

# NEA Response to Ofgem's ECO3 improving consumer protection consultation



*Action for Warm Homes*

## About National Energy Action (NEA)

NEA<sup>1</sup> works across England, Wales and Northern Ireland to ensure that everyone in the UK<sup>2</sup> can afford to live in a warm, dry home. To achieve this we aim to improve access to energy and debt advice, provide training, support energy efficiency policies, local projects and co-ordinate other related services which can help change lives.

## Background to this response

NEA has been engaged with the ECO 3 process throughout the initial Government consultation stage, the associated Ofgem guidance consultation, and the Government consultation on consumer protection. We are pleased to respond to this consultation and support Ofgem to design guidance and implement robust processes that can ensure obligated parties, installers, local authorities and other delivery parties are making every reasonable effort to achieve the new requirements which are being consulted upon.

## Our response

**Question 1 - Do you agree with our proposal to create three new fields in the notification template to capture an installer's TrustMark license number, lodged certificate ID and TrustMark Unique Measure Reference Number for verification purposes? If you disagree, please provide alternative suggestions, including any evidence, to support your response.**

Yes, we agree.

**Question 2 - Do you agree with our proposal to verify certain data fields with TrustMark's Data Warehouse? If you disagree, please provide alternative suggestions, including any evidence, to support your response.**

Yes, we agree.

**Question 3 - Do you agree with our proposal on how the transition of appropriate guarantees will be carried out? If you disagree, please provide alternative suggestions, including any evidence, to support your response.**

Yes, we agree.

**Question 4 - Do you agree with our proposal that suppliers will be required to conduct technical monitoring and score monitoring until TrustMark are able to take full responsibility of the process? If you disagree, please provide alternative suggestions, including any evidence, to support your response.**

Yes, we agree.

**Question 5 - Do you agree with our proposed approach to the administration of FTCH insulation requirements? If you disagree, please provide alternative suggestions, including any evidence, to support your response.**

NEA strongly supports the fabric first principle in order to ensure that both fuel poverty and emissions are tackled at the same time when first time central heating systems (FTCH) are installed. This helps ensure ECO, and other schemes such as the Fuel Poor Network Extension Scheme (FPNES) make as much of a contribution as possible to the fuel poverty targets.

A risk with the proposed administration approach is that the additional insulation measures cannot be installed in a home, either because it isn't technically possible, or because there are planning objections or restrictions or there are also instances where a freeholder may object to the works (or fails to respond in a swift enough time) even if the leaseholder or tenant want the work to go ahead. Neighbours may also object if roof space is shared, or a communal party wall is affected. We do not believe that this should affect the householder's ability to receive FTCH through the scheme, but are unsure as to how Ofgem might mitigate this risk. We therefore encourage Ofgem to engage more widely with stakeholders to come to a solution that does not disbenefit households that simply cannot receive cavity wall or loft insulation.

**Question 6 - Do you agree with our proposal that weather / load compensation should be a stand-alone measure type, rather than the savings being included in scores for installing gas and LPG boilers? If you disagree, please provide alternative suggestions, including any evidence, to support your response.**

Yes, we agree.

**Question 7 - Do you think that a change in approach is necessary for scoring multiple measures? If so, please indicate your alternative approach, including any evidence, to support your response.**

We do not have a view on this currently.

**Question 8 - Do you agree with our proposal to split out the existing underfloor insulation score into solid underfloor insulation and suspended underfloor insulation? If you disagree, please provide alternative suggestions, including any evidence to support your response.**

Yes, we agree. Ensuring that scores are as accurate as possible is important in reaching the best outcomes.

**Question 9 - Do you know of any other situations where failed cavity wall insulation would need to be removed that we should be aware of that would help us to clarify the guidance? If so, set out any examples, and provide supporting evidence as required.**

Where the property in question have had (and can evidence) past or current issues with CWI in the past, the insulation requirement to access FTHC may prompt questions on whether the extraction and/or new installation of CWI could prompt new damp problems. If this can be robustly demonstrated from a compliance perspective (surveyors report, photos, CIGA correspondence etc) then the household should still be able to benefit from FTHC.

