



EDINBURGH TENANTS  
FEDERATION

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Edinburgh's Federation of Tenants' and Residents' Associations

## Energy Efficiency Standard for Social Housing post-2020 (ESSH2):

### ETF Response – July 2018

#### 1.0 Background

Edinburgh Tenants Federation (ETF) is the umbrella organisation for tenants and residents' groups in Edinburgh and a Registered Tenant Organisation (RTO). ETF held a focus group for members to find out their views on Energy Efficiency Standard for Social Housing post-2020. This response represents the ETF Members' views on the questions most relevant to attendees at the event.

ETF welcomes the opportunity to contribute to this discussion paper. It is essential that everyone in Scotland has access to good quality housing that they can afford to heat.

#### 2.0 Introduction to Right to Housing and Human Rights Based Approaches

Before answering individual questions in more detail, we hope to set out some key points articulating the right to housing in international law and human rights based approaches.

The right to housing appears across a number of international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 11 (1) states:

'The State Parties to the present Convention recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.'

The right to housing has been further developed by the Committee of international experts which monitors the Convention (the Committee) in one of its General Comments. This sets out the essential elements of the rights to housing as:

'a) Legal security of tenure. Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups;

(b) Availability of services, materials, facilities and infrastructure. An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All

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beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services;

(c) **Affordability.** Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials;

(d) **Habitability.** Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well. The Committee encourages States parties to comprehensively apply the Health Principles of Housing prepared by WHO which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses; i.e. inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates;

(e) **Accessibility.** Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement;

(f) **Location.** Adequate housing must be in a location which allows access to employment options, health care services, schools, childcare centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants;

(g) **Cultural adequacy.** The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of

housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured.’

The General Comment also stresses the importance of the participation of tenants within the development, delivery and monitoring of policy, which would include the activities of both the Scottish Housing Regulator and also of Registered Social Landlords (RSLs) themselves.

Beyond these specific elements, States Parties to the Convention (including the U.K. and by extension Scotland) are also bound by more general obligations in relation to economic and social rights, such as the right to housing as set out in Article 2 of ICESCR:

‘To take steps, individually....and to the maximum of its available resources, with a view to progressively achieving the full realization of the rights recognized in the present Convention by all appropriate means, including particularly the adoption of legislative measures.’

Broadly speaking, this means that with respect to the right to housing, States Parties and public authorities within States must:

- Take immediate action to draft a strategy to realise the right to housing;
- Take immediate action to ensure non-discrimination in the realisation of the right to housing;
- Ensure there is adequate investment in realising the right to housing to the maximum of available resources; and
- Ensure that people’s enjoyment of the right continues to improve and does not go backwards.

The Commission stresses that rights in international law are legal obligations and that public authorities in Scotland have duties to respect, protect and fulfil these rights, alongside their obligations to act in conformity with the Human Rights Act 1998. Given this context, it is critical that standards of regulation for RSLs in Scotland are informed by international human rights law and that the Regulator is empowered to monitor performance on this basis. All of these elements provide a useful framework for the regulation of RSLs in Scotland and should also inform the Scottish Social Housing Charter, to which consultation both ETF and the Commission also made individual submissions.

Human rights based approaches have as their aim the realisation of international human rights laws, the right to housing being of relevance within this context. However, such approaches are also concerned with process and a number of rights based principles inform what this should be. The Commission uses the PANEL principles outlined below:

**Participation** – People should be involved in decisions that affect their rights. In this context, this could mean that tenants are able to inform the regulatory process, raise issues of concern, set indicators against which RSLs can be held accountable.

**Accountability** - There should be monitoring of how people’s rights are being affected, as well as remedies when things go wrong. This element of a human rights based approach is core to the activity of the regulator. It is critical that regulatory activity is informed by human rights norms and standards and that there are robust procedures

to hold RSLs to account and provide appropriate remedies to tenants when things go wrong.

**Non-discrimination** - All forms of discrimination must be prohibited, prevented and eliminated. People who face the biggest barriers to realising their rights should be prioritised. Regulatory activity should include monitoring of the particular experience of specific groups of people to ensure that they are not experiencing direct or indirect discrimination in the realisation of their right to housing.

**Empowerment** - Everyone should understand their rights, and be fully supported to take part in developing policy and practices which affect their lives. The Regulator has a key role in ensuring that tenants know and understand their rights, and what they can do in the event that these rights are breached.

**Law** - Approaches should be grounded in the legal rights that are set out in domestic and international laws.

### **3.0 What are your views on the proposed target to maximise the proportion of social housing meeting EPC B by 2032?**

ETF welcomes any measures that seek to increase the energy efficiency of homes, however we have concerns about whether this proposal is achievable. It is worth noting that in 2016, just 15,000 units or 2% of Scotland's social housing stock actually met energy performance certificate (epc) band b or higher. If energy suppliers refrain from increasing their prices, then the proposal could be more realistic and ETF would support this.

