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Cold Homes: Energy Efficiency and the Green Transition in the UK Private Rental Sector

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Abstract

The problem of energy poverty has risen up the political agenda in both the EU and England in recent years. Many people in England struggle with energy costs, contributed to by high energy costs and inefficient consumption for heating. Additionally, this problem particularly effects those living in private rented housing, due to their lack of control over their homes, combined with split incentive problems. In light of this, the objective of this study is to analyse the current policies in place in England, and the EU, and, through a comparison, find possible improvements which could be made to the English regime. It will be argued that there are policies which could be implemented in England to help solve the problem of inefficient rental housing, informed by both the EU regime and domestic recommendations. Finally, this thesis emphasises the need to consider the social and environmental dynamics of sustainability together.

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Ch. 1: Introduction

1.1: Factual context

The UK is, within an OECD context, not a highly energy consuming country. In their latest report, the International Energy Agency (IEA) found that in 2017, the UK had the sixth lowest total final energy consumption per capita, and the third lowest per unit of GDP, putting it well below the IEA median.¹ Despite this, in terms of the energy consumption per floor area for residential space heating, the UK sat at fourth *highest* amongst IEA countries in 2015.² This stark contrast puts the problem faced by the UK into sharp relief- the issue is not excess energy consumption generally, but specifically with heating of residential spaces. Research by British Gas found that British houses ‘lose heat three times as quickly as our European neighbours’.³ This problem is also clear when the distribution of energy consumed within the residential sector is assessed: 71% is used for heating in comparison to, for example, 2% for cooking.⁴ As a result of this, depending on the statistics and method used (see more later), the Department for Net Zero and Energy Security estimate that 8.9 million *households*, or 36.4%, in England are currently living in fuel poverty.⁵ This clearly shows that energy costs are a heavy burden for people in the UK, and a recent report from the National Energy Agency found that 49% of those surveyed turned their heating off, even though it was cold in the house, and 23% left their curtains closed all day or put newspaper over windows in order to stay warm.⁶

The effects of this, however, are not spread evenly across all parts of society, and those living in the private rental sector face more of a burden. According to recent government estimates, ‘despite only 20.3% of all households [in England] privately renting their homes,

¹ International Energy Agency, ‘Energy Policies of IEA Countries: United Kingdom 2019 Review’, p. 81.

² Ibid, p. 86.

³ British Gas, ‘Greening the Private Rental Sector’ (Renters’ Report 2023) 16 November 2023, p. 3.

⁴ International Energy Agency, ‘Energy Policies of IEA Countries: United Kingdom 2019 Review’, p. 87.

⁵ Suzanna Hinson and Paul Bolton, ‘Fuel Poverty’ (Briefing Paper No CBP 8730, House of Commons Library 24th March 2023) <https://researchbriefings.files.parliament.uk/documents/CBP-8730/CBP-8730.pdf>, p. 21.

⁶ National Energy Action, ‘UK Fuel Poverty Monitor 2022-2023’ (31 January 2024), p. 7.

36.6% of all fuel poor households live in privately rented accommodation'.⁷ This is due to a combination of factors. Firstly, those living in the private rental sector are more likely to be on a low income, and therefore more likely to struggle to pay their bills, with 26% reporting difficulty paying rent.⁸ Additionally, dwellings in this sector are more likely to be of poor quality, both in general, and specifically in terms of their energy efficiency. Only 43% of private rental sector dwellings are in bands A-C on the energy efficiency scale, the lowest of any housing sector,⁹ 11% have such a severe problem with damp as to be a health hazard, and in 2021, 14% of private rental sector dwellings were estimated to be unsafe according to the Housing Health and Safety Rating System, many due to dangerously cold temperatures.¹⁰ These statistics show that this is not just a case of people unable to afford their housing costs, but a more fundamental issue with the quality of housing in the private rental sector.

The reasons for this are complex, and due to a combination of long- and short-term factors. In the long term, as Catrin Fflur Huws notes, '[r]enting in the UK has for a long time been characterised by a lack of security of tenure', with few historic legislative protections for tenants.¹¹ The rise of Thatcherism in the 1980s led to an increase in individual landlords, and the rise of 'buy-to-let' property, as well as the liberalisation of the private rental sector and removal of many existing tenant protections.¹² In a comparison of housing laws between Denmark and the UK, Sirid Bonderup noted that 'it was also clear that British rental laws

⁷ Department for Energy Security and Net Zero and Department for Business, Energy and Industrial Strategy, 'Fuel Poverty Factsheet: England, 2022' 28 February 2023 <https://www.gov.uk/government/statistics/fuel-poverty-factsheet-2023>.

⁸ Department for Levelling up, Housing and Communities, 'English Housing Survey 2021 to 2022: private rented sector' 13 July 2023 <https://www.gov.uk/government/statistics/english-housing-survey-2021-to-2022-private-rented-sector/english-housing-survey-2021-to-2022-private-rented-sector> 'Ease of paying rent'.

⁹ Department for Levelling up, Housing and Communities, 'English Housing Survey 2021 to 2022: energy' 13 July 2023 <https://www.gov.uk/government/statistics/english-housing-survey-2021-to-2022-energy/english-housing-survey-2021-to-2022-energy> 'Energy efficiency profile by tenure'.

¹⁰ Department for Levelling up, Housing and Communities, 'English Housing Survey 2021 to 2022: private rented sector' 13 July 2023 <https://www.gov.uk/government/statistics/english-housing-survey-2021-to-2022-private-rented-sector/english-housing-survey-2021-to-2022-private-rented-sector> 'Housing health and safety rating system (HHSRS)'.

¹¹ Catrin Fflur Huws, 'Tenants' rights and the Renting Homes (Wales) Act 2016' (2019) 19(4) International Journal of Housing Policy 588, p. 591.

¹² Sirid Bonderup and Lucie Middlemiss, 'Mould or cold? Contrasting representations of unhealthy housing in Denmark and England and the relation to energy poverty' (2023) 102 Energy Research & Social Science 103176, p. 7.

mainly function as protection for landlords’, rather than tenants.¹³ This has led to poor quality housing, with landlords often inexperienced at property management, and with little obligation or desire to do more than the bare minimum to maintain their properties.¹⁴ In the shorter term, as British Gas raise in their report, ‘[t]hus far, schemes to support the decarbonisation and insulation of homes have largely focused on low-income homeowners and the social rented sector. Meanwhile, notably, an important segment of the housing market has been left out of policy discussion and research: the private rental sector’.¹⁵ This has meant that existing problems due to the underlying structure of the private rental sector in England have been exacerbated by the growing climate crisis, as well as the cost of living crisis due in no small part to the war in Ukraine. If the private rental sector continues to be left behind in this way, millions will suffer unnecessarily, and the inherent costs of the net-zero transition will be unfairly and disproportionately attributed to already vulnerable groups.

1.2: Research questions and purpose

Based on this background, this thesis hypothesises that the harmful inefficiency in rental housing is caused by the lack of adequate regulation in this area, both in general tenant protection, and more specific energy efficiency standards. This thesis will therefore explore if and how adapting and improving existing regulation could be used to improve this inefficiency in England by analysing the current regime through a comparative lens. In order to achieve this, the following questions will be considered:

What are the key differences and similarities between the current EU and English regimes?

How can regulatory changes be used to address the problem of energy inefficiency in the English private rental sector, especially in the context of the energy transition?

How can the existing EU framework be used to inform and add to this solution?

¹³ Ibid.

¹⁴ Ibid.; Catrin Fflur Huws, ‘Tenants’ rights and the Renting Homes (Wales) Act 2016’ (2019) 19(4) International Journal of Housing Policy 588.

¹⁵ British Gas, ‘Greening the Private Rental Sector’ (Renters’ Report 2023) 16 November 2023, p. 3.

1.3: Methodology and limitations

In attempting to address this problem, I will first set out the significance of the interplay between social and environmental sustainability factors in this area of law. These two facets of sustainability can be used to mutually reinforce each other for overall improvements. Then, I will look in turn at the existing regulatory frameworks governing this area in both the UK and EU. This will then enable me to compare the two regimes and assess what can be done to address the problem of energy inefficiency in the UK private rental sector, including what could be taken from the EU regime.

This thesis will primarily follow a doctrinal legal research method. It will mainly analyse legislation and policy documents from the EU and UK, and the impacts of these on their fields. These documents will be accessed via the eurlex portal for EU documents, and the legislation.gov.uk website for UK documents, with some usage of the wider EU Commission and UK Government websites where necessary. The interpretation of these documents will be slightly different due to their varying origins: the common law tradition of the UK and the special nature of EU governance require different applications. For example, usage of the preambles and other preparatory materials from the Commission is an important part of the interpretation of EU documents, whilst English legislation has no preambles, and it is very unusual to consult preparatory or governmental material about any piece of legislation.

The structure of this thesis will be a comparison between UK and EU laws and policies governing energy poverty and energy efficiency, and therefore a secondary methodology will be the comparative method. I will first describe each of the two regimes, before comparing their effects and the extent to which they directly and indirectly consider the links between energy poverty and energy efficiency. I will then use this comparison with the EU to see what gaps, if any, there are in the UK's regime, and what can be learnt from the steps taken in the EU.

These doctrinal and comparative methods will be supported by literature review of existing legal scholarship in this area. Furthermore, environmental science scholarship will be used to provide scientific background to the problem, and discuss its extent, whilst political science will be used to provide definitions where necessary of contested topics such as 'energy poverty'. This thesis fits within the wider context of energy law scholarship in both the EU and

UK: extensive work has been done within each of these two regimes,¹⁶ but there is room for more research on the potential impacts of regulation, and the specific interplay with tenants' rights.

It may seem counterintuitive to begin a comparison between the laws of the UK and EU several years after Brexit severed any overt ongoing connection between the two. However, there remains strong basis for comparison. Much of the underlying regime governing energy efficiency in the UK remains EU-derived and will continue to be so.¹⁷ This therefore means that although newly released directives and regulations will not be implemented, many of the base assumptions and definitions are the same. Additionally, the EU is a world leader when it comes to the green transition and improving efficiency,¹⁸ and it therefore makes sense to see what can be learnt from this. Finally, the EU and UK exist in a similar geographic and economic context: OECD countries (or a group thereof) in Western Europe, with similar liberalised energy networks.

The different nations within the UK (Scotland, England, Wales, and Northern Ireland) are each covered by a devolution agreement which regulates the areas in which their parliaments have competence. The UK Parliament has ultimate competence and sovereignty to do (theoretically) anything it likes, but the Scottish Parliament, Welsh Senedd and Northern Irish Assembly each have a different set of powers depending on the act under which they are regulated.¹⁹ The interplay between these is complex, both legally and politically, but crucially for this topic, energy policy is a complex area. Some pieces of legislation passed by the UK government have competence to regulate all four nations, whilst some affect only one, two or three. For example, laws related to energy efficiency can be passed by the Scottish, Welsh, and Northern Irish Assemblies, unless they pertain to prohibition or regulation, in which case only the Northern Irish Assembly has competence. Only the Northern Irish Assembly has

¹⁶ See for example the work of Brenda Boardman, Benjamin Sovacool and Dimitris Papantonis.

¹⁷ The 'Energy Performance of Buildings (England and Wales) Regulations 2012', for example, implement the EU Energy Performance of Buildings Directive.

¹⁸ 'Leading the Green Transition' European Commission https://state-of-the-union.ec.europa.eu/state-union-2022/state-union-achievements/leading-green-transition_en (accessed 29 April 2024).

¹⁹ UK Civil Service, 'Devolution: Factsheet' https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/770709/DevolutionFactsheet.pdf.

competence for matters of consumer protection, but the Scottish Parliament also has competence for matters of consumer advice and advocacy.²⁰ Due to this complex underlying regime, I will not look at the laws which affect *all* parts of the UK and will focus only on England.