**Question 10 - Do you know of any heat sources which would fall within the 'Gas room heaters' pre main heat source category which are not fuelled by mains gas? If you do, please provide evidence to support your response**

We are not aware of any heat sources in this category that are not fuelled by mains gas.

**Question 11 - Do you know of any other categories of HMO that we should be aware of that would help us to clarify the guidance? If so, set out any examples, and provide supporting evidence as required**

The following information is taken from research that NEA and Future Climate undertook in 2015-16 to look in detail at the facts about fuel poverty and energy efficiency standards in Houses in Multiple Occupation (HMOs)<sup>3</sup>. In particular:

- Is there a problem of fuel poverty (broadly defined as energy efficiency problems leading to cold and high bills) in HMOs?
- Are HMOs more or less likely than other homes to be energy inefficient and, if so, what are the distinctive energy-related features and problems?
- How is energy paid for in HMOs?
- How well are council action and national policies working to promote energy improvements in HMOs?
- How could policies be adjusted to improve the energy efficiency of HMOs?

We surveyed 112 people working with HMOs - mostly council environmental health and housing officers, but also landlords and representatives of voluntary groups and local advice providers. We also looked at the available literature on HMOs and energy efficiency (building on a detailed literature review undertaken by Future Climate and University of Manchester for Eaga Charitable Trust in 2014). We staged telephone and face-to-face interviews with HMO specialists for more detailed insight into the issues we found. The results have helped us establish perhaps the most comprehensive overview to date on fuel poverty and energy efficiency standards in HMOs.

#### Examples of typical HMOs

Whilst low household incomes are clearly prevalent in the HMO sector, the extent of problems of cold, damp and high cost within HMOs is driven in large part by the built form of these buildings. We asked respondents to our survey to identify typical HMOs in their area.

It is striking that the characteristics of HMOs most commonly identified by our respondents are close to the characteristics that pre-dispose households to be in fuel poverty:

- Pre-1919 age of construction
- Low levels of insulation
- Electric heating
- Private rented sector
- Single person households
- Unemployed households

The majority of respondents drawing pen portraits of larger, older town houses:

