approach, owner occupied homes have similar challenges due to the diversity of stock and construction dates. We have three observations:

- Firstly, before the Scottish Government consider these measures, they should adopt a national awareness campaign to ensure that homeowners are aware of the proposals.
- Secondly, homeowners may require greater support on what appropriate energy efficiency measures they should adopt. This could be provided by local authorities who in turn could make recommendations on measures and local suppliers. This could also protect consumers from poor practice and unqualified installers taking advantage particularly of vulnerable household which has noticeably been the case in spray foam installation. Finding suitably reliable and qualified installers will likely be the most challenging in the Scottish islands and rural communities.
- Thirdly, meeting the standards may be challenging for some properties including those properties in conservation areas and heritage properties. We believe that measures that would radically change the character of such properties should be exempt from the measures. Local authorities should also be given greater support and guidance on permitted development rights as these can be a barrier in such cases.

Q4. Do you agree with our proposal to set a minimum energy efficiency standard that can be met by either installing a straightforward list of measures, or showing a good level of energy efficiency based on a reformed EPC fabric efficiency metric?

12. Yes, in principle we agree with this approach in principle. However, both landlords, property agents and homeowners will require significant engagement to understand and become aware of these standards. We would be very happy to support the Scottish Government in raising awareness amongst Scottish property agents.

Q5. What is your view on the initial proposed list of measures to meet the minimum energy efficiency standard?

13. We think that offering a rating from A-G is recognised by both the industry and consumers. We can see positives and constraints from adopting a prescribed list of measures. On the one hand, by taking this approach it is clear how to improve a property by specific measures. On the other hand, the more traditional rating system is recognised by consumers and the industry which reaffirms our call for additional time to raise awareness.

14. We are also interested in the dissemination of data and information. Our favoured model would be to implement a property logbook or property passport. This would include holistic data for each property, a roadmap to how the property can meet EPC levels as well as details of all retrofit a property has had installed. However, we recognise that there needs to be a balance between the amount of data made available with what data would be useful for our members, landlords, tenants, and homeowners. We feel that the proposed data strikes the right balance in providing valuable information for property professionals and consumers.

Q6. Do you think that properties for which most or all of the measures on the initial proposed list are not relevant should be required to meet an equivalent minimum energy efficiency standard?

15. No, we disagree. We believe these properties should be considered compliant once they have installed all the measures that are appropriate for their building type, even if this is few or no measures.

Q7. Do you think that an alternative approach to setting the minimum energy efficiency standard is required?

16. We would favour a simple as possible approach as possible. We believe that additional data could be collected on the energy efficiency properties but should not be fed into the overall MEES assessment. For example, the SAP and Rd SAP methodologies hold a wealth of data which could be useful to energy professionals working in the retrofit industry. One area the new SAP methodology could be useful for could be the detection of damp and mould. Accordingly, we would welcome higher level data being open to such professionals and building surveyors.

Q8. Do you agree that the use of bioenergy should continue to be permitted in certain circumstances?

17. Yes, Propertymark thinks that the use of bioenergy should be permitted for those buildings already using it and for those buildings who have no other clean heating system available. This approach would support those properties with no alternatives most often in challenging communities such as the rural Scotland and the islands.

Property purchases

Q9. To what extent do you support the requirement to end the use of polluting heating following a property purchase?

18. We somewhat oppose the proposals. We are concerned with the proposal that properties in the private rented sector which don't meet the energy efficiency standard by the end of 2028 would not be allowed to be let to a new tenant, this is likely to continue to have an impact on the levels of supply of properties to rent in the private rented sector with reduced housing options for the most vulnerable and may result in increased rents for new tenants. The proposals will impact anyone who has purchased a property, lived in it for a period of time and then rents it out.

19. Turning to the sales market, while we acknowledge the proposal of a grace period to allow purchasers sufficient time to have work carried out to ensure properties meet the standards, we are concerned that the least energy efficient properties may have difficulties in finding a mortgage provider. In addition, we are concerned that many would-be home buyers will not be able to afford improvement works on top of the existing costs associated with home moving

and could be deterred from moving altogether. The Scottish Government acknowledge that first time buyers and those that move more than once before 2045 are likely to be negatively impacted by the proposal. Accordingly, we are also concerned that additional borrowing costs are unlikely to support more first-time buyers to step onto the housing ladder and as a result they should be exempt from these proposals and incentivised to make improvements once they have purchased a property. The Scottish Government must also consider the effect of their proposals on homeowners in rural areas and the impact on older people, homeowners who live in older properties and residents of listed buildings or in conservation areas.