ETF is concerned about the additional costs this highly ambitious target will have for tenants. If the additional costs rest on local authorities and registered social landlords building new homes and installing retrofit measures (i.e changes to an existing building that seeks to improve its performance, in terms of energy use and its associated Carbon Dioxide emissions), there is a very strong chance that the increased costs could impact on the eventual affordability of rent levels or reduce the available funding for future maintenance works. Tenants in Edinburgh already pay the highest rents in Scotland and rents will increase by a further 2% for 2018-2019. Furthermore many tenants in Edinburgh are suffering from the effects of Welfare Reform and this will only worsen when Universal Credit is rolled out in the city. During the winter months, a large proportion of tenants have to make a choice about whether to heat their homes or provide food to their family as they can't afford to do both.

ETF is aware that energy efficiency improvements mostly lead to savings in running costs for tenants over time, but the costs and savings must stack up. Any rent increases must be matched by actual and not assumed fuel cost savings to tenants. Technical officers have commented that an epc b rating is only achievable via the use of renewables, which are inevitably high costs. For example a solar panel installed for £5,000 might lead to savings of £160/ year and this would take over 30 years to recover the investment cost.<sup>1</sup>

ETF notes that the tender process for recruiting contractors to carry out various pieces of work can often be a lengthy and quite complicated process. In addition the unpredictability of the Scottish winter could have an impact on achieving the target of epc b by 2032.

ETF responded to the Proposed Social Housing (Automatic Fire Suppression Systems) (Scotland) Bill earlier this year. Although supportive of this proposal to a certain extent, ETF was concerned of the additional costs this would add to tenants' rent. ETF has similar concerns on this target.

**3.1 What are your views on the proposal for a lower target of EPC C for detached houses and houses reliant on specific fuel types (e.g. oil, LPG and solid fuel)?**  
ETF support this proposal, but notes that these types of properties only account for 6% of social housing and the remaining 94% is gas or electricity.

**3.2 What are your views on the proposed content of the review:**

**(a) to assess progress towards meeting the new standard?**

ETF agrees with the proposed content to assess progress.

**(b) to consider the 2032 milestone in the context of technological developments**

ETF is concerned that there are not enough technological developments in Scotland and this comes down to funding. The Scottish Government has provided a list of different funding sources in this consultation which should be welcomed. However it is important to appreciate that the majority of funding options do not provide direct funding for projects that landlords will have to undertake to work with. ETF would like to see the Scottish Government analyse this milestone in 2020 after EESH1 has been achieved to see if this target is still realistic.

**(c) to consider any additional requirements of the 2032 milestone regarding air quality and environmental impact**

ETF would like to see the Scottish Government address poor ventilation in homes as this can lead to poor air quality, which in turn can lead to illnesses. Indoor air quality has not been discussed in great deal in this consultation.

ETF welcomes the 2032 milestone addressing air quality and the environmental impact, as this is a major issue in Edinburgh. The 20 miles per hour system in Edinburgh is appropriate in some areas in the city, but not others. As a result this is causing severe air pollution. It should be noted that St John's Road in Edinburgh and Queensferry Road were recently named as two of the most polluted streets in Scotland. If the tram system is to be extended to Leith, then this will have more severe air quality and environmental impacts to Edinburgh.

**3.3 In terms of the timing of the review, what are your views on the proposal to review the new standard in 2025?**

ETF agrees that this is a suitable timescale to review the standard.

**3.4 Do you have any other comments on the further requirements proposed for the ESSH 2032 target?**

Tackling poverty has to be at the forefront of the EESH 2032 target. ETF has already highlighted the impact the proposals could have on tenants' rents and the funding options provided by the Scottish Government are not appropriate in some cases. The General Fund budget for all local authorities; including Edinburgh has reduced for many years, so trying to find the necessary funds will be challenging. ETF would like to see the Scottish Government providing more funding to landlords, so the appropriate works can be carried out.

In addition funding is required for tenant education and support before, during and after new energy efficiency measures or renewable technology has been installed. The cost of tenant support does not appear in the Scottish Government cost/ benefit figures provided in relation to EESSH 2.

**3.5 What are your views on the proposed minimum standard that no social housing should have an energy efficiency rating of less than EPC D?**

ETF supports this proposal.