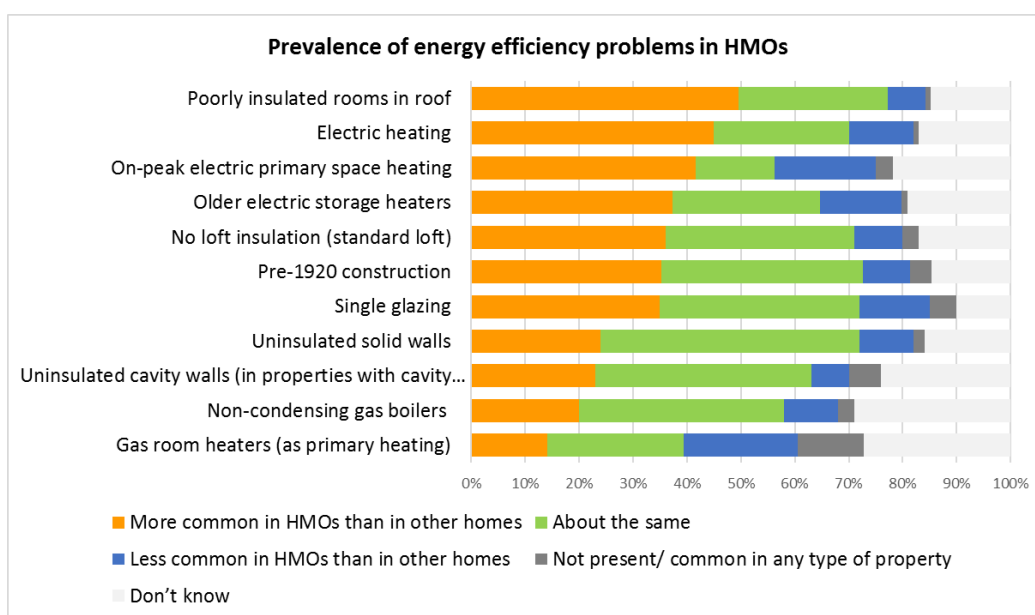
- *Converted large five floor terraced properties on a sea front. Others are multi occupancy flats above commercial properties.*
- *Large town house providing a shared living room with bedrooms on ground and first floor, sometimes with an attic room on second floor. Gas central heating, more than one bathroom, sometimes some en-suite rooms. built interwar. Semi-detached or terraced usually double glazed and loft insulation but no other energy saving measures.*
- *'Taking Bournemouth/Poole area firstly typically 1885-1910, cavity construction 80-100mm cavity width, detached, 7-10 units mixture of bedsits and studio flats, when first looked at usually had 0-25mm loft insulation and unfilled cavity (however most now fully insulated, but most (90%) rooms in roof remain untreated. Typically heated with E7 storage heaters.'*
- *'1800s, listed, attached on one side, very large. Was hotel, now converted. Single bedsits. Zero insulation'.*
- *'1840-1900 construction, Terraced Georgian property built with solid walls and either listed or in conservation areas. Levels of insulation in loft tend to be low. Heating is usually mains gas or electric storage heaters.*
- *'1880 to 1920, mid terrace, two storey property which is let as a shared house. Roof insulated with 100mm loft insulation. Heating either mains gas from a boiler in the kitchen/bedroom or electric storage radiators'.*
- *'Pre 1919: terrace: s257 self-contained flats: very little insulation in attic space and usually solid stone wall: usually electric wall heaters or electric storage'.*
- *'1890s brick built terraces, 3 storey, 9" walls, poor insulation. UPVC windows generally plus central heating, combi boiler'.*
- *'Pre-1919; mid-terrace; bedsits or s257 flats; v poor insulation; gas central most common'.*
- *'Converted Victorian semi-detached with small one bedroom or studio s/c flats, (not to building regs). Electric heaters - with timer and thermostat. No heating in bathrooms. Ceilings are high, walls don't have CWI [cavity wall insulation] or aren't suitable. No loft insulation. No heating in communal parts'.*
- *'Pre 1920 - 3-storey semi-detached house. 3 self-contained flats with uninsulated walls, moderate-to-poor heating appliances. 100mm loft insulation or uninsulated attic room. Single-glazed sash windows'.*
- *'Poorly converted /5 storey terrace Victorian house containing self-contained flat with poor insulation and gas central heating. Quite often there is on peak electric heating. We also have similar houses used as bedsits and sharing bathrooms'.*
- *'1940s, terraced, multiple occupancy house, solid wall, electric storage heaters'.*
- *'1940s, end terrace, 2 storey shared house, minimal insulation, old heating system in place but tenants use old electric heaters'.*
- *'1950's traditional brick built 2 storey dwelling with mixture of gas & electric heating'.*

Some respondents to our survey emphasised that there is not a single type of HMO: one respondent saying “No such thing as a typical HMO I'm afraid. Going back to the 80s they were traditionally older, inner-city properties in poorer areas. They now include the whole range of property types including ex council flats and new town-houses”.

Nonetheless the focus on older town houses does seem to be backed up by other data: though it is a small sample, the latest English Housing Survey suggests that a high proportion (53%) of shared homes (private rented sector, occupied by 3 or more unrelated people sharing) are mid or end terraces. Using a larger sample, but a looser approximation of HMOs (private rented sector homes occupied by “other multi-person households”) the EHS shows that 49% of homes were built before 1919; 75% before 1944<sup>4</sup>.

## Energy efficiency problems in HMOs

We asked respondents to state whether a range of energy efficiency issues were more or less prevalent in HMOs than in other housing.