The EU regime is necessarily different from that of the UK as a result of the different structure of government. This thesis will not look in detail at any of country's implementation of the EU regime, only the general rules will be discussed. There are therefore few concrete implementing measures, but rather the directives and regulations which set up the wider regime to be implemented by the Member States.

This thesis is structured as follows. Chapter 2 will first provide key definitions and explain the interplay between significant concepts as defined. Chapter 3 will then give an overview of the present regime governing this area in England, as well as past schemes which have been viewed as successful. Chapter 4 will then do the same for the EU, giving a view of the current regime and also some background on previous iterations of newly updated instruments. Chapter 5 will then take the key points from both regimes to compare and contrast, before making recommendations for improvements to the English structure. Finally, Chapter 6 provides some brief concluding thoughts.

²⁰ International Energy Agency, 'Energy Policies of IEA Countries: United Kingdom 2019 Review', p. 19.

Ch. 2: Defining the problem: ‘fin de mois, fin de monde: mêmes responsables, mêmes combat’²¹

2.1: Introduction

This chapter will first set out the conceptual basis for the research, discussing the interplay between social and environmental sustainability and the problems that are caused or affected by the balance between these issues. Then, some key terms used in this research will be defined: energy poverty; energy efficiency; adequately warm; split incentive; and just transition, before the interconnections between these terms and their relevance for this thesis is outlined.

2.2: The conceptual basis of the research

Social and environmental sustainability are different facets of sustainable development which can be seen as opposed to one another, for example in the slogan used by some *gilets jaunes* protestors in France: ‘Les élites parlent de fin du monde, quand nous on parle de fin du mois’.²² While vulnerable groups cannot afford to pay their rent, it can seem ridiculous, and alienating, for politicians and others to be focusing on the climate crisis. This links strongly to the concept of just transition- ensuring that this does not happen, and that the situation for such groups is not made more difficult than it already is.

These two goals, however, do not need to be so opposed. It is possible, and even necessary, that in many cases a policy mix is produced which allows them to support and reinforce each other instead. This is certainly the case in this area of law. As Kantamneni and Haley argue,

²¹ Natalie Sauer, ‘‘We were ecologists before the capitalists’’: the gilets jaunes and climate justice’, *Climate Home News* (20 March 2019) <https://www.climatechangenews.com/2019/03/20/ecologists-capitalists-gilets-jaunes-climate-justice/> (end of the month, end of the world: same perpetrators, same fight) (accessed 16 March 2024).

²² Raphaëlle Rérolle, ‘Gilets jaunes: Les élites parlent de fin du monde, quand nous, on parle de fin du mois’, *Le Monde*. (Paris 24 November 2018) https://www.lemonde.fr/politique/article/2018/11/24/gilets-jaunes-les-elites-parlent-de-fin-du-monde-quand-nous-on-parle-de-fin-du-mois_5387968_823448.html (the elites talk about the end of the world, while we talk about the end of the month) (accessed 16 March 2024).

‘[d]iminishing energy efficiency initiatives for renters re-produces and exacerbates historic under-resourcing of traditionally marginalized communities and patterns of vulnerability. It also puts tenants at risk of potentially regressive climate policies such as carbon pricing (Zhang and Baranzini 2004) and large fixed distribution charges for those unable to exit fossil fuel distribution networks (M. Anderson, LeBel, and Dupuy 2021). Therefore, weakening energy efficiency policies also fails to deliver energy justice or climate justice’.²³

As governments continue to bring in new policies towards net zero in other sectors, whilst leaving renters behind, this has a dual negative impact socially and environmentally- in their report on the lack of government action in this area, British Gas argues that ‘[d]elaying action does not delay the cost of transitioning Britain’s homes- it simply shifts the responsibility of those costs away from landlords towards tenants and puts our net zero goal in jeopardy’. Strengthening energy efficiency policies for renters therefore would seem to bring us closer to energy justice goals by reducing some of the burden placed on that sector in the green transition and maintaining progress towards decarbonisation.

In their study of different potential policy mixes for efficient, affordable and secure housing, Kantamneni and Haley explore these connections, concluding that these links are unavoidable, and that efficient rental housing policy is necessarily a mix of efficient housing policies more widely, as well as strong tenant protection laws.²⁴ A study by British Gas found that very few tenants requested green upgrades from their landlords in the past five years: ‘[o]f the tenants that had made a request, a smart meter was the most popular (19%), followed by double glazed windows (11%) and central heating (9%). At an aggregate level, landlords were reasonably responsive to these requests with the majority (61%) making an installation as a result’.²⁵ However, their research did not investigate the reasons for these low request rates. Although Kantamneni and Haley conducted their research in a Canadian context, I would argue

²³ Abhilash Kantamneni and Brendan Haley, ‘Energy Efficiency in Rental Housing: Policy Mixes for Efficient, Affordable and Secure Housing’ (2023) Efficiency Canada, Carleton University, Ottawa, ON, p. 11.

²⁴ Ibid, p. 51.

²⁵ British Gas, ‘Greening the Private Rental Sector’ (Renters’ Report 2023) 16 November 2023, p. 25.

that the similarity of these systems mean it can be applied also in England. According to their research,

‘(Wrigley and Crawford 2017) find that improving tenant protections against evictions would result in greater uptake of energy efficiency upgrades by renters’, and ‘[w]hile (Heffernan et al. 2021) find that tenant concerns about potential rent increases constraints retrofitting, (Mjörnell, Femenías, and Annadotter 2019) show that tenants are willing to work with their landlords to prioritize and pick energy efficiency measures in exchange for negotiating modest rent increases for a fixed time to recoup a portion of upfront costs of the upgrades’.²⁶

These findings show that it is not through lack of will that tenants do not request energy upgrades, but through fear of eviction. This fact is also emphasised by Bonderup and Middlemiss in their comparative study between the UK and Denmark: ‘[t]he fact that there are tenant guidelines [in the UK] on how to react if you are evicted because you ask for repairs – so called “revenge evictions”– clearly show the risks that tenants with mould issues face’.²⁷ These studies therefore demonstrate the inexorable links between social rights for tenants, and improved efficiency of their housing.

Therefore, in asking whether we should focus our efforts on the end of the month, or the end of the world, it appears that in the context of energy poverty, the only answer is to focus on solutions that work towards both aims simultaneously. In working towards these solutions, there are some key terms and concepts which it is necessary to define, as the rest of this chapter will set out to do. The key terms for this research are: energy poverty; ‘adequately warm’; energy efficiency; split incentive; and just transition. These are concepts which are crucial for this thesis, and which can often be used to mean different things, for example in the case of energy poverty in which different metrics are used by different bodies, as will be discussed.

²⁶ Abhilash Kantamneni and Brendan Haley, ‘Energy Efficiency in Rental Housing: Policy Mixes for Efficient, Affordable and Secure Housing’ (2023) Efficiency Canada, Carleton University, Ottawa, ON, p. 24.

²⁷ Sirid Bonderup and Lucie Middlemiss, ‘Mould or cold? Contrasting representations of unhealthy housing in Denmark and England and the relation to energy poverty’ (2023) 102 Energy Research & Social Science 103176, p. 7.

Once these concepts have been defined, this chapter will conclude by discussing the interplay between them and the significant interactions which form the basis of the rest of this research.

2.3: Key Terms

2.3.1: Energy Poverty

In some contexts, the term fuel poverty is used to refer to unaffordability of energy in a developed country context, with energy poverty used instead for the infrastructure issues which cause unavailability of energy in developing countries.²⁸ However, as Bouzarovski and Petrova recommend, in this thesis, the term ‘energy poverty’ will be used to refer to the former as well as the latter.²⁹ The lack of access to the services provided by energy is the same, regardless of the cause: it is of no practical difference to be in an unheated home because there is no heating infrastructure or because topping up the prepayment meter is unaffordable.

There is no universally agreed definition of energy poverty, and this can make comparison difficult, as different methods will be used to assess levels of energy poverty in different countries and regions at different times. There has been some dispute about whether energy poverty should even be considered as a specific defined problem, but here the argument will be made in line with Brenda Boardman, that energy poverty and general poverty are two overlapping but ultimately separate issues, and should be treated as such.³⁰ It is therefore important to have a working definition of energy poverty which separates it from general poverty.

The EU broadly defines energy poverty as ‘a household’s lack of access to essential energy services, where such services provide basic levels and decent standards of living and health, including adequate heating, hot water, cooling, lighting, and energy to power

²⁸ Stefan Bouzarovski and Saska Petrova, ‘A global perspective on domestic energy deprivation: Overcoming the energy poverty–fuel poverty binary’ (2015) 10 *Energy Research & Social Science* 31.

²⁹ *Ibid.*

³⁰ Brenda Boardman, *Fuel Poverty: From Cold Homes to Affordable Warmth* (Belhaven Press, London, 1991), Ch. 3.

appliances’.³¹ This definition has only very recently become part of EU law, as part of the revised Energy Efficiency Directive in 2023, and therefore there is currently no CJEU case law to inform its boundaries or content.³² This definition once again focuses on access to the *services* provided by energy, with the reasons for lack of access ‘including at least non-affordability, insufficient disposable income, high energy expenditure and poor energy efficiency of homes’.³³ EU-wide statistics on energy poverty are mainly self-reported responses to questions like ‘are you able to keep your house adequately warm?’.³⁴

In the UK, statistics of energy poverty have been kept for much longer, as the problem was first defined there, and the definition of energy poverty has changed over that period. Previously, a household was defined as being in energy poverty if more than 10% of their income had to be spent on energy to keep the home adequately warm.³⁵ This definition is still used in the devolved nations, and is still used in England due to ‘stakeholder interest’, but official statistics of energy poverty are now collected using the LILEE indicator. Under this indicator, a household is considered to be fuel poor if a) they are living in a property with a fuel poverty energy efficiency rating of band D or below, and b) when they spend the required amount to heat their home, they are left with a residual income below the official poverty line.³⁶ A parliamentary briefing paper on the subject has therefore stated that ‘[t]he definition in England is therefore better viewed as a measure of progress against the Government’s fuel poverty target [...], rather than an estimate of the full extent of households who are struggling to keep their homes warm, well-lit, provide sufficient hot water and run appliances’.³⁷ It is therefore important to keep these different base definitions in mind when using statistics from

³¹ Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency and amending Regulation (EU) 2023/955 [2023] OJ L231/1, Art. 2(52).

³² ‘Energy Poverty’ European Commission https://energy.ec.europa.eu/topics/markets-and-consumers/energy-consumer-rights/energy-poverty_en (accessed 29 April 2024).

³³ Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency and amending Regulation (EU) 2023/955 [2023] OJ L231/1, Art. 2(52).

³⁴ European Union, ‘Sustainable development in the European Union: Monitoring report on progress towards the SDGs in an EU context- 2023 Edition’ (7th Edn, Publications Office of the European Union, Luxembourg, 2023), p. 147.

³⁵ Suzanna Hinson and Paul Bolton, ‘Fuel Poverty’ (Briefing Paper No CBP 8730, House of Commons Library 24th March 2023) <https://researchbriefings.files.parliament.uk/documents/CBP-8730/CBP-8730.pdf>, p. 12.

³⁶ *Ibid*, p. 13.

³⁷ *Ibid*, p. 14.

different sources: they may not actually be telling us the same thing. Wherever possible, statistics based on the 10% measure, rather than LILEE, will be used as a more reliable indicator of the proportion of the population actually struggling to keep their houses sufficiently warm.

2.3.2: ‘Adequately warm’

Once again, there is no universally agreed temperature which is ‘warm enough’. The WHO recognises that this will be informed by many factors, including the environment people are used to, as well as vulnerabilities like age and chronic conditions which make people more susceptible to the negative effects of cold.³⁸ However, they also state in their report that 18°C is a ‘widely accepted’ minimum for general populations.³⁹ Barlow et al. found that there was a positive correlation between a cold home environment and energy poverty across studies done.⁴⁰ Buildings which are in poor condition (badly insulated, damp, etc.) are more expensive to heat, and more likely to be occupied by those on lower incomes who are more likely to be unable to afford to heat them adequately. Therefore, Barlow states that ‘[b]uilding conditions do not define the temperature of a home, but they play an important role in determining which home environments are likely to be ‘cold’. Homes with poor building conditions, including a lack of insulation or heating, damp and mould, were more likely those in which occupants reported feeling cold or in which temperatures were below WHO recommendations’.⁴¹ Building quality and income are therefore both important factors which lead to residents living in cold homes.

