

Proposals for a Heat in Buildings Bill: Consultation

The Heat in Buildings Standard - covering heating and energy efficiency

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

Somewhat support

Please include any additional comments below:

Tenements – whether they are historic stone-built buildings, 50’s and 60’s-era four-in-a-blocks, or modern apartment complexes – are home to millions of people across Scotland.

As Scotland’s only charity dedicated to providing information on repairs, maintenance, and retrofit for owners of tenement flats, we are concerned that the Government will not be able to achieve the goals set out in these proposals by 2045 due to the complexity of rules governing tenements repair, maintenance, and retrofit.

We understand the stakes – we are living in a climate emergency, and action must be taken across all sectors to address it. We support prohibiting the use of polluting heating systems, and Scotland’s efforts to achieve NetZero status by 2045.

Our concerns are the proposals do not address in sufficient detail the uniquely challenging aspects of repair and retrofit work in tenement buildings in Scotland, specifically, the state of building disrepair in flatted properties, and the cost and complexity to remedy both this disrepair while simultaneously making tenement buildings energy efficient and carbon neutral.

As noted in the Report from the Tenements Short Life Working Group on Energy Efficiency and Zero Emissions Heating, a group of housing professionals from all areas of the sector, “The repair and maintenance of these buildings must come first in the order of importance as there is little merit in installing additional energy efficiency measures until the building is in a good state of repair.

“In order to maximise benefits to occupants, ameliorate fuel poverty, and to reach demand reduction targets, existing fossil fuel heating systems should only be replaced by zero direct emissions systems after appropriate property repair and energy efficiency measures are in place.

“The order of priority must be: repair > maintenance > energy efficiency > zero direct emissions heat.”

Our concern is that the owners of these tenement flats – both owner-occupiers and landlords – are already not acting on the first priority – long-overdue repairs to the fabric of their buildings. These reasons are varied – a lack of financial resources, indifference of a majority of owners in a building, the intransigence of one owner blocking repairs or not paying their fair share, the unavailability of qualified or quality contractors, breakdown in factor/owner relations, the complexity of rules regarding repairs – all of these are common reasons given to our organisation for why necessary repair works are not undertaken.

It is for these same reasons that it will be extremely unlikely that owners of tenement flats - which make up more than a third of all homes in Scotland - will be able to play the same role other homeowners will in reducing polluting heating systems in their homes.

Ultimately, the proposals are attempting to set a nationwide standard. However, the exemptions that may be necessary for tenement buildings, due to the complex nature of the rules governing common repair, maintenance and retrofit, and the historic makeup of many of these tenement buildings, points to the need for alternative approaches, including a dedicated, fabric-first energy efficiency approach to flatted properties in Scotland.

2. 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)?

Somewhat support

Please include any additional comments below:

Under One Roof supports this proposal, with the very significant caveats that clear, appropriate, and well-publicised guidance on what works are appropriate for the particular building archetype, in order that poorly thought-out and implemented efforts to meet standards do not make the situation for tenants worse. These may include exemptions for works required in common areas, if agreement can't be reached by owners to conduct them, as is the case to updates to the Repairing Standard that went into effect this year.

Given the short timeframe to achieve these goals, and the knock-on benefit to tenants' energy bills, and/or risk of costs being passed on to tenants, there should also be consideration for the provision of significant financial incentives to achieve these targets in an appropriate manner.

It should also be noted that some clean heating systems could significantly increase fuel poverty for tenants – this potential unintended effect should be addressed in some form to not increase hardship, which would negate any energy efficiency efforts and understandably turn tenants' views against efforts to decarbonise the housing sector.

3. 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?

Somewhat support

Please include any additional comments below:

Under One Roof supports this proposal, though, as with landlords, owner-occupiers should also be provided with clear, appropriate, and well-publicised guidance regarding energy efficiency works that are appropriate for the building archetypes.

On the topic of information provision, we support the work done by the Existing Homes Alliance. It has produced a Customer Journey Briefing recommending the creation of a network of one-stop shops throughout Scotland to support owners – both owner-occupiers and landlords – with the process of upgrading the energy efficiency of flats and other homes.

The development of a whole-building approach to energy efficiency, which incorporates and prioritises work that addresses issues with the fabric of the building, would also ensure that works are completed in a manner appropriate to the building archetype.

4. 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?