Our data suggests that the principal energy related issues that are distinctive to HMOs are:

- 'Poorly insulated rooms in roof' – identified as more prevalent in HMOs by 50% of respondents;
- 'Electric heating' was the second most commonly identified issue. Electric heating is not always problematic where properties are very well insulated. However our respondents also identified that use of older storage heaters and use of on-peak electric heating as primary space heating were prevalent in HMOs.
- Lack of loft insulation in properties with standard lofts remains an issue that is more prevalent in HMOs than in the wider stock.

Secondly our data suggests that older boilers and uninsulated cavity walls – issues for the rest of the stock – are not especially acute problems in the HMO sector. Nonetheless it is important to note that respondents did not think these issues were less prevalent in HMOs than other homes.

The use of expensive electric heating is very noticeable as a distinctive issue for HMOs – whether that is direct electric heating or older storage heaters which do not hold their heat well. The issue here is compounded by the fact that many HMOs residents are often at home all day and so have a high heating demand<sup>5</sup>. Use of fixed direct electric heating may have been driven by HHSRS enforcement practice which has tended to focus on heating adequacy rather than heating costs.

The under-insulated room in roof is also noticeable as an issue that is not widely discussed in relation to the rest of the housing stock. This can be a problem both for cold in winter and for overheating risk in summer. A paper from Warwick University and the French Service des Etudes Médicales reports that:

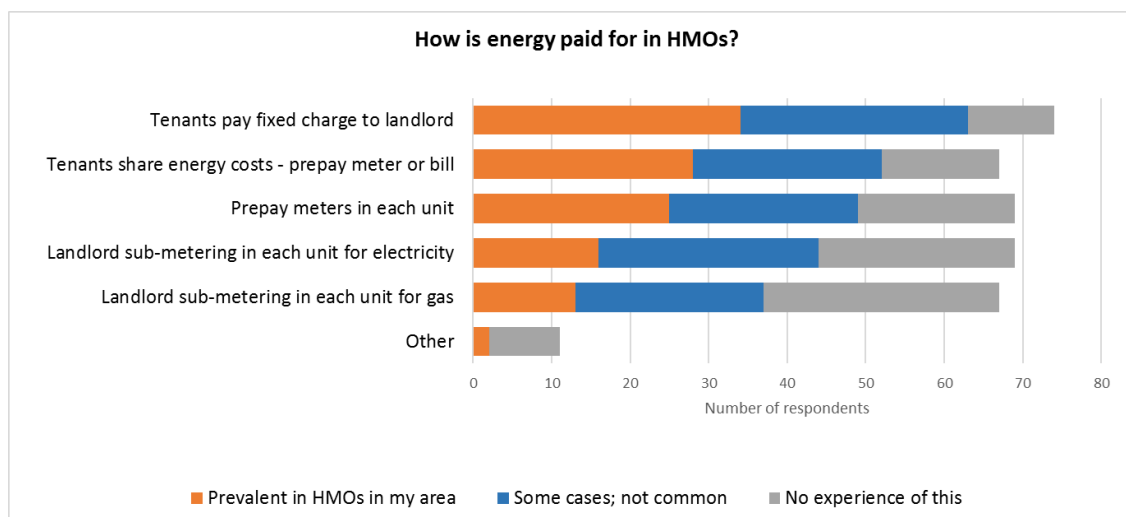
“Investigations into the Paris heat wave of 2003 found that elderly residents of dwellings sited immediately under an inadequately insulated roof were more likely to suffer overheating and an increased risk of mortality than those in other apartments (Vandentorren et al, 2006).

The amount of heat conducted through the opaque elements of the building fabric when the temperature of external surfaces is higher than the internal is relatively small in modern buildings. However, this may not be the case for older buildings and in some cases (where dwelling or rooms are directly under the roof) heat gains can be very significant.”<sup>6</sup>

## Paying for energy in HMOs

We asked what payment arrangements were prevalent in HMOs in survey respondents' communities (chart 6 below). Many indicated that these were highly variable depending on the type of HMO (with S257 HMOs usually having individual meters, for example). Our survey respondents identified that landlords including costs of energy in rent was

the most common way in which energy is paid for, followed by tenants sharing bills, then prepayment meters in each unit. Arrangements may be mixed for fuels with gas included in rent but electricity paid for by individual pre-payment meters<sup>7</sup>.