2.3.3: Energy Efficiency

The definition of energy efficiency this thesis will use is that used by the EU in the Energy Efficiency Directive (EED): ‘the ratio of output of performance, service, goods or energy to

³⁸ — WHO Housing and Health Guidelines (World Health Organisation, Geneva, 2018), p. 41.

³⁹ Ibid, p. 34.

⁴⁰ Cynthia Faye Barlow and others, ‘Cold housing environments: defining the problem for an appropriate policy response’ (2023) 44 *Journal of Public Health Policy* 370, p. 377.

⁴¹ Ibid.

input of energy’.⁴² Something is more energy efficient, therefore, when more performance is obtained for the same input, or the same performance for lower input. Both the EU and English governments directly tie improvements in energy efficiency to reductions in energy poverty. The energy efficiency directive also includes the EU’s definition of energy poverty, and an entire article dedicated to poverty reduction measures.⁴³ Similarly, the two concepts are so intrinsically linked in England that the very definition of energy poverty described above means that households can only be described as living in energy poverty if their housing is inefficient. Indeed, the UK Government’s energy poverty target for England in 2030, set in 2021, is for every home to be in EER band C or higher,⁴⁴ and is therefore better described as an energy *efficiency* target.

2.3.4: Split incentive

The split incentive problem is the idea that improvements to rental houses are particularly challenging because it tends to be the landlord who pays the upfront cost for them, whilst tenants reap the benefits. Therefore, landlords will be unwilling to carry out improvements due to the upfront cost, while tenants are unwilling to pay the upfront cost due to their lack of security of housing. This problem is defined in the Energy Efficiency Directive as follows:

‘‘split incentives’ means the lack of fair and reasonable distribution of financial obligations and rewards relating to energy efficiency investments among the actors concerned, for example the owners and tenants or the different owners of building units, or owners and tenants or different owners of multi-apartment or multi-purpose buildings’.⁴⁵

⁴² Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency and amending Regulation (EU) 2023/955 [2023] OJ L231/1, Art. 2(8).

⁴³ Ibid, Art. 24.

⁴⁴ Secretary of State for Business, Energy & Industrial Strategy, ‘Sustainable Warmth: Protecting Vulnerable Households in England’ (Cm 391, 2021) ‘2. The fuel poverty target for England’.

⁴⁵ Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency and amending Regulation (EU) 2023/955 [2023] OJ L231/1, Art. 2(54).

Split incentive problems can therefore lead to rented dwellings being left behind when compared to other sectors.

2.3.5: Just Transition

There is a growing awareness that, as the necessary move to net zero and green technology happens over the coming decades, this shift will not affect all groups equally, and if not managed carefully, could result in some vulnerable groups, including those living in the private rental sector, being left behind. As Kantamneni and Haley warn:

‘[o]ne of the biggest challenges associated with this transition is reckoning with ethical and practical questions about who makes the transition, who pays for it, who is more likely to benefit from it and who is at the risk of being left behind. Such questions cannot be answered by economic analysis or technical engineering alone’.⁴⁶

This fear has already been understood as one of the long term causes of the ‘gilets jaunes’ fuel riots in France,⁴⁷ and British Gas has warned that ‘failure to act risks an ‘unjust’ transition - renters living in cold, draughty homes, locked out of the electric vehicle market and paying taxes to support government schemes to green other people’s homes without reaping the benefits themselves’.⁴⁸ It is vital to ensure that these groups do not become further alienated from the green transition movement as a whole.

The concept of a just transition is therefore one which has been gaining popularity, and is now firmly ensconced in the EU’s climate and energy regime, most significantly in the form of the Social Climate Fund and the Just Transition Fund.⁴⁹ This concept requires measures to

⁴⁶ Abhilash Kantamneni and Brendan Haley, ‘Energy Efficiency in Rental Housing: Policy Mixes for Efficient, Affordable and Secure Housing’ (2023) Efficiency Canada, Carleton University, Ottawa, ON, p. 48.

⁴⁷ Jeremy Harding, ‘Among the Gilets Jaunes’ *London Review of Books* (London 21 March 2019) <https://www.lrb.co.uk/the-paper/v41/n06/jeremy-harding/among-the-gilets-jaunes>.

⁴⁸ British Gas, ‘Greening the Private Rental Sector’ (Renters’ Report 2023) 16 November 2023, p. 3.

⁴⁹ Regulation (EU) 2023/955 of the European Parliament and of the Council of 10 May 2023 establishing a Social Climate Fund and amending Regulation (EU) 2021/1060 [2023] OJ L130/1; Regulation (EU) 2021/1056 of the European Parliament and of the Council of 24 June 2021 establishing the Just Transition Fund [2021] OJ L231/1.

be taken so that the losses are not simply left to be felt where they fall, and are instead managed to ensure that those who feel them can adequately cope, and also receive the benefits of the transition. Kantamneni and Haley divide a just transition into three parts:

‘distributive justice: equitably sharing the benefits (and costs) of energy systems with a focus on fair outcomes for all; procedural energy justice: fairly and meaningfully incorporating perspectives and priorities of marginalized communities into design and delivery of energy efficiency initiatives; and restorative energy justice: repairing past and ongoing harm caused by energy systems, decisions and (in)actions’.⁵⁰

Whilst all three aspects are necessary, they each contribute to a just transition in different ways, and different policies and laws will produce more or less effect in each lens.

2.4: Interplay between these relevant concepts

Each of these terms interact with each other in different ways which are significant for the rest of this research. Energy poverty cannot be understood without energy efficiency, and indeed, under, for example, the LILEE definition of energy poverty, domestic energy inefficiency is *required* if a household is to be classed as energy poor. A definition of ‘adequate warmth’, although difficult to widely agree, is an important part of the EU’s statistics and measurement of energy poverty: how warm does a house have to be before it is warm enough, and what level of heat do citizens have a right to expect in their houses? Specifically in the context of rental housing, how warm do landlords have a duty to keep their properties? This therefore links to the problem of split incentives- landlords have an incentive only to make their houses as warm as is legally required, for the lowest cost, whilst tenants have an incentive to be as warm as is comfortable and affordable for them. The green transition, and more importantly a just transition, sits above these concepts: energy efficiency increases are widely viewed, especially within the EU, as a crucial step towards net zero- saving energy without having to make lifestyle

⁵⁰ Abhilash Kantamneni and Brendan Haley, ‘Energy Efficiency in Rental Housing: Policy Mixes for Efficient, Affordable and Secure Housing’ (2023) Efficiency Canada, Carleton University, Ottawa, ON, p. 11.

sacrifices, just by doing things in a more efficient way, and ensuring that no one gets left behind in the process.

The importance of these interactions between energy poverty, energy efficiency and the green transition can be seen if we return to the *gilets jaunes*. Whilst it is the case that there are those amongst them who oppose climate policy more generally, and who are climate change deniers, the representation of the movement as a whole as one hostile to the green transition is incorrect, and largely a creation of the far-right media seeking to show popular discontent with European efforts towards climate change mitigation.⁵¹ In truth, many of those within the *gilets jaunes* movement are not opposed to climate change mitigation policies as a concept, but merely the perceived unfairness contained within government strategies which seem to penalise already vulnerable groups:

“The social and ecological emergencies are inseparable: the fight against the end of the world and the end of the month are the same. We will not be able to operate the ecological transition without an equitable wealth redistribution,” said Boulot, who has been a prominent figure in the *gilets jaunes*. “How can you impose another tax on people already rummaging the bins to feed themselves?”⁵²

Indeed, one of the demands of a manifesto circulated by the *gilets jaunes* was increased building insulation,⁵³ thus demonstrating the inherent links between social and environmental progress, and the inexorability of these two goals.

Ch. 3: What is the existing English legal/policy regime governing energy efficiency of buildings?

⁵¹ Natalie Sauer, ‘“We were ecologists before the capitalists’: the *gilets jaunes* and climate justice’, *Climate Home News* (20 March 2019) <https://www.climatechangenews.com/2019/03/20/ecologists-capitalists-gilets-jaunes-climate-justice/> (accessed 16 March 2024).

⁵² *Ibid.*

⁵³ Natalie Sauer, ‘“We were ecologists before the capitalists’: the *gilets jaunes* and climate justice’, *Climate Home News* (20 March 2019) <https://www.climatechangenews.com/2019/03/20/ecologists-capitalists-gilets-jaunes-climate-justice/> (accessed 16 March 2024).

3.1: Introduction

The legal and policy regime governing this area in England is complex and ever evolving. This section does not seek to cover every single relevant law or policy document, just the most significant as it currently stands. England has several different measures aimed at encouraging the improvement of energy efficiency in rented dwellings directly, as well as more general measures aimed at both energy efficiency and energy poverty. Unfortunately, many of these are relatively weak, and not particularly well focused on those living in energy poverty. Additionally, the basic structure of the rental housing regime in England creates challenges for energy efficiency improvements to be made to rental housing, either by tenants or landlords. Energy poverty is acknowledged as a major issue facing the country, particularly in the current cost-of-living crisis.⁵⁴ This chapter will discuss the current standards and measures in place, as well as some previous schemes widely considered to have been more successful than those currently in place.

3.2: ‘Decent Home’ Standard

The standards for privately rented housing are lower than those for socially rented housing. In the social housing sector, landlords must comply with the ‘Decent Home’ Standard for their properties.⁵⁵ This requires that: a) It meets the current statutory minimum standard for housing, meaning no Category 1 hazards under the HHSRS; b) It is in a reasonable state of repair; c) It has reasonably modern facilities and services; and d) It provides a reasonable degree of thermal comfort. The definition states that ‘[i]t should be noted that, whilst dwellings meeting criteria b, c and d are likely also to meet criterion a, some Category 1 hazards may remain to be addressed. For example, a dwelling meeting criterion d may still contain a Category 1 damp or cold hazard’.⁵⁶ The fact that a dwelling which is so cold that it constitutes a hazard to health

⁵⁴ Secretary of State for Business, Energy & Industrial Strategy, ‘Sustainable Warmth: Protecting Vulnerable Households in England’ (Cm 391, 2021).

⁵⁵ Department for Communities and Local Government, ‘A Decent Home: Definition and guidance for implementation’ London, June 2006 (06HC03962), p. 12.

⁵⁶ *Ibid*, p. 11.

can still be considered as providing ‘a reasonable degree of thermal comfort’ demonstrates the weakness of this requirement.

This standard does not currently apply to the private sector, and the only obligations landlords have are those contained within the Landlord and Tenant Act 1985.⁵⁷ This specifies that dwellings must be ‘fit for human habitation’, and that:

‘[i]n determining for the purposes of this Act whether a house or dwelling is unfit for human habitation, regard shall be had to its condition in respect of the following matters: repair, stability, freedom from damp, internal arrangement, natural lighting, ventilation, [...] and the house or dwelling shall be regarded as unfit for human habitation if, and only if, it is *so far defective* in one or more of those matters that it is not reasonably suitable for occupation in that condition’.⁵⁸

The only available remedy for breach of this duty is to take the landlord to court, an expensive and drawn-out procedure.⁵⁹

An important development in the law in this area is the upcoming Renters (Reform) Bill currently working its way through the stages of parliamentary debate. This bill will, if it is signed into law, expand the ‘Decent Home’ standard to cover privately rented dwellings as well as social housing, and create an ombudsman to which tenants could take complaints of breaches, instead of having to resort to the courts.⁶⁰ In addition, the opposition have tabled an amendment which would extend the Social Housing (Regulation) Act 2023, also known as ‘Awaab’s Law’ to the private sector.⁶¹ This Act, which had to be introduced outside of the normal legislative process by the House of Lords,⁶² requires landlords to deal with damp and mould issues within specified and limited timelines,⁶³ and was introduced into the social

⁵⁷ Landlord and Tenant Act 1985, s.10.