Somewhat support

Please include any additional comments below:

In principle, we agree with proposals that will allow different pathways to reach the same outcome, given the diversity of tenement building archetypes. We are concerned about the level of detail in the proposals, however, as we believe measures will be far from straightforward.

We note that the long-promised reform of EPC is still yet to be completed, therefore requiring faith that legislation concerning Heat in Buildings and EPC reform are aligned properly, and a reformed EPC being fit for purpose right from the start, with no bedding in time and little margin for error given the significant work being undertaken in the coming years.

The list of measures has the benefit of being easier for tenement flat owners to understand and apply to their own flat and building's circumstances, so it is valuable as an option, however, this approach also risks certain measures being applied to historic tenement buildings when they clearly should not be. Significant effort should be taken to ensure owners in pre-1919 flats are aware of the dangers in applying these measures, and pointed towards the abovementioned information hubs to provide solutions appropriate for their situation.

We also believe this area of work is where a strong case is made for the phasing in of energy efficiency measures for historic flatted properties, to address the issues faced by owners of solid wall tenements. Suggested measures such as providing additional time beyond the 2028 and 2033 backstops would also be welcome, as well as dedicated work with housing professionals to reach consensus on what other options, if any, can be implemented on a large scale to address the complexity, and potentially much higher cost, of increasing energy efficiency within historic tenements than the rest of the tenement stock.

In addition, it is critical to understand the benefit of not having to replace crumbling tenements. Keeping tenement buildings wind tight and waterproof – i.e., not falling down – is in itself a significant measure of energy efficiency, and should have equal weight to the specific measures listed. Studies have found that up to 50% of a building's whole life carbon emissions comes from embodied carbon - i.e., the manufacturing of materials and the construction process.

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

Somewhat support

Please include any additional comments below:

We have addressed this in general terms above, though note that low and no-cost measures, such as the use of shutters and thick curtains in tenement buildings, are absent in the consultation document. Efforts to use these methods to address energy efficiency issues in tenements are already happening through local community groups in Scotland, such as the Edinburgh Tool Library Retrofixers, and should be encouraged and funded, and their work impactful on new EPC assessments, to help owners reach standards in an affordable manner.

6. 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?

C. Yes – they should be required to meet the standard and additional measures should be included on the list (such as solid wall insulation, solid floor insulation and flat roof insulation), but they should only be required to install some of these where feasible and cost effective

Please include any additional comments below:

The critical aspect of this answer is cost – to meet equivalent minimum energy efficiency standards there will need to be significant funding available for historic tenement buildings. In the absence of such funding, then the answer would be A (no).

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

Yes

Please include any additional comments below:

We touch upon potential alternatives in Q18.

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

No answer provided

Property Purchases

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

Neither support nor oppose

Please include any additional comments below:

It's not clear from the information provided whether this requirement is proposed with the caveat of an exemption for owners in Heat Network Zones. Such an exemption should exist and be extended to include tenement flat owners in non-Heat Network Zones, as at the moment communal heating systems are the only practical and affordable option for tenement owners. Incentives should exist for owners to find communal solutions, rather than piecemeal approaches that could lead to the need to install clean but extremely inefficient and expensive heating systems to avoid penalties.

We have additional concerns in this area relating to the potential introduction of publicly available five-yearly tenement inspection reports, as proposed by the 2019 Cross-Party Working Group on Tenement Maintenance. These reports are much needed, to give owners and potential buyers a true understanding of the actual condition of the buildings.

These reports are critical to giving owners, buyers, and the wider housing market a true sense of actual cost of buying a flat, but have yet to be examined in detail as to the potential affect they would have on the market for potential buyers, and what mitigation efforts are needed to reduce disruption.

The introduction of a trigger point that requires replacement of polluting heating systems, in addition to the introduction of tenement inspection reports that contain an accurate accounting of the buildings repair needs, could potentially have a seriously disruptive effect for the flatted housing market. This issue should be investigated in further detail to anticipate and mitigate against unintended consequences.

10. 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?

No, please provide reasons for your view.

Please include any additional comments below:

Note concerns outlined in the previous section.

11. 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?

Neither support nor oppose

Please include any additional comments below:

We do not feel there is enough information on what the cost-cap would apply to in multi-tenure flatted properties to provide an informed position, such as whether cost-cap would apply to communal heating systems and how that would function.

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

None.

If another, please suggest below:

See answers to questions 10 and 11.

13. 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? This could be, for example, preventing the installation of new fossil fuel boilers when replacing the heating in your home or business premises?