**Chart 1**

Landlords sub-metering was identified as “prevalent” by 20% of respondents. One interviewee felt that levels of sub-metering was diminishing due to Ofgem rules (see below) and the fact that in the past, but no longer, energy companies had provided sub-metering services. Even if tenants are not overcharged, sub-metering can be practically difficult for HMO residents - for example with tenants having to buy tokens off their landlord at a time that suits the landlord.

Ofgem energy resale rules prohibit landlords from profiting from energy sales whether sub-metered or calculated on other bases (for example on the basis of the size of rooms occupied). Resale rules do not apply where a fixed charge for energy is agreed as an additional charge on the rent, before rental agreements are signed (though where such fixed charges have a usage cap it is likely the resale rules do apply).

We asked respondents if they felt the resale rules were being adhered to and received a full range of responses from “We have no experience of this happening in our area,” to “Landlords will have inclusive bills in their rent but have a utility cap. I am yet to hear of a case where a landlord has refunded money to a student if they did not reach the cap,” and “landlords sometimes profit from token arrangements that can only be purchased from them.”

## Barriers to action on energy efficiency in HMOs

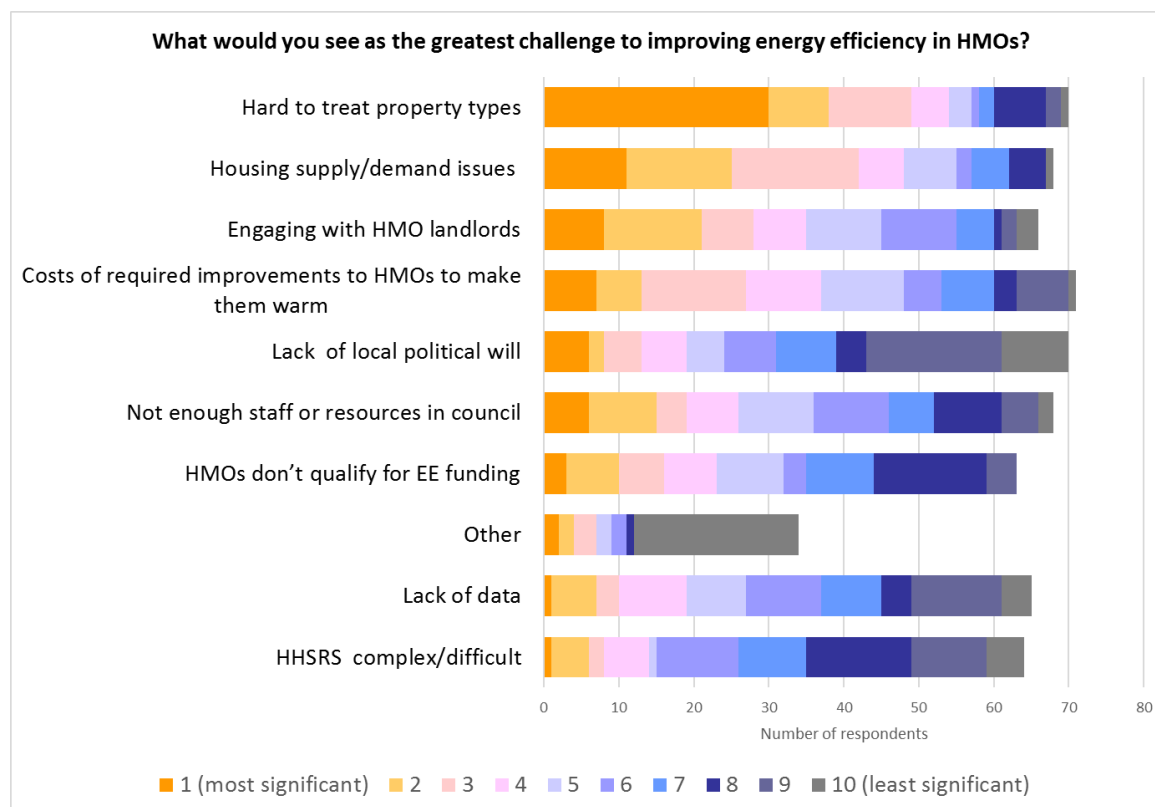


Chart 2

We asked respondents their views on the most significant barriers to action in HMOs (Chart 2 above). The main barrier is the basic issue that these tend to be hard to treat properties: large, old and solid walled where the costs of improvements are high. They are in urban areas and access and consent issues may also complicate action.

The second issue highlighted is the supply/demand issue: that landlords do not have to make energy efficiency improvements in areas of high demand, and/or the fact that tenants do not ask for these features. This is clearly not always the case – our evidence above suggests that in the more professional or higher end of the student market properties are being improved. But in much of the HMO “market” normal rules of supply and demand do not apply, with tenants being placed in these properties by local authorities or having very limited choice due to personal circumstances (no deposit, poor references, limited English etc). This poorly functioning market is why government already takes a more robust regulatory approach with HMOs than other rented properties, and also makes the case for stronger use of regulation as a means of managing energy standards in these properties.