⁵⁸ Ibid, (my emphasis).

⁵⁹ Ibid, s. 9A.

⁶⁰ Renters (Reform) HC Bill (2022-23, 2023-24) [15], Part 2 (Ch. 2) and Part 3.

⁶¹ Renters (Reform) Bill Amendment Paper HC (2023-24) 7 February 2024, Amendment NC10.

⁶² — ‘Social Housing (Regulation) Act 2023’ <https://bills.parliament.uk/bills/3177> (accessed 6 March 2024).

⁶³ Social Housing (Regulation) Act 2023.

housing sector after a child's death in 2020 was directly attributed to his 'appalling' and 'unacceptable' living conditions.⁶⁴

The expansion of this standard will lead to improvements- in some regions, almost 40% of rental housing does not meet this basic standard,⁶⁵ however, as British Gas note in their report, it will not be sufficient to decarbonise the sector.⁶⁶ As stated above, the level of insulation and thermal comfort required for a dwelling to meet this standard is remarkably low, and therefore it alone cannot solve the energy efficiency problems this sector faces.

3.3: Tenants' rights

As discussed above, although security of tenure may not at first seem relevant to improvements to the energy efficiency of buildings, tenants who do not feel secure in their housing, and feel that they could be asked to leave at any time with no repercussions, will not feel motivated to make or ask for energy efficiency upgrades to their housing. Additionally, with little restriction on 'no fault' evictions' currently in England, so-called 'revenge evictions' for tenants who do ask for repairs/improvements are another deterrent, even though they technically have the right to ask for such improvements.⁶⁷ This shows that the procedural right to ask for energy efficiency upgrades and not be 'unreasonably refused', as tenants currently have, means little without protection from eviction without cause.

The basic position under English land law is currently that tenants can be evicted at any time, with no reason except that the landlord did not want them there anymore.⁶⁸ This could be due to the property being sold, or the landlord moving in, or because prices have risen in the

⁶⁴ Phil McCann and Lynette Horsburgh, 'Awaab Ishak: Mould in Rochdale flat caused boy's death, coroner rules', *BBC News* (London 15 November 2022) <https://www.bbc.co.uk/news/uk-england-manchester-63635721> (accessed 16 March 2024).

⁶⁵ Department for Levelling up, Housing and Communities, 'English Housing Survey 2021 to 2022: private rented sector' 13 July 2023 <https://www.gov.uk/government/statistics/english-housing-survey-2021-to-2022-private-rented-sector/english-housing-survey-2021-to-2022-private-rented-sector> 'Figure 4.1: Non-decent homes by region, all tenures, 2021'.

⁶⁶ British Gas, 'Greening the Private Rental Sector' (Renters' Report 2023) 16 November 2023, p. 28.

⁶⁷ Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, Reg. 8.

⁶⁸ Housing Act 1988, S. 21.

neighbourhood and he wants to charge more rent. Only a month's notice is required under a standard tenancy, and tenants have little remedy.⁶⁹ More generally, the duties of landlords and tenants are unequal: landlords have responsibility for repairs and maintenance, including ensuring that the property is habitable; and tenants have the duty to pay rent on time as agreed. However, the tenant's duty to pay rent is not reliant on the landlord's fulfilment of his duty to repair- if the landlord can prove that rent is unpaid, the court *must* order an eviction, if one is sought, regardless of other circumstances.⁷⁰ Even where a property is barely habitable and entirely unsafe due to landlord neglect, the tenant still has the obligation to pay rent, and can be taken to court or face future problems renting another house if they do not.⁷¹ Landlords often face no such consequences for breaches of their covenants.

Some of these issues will potentially be resolved by the Renters (Reform) Bill, if it passes into law, and this will hopefully have an impact also on the take-up of existing energy efficiency schemes by renters. The bill will strongly restrict no fault evictions, making it much harder for landlords to evict tenants just because property is being sold, and with more of a process required, should a no fault eviction be desired.⁷² It will also introduce further rules and mechanisms for landlords to raise the rent on their properties, making it easier for tenants to challenge unfair increases.⁷³ This will hopefully also increase tenant willingness to ask for energy efficiency upgrades, as there will be less fear of crippling rent increases as a result of upgrades made. Research has already shown that suitably protected tenants are willing to agree to proportionate and temporary rent increases to help landlords recoup the upfront costs of energy efficiency improvement measures.⁷⁴

The bill also seeks to create a landlord registry database which would list landlords of private sector dwellings, as well as those subject to banning orders or financial penalties⁷⁵ and,

⁶⁹ Ibid.

⁷⁰ Ibid, Sch. 2, Ground 8.

⁷¹ *Hussein v Mehlman* [1992] 2 EGLR 287 (only where the underlying *contract* can be said to have been frustrated will the tenant's obligation cease, which will only be the case extremely rarely)

⁷² Renters (Reform) HC Bill (2022-23, 2023-24) [15], Part 1 (Ch. 1, S. 3).

⁷³ Housing Act 1988, S. 13; Renters (Reform) HC Bill (2022-23, 2023-24) [15], Part 1 (Ch. 1, S. 6-7).

⁷⁴ Abhilash Kantamneni and Brendan Haley, 'Energy Efficiency in Rental Housing: Policy Mixes for Efficient, Affordable and Secure Housing' (2023) Efficiency Canada, Carleton University, Ottawa, ON, p. 24.

⁷⁵ Renters (Reform) HC Bill (2022-23, 2023-24) [15], Part 2, (Ch. 3).

if it operates similarly to that which already exists in Scotland, could require landlords to be registered with the relevant local authority.⁷⁶ This would give tenants more information than they currently have, and also make it easier to ensure that landlords are contactable, thus improving the ability of tenants to know the landlord of a property before they move in, and know whether there have ever been any proceedings against him. They could therefore make a more informed choice, and the power dynamic would be slightly less tilted in the landlord's favour.

However, the future of this reform bill is in danger: many MPs oppose these reforms: one in five of the majority party's MPs are landlords, and many are refusing to agree to the passage of this legislation, leaving it 'close to collapse'.⁷⁷ Amendments to the bill to reduce its effect and delay the ban on no-fault evictions have already been introduced, but the wider bill entirely is now at risk. The government will almost certainly face an election later this year, and if not brought in by then, this important bill may never see the light of day.⁷⁸

3.4: Energy Performance Certificates

Energy Performance Certificates (EPCs) are required for all rented dwellings in England.⁷⁹ This requirement was introduced due to the transposition of the EU Energy Performance of Buildings Directive,⁸⁰ while the UK was still a Member State, and has continued post-Brexit. All private rental dwellings must have an EPC rating of at least E in order for a new tenancy to start,⁸¹ and cannot be rented until sufficient improvements are made to bring them up to band E or an exemption certificate is granted.⁸² This means that 95% of rental homes are now at or

⁷⁶ — 'Scottish Landlord Register' <https://www.ros.gov.uk/our-registers/scottish-landlord-register>.

⁷⁷ Mattie Brignal and Ruby Hinchliffe, 'Landlord MPs leave Gove's rental reform bill 'close to collapse'', *The Telegraph* (London 16 March 2024) <https://www.telegraph.co.uk/money/property/buy-to-let/michael-gove-landlord-rental-reform-bill/> (accessed 17 March 2024).

⁷⁸ Ibid.

⁷⁹ Energy Performance of Buildings (England and Wales) Regulations 2012, Reg. 6.

⁸⁰ Directive (EU) 2010/31 of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings [2010] OJ L153/13, Art 12.

⁸¹ Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, Reg. 6.

⁸² Ibid, Reg. 22 and 23.

above this minimum standard.⁸³ However, although this is an improvement on the previous levels,⁸⁴ most rental homes are not in the highest bands: there are more homes still in bands F and G (5%) than in bands A and B (3%).⁸⁵ Most properties are still below band C, and therefore the government announced a proposal to raise the minimum standard for rental dwellings from band E to band C.⁸⁶ Unfortunately, these proposals have now been dropped, and they instead plan to merely continue to ‘encourage households to [improve energy efficiency] where they can’.⁸⁷

However, mere encouragement is not enough. British Gas found in their survey of landlords that ‘[n]early half of the 508 landlords surveyed (44%) didn’t know their EPC rating, and of those with a property rating below EPC C, 88% had not received a quote for how much it would cost to bring the home to EPC C’.⁸⁸ This shows that the current strategy of ‘encouragement’ is not having enough of an effect- only 12% of surveyed landlords with properties which would have been required to be improved under the proposal had independently sought a quote as to how much that would cost. Additionally, the Energy and Climate Intelligence Unit found that delaying an increase of the requirement from band E to band C until 2030 could cost bill payers more than £1.4 billion due to increased energy bills.⁸⁹ This is therefore yet another example of the fact that delaying action to improve energy

⁸³ Department for Levelling up, Housing and Communities, ‘English Housing Survey 2021 to 2022: private rented sector’ 13 July 2023 <https://www.gov.uk/government/statistics/english-housing-survey-2021-to-2022-private-rented-sector/english-housing-survey-2021-to-2022-private-rented-sector> (see technical report for the raw statistics used here).

⁸⁴ Ministry of Housing, Communities and Local Government, ‘English housing survey 2013: energy efficiency of English housing report’ 16 July 2015 https://assets.publishing.service.gov.uk/media/5a80ea5ee5274a2e87dbc89e/EHS_Energy_efficiency_of_English_housing_2013.pdf, p. 20.

⁸⁵ Department for Levelling up, Housing and Communities, ‘English Housing Survey 2021 to 2022: private rented sector’ 13 July 2023 <https://www.gov.uk/government/statistics/english-housing-survey-2021-to-2022-private-rented-sector/english-housing-survey-2021-to-2022-private-rented-sector> (see technical report for the raw statistics used here).

⁸⁶ Secretary of State for Business, Energy & Industrial Strategy, ‘Sustainable Warmth: Protecting Vulnerable Households in England’ (Cm 391, 2021) ‘Minimum Energy Efficiency Standards’.

⁸⁷ Prime Minister's Office, 10 Downing Street and The Rt Hon Rishi Sunak MP, ‘PM recommits UK to Net Zero by 2050 and pledges a “fairer” path to achieving target to ease the financial burden on British families’ (Press Release) 20 September 2023 <https://www.gov.uk/government/news/pm-recommits-uk-to-net-zero-by-2050-and-pledges-a-fairer-path-to-achieving-target-to-ease-the-financial-burden-on-british-families>.

⁸⁸ British Gas, ‘Greening the Private Rental Sector’ (Renters’ Report 2023) 16 November 2023, p. 4.

⁸⁹ Ibid, p. 31.

efficiency does not reduce the financial burden, it just shifts that burden from landlords, onto tenants.

3.5: Energy Act 2023

Last year, the biggest piece of energy legislation in UK history, the Energy Act 2023, came into force in the UK.⁹⁰ Unfortunately, this Act will have little direct impact on the energy efficiency of rented dwellings, or on energy poverty more widely. The Act has 335 sections and 22 schedules, and contains no mention of energy poverty at all, and only one mention of vulnerable customers in Schedule 18: not a duty to consider them, but an allowance that a duty to consider vulnerable users ‘may’ be introduced.⁹¹ Given the above discussion of the current deep poverty in which many people in the UK find themselves, the clear unaffordability of bills, and the significant role that inefficient housing and high costs play in this, the failure of this Act to go any way towards solving this crisis seems like a missed opportunity.