20. We look forward to further understanding on how the Scottish Government will work with estate agents to ensure proposed works run smoothly alongside their current processes and to make sure that purchasers, and those providing them with legal services, are clear about their role and responsibilities.

Q10. We are proposing to give those purchasing a property a 'grace period' to end their use of polluting heating. Do you agree with this proposal?

21. We agree with a grace period to give those purchasing a property time to end their use of polluting heating. Given the profound impact this will have on the home buying and selling process in Scotland, we would recommend the grace period should be at least five years.

Q11. To what extent do you support our proposal to apply a cost- cap where people are required to end their use of polluting heating following a property purchase?

22. We strongly agree with the proposal of a cost cap. This would strike the right balance between making energy efficiency improvements and ensuring the proposals to not adversely impact those with property that is expensive to improve. However, we do not think that a cost cap should be the only exemption to be considered. The Scottish Government must consider further exemptions such as if the property is a listed building or in a conservation area, if a landlord has a tenant who refuses the necessary works, if the property owner requires third party consent and cannot obtain it and if the proposed energy efficiency measures are not cost neutral after a seven-year period.

Q12. Which of the following methods of applying a cost-cap do you support?

23. We think the fairest and simplest approach would be a flat based approach. This would be clear for property owners to understand and easy to evidence with quotes of proposed works.

Q13. To what extent do you support the proposal that the Scottish Ministers should be given powers to extend the circumstances in future (beyond a property purchase) in which people could be required to end their use of polluting heating?

24. We somewhat disagree. Property owners of all types are generally sympathetic of the Scottish Government's proposal to decarbonise property and the reasons why it is important as part of the Scottish Government's wider strategic objective to meet Net Zero by 2045. However, what is required is clear clarity on expectations and a clear timetable for requirements as well as clear financial support, advice, and guidance. By allowing Scottish Ministers the opportunity to amend provisions will likely confuse expectations and reduce good will towards the aims of the proposals.

Connecting to heat networks

Q14. To what extent do you support our proposal to provide local authorities (and Scottish Ministers) with powers to require buildings within a Heat Network Zone to end their use of polluting heating systems by a given date?

25. In principle we support this proposal but would like greater clarity on proposed timeframes for compliance. Currently as only Glasgow City Council and Fife Council are the only council who have published their Local Heat and Energy Efficiency Strategy (LHEES), we think that it is too premature to give local authorities these powers until they have developed their strategy. Given that property owners will have to be informed that they are in a heat network, we believe this proposal should be investigated further down the line to assess if local authorities have the capacity.

Q15. To what extent do you support our proposal to provide powers to local authorities (or Scottish Ministers) that require developers to connect new buildings within Heat Network Zones to a heat network?

26. Again, before this power is given to local authorities, we would recommend waiting till local authorities have sufficient capacity and intelligence in developing their LHES's.

Q16. To what extent do you support our proposal to require occupiers of non-domestic properties to provide information about unused heat on their premises?

27. We suspect that owners of non-domestic property would be unlikely to submit information on unused heat even if this was in confidence. However, we would be happy to engage further with the Scottish Government to engage with property agents of non-domestic stock.

Q17. To what extent do you support our proposal to potentially require buildings with unused heat to provide this to a local heat network?

28. In principle, we believe there is strong merit in requiring buildings with unused heat to provide this to a local heat network. However, we would like greater clarity on how the Scottish Government would encourage owners of non-domestic stock to unlock the potential of using their unused heat.

Monitoring and enforcement

Q18. We will need to have a way to monitor if people are meeting the Heat in Buildings Standard, and discussed two options for this. Which do you support?

29. We are concerned that compliant landlords and homeowners will meet the Building Standard leaving non-compliant building owners to continue operating under the radar. Therefore, we would support enforcement of a sample of Scotland's buildings broken down by each local authority area. We recognise that taking this approach would be very resource intensive for local authorities and local authorities would be very unlikely to check the enforcement of all buildings in their area. Therefore, we think that by adopting a robust sample of buildings would strike the right balance in setting an achievable enforcement framework with a suitable deterrent for non-compliance.

Q19. We will need to have a way to enforce the Heat in Buildings Standard. We discussed possible options to help achieve compliance. What are your views on these ideas?