Competing local priorities emerged as a strong factor for action on energy efficiency in HMOs both in this part of our survey and in interviews with EHOs. While all local authorities appeared to recognise their duties to monitor and act on excess cold in rented properties and to licence large HMOs, as section 7.5 highlights commitment to enforcement action in the PRS varies greatly across different local authorities. The reasons for this and the challenge to national policy makers this creates are explored in more detail later in the report and the conclusions below.

Comments under the “other” heading mostly related to the lack of national support programmes for energy efficiency

### Energy Performance Certificates and HMOs

There are two recognised issues with regard to the issuing of Energy Performance Certificates for HMOs which we explored through our survey and interviews. The first relates to the fact that EPCs are generally not considered to be required for HMO rental situations. The second issue is that there is a lack of clarity around what type of EPC different HMOs may require.

In addition to these issues around the issuing of EPCs, three interviewees highlighted that EPCs could be used much better alongside private sector housing programmes including HMOs licensing - but scope for this was limited in

non-unitary authorities by the fact that Trading Standards (at county council level) enforced EPC requirements while housing enforcement activities were run from the district council.

#### *Requirement for EPCs at Point of Letting HMOs Units*

DCLG's "How to Rent" checklist advises that Energy Performance Certificates are not required at point of letting units within HMOs.<sup>8</sup> This can mean that tenants in HMOs get less information about the energy used in their home than other tenants.

The fact that HMO units may not require EPCs could limit the impact of the PRS minimum energy efficiency regulations which will take effect from 2018. HMOs which have not been sold or rented out as a whole property since 2008 will not have to meet the minimum EPC "E" standard because they do not have the EPC which acts as the legal trigger for these regulations<sup>9</sup>.

One of our respondents said: *"Currently the EPC requirements exclude the majority of HMOs and the proposed new enforcement powers to ensure PRS properties meeting minimum energy efficiency standards which come into force in a couple of years have so many exemptions that most PRS properties (inc HMOs) will not need to comply with these minimum standards."*

As part of evidence gathering for this study we found that Dr David Smith, Legal Director of the Residential Landlords Association is now advising that the EPC is required a point of letting of HMOs.