Instead, the Act focuses on carbon capture and storage, hydrogen production and civil nuclear development.⁹² While some of these provisions will hopefully contribute in the long term to lowering consumer bills through energy-independence and an increase in low carbon energy generation, this will only be indirect. In their press release, the government stated that:

‘[t]he Act will deliver a more efficient energy system in the long-term, helping to keep energy costs low. It will do this by increasing competition in Great Britain’s onshore electricity networks, through a new tender process – reducing costs for network operation and development. This new model is expected to save consumers up to £1 billion off their energy bills by 2050’.⁹³

⁹⁰ Department for Energy Security and Net Zero, Ofgem, The Rt Hon Claire Coutinho MP, and Andrew Bowie MP, ‘New laws passed to bolster energy security and deliver net zero’ (Press Release) 26 October 2023 <https://www.gov.uk/government/news/new-laws-passed-to-bolster-energy-security-and-deliver-net-zero>.

⁹¹ Energy Act 2023, Schedule 18.

⁹² Energy Act 2023.

⁹³ Department for Energy Security and Net Zero, Ofgem, The Rt Hon Claire Coutinho MP, and Andrew Bowie MP, ‘New laws passed to bolster energy security and deliver net zero’ (Press Release) 26 October 2023 <https://www.gov.uk/government/news/new-laws-passed-to-bolster-energy-security-and-deliver-net-zero>.

However, as discussed above, the failure to directly require improvements in energy efficiency of rental housing is already set to cost consumers £1.4 billion by 2030, therefore making these gains look less significant than the potential savings through energy efficiency improvement measures.

3.6: Financial Support

There are several financial support schemes which are available for landlords to fund energy efficiency improvements to their properties, and some which are also open to applications by tenants (although, as discussed above, fear of eviction or rent rises may be leading to low take-up by tenants). These include help funding improved insulation⁹⁴ and reductions to VAT on energy-saving products and heat pumps.⁹⁵ Additionally, there are several direct money saving schemes managed by the government for those who cannot afford heating. These include the Warm Home Discount Scheme,⁹⁶ Winter Fuel Allowance,⁹⁷ and Cold Weather Payments.⁹⁸

3.6.1: Support for Landlords

There are several varieties of financial support available at national level for landlords looking to improve the energy efficiency of their rental properties- in 2021, the Secretary of State for Business, Energy, and Industrial Strategy reported that ‘Government sees landlords as playing a significant role in investing in energy efficiency upgrades for their asset to ensure that their tenants are not living in fuel poverty’, and planned a consultation for an update to the financial

⁹⁴ — ‘Apply for support from the Great British Insulation Scheme’ <https://www.gov.uk/apply-great-british-insulation-scheme> (accessed 24 January 2024).

⁹⁵ — ‘Guidance: Energy-saving materials and heating equipment (VAT Notice 708/6)’ <https://www.gov.uk/guidance/vat-on-energy-saving-materials-and-heating-equipment-notice-7086> (accessed 8 March 2024) (reduced rate on energy saving materials until 31 March 2022, and zero rate on heat pumps from 1 May 2023 until 31 March 2027, with reduced rate after that).

⁹⁶ — ‘Warm Home Discount Scheme’ <https://www.gov.uk/the-warm-home-discount-scheme> (accessed 10 March 2024).

⁹⁷ — ‘Winter Fuel Payment’ <https://www.gov.uk/winter-fuel-payment> (accessed 10 March 2024).

⁹⁸ — ‘Cold Weather Payment’ <https://www.gov.uk/cold-weather-payment> (accessed 10 March 2024).

obligations of landlords.⁹⁹ However, there have since been three changes of government; this department no longer exists; and access to the outcomes of this consultation seems to be limited. Smaller support schemes are provided by county or city councils, but these will not be considered due to their wide variety and limited application.

Firstly, for landlords whose properties do not meet the minimum ‘band E’ standard of EPC, there is a cost cap. Landlords will never be required to pay more than £3,500, including VAT, towards the cost of improving their properties to band E.¹⁰⁰ Instead, if no improvements can be made for less than this amount, or all improvements which can be made for this amount have already been made, they can apply for a ‘high cost’ or ‘all improvements made’ exemption to be registered for their property, both valid for 5 years.¹⁰¹ This is comparatively a very low amount of money, on average around 2 months rent,¹⁰² and especially given that the average cost to improve a rented home to band C is between £5,000 and £10,000.¹⁰³ This means that many highly inefficient properties will simply never *have* to be improved, and tenants instead are reliant on the goodwill of their landlords, which, as discussed above, is often not forthcoming.

Not included in this cap, however, are various government funding schemes which can provide discounts on, or lower the cost of, installing energy efficiency improvements. The first of these is the Energy Company Obligation.¹⁰⁴ This allows private sector tenants (with their landlord’s permission), who are on certain social benefits, and who live in homes rated bands E, F or G to apply for help with energy efficiency upgrades like insulation or a new boiler.¹⁰⁵

⁹⁹ Secretary of State for Business, Energy & Industrial Strategy, ‘Sustainable Warmth: Protecting Vulnerable Households in England’ (Cm 391, 2021) ‘Minimum Energy Efficiency Standards’.

¹⁰⁰ — ‘Guidance on PRS exemptions and Exemptions Register evidence requirements’ <https://www.gov.uk/government/publications/private-rented-sector-minimum-energy-efficiency-standard-exemptions/guidance-on-prs-exemptions-and-exemptions-register-evidence-requirements> (accessed 10 March 2024).

¹⁰¹ Ibid.

¹⁰² Department for Levelling up, Housing and Communities, ‘English Housing Survey 2021 to 2022: private rented sector’ 13 July 2023 <https://www.gov.uk/government/statistics/english-housing-survey-2021-to-2022-private-rented-sector/english-housing-survey-2021-to-2022-private-rented-sector> ‘Rent’.

¹⁰³ Ibid, ‘Figure 4.7: Distribution of costs to improve to EER band C by tenure, 2021-22’.

¹⁰⁴ — ‘Help from your energy supplier: the Energy Company Obligation’ <https://www.gov.uk/energy-company-obligation> (accessed 11 March 2024).

¹⁰⁵ Ibid.

The energy companies have an obligation to pay contributions towards this scheme to fund these upgrades, however, the heavy reliance of recent English governments on this type of scheme as the main pillar of their post-2010 energy efficiency policy has been widely criticised.¹⁰⁶ According to one study, only 24% of households receiving this support were actually in energy poverty due to the eligibility requirements being based more on receipt of social benefits, especially for owner-occupiers, than on directly energy poverty.¹⁰⁷ The main problem with these schemes is that they allow energy companies to distribute these costs to their customers through increased bills, rather than having to bear them themselves, thus increasing energy injustice as the burden is higher on the poor. The commercial incentives at play mean that cheaper, easier to install, but perhaps less necessary or effective interventions have been prioritised: ‘there is evidence they have targeted easier-to-access priority group elements and concentrated on least expensive interventions and/or cost sharing with customers’.¹⁰⁸ Bridgen argues that governments are unwilling to step in and force companies to take further steps towards higher cost measures for fear of further bill increases for consumers, ‘thus worsening the regressive nature of the scheme’.¹⁰⁹ However, this means that the scheme as it currently stands is of questionable and limited effectiveness, particularly in private rental sector dwellings.

Along the lines of the ECO, the latest incarnation of the scheme also includes the ‘Great British Insulation Scheme’.¹¹⁰ This allows landlords, or tenants with their landlord’s permission, to apply for help with the cost of improved insulation for their home. In order to be

¹⁰⁶ Paul Bridgen, ‘An eco-social solution to energy poverty? Substance and symbolism in the England’s use of domestic energy efficiency policy to achieve social and environmental synergies, 1997–2023’ (2023) 25(4) *European Journal of Social Security* 388, see particularly p. 399.

¹⁰⁷ Louise Sunderland and Darryl Croft, ‘Energy poverty – risks, conflicts and opportunities in the development of energy poverty alleviation policy under the umbrella of energy efficiency and climate change’ *European Council for an Energy Efficient Economy Summer Study Proceedings* (2011) https://www.eceee.org/library/conference_proceedings/eceee_Summer_Studies/2011/2-current-energy-efficiency-policies-on-stage-and-backstage/energy-poverty-risks-conflicts-and-opportunities-in-the-development-of-energy-poverty-alleviation-policy-under-the-umbrella-of-energy-efficiency-and-climate-change/ (accessed 29 April 2024), p. 467.

¹⁰⁸ Paul Bridgen, ‘An eco-social solution to energy poverty? Substance and symbolism in the England’s use of domestic energy efficiency policy to achieve social and environmental synergies, 1997–2023’ (2023) 25(4) *European Journal of Social Security* 388, p. 399.

¹⁰⁹ *Ibid.*

¹¹⁰ — ‘Apply for support from the Great British Insulation Scheme’ <https://www.gov.uk/apply-great-british-insulation-scheme> (accessed 24 January 2024).

eligible, dwellings must be rated at most band D, and not of high value, although this does not guarantee that support will be given.¹¹¹ This is funded through an ECO, and the energy companies are given some freedom to decide how their obligation is met.¹¹² The gas and electricity regulator, Ofgem, states that ‘[i]t is up to the energy companies to determine which retrofit projects they choose to fund, the level of funding they provide, and the retrofit coordinator or installers they choose to work with. The level of funding will depend on the measures type (*sic*), and a number of other factors. In some cases, you may be asked to contribute to the cost of the installation. The Great British Insulation Scheme is not a grant scheme and as such, different companies or installers may provide different levels or types of support towards the installation of energy-efficiency or heating controls’.¹¹³ This scheme is also subject, as an ECO based scheme, to most of the criticisms levelled at the wider ECO scheme.

3.6.2: Direct Payment Schemes

Alongside these ECO based schemes, the other, more direct, kind of support provided to those struggling with energy bills is direct payments. The three main direct payment schemes which exist in this area are: the Warm Home Discount Scheme; the Cold Weather Payment Scheme; and the Winter Fuel Allowance. These are each allocated and function differently, the Warm Home Discount Scheme is the newest of the three, and is a specific payment designed to help combat the increases in fuel prices in the last winters due to the war in Ukraine. It is a one-off £150 electricity bill discount paid to those on certain means-tested social benefits such as Housing Benefit, and who live in homes calculated to have high energy costs.¹¹⁴ The Cold Weather Payment Scheme and Winter Fuel Allowance are much more long-standing schemes which run every year. The Cold Weather Payment gives £25 for each week in which the temperature does not rise above 0 degrees centigrade, paid to those on certain social benefits.¹¹⁵

¹¹¹ Ibid.

¹¹² Ofgem ‘Great British Insulation Scheme: Homeowners and Tenants’

<https://www.ofgem.gov.uk/environmental-and-social-schemes/great-british-insulation-scheme/homeowners-and-tenants> (accessed 10 March 2024).

¹¹³ Ibid.

¹¹⁴ — ‘Warm Home Discount Scheme’ <https://www.gov.uk/the-warm-home-discount-scheme> (accessed 10 March 2024).

¹¹⁵ — ‘Cold Weather Payment’ <https://www.gov.uk/cold-weather-payment> (accessed 13 March 2024).

Finally, the Winter Fuel Payment is specifically for the elderly, currently available to those born before 25 September 1957 (roughly 66 years old), and is between £250 and £600, depending on age and some social benefits.¹¹⁶

Although these schemes are important for helping to relieve the current energy poverty crisis, they are no long-term solution, and are insufficient to tackle the entire issue. As Sunderland and Croft argue, ‘rather than plugging the hole through energy efficiency, the income support approach has been likened to running more water into a bath without inserting the plug’- the underlying issue is not being dealt with, and so the need will never grow smaller.¹¹⁷ Too many people, mainly the elderly, still die every winter in the UK due to excess cold-¹¹⁸ one-off payments will not stop this, and a more thoughtful solution is needed.

3.7: Previous Schemes

Under previous governments, widely different and more effective schemes were used to improve energy efficiency of housing in the UK. Although these schemes are no longer open to new applicants, their effect on housing was substantial, and they offer potential insights into similar schemes which could be used again in future. For this reason, this chapter also briefly covers a few of these schemes. As Paul Bridgen has argued, ‘[i]n terms of environmental goals, there is a general consensus that before it was cut back after 2012, UK domestic energy efficiency policy was successful’; whereas ‘[a]fter 2010, with government dominated by neo-liberal Conservatives, with respect to energy poverty, determination was even greater to resist

¹¹⁶ — ‘Winter Fuel Payment’ <https://www.gov.uk/winter-fuel-payment> (accessed 13 March 2024).