Don't know

Please include any additional comments below:

Not enough information is provided to answer the question in detail.

Connecting to Heat Networks

14. 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?

Somewhat support

Please include any additional comments below:

Under One Roof believes that heat networks will be the primary means by which flatted properties will be able to end the use of polluting heating systems. Once the infrastructure is in place for this to happen, tenement flat owners should be given incentives to join the network, but penalties may also need to be implemented to ensure maximum take-up in order that the network is viable.

Concerns centre around issues of how owners of flatted properties could be required to do so given rules governing collective decision-making in tenement buildings and potential conflicts with deeds. Further detail on the difficulties surrounding tenement flat owners and the rules governing repairs, maintenance, and improvement are provided in detail below.

15. 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?

Strongly support

Please include any additional comments below:

We strongly support the addition of these powers, to avoid issues related to the complexity of rules regarding approval of projects among owners of tenement flats after they have moved in.

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

Don't know

Please include any additional comments below:

No answer provided

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

Don't know

Please include any additional comments below:

No answer provided

Monitoring and Enforcement

18. 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

Another method, please suggest below or explain your selected answer

Please include any additional comments below:

One of the key issues with suggestions about monitoring whether people are meeting the standard is that individual owners do not have 100% control of the situation they are in, but may be expected to take 100% responsibility for not meeting the standard.

An alternate approach for monitoring could be to use house condition surveys to set building-appropriate SMART targets for individual tenements and "exceptional" buildings (i.e. stone built / pre-1919 / non-trad buildings etc.), and then monitor progress against achieving these targets. Targets could start with achieving a degree of maintenance by a certain date. And where a target involves reroofing or rendering, then the target could also include insulation.

19. 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?

I do not support the suggested enforcement tools, but have another suggestion (please provide below).

Please include any additional comments below:

See below sections on exemptions for detailed list of concerns around enforcement and exemptions.

20. 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?

Don't know

Please include any additional comments below:

It is unclear from the consultation document whether exemptions, as laid out in this question, refers also to groups of owners in a tenement building who are not able to reach the voting threshold (i.e. majority of owners/consensus of owners/other voting thresholds laid out in titles) to commence works on common parts of the building necessary for the installation of a communal non-polluting heating system.

It is not known whether the installation of a communal heating system in common areas of a tenement building would be considered repair or improvement; the Tenement Act provides no clarity on this issue. But assuming the Act was amended to make it clear that only a majority was necessary, there is also a question of whether an exemption would apply if a majority of owners agreed to commence the work but an owner or two did not pay their share of the costs – an extremely common occurrence that tenement flat owners already face who attempt to conduct repairs and maintenance.

A separate scenario also presents challenges – tenement flat owners could vote to not approve works to the common areas of the building, knowing that by doing so they would be exempt from having to spend funds to move to non-polluting heating systems, or commence required energy efficiency measures.

As heat pumps for individual flats are likely to have insurmountable practicable problems on a large scale (and they also need siting on communal areas), this is potentially a loophole that would allow one or all tenement flat owners to stymie any attempt at energy efficiency and zero-carbon heating on a building-wide scale.

Alternatively, if there is not an exemption for owners who fail to reach agreement on common works, would all owners in the building be sanctioned for not approving a communal system, when it was deemed reasonably practicable and technically feasible to do so – and how could this take place given the rules set out in titles and the Tenements Act?

And what sanctions should apply to owners who vote in favour of non-polluting systems and building-wide energy efficiency works, but are voted down - would they be sanctioned as well?

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

Please include any additional comments below:

See above for more detail on concerns related to issues of modifying standards or the exemption for tenement flat owners.

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

Don't know

Please include any additional comments below:

Although Under One Roof would support proposals that saw tenement flat owners additional time to meet the standard, the comments in Q20 on providing exemptions for tenement flat owners whose actions disrupt the process of decarbonising the housing sector's heat systems points to a significant barrier to achieving this proposal.

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

Please include any additional comments below:

See answer to Q22.

Public Sector Buildings

24. 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?

Don't know

Please include any additional comments below:

No answer provided

25. We are considering the following further duties on public sector organisations to support planning for the transition by 2038. Please tell us which option(s) you would support.

No answer provided

Please include any additional comments below:

No answer provided

Amendments to Existing Legislation

26. 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?

Yes

Please include any additional comments below:

No answer provided

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

Yes

Please include any additional comments below:

No answer provided

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

No answer provided