The issue is that the relevant regulations says that an EPC is required only at the point of rental of a "a section, floor or apartment within a building which is designed or altered to be used separately."<sup>10</sup> Mr Smith in a March 2016 communication reproduced with permission here says:

*"The EPC definition neither includes or excludes an s254 HMO because the definition is not just about design. If you design a property to have individual bedrooms with en suite bathrooms and shared kitchens then it will be a s254 HMO but it will still be designed to be used separately. The problem is that the EPC definition does not really make sense. The EU was of the view that EPCs should be provided for HMOs and there now appears to be confusion. This is partly because the EU tends to use the word "apartment" as they have done in the Heat Networks directive and this has not been directly translated here."*

#### *Methodology to be used in EPC assessments*

The second issue around EPCs and HMOs is that of the appropriate methodology (domestic or non-domestic) for carrying out EPC assessments in HMOs. The issue is that SAP (the EPC calculation methodology) is designed to estimate energy use using calculations based on construction, installed measures and behaviour within a typical family home. A SAP assessment may not be suitable particularly for larger, bedsit-style or hostel HMOs.

The survey undertaken for this study found that while only a small percentage of our respondents (12%) claimed to be familiar with the issue, the problem that "you can't do an EPC for bedsits" was mentioned several times, for example *"I assume they [EPCs] are not being required for bedsits with shared facilities. How would they be done anyway?"* This has the following practical consequences:

- Lack of clarity around how SAP assessments should be carried out causes problems with financing schemes, particularly where these are based on ECO which has required EPCs to calculate grant. Our respondents highlighted that this has militated against inclusion of HMOs in ECO funding (see section 8 below).
- It is difficult for environmental health officers to know when it is appropriate to use SAP assessments within assessments of excess cold risk in HMOs or individual bedsits— limiting and complicating the use of SAP in supporting HHSRS assessments
- It may cause confusion and difficulty when EPCs are specified as a minimum requirement of EPC licensing.
- The government has set a goal that no properties rented or owned by people in fuel poverty which have an Energy Performance Certificate of Band G or F by 2020. It is currently possible for an HMO resident to be occupying an uninsulated, electrically heated attic room within a wider property that does as a whole building meet the minimum EPC "E" standard.

**Question 12 - Do you agree with our proposal to rename the measure categories and to move the measure types “Cavity Wall – External Insulation” and “Cavity Wall – Internal Insulation” into the measure category “Cavity Walls”? If you disagree please provide alternative suggestions, including any evidence, to support your response.**

We agree with this proposal.

**Question 13 - Do agree that the approach of introducing a separate and transparent behavioural usage factor would be an effective way of recognising that systems might be turned off or removed? If you disagree please provide alternative suggestions, including any evidence, to support your response.**

Whilst it is true that behaviour can have an impact on the lifetime of a measure, we are not confident that there is a robust way of measuring this through a “behavioural usage factor”. Applying this across all installs of a technology could result in penalising those households who would not remove or turn off the measure. We are not comfortable with this, and believe that each measure should be treated as if it will be used for the appropriate lifetime.

**Question 14 - Are there any areas where you think further guidance would be useful?**

We do not have anything further to add at this time.

**Question 15 - Do you have any further comments on our proposed administration for ECO3?**

There are three areas where we believe further consideration should be made regarding the administration of ECO 3.

Firstly, NEA believes that more work can be done to enhance the understanding of the cost effectiveness of the scheme in relation to capital contributions. The NAO ECO and Green Deal report states that there were “significant gaps in the Department’s information on costs, which means it is unable to measure progress towards two of its objectives. The Department collects some cost information from households, suppliers and the brokerage platform. But the information does not show households’ contribution to measures installed under ECO, nor how much each measure has cost suppliers. This means the Department cannot track accurately whether it is achieving its aims of improving harder-to-treat homes more efficiently and getting households to bear more of the cost of measures”. Given that the government has unfortunately decided not to prohibit capital contributions for this iteration of ECO, NEA agrees with the NAO that each phase should have an audit of the capital contribution for measures. This should be conducted by Ofgem as part its scheme administration activities.