¹¹⁷ Louise Sunderland and Darryl Croft, ‘Energy poverty – risks, conflicts and opportunities in the development of energy poverty alleviation policy under the umbrella of energy efficiency and climate change’ European Council for an Energy Efficient Economy Summer Study Proceedings (2011) https://www.eceee.org/library/conference_proceedings/eceee_Summer_Studies/2011/2-current-energy-efficiency-policies-on-stage-and-backstage/energy-poverty-risks-conflicts-and-opportunities-in-the-development-of-energy-poverty-alleviation-policy-under-the-umbrella-of-energy-efficiency-and-climate-change/ (accessed 29 April 2024), p. 466.

¹¹⁸ Matthew Taylor, ‘Failure to insulate UK homes costing thousands of lives a year, says report’ *The Guardian*. (London 13 March 2024) <https://www.theguardian.com/environment/2024/mar/13/failure-insulate-uk-homes-costing-thousands-of-lives-winter-cold-deaths> (accessed 13 March 2024).

social protection improvements and/or energy market intervention’,¹¹⁹ leading to a desire to ‘cut the green crap’, and cutbacks to existing policies.¹²⁰

The Warm Front Home Energy Efficiency Scheme was arguably the most successful energy efficiency programme of recent British history, and was largely the reason for the consensus on the effectiveness of this policy area. It was the second largest national programme *ever* implemented to address energy poverty.¹²¹ From 2000 to the end of the programme in 2013, more than 2.3 million households were helped.¹²² The programme was a success from both an environmental and economic angle:

‘Warm Front interventions have been credited with reducing carbon dioxide emissions per home by 1.5 tons per year, displacing £610.56 in modeled, potential annual energy costs and generating an average annual increase in income per customer of £1894.79. Notable achievements include more than one million homes refitted with draught proofing and cavity wall insulation, 722,300 lofts insulated, the replacement of 479,000 boilers, and 75,000 new electric central heating systems installed, among others.’¹²³

However, possibly the most impressive result of this programme was its incredibly high satisfaction rate: 92.3%.¹²⁴

¹¹⁹ Paul Bridgen, ‘An eco-social solution to energy poverty? Substance and symbolism in the England’s use of domestic energy efficiency policy to achieve social and environmental synergies, 1997–2023’ (2023) 25(4) *European Journal of Social Security* 388, p. 397.

¹²⁰ Matthew Taylor, ‘Failure to insulate UK homes costing thousands of lives a year, says report’ *The Guardian*. (London 13 March 2024) <https://www.theguardian.com/environment/2024/mar/13/failure-insulate-uk-homes-costing-thousands-of-lives-winter-cold-deaths> (accessed 13 March 2024).

¹²¹ Benjamin K Sovacool, ‘Fuel poverty, affordability, and energy justice in England: Policy insights from the Warm Front Program’ (2015) 93 *Energy* 361, p. 361.

¹²² Department for Energy and Climate Change, ‘Connecting with communities: The Warm Front Scheme Annual Report 2010/11’ (2011) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/48168/2747-warm-front-annual-report-2010-2011.pdf, p. 3.

¹²³ Benjamin K Sovacool, ‘Fuel poverty, affordability, and energy justice in England: Policy insights from the Warm Front Program’ (2015) 93 *Energy* 361, p. 361.

¹²⁴ Department for Energy and Climate Change, ‘Connecting with communities: The Warm Front Scheme Annual Report 2010/11’ (2011) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/48168/2747-warm-front-annual-report-2010-2011.pdf, p. 5.

The Warm Front Scheme provided interventions on a ‘whole home’ basis, providing grant-funded packages of insulation and heating measures to households on certain social benefits, depending on the needs of the individual household. The scheme also provided training and one or two aftercare service visits annually to ensure that systems’ lifetimes were prolonged as much as possible.¹²⁵ This scheme was very different in design from older schemes: ‘[o]lder schemes targeted almost exclusively those in public housing and offered a grant maximum of only £315, whereas [the Warm Front Scheme] applied both to private rented and owner occupied housing and increased the minimum grant amount by almost five times’.¹²⁶

In addition to its successes from an environmental and customer satisfaction perspective, the Warm Front Scheme was also highly *economically* efficient: based on the numbers from the Department of Energy and Climate Change, every £1 invested into the Warm Front Programme produced as much as £36.30 in savings over 20 years.¹²⁷ Sovacool argues that even this number is ‘potentially conservative’ as it excludes ‘indirect savings related to reduced health care expenditures, avoided excess winter deaths, and longer lives for those living in more efficient homes’.¹²⁸ The Warm Front Scheme is therefore an example of the ways in which energy efficiency programmes do not have to be a drain on resources, and can instead relatively quickly recoup any initial losses from high investment, even from a purely economic perspective which discounts more incalculable gains to quality of life.

The Green Deal, an English government scheme entirely separate from the EU’s Green Deal, was introduced to effectively replace the Warm Front Programme due to a change in government, and therefore in spending priorities.¹²⁹ This scheme provided loans, initially government-funded, and now private, for households to pay for energy efficiency upgrades. The Green Homes Grant continued the longest, finally closing to applicants in 2021, but was previously open to landlords of private rental sector dwellings as well as owner-occupiers. The scheme provided a voucher which would part-fund energy efficiency improvements from a list

¹²⁵ Ibid, p. 9.

¹²⁶ Benjamin K Sovacool, ‘Fuel poverty, affordability, and energy justice in England: Policy insights from the Warm Front Program’ (2015) 93 Energy 361, p. 364.

¹²⁷ Ibid, p. 369.

¹²⁸ Ibid, p. 369.

¹²⁹ Chris Watson and Paul Bolton, ‘Warm Front Scheme’, 21 August 2013 (SN/SC/06231) <https://researchbriefings.files.parliament.uk/documents/SN06231/SN06231.pdf>.

of applicable measures, up to a maximum government contribution of 2/3 of the cost, or £5,000.¹³⁰

Although the scheme does continue in a small way, as loans taken out under it continue to be valid, it no longer receives any government funding, and ‘[w]ith government support withdrawn, the future of the initiative became uncertain, and few private firms were willing to offer loans independently’.¹³¹ Loans were available to any household with an electricity meter, and can be used for a range of eligible upgrades, including insulation, replacement windows, and double glazing.¹³² Upgrades must be recommended by a certified assessor, and both landlord and tenant must consent before work will be carried out. The loan is tied to the property with repayment as a surcharge on electricity bills, rather than being tied to the occupant, meaning that, especially in private rental sector dwellings where occupants tend to live in properties for shorter lengths of time,¹³³ people could easily end up living with, and paying for, Green Deal upgrades they did not ask for. However, the scheme states that ‘annual repayments on the loan should not be more than the savings you might make on your energy bills’, and the interest rate (and therefore the payment) is fixed for the duration.¹³⁴

Unfortunately, ‘[d]espite its potential, the Green Deal did not resonate as expected with the public. By June 2015, only about 10,000 households had completed measures under the scheme, and there were around 5,600 plans in progress’.¹³⁵ The scheme was therefore discontinued in terms of funding ‘due to this low uptake and concerns regarding the standards

¹³⁰ Secretary of State for Business, Energy & Industrial Strategy, ‘Sustainable Warmth: Protecting Vulnerable Households in England’ (Cm 391, 2021) ‘Green Homes Grant - Voucher Scheme’.

¹³¹ Emma Spencer, ‘The Green Deal explained’ *MoneySuperMarket* (12 February 2024) <https://www.moneysupermarket.com/gas-and-electricity/the-green-deal-explained/> (accessed 15 March 2024).

¹³² — ‘Improvements and benefits to your home’ <https://www.gov.uk/green-deal-energy-saving-measures/improvements-and-benefits-to-your-home> (accessed 11 March 2024); Green Deal (Qualifying Energy Improvements) Order 2012.

¹³³ Department for Levelling up, Housing and Communities, ‘English Housing Survey 2021 to 2022: private rented sector’ 13 July 2023 <https://www.gov.uk/government/statistics/english-housing-survey-2021-to-2022-private-rented-sector/english-housing-survey-2021-to-2022-private-rented-sector> ‘Length of time in current home, by age and tenure’.

¹³⁴ — ‘How to pay’ <https://www.gov.uk/green-deal-energy-saving-measures/how-to-pay> (accessed 11 March).

¹³⁵ Emma Spencer, ‘The Green Deal explained’ *MoneySuperMarket* (12 February 2024) <https://www.moneysupermarket.com/gas-and-electricity/the-green-deal-explained/> (accessed 15 March 2024).

of work being carried out',¹³⁶ and, compared to the Warm Front Scheme that came before it, had little impact on the overall energy efficiency of housing.

With regard to private rental sector dwellings in particular, a scheme similar to the Green Deal in functionality has the potential to avoid some of the split incentive issues which are often a barrier to energy efficiency improvements. The scheme removed much of the up-front investment cost from landlords, and the payments were taken from electricity bills, usually paid by tenants. With some safeguards in place to prevent additional rent increases, and to ensure that new tenants are fully informed of their payment responsibilities, there may be a future for this kind of scheme to fund improvements to rented housing in a cost-effective way.

3.8: Conclusion

The range of measures intended to support those living in energy poverty and improve the energy efficiency of rental housing in England have gone some way towards improving these issues, particularly under the previous Warm Front Programme. However, since then, levels of energy poverty have only continued to increase as government priorities have changed, and only minimal improvements to housing quality have been made. The current regime is fragmented and contains lacunae where it is most needed, whilst those who are not energy poor receive help. Too much emphasis is placed on direct payment support schemes which offer necessary support in the moment, but ultimately do not contribute to a long-term solution. This, combined with the reliance on ECOs to fund energy efficiency improvements hinders the ability of the regime to achieve its objectives. Sadly, the recently passed Energy Act 2023 seems to be a missed opportunity in the field of energy poverty and energy efficiency, with little mention of either problem. The upcoming Renters (Reform) Bill presents a hopeful step in the right direction, but as more time passes with no sign of agreement, the chance of it becoming law diminishes, and it may be no more than another missed opportunity.

¹³⁶ Ibid.

Ch. 4: What is the current EU framework for energy poverty and energy efficiency in buildings, and how does it compare to England?

4.1: Introduction

The relationship between energy poverty and energy efficiency can be easily seen in almost all the relevant EU regulation. Alongside more obviously relevant legislation like the Energy Performance of Buildings Directive,¹³⁷ the link between energy efficiency and energy poverty is also clearly made in directives such as the Internal Market in Electricity Directive,¹³⁸ and is strongly asserted in the Energy Union and Climate Action Governance Regulation.¹³⁹ Although energy poverty has only relatively recently come to be widely discussed at an EU level,¹⁴⁰ the EU Commission considers energy poverty to be a ‘major challenge’ for the Union.¹⁴¹ EU policy in this area already has the link between social and environmental development threaded through it, with many requirements to consider and alleviate energy poverty more generally,¹⁴² as well as specifically in the context of the green transition. These policies work together to provide a framework to limit the potential negative effects of the green transition on those already struggling with energy costs, whilst also aiming to pass on many of the benefits as well. Energy efficiency improvements to buildings are a core part of the EU’s carbon reduction goals, and the important link between this aim and energy poverty are widely acknowledged. Overall, although energy poverty has only recently come to be the subject of much EU regulation, extensive steps have been taken which leave the Union in a stronger position going forward.

The fact that energy poverty and vulnerable consumers are widely considered as part of the energy governance regime of the EU is commendable. This is the case even though average

¹³⁷ Directive (EU) 2010/31 of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings [2010] OJ L153/13.

¹³⁸ Directive (EU) 2009/72 of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity [2009] OJ L211/55, Art. 8.