**3.6 It is proposed that this minimum standard of EPC D applies to social housing from April 2025, in line with the standard for the private rented sector. What are your views on this timescale for social housing?**

ETF would urge caution on this, as there are many differences between social housing and the private rented sector and making a comparison between the two could be difficult. It should be noted that the current average rating for epcs in Scotland is band d (61) and the majority of landlords will meet this. However achieving the minimum epc d standard will still require big investment from the City of Edinburgh Council due to the sheer size of stock and need to upgrade many multi-stories and deal with mixed tenure housing. Keeping rents to a reasonable standard for tenants needs to be a top priority. Stock should be brought up to a minimum d standard but not at a direct cost to tenants.

**3.7 What are your views on the proposal that landlords would need to provide a short narrative explanation of their performance**

As this is current practice for landlords, ETF would support this. However, ETF would like to see landlords involve tenants more in this process through a short life working group of where possible collating, finalising and sending the annual returns on the charter to the Scottish Housing Regulator. At present very few landlords involve tenants in this process and ETF would like to see this increase.

**3.8 What are your views on the proposal that limited exemptions should apply to the 2025 minimum standard for lets?**

ETF does not agree with the proposal to remove technical, excessive cost and unable to secure funding as reasons for a property's exemption and would recommend that these still be included, at least up until the 2032 deadline. ETF believes that technical, excessive cost and unable to secure funding should be retained as they allow social housing providers the ability to manage their own stock. ETF cannot see any concrete evidence in this consultation to remove them.

However it will be important for all landlords to produce robust, concrete evidence to support their case for having exemptions for properties and show they have exhausted all avenues for improvement.

**3.9 What are your views about the proposed approach to recognising new technology in EESSH2?**

As per our previous answers, the Scottish Government has only provided a limited range of funding options for landlords and ETF would like to see the Scottish Government increase its funding to landlords in order for them to invest in new technologies. ETF supports the view that the innovation must be in the best interests of tenants and effective monitoring and evaluating is crucial in assessing the effectiveness of new technologies.

ETF strongly supports the Scottish Government's view that tenants should be involved and empowered as part of the monitoring process. However ETF believes that tenants need to have more information in order to take part in this process. This could be achieved through information sessions, newsletters and learning sessions. ETF has carried out Tenant Led Inspections for years as part of tenant scrutiny and this has made a huge difference to improving services for tenants in Edinburgh. This could be replicated more throughout Scotland.

Accessible information is a right under the Convention on the Rights of Persons with Disabilities and is critical to supporting the realisation of other rights. Information should be available in a range of formats and the Scottish Government should ensure that it conforms to the highest standard of accessibility for example, on its website. Given the complexity of some of the information which the Scottish Government needs to report, it will be useful to consider if the use of infographics, animations and films could help to make this more accessible.

### **3.10 Do you have any comments on the EESH 2040 Vision for;**

#### **(a) poor energy efficiency to be removed as a driver for fuel poverty and for**

ETF supports this vision and could be included as part of the 2032 milestone to look at what progress is being made.

#### **(b) social housing to be carbon neutral**

ETF supports this vision and could be included as part of the 2032 milestone to look at what progress is being made.

### **3.11 Any further comments?**

As mentioned at the beginning of the paper, there is no discussion about how energy efficiency standards for social housing in Scotland links to international human rights law, or how a rights based approach to housing in Scotland could be taken. This is emerging as a key trend in Scotland right now but is missing from this consultation.

There needs to be more emphasis on rent affordability. This is a rights based issue as the ICESR Right to Adequate Housing includes a right to affordable housing.

ETF notes there is nothing in this consultation about landlords needing to be able to demonstrate how they are meeting the Equality Act 2010, so there is no discrimination against different groups of people (protected characteristics). Access to housing should be made available to all people.

ETF would like to see more social homes built across Edinburgh and where possible buy back empty private homes as homelessness is a particular issue in Edinburgh at the moment. It is encouraging that the Scottish Government is recognising energy efficiency in homes but only by building more social homes will homelessness be reduced. (\* i.e. rough sleeping being a much smaller number than the number of people sleeping in friends of family's houses but effectively homeless).

There is little information in this consultation about the possible impact that Brexit will have on future funding and whether this could impact on the proposals in this consultation.

ETF is keen for the Scottish Government take greater steps to influence the prices that energy providers charge and to push for this to be within the remit of a devolved power.

Tenant participation and tenant empowerment should be at the forefront of the Scottish Government's proposals as per the Housing Scotland Act 2001. 'Every local authority landlord and registered social landlord must, by such time as the Scottish Ministers may direct, prepare a strategy (a "tenant participation strategy") for promoting the participation of tenants under a Scottish secure tenancy or a short Scottish secure tenancy in the formulation by the landlord of proposals in relation to the management of housing accommodation and the provision of related services by it, so far as such proposals are likely to affect such tenants.'

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July 2018

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<sup>i</sup> TPAS EESSH Consultation Event, Wednesday 27<sup>th</sup> June 2018, the Raploch Community Centre, Stirling