Secondly, NEA would like to see more information on the administration of statements of intent. To date, regulation has been light touch in relation to the compliance around LA flex. Anecdotally, we have heard that contractors have been going into households without agreement from the LA, doing assessments and retrospectively getting an agreement from the LA with respect to eligibility. Ofgem should take responsibility for doing audits for who is targeted through SOI in order to reduce the risk of the system being gamed, which could lead to vulnerable and fuel poor customers losing out on measures

Finally, Ofgem must take enforcement action if suppliers fail to comply with their obligations under SLC 0 and SLC 26. Ofgem must stress its willingness to regulate all licensees to ensure they are compliant with the domestic Standards of Conduct and not accept large variances in the different protections and services being delivered across different energy suppliers, depending on their size and capacity. In addition, Ofgem must ensure suppliers that deliver Government obligated programmes are communicating the support that is available in more consistent and accessible formats, provide adequate advice and are clearly signposting how other forms of supplier-led assistance can be accessed if the most vulnerable fail to benefit from different supplier-led schemes<sup>1</sup>. NEA also notes that once Gas Distribution Networks (GDNs) are also required to carry out minimum standards for the treatment of vulnerable customers within the next price control, these minimum standards must be reflected in the updated ECO guidance. Ofgem should also stress that where a FPNES or related service continues to be delivered by a GDN’s contractor, this will require the GDN to be able to demonstrate clear mechanism for auditing their contractors compliance with any stipulations in relation to the treatment of vulnerable customers and/or any requirements for delivering the ECO scheme.

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<sup>1</sup> For more information visit: [www.nea.org.uk](http://www.nea.org.uk).

<sup>2</sup> NEA also work alongside our sister charity Energy Action Scotland (EAS) to ensure we collectively have a UK wider reach.

<sup>3</sup> We considered HMO as defined in 2004 Housing Act which includes private sector shared houses, flats, hostels and bedsit properties – any property lived in by three or more people in two or more households. This official definition of an HMO also includes poorly converted blocks of self-contained flats where more than a third of the flats are rented out – these are often referred to as Section 257 HMO after the section of the Housing Act where they are defined.



<sup>4</sup> See Appendix 2: Analysis of the latest English Housing Survey data undertaken by Future Climate for this study Department for Communities and Local Government. (2015). *English Housing Survey, 2013: Housing Stock Data*. [data collection]. UK Data Service. SN: 7802, <http://dx.doi.org/10.5255/UKDA-SN-7802-1>.

<sup>5</sup> An issue identified to us by one of the EHO interview respondents

<sup>6</sup> *Thermal Discomfort and Health: Protecting the Susceptible from Excess Cold and Excess Heat in Housing* Ormandy and Ezratty 2014  
<https://www2.warwick.ac.uk/fac/med/research/hscience/sssh/publications/publications14/thermal.pdf>

<sup>7</sup> Based on interview with an EHO

<sup>8</sup> DCLG's "How to Rent" checklist advises that "The landlord must provide you with... ..The Energy Performance Certificate. This will affect your energy bills and the landlord must provide one (except for Houses in Multiple Occupation)."  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/496709/How\\_to\\_Rent\\_Jan\\_16.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/496709/How_to_Rent_Jan_16.pdf)

<sup>9</sup> There are also other reasons why the regulations may have a limited impact – most notably the requirement that landlords only have to install measures where these are fully funded by a third party.

<sup>10</sup> Section 6(5) of the Energy Performance of Buildings (England and Wales) Regulations 2012 as amended in Part 4 of The Building Regulations &c. (Amendment) Regulations 2013

<sup>11</sup> Energy suppliers offer a range of services but these are often poorly promoted as part of ECO by obligated parties or their suppliers and contractors. Without adding costs to the ECO scheme, obligated parties and their suppliers and contractors should be able to provide information on how households can register for priority services, get the best energy tariff, check if they can receive the WHD and hence benefit from the Safeguard Tariff, make a meter reading, benefit from a smart meter, how to maximise their income, contact their supplier to discuss energy debt, benefit from a carbon Monoxide alarm or free gas safety check.