¹³⁹ Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action [2018] OJ L328/1.

¹⁴⁰ Brenda Boardman, *Fixing Fuel Poverty: Challenges and Solution* (Earthscan, London, 2010).

¹⁴¹ Commission Recommendation (EU) 2020/1563 of 14 October 2020 on energy poverty [2020] OJ L357/35, Preamble 1.

¹⁴² *Ibid.*

rates of energy poverty in the EU are reported to be much lower than in the UK. Statistical comparison is not easy as different calculation measures are used, but taking each regime's own official energy poverty statistics, between 5% and 10% of the EU population is unable to keep their house adequately warm, whilst in England this is more like 20% to 30%.¹⁴³ Not only this, but the EU does not have the same increased proportion of energy poverty in rented dwellings as is found in England. In 2019, 14.9% of EU citizens were tenants paying rent, and 16.3% of those unable to keep their house sufficiently warm were tenants.¹⁴⁴ Although this is a slight increase, the disparity in England is much higher.¹⁴⁵ This means that, while the EU has many measures which tackle energy poverty, and are aimed at vulnerable consumers, renting itself, as opposed to owning, is not a highly relevant factor.

This chapter will first briefly discuss the relevant history of EU regulations in place prior to this point, to set out the necessary background to analyse the current rules. It will then move on to cover the most relevant current regulations: the Energy Performance of Buildings Directive and Energy Efficiency Directive; the Energy Poverty Recommendation; and relevant financial support measures.

4.2: Previous development

The prevalence of regulation dealing with energy poverty, especially linked to energy efficiency, is a recent development of the EU's energy law regime, which has become more extensive as the law focuses increasingly on the green transition and the need to save energy. Energy poverty was first mentioned in the Internal Market in Electricity Directive in 2009,¹⁴⁶

¹⁴³ European Union, 'Sustainable development in the European Union: Monitoring report on progress towards the SDGs in an EU context- 2023 Edition' (7th Edn, Publications Office of the European Union, Luxembourg, 2023), p. 147; Suzanna Hinson and Paul Bolton, 'Fuel Poverty' (Briefing Paper No CBP 8730, House of Commons Library 24th March 2023) <https://researchbriefings.files.parliament.uk/documents/CBP-8730/CBP-8730.pdf>, p. 22.

¹⁴⁴ Giorgos Koukoufikis and Andreas Uihlein, 'Energy poverty, transport poverty and living conditions - An analysis of EU data and socioeconomic indicators' (Publications Office of the European Union, Luxembourg, 2022), p. 24.

¹⁴⁵ See n. 7.

¹⁴⁶ Directive (EU) 2009/72 of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity [2009] OJ L211/55, Art. 3(7-8).

but was not explicitly linked with energy efficiency measures until the recast Energy Efficiency Directive in 2023,¹⁴⁷ despite that directive being in force in one form or another since 2012.¹⁴⁸ Previous iterations of the directive included energy efficiency targets for Member States and other measures, but no requirements to consider energy poverty directly as a core part of their measures, or to specifically protect the most vulnerable consumers.¹⁴⁹ Unlike in England, there has not been any one single moment of overhaul in the EU regime, but rather an evolution of existing regulation over time to increase the interconnectivity of energy poverty, energy efficiency and housing issues within the EU's regulation, to reach the current position.

4.3: Energy Performance of Buildings Directive

The Energy Performance of Buildings Directive was first brought into force in 2010, and has been amended since to '[send] a strong political signal on the EU's commitment to improving and modernising the buildings sector'.¹⁵⁰ This directive sets out the EU's methodology for the Energy Performance Certificates scheme,¹⁵¹ and requires Member States to have a long term renovation strategy which includes 'an overview of policies and actions to target the worst performing segments of the national building stock, split-incentive dilemmas and market failures, and an outline of relevant national actions that contribute to the alleviation of energy poverty'.¹⁵²

¹⁴⁷ Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency and amending Regulation (EU) 2023/955 [2023] OJ L231/1, Art. 3(5)(b).

¹⁴⁸ Directive (EU) 2012/27 of the European Parliament and of the Council of 25 October 2012 on energy efficiency [2012] OJ L315/1.

¹⁴⁹ Directive (EU) 2012/27 of the European Parliament and of the Council of 25 October 2012 on energy efficiency [2012] OJ L315/1 for example contains only three mentions of energy poverty, and states only that MS 'may' link energy poverty and energy efficiency (Art. 3(7)(a)).

¹⁵⁰ 'Energy Performance of Buildings Directive' *European Commission* https://energy.ec.europa.eu/topics/energy-efficiency/energy-efficient-buildings/energy-performance-buildings-directive_en (accessed 21 March 2024).

¹⁵¹ Directive (EU) 2010/31 of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings [2010] OJ L153/13, Arts. 11-13.

¹⁵² *Ibid*, Art. 2a (1)(d).

A proposal for reform of this directive was put forward in 2021 to make these long-term renovation strategies (renamed national building renovation plans) more operational, and bring the directive in line with the wider EU policy ‘Fit for 55’.¹⁵³ This proposal had an increased focus on energy poverty reduction when compared to the original Energy Performance of Buildings Directive, requiring Member States to focus their financial support on the alleviation of energy poverty and to support social housing, and to shield tenants from disproportionate rent levels following renovation.¹⁵⁴ The worst performing residential buildings, those in EPC class G, must be improved to class F by 2030, and class E by 2033 as part of the ‘Renovation Wave’.¹⁵⁵ Whilst the original Energy Performance of Buildings Directive also formed the basis of the EPC regime in the UK, this proposed reform to the directive will not be enforced as it takes place post-Brexit.

In response to this proposal by the Commission, agreement was reached late in 2023 on an update to the Energy Performance of Buildings Directive, to be brought into force in early 2024.¹⁵⁶ As part of this update, each Member State must reduce energy use of residential buildings by 16% by 2030 and 20-22% by 2035. Although these reductions can be allocated as Member States see fit, at least 55% of the decrease must be achieved through renovation of worst-performing buildings.¹⁵⁷ Additionally, ‘to fight energy poverty and bring down energy bills, financing measures will have to incentivise and accompany renovations and be targeted in particular at vulnerable customers and worst-performing buildings, in which a higher share of energy-poor households live’.¹⁵⁸ These measures make the links between energy efficient housing and energy poverty reduction more obvious, and require Member States to address both of these issues at the same time.

¹⁵³ European Commission, ‘Proposal for a Directive of the European Parliament and of the Council on the energy performance of buildings’(Proposal) COM (2021) 802 final, 15 December 2021 ‘1.1.Interplay “Fit for 55” package and notably the new ETS’.

¹⁵⁴ Ibid, ‘Detailed explanation of the specific provisions of the proposal’.

¹⁵⁵ Ibid.

¹⁵⁶ European Commission, ‘Commission welcomes political agreement on new rules to boost energy performance of buildings across the EU’ (Press Release) 7 December 2023 https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6423.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

4.4: Energy Efficiency Directive

Energy poverty reduction is threaded throughout the Energy Efficiency Directive. There are in total 87 mentions of energy poverty throughout this directive and its preambles.¹⁵⁹ This shows the strong link the EU see between energy poverty and energy efficiency, as this directive could otherwise have little to do with energy poverty.

A core policy of the Energy Efficiency Directive is the ‘Energy Efficiency First’ principle.¹⁶⁰ This principle is defined in the Governance Regulation,¹⁶¹ but as the Energy Efficiency Directive states, fundamentally requires that ‘energy efficiency solutions should be considered as the first option in policy, planning and investment decisions when setting new rules for the supply side and other policy areas’.¹⁶² Additionally, the Energy Efficiency Directive requires that, when implementing the Energy Efficiency First principle, ‘Member States shall [...] address the impact on energy poverty’.¹⁶³ This is a strong requirement- not only consideration of energy poverty, but that it be *addressed* by energy efficiency measures.

Secondly, Article 8 sets out the obligations on Member States to set up energy efficiency obligation schemes. As part of this obligation, Member States must ensure that their energy efficiency obligation schemes do not have any adverse effects on those affected by energy poverty or other vulnerable customers, and ‘make the best possible use of funding [...] with the aim of removing adverse effects and ensuring a just and inclusive energy transition’.¹⁶⁴ This specific reference to those in energy poverty again shows a general awareness within EU policy making of the need to always consider energy poverty and the unintended effects that energy related policies may have on those struggling with energy costs.

¹⁵⁹ Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency and amending Regulation (EU) 2023/955 [2023] OJ L231/1.

¹⁶⁰ Ibid, Art. 2(2).

¹⁶¹ Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action [2018] OJ L328/1, Art. 2(18).

¹⁶² Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency and amending Regulation (EU) 2023/955 [2023] OJ L231/1, Preamble 15.

¹⁶³ Ibid, Art. 3(5)(b).

¹⁶⁴ Ibid, Art. 8.

The Energy Efficiency Directive also contains an article which is entirely directed at energy poverty measures. Article 24 of the Directive is titled ‘Empowering and protecting vulnerable customers and alleviating energy poverty’, and requires Member States to ‘take appropriate measures to empower and protect people affected by energy poverty, vulnerable customers, people in low-income households and, where applicable, people living in social housing’.¹⁶⁵ This Article then requires Member States to undertake a variety of measures to support those struggling with energy poverty, including technical assistance, access to funding, and mitigating ‘distributional effects from other policies and measures’.¹⁶⁶ In addition to these measures, Member States must set up a network of experts in relevant fields to offer advice on energy poverty policy, including measures to ensure that particular demographics are not more at risk of energy poverty, and specifically ‘ways to ensure that public funding invested in energy efficiency improvement measures benefit both owners and tenants of buildings and building units’.¹⁶⁷ Although these obligations alone are insufficient to completely solve the problem of energy poverty, the attention paid and repeated acknowledgement of the problem, alongside multiple requirements to consider and address the needs of vulnerable consumers demonstrate the focus of the EU on clean energy *for all*.

4.5: Energy Poverty Recommendation

Alongside these binding Directives, the Commission has also passed an advisory recommendation on energy poverty, which acknowledges energy poverty as a ‘major challenge’ facing the Union.¹⁶⁸ Although this recommendation does not have concrete effect to the same extent as the directives, it is still significant for EU energy poverty policy, demonstrating the Commission’s aims to ‘recover better’ from the damage done by the Covid-19 Pandemic, and create a regime that is both environmentally and socially sustainable: ‘Europe’s recovery plans must be guided by the principles of environmental sustainability, solidarity, cohesion and

¹⁶⁵ Ibid, Art. 24.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ Commission Recommendation (EU) 2020/1563 of 14 October 2020 on energy poverty [2020] OJ L357/35, Preamble 1.

convergence and the determination not to leave behind any Member States, regions or individuals'.¹⁶⁹

4.6: Financial support measures

The Social Climate Fund was created by the Social Climate Fund Regulation, and requires that 'measures and investments supported by the Fund shall benefit households, micro-enterprises and transport users, which are vulnerable and particularly affected by the inclusion of greenhouse gas emissions from buildings and road transport within the scope of Directive 2003/87/EC, in particular households in energy poverty or households in transport poverty'.¹⁷⁰ This fund is therefore aimed at eliminating the 'distributional effects' described in the Energy Efficiency Directive which can cause those already in energy poverty to pay a disproportionately high cost due to measures like the Emissions Trading Scheme. The existence of this fund once again shows the awareness of EU policy makers of the potential for an unjust transition, and the need to actively mitigate against this potential with additional financial support for vulnerable groups.

This regulation also recognises the fact that energy poverty is not necessarily tied to more general poverty, with its definition of 'vulnerable households' including not only 'households in energy poverty', but also 'households, including low income and lower middle-income ones, that are significantly affected by the price impacts of the inclusion of greenhouse gas emissions from buildings within the scope of Directive 2003/87/EC and lack the means to renovate the building they occupy'.¹⁷¹ This fund is therefore directly aimed at supporting those groups who could, regardless of income, fall into energy poverty due to lack of means to renovate and continued reliance on fossil fuels through the green transition and decarbonisation.