30. In principle are favoured option would be the introduction of civil penalties if future compliance is not achieved. However, would like clarity on whether the local authority would be able to retain some or all the civil penalty. Furthermore, we would welcome clarity on the proposed levels of the civil penalty. We recommend that the Scottish Government should publish enforcement guidelines for local authorities as it would be disappointing if a post code lottery was developed where some local authority's police this more vigorously while some not at all. In essence, our overall philosophy towards enforcement is that local authorities should concentrate on education before sanctions. Sanctions should only be allocated for those property owners who fail to meet the necessary standard following sufficient guidance and warnings.

Q20. To what extent do you support our proposals to modify the Standard or exempt certain people from the need to meet the Heat in Buildings Standard?

31. We strongly support this proposal.

Q21. Which people, businesses, or types of buildings, if any, should be eligible for a modified standard or exemptions?

32. Some properties will be difficult to instal certain clean heating system including heat pumps. These could include buildings in conservation areas or historic or listed buildings. While generally clean heating systems do not require planning permission, permitted development rights are not always achieved in some local authority areas. Furthermore, we would propose that any buildings where the character would be radically changed from the installation of energy efficiency measures including clean heating systems, then we believe these should be exempt.

33. We have previously stated criteria for exemptions, but to repeat our recommendation we strongly support a price cap to ensure that landlords and homeowners do not have to go into financial hardship to be compliant, we also propose that for private landlords who have tenants who for what every reason refuse the measures, then they should be exempt. Equally, any property that requires third party permission which ha not be granted should also be exempt.

34. We agree with the comment made in the consultation document that first time buyers should be exempt. We would recommend that the Scottish Government does everything in its power to encourage first time buyers and equally not put any barriers in their way. Likewise, businesses that are integral to local economies should also be exempt and this should be at the discretion of local authorities to grant these exemptions.
35. Finally, we would recommend that the Scottish Government produces an exemptions database that is monitored and responsive, to clearly indicate which properties are exempt, and this could be viewable by local authorities and any other relevant public bodies.

Q22. To what extent do you support our proposals to give certain people extra time to meet the Heat in Buildings Standard?

36. We strongly agree with this statement.

Q23. Which people, businesses or types of buildings, if any, should be eligible for extra time?

37. We think that it would be challenging to form a definitive list of persons and buildings that should be given additional time to be compliant. We think that local authorities know the people living in their communities best, and they would be in the best position to decide at their discretion which groups would suffer hardship from the measures and should subsequently be exempt. In most areas we would suggest this could be the low-waged, those in receipt of means tested benefits or those with limiting life changing disabilities. However, ultimately, we believe local authorities should decide who should be exempt.

Public sector buildings

Q24. To what extent do you support our proposal to require all buildings owned by a Scottish public authority to be using clean heating systems by 2038?

38. The estate of public sector bodies is outside of the remit of PropertyMark. However, we strongly support this proposal. We believe that local authorities should lead by example in adopting clean heating systems. Despite the current difficult financial climate for local authorities, we believe that 2038 would give them fair opportunity to meet the measures. We

also believe that local authorities have an advantageous position in having data on requirements within their estates to be compliant.

Q25. We are considering the following further duties on public sector organisations to support planning for the transition by 2038:

39. We would support creating a new duty for each public body to develop and implement a plan to decarbonise their buildings as we believe this would have the widest possible impact on decarbonisation within local authorities.

Amendments to Existing Legislation

Q26. Do you agree with our proposals to include powers in the proposed Heat in Buildings Bill to change the current requirement in legislation for a narrowly-defined renewable heat target?

40. We would support this proposal providing the Scottish Government engaged with the housing sector, including property agents, on new targets and the likely impact on the sector.

Q27. Do you agree that the Heat Networks (Scotland) Act 2021 should be amended in light of the passage of the Energy Act 2023?

41. We agree.

Q28. Are there any further amendments to the Heat Networks (Scotland) Act 2021 that the Scottish Government should consider?

42. We are grateful to the Scottish Government in giving us the opportunity to outline our views on the Heat in Buildings Bill. We would be very happy to support the Scottish Government engage with property agents in Scotland should they feel, that would be helpful.
43. We also believe that as the proposed Bill will have a significant impact in both the sales and lettings industry, then property agents' voices should be heard more widely. We acknowledge the online consultation event, but we would recommend a virtual roundtable for our members to engage with the Scottish Government.