As a result of this, the fund is mainly aimed at 'measures and investments intended to increase the energy efficiency of buildings, decarbonisation of heating and cooling of buildings,

¹⁶⁹ Ibid Preamble 16.

¹⁷⁰ Regulation (EU) 2023/955 of the European Parliament and of the Council of 10 May 2023 establishing a Social Climate Fund and amending Regulation (EU) 2021/1060 [2023] OJ L130/1, Art. 1.

¹⁷¹ Ibid, Art. 2(11).

including through the integration in buildings of renewable energy generation and storage, and to grant improved access to zero- and low-emission mobility and transport'.¹⁷² Member States must make plans with 'concrete measures' to reduce the impact of the ETS expansion, alongside estimates of this impact, along with a timeline for implementation by 2032.¹⁷³ This Regulation therefore goes further than merely 'consideration' or acknowledgement of vulnerable groups, but requires concrete and timely assistance measures, reviewable by the Commission for suitability, and funded at an EU level and thus enabling lower income Member States with higher levels of energy poverty to benefit.¹⁷⁴

Alongside the Social Climate Fund, the EU also has a Just Transition Fund.¹⁷⁵ This fund is primarily aimed at supporting a just transition, as the name would suggest, through green job creation and investment in green technology.¹⁷⁶ However, it also contains specific provisions aimed at energy poverty reduction, for example providing funding to 'investments [...] in energy efficiency, including for the purposes of reducing energy poverty'.¹⁷⁷ It is stated in the preamble to this regulation that '[w]hen supporting energy efficiency measures, the [Just Transition Fund] should be able to support investments such as those which contribute to reducing energy poverty, principally through energy efficiency improvements of housing stock'.¹⁷⁸ This once again shows an awareness at EU level of not only the relationship between energy efficiency and energy poverty, but also the role that the green transition plays in this dynamic as something which can have either a positive or negative impact on levels of energy poverty.

Finally, the Energy Union and Climate Action Governance Regulation requires Member States to produce Integrated National Energy and Climate Plans detailing their efforts and progress with regard to climate and energy efficiency goals.¹⁷⁹ As part of these plans, Member

¹⁷² Ibid, Art. 1.

¹⁷³ Ibid, Art. 4(1)(e).

¹⁷⁴ Ibid, Arts. 5 and 6.

¹⁷⁵ Regulation (EU) 2021/1056 of the European Parliament and of the Council of 24 June 2021 establishing the Just Transition Fund [2021] OJ L231/1.

¹⁷⁶ Ibid, Art. 8.

¹⁷⁷ Ibid, Art. 8(2)(e).

¹⁷⁸ Ibid, Preamble 12.

¹⁷⁹ Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action [2018] OJ L328/1, Ch. 2.

States must ‘assess the number of households in energy poverty taking into account the necessary domestic energy services needed to guarantee basic standards of living in the relevant national context, existing social policy and other relevant policies, as well as indicative Commission guidance on relevant indicators for energy poverty’,¹⁸⁰ and, if they find ‘a significant number of households in energy poverty’, must include a ‘national indicative objective’ to reduce this number, including ‘[outlining] in their integrated national energy and climate plans, the policies and measures, which address energy poverty, if any, including social policy measures and other relevant national programmes’.¹⁸¹

Once again, this consideration of energy poverty at an EU level demonstrates a level of awareness of the potential impact of wider energy efficiency and carbon neutrality policies on energy poverty, and the need to be cognizant of this interaction when producing policies. Another benefit of the multi-level governance structure of the EU in this area is that energy poverty is, as a result of these provisions, well covered in most National Energy and Climate Plans, even in countries which do not otherwise regulate energy poverty as a distinct issue.¹⁸²

4.7: How does this regime compare to that in England?

The EU regime has a more holistic view than that in England, and therefore fewer gaps. Consideration of the links between housing, energy poverty and energy efficiency are threaded throughout the EU regime, with references and links between directives and regulations such as the Energy Efficiency Directive and the Energy Performance of Buildings Directive. The National Energy Agency argue that this kind of approach is necessary to tackle such an intersectional problem as energy poverty:

‘It is not sufficient to have plans that sit solely within a single department. Fuel poverty spans energy, income, housing, and health policies so all new and refreshed fuel poverty

¹⁸⁰ Ibid, Art. 3(3)(d).

¹⁸¹ Ibid

¹⁸² Stefan Bouzarovski, Harriet Thomson and Marine Cornelis, ‘Confronting Energy Poverty in Europe: A Research and Policy Agenda’ (2021) 14 *Energies* 858, p. 9.

strategies should be put together on a cross-departmental basis, including at least the relevant departments with responsibility for energy, housing and health'.¹⁸³

The overarching policies such as the Renovation Wave and Fit for 55 also encourage this kind of joined-up thinking, instead of different regimes becoming siloed.¹⁸⁴

This leads to more stability and consistency throughout time: in the nearly 15 years since energy poverty was first regulated at an EU level, the regime has developed organically by amendment of existing directives and glossing, for example with the Energy Poverty Recommendation.¹⁸⁵ In England, by contrast, there have been several different strategies which have replaced one another over the years, rather than building on an existing framework, each with different priorities and methods. This has made the regime less efficient and able to achieve its goals: the requirements are less consistent. The strength of requirements and enforcement through the Commission ensures a certain level of Member State participation which is not required by the English system, and ensures that the required consideration of vulnerable consumers is met.

Finally, the EU's financial support schemes are much better suited for the task than those used in England. As opposed to the English reliance on ECOs and direct payments, the EU supports job creation and harm mitigation schemes to allow the benefits of the green transition to be spread as widely as possible, and make sure the costs do not simply lie where they fall. Long-term housing improvement and community support strategies go some way towards actually helping people out of poverty and dependence on fossil fuels, and improving their living conditions, rather than merely supporting them through a particularly cold period.

4.8: Conclusion

¹⁸³ National Energy Action, 'UK Fuel Poverty Monitor 2022-2023' (31 January 2024), p. 43.

¹⁸⁴ European Commission, 'A Renovation Wave for Europe - greening our buildings, creating jobs, improving lives' (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM (2020) 662 final, 14 October 2020; — 'Fit for 55' European Commission <https://www.consilium.europa.eu/en/policies/green-deal/fit-for-55/> (accessed 9 May 2024).

¹⁸⁵ Commission Recommendation (EU) 2020/1563 of 14 October 2020 on energy poverty [2020] OJ L357/35.

The EU has a range of measures dedicated to tackling energy poverty, and improving energy efficiency in buildings, and which directly link these two issues. As well as generalised recommendations and duties to acknowledge vulnerable consumers, the EU has also required Member States to tailor their financial regimes towards those in energy poverty, supporting them *first*, and has founded specific funds to mitigate the effects of climate change and climate change policy on those living in energy poverty. This regime means that the EU's management of energy poverty and energy efficiency is much more effective and holistic than that of England, and the English regime could learn from the EU and adapt to some of its policies, as will be explored in the next chapter.

Ch. 5: How could the English regime be improved, especially taking into account the EU's energy efficiency measures?

5.1: Introduction

There are many improvements which could be made to the current situation in England, of varying levels of ease. Some changes could be made very simply, whilst others would require large-scale rethinking of the function and role of the private landlord as we move through the green transition. This thesis does not discuss these more systematic changes in detail, focusing instead on measures that could be implemented without the overhaul of the entire system of English land law. Some changes would apply to society as a whole, not just to the private rental sector, although specifically focussed measures also seem necessary to counter the neglect of this sector in energy efficiency policy up to this point. Firstly, this chapter will discuss general shifts in the focus and framing of policies in this area, followed by possible reforms to the rights and obligations of tenants and landlords respectively with regard to energy efficiency improvements; then possible financial support systems to pay for these upgrades; and finally broader energy efficiency subsidy and pricing reforms.

As with all complex, systemic issues, there is no 'magic wand' to address this issue. Instead, a range of measures to target all causes and sides of this issue will be needed. Bouzarovski, Thomson and Cornelis report that

'[a] comparative investigation of energy poverty policies and measures across 5 EU countries [...] has found that regional approaches are more effective in energy poverty alleviation compared to those at the national level. The same study also emphasizes that countries with a "wide range of measures perform better" than those who have a more limited policy arsenal'.¹⁸⁶

¹⁸⁶ Stefan Bouzarovski, Harriet Thomson and Marine Cornelis, 'Confronting Energy Poverty in Europe: A Research and Policy Agenda' (2021) 14 *Energies* 858, p. 6.

These factors mean that an individualised, devolved approach, which allows flexibility and provides a broad framework within which different regions can adapt policies to their specific needs is required, something England could take from the EU.

5.2: Shifts in policy focus

One policy which could be directly implemented from the EU's energy efficiency regime would be the 'Energy Efficiency First' principle. England currently does not have this kind of lens through which all energy policy can be viewed, and this would allow a focus of policy design in areas adjacent to energy, as well as in energy policy directly, for example housing. Ensuring that energy efficiency measures come first, before new methods of generation, and focusing on improving the efficiency of what we already have, instead of building more, seems particularly important in the country with the oldest housing stock in Europe.¹⁸⁷

A second important shift which is necessary to tackle this issue going forwards is the focus of public energy efficiency campaigns. Current government campaigns focus on small changes individuals can make, such as washing clothing on a lower temperature, and turning down radiators.¹⁸⁸ However, given that research by charities suggests that many people are already going much further than this in the hopes of saving money,¹⁸⁹ and that we know that uses such as laundry and lighting make up only a tiny fraction of the total domestic energy consumption,¹⁹⁰ this seems misplaced. It would be better instead for policies and campaigns to focus on larger changes with a more substantial impact, publicising the support available for, e.g. new double-glazed windows, or loft insulation.

Finally, English energy poverty policy must shift from immediate payment-based support, like the Cold Weather Payment, towards more long-term support which targets the

¹⁸⁷ Justine Piddington et al, 'The Housing Stock of The United Kingdom' BRE Trust (February 2020) https://files.bregroup.com/bretrust/The-Housing-Stock-of-the-United-Kingdom_Report_BRE-Trust.pdf, p. 2.

¹⁸⁸ Department for Energy Security and Net Zero, The Rt Hon Claire Coutinho MP, and Amanda Solloway MP, 'Families to cut bills with energy saving tips and support for most vulnerable' (Press Release) 16 October 2023 <https://www.gov.uk/government/news/families-to-cut-bills-with-energy-saving-tips-and-support-for-most-vulnerable>.

¹⁸⁹ See p. 1.

¹⁹⁰ See p. 1.

source of the problem: rather than helping people to meet unaffordably high energy costs, reduce those costs further upstream. These current strategies treat energy poverty merely as part of poverty in a wider sense, targeting those on low incomes or otherwise vulnerable to general poverty as discussed above,¹⁹¹ rather than actually ensuring that those who struggle to afford energy are reached. However, as Boardman argues, it is important to see energy poverty as its own separate issue with its own vulnerability factors, which are not necessarily so closely related to income, and therefore these measures are not very appropriate for the problem when it is defined more narrowly.¹⁹² Once again, inspiration could be drawn from the Social Climate Fund, and Just Transition Fund operated by the EU, directly allowing those who face the highest burdens through the green transition to be compensated and helped accordingly.¹⁹³

5.3: Improved rights and support for tenants

A first area in which specific improvements could be made is the rights available to tenants with regard to energy efficiency measures specifically, as well as more widely. The Renters (Reform) Bill will hopefully go some way towards making these improvements as discussed above, but further steps are still needed, and the passage of this bill is by no means guaranteed. Tenants currently have few rights to directly make energy efficiency upgrades to their homes, and 52% dislike this.¹⁹⁴ However, as discussed above, these specific rights alone are insufficient, and must be accompanied by broader changes to the relationship between landlord and tenant. More security of tenure and protection from arbitrary rent increases, as will hopefully begin to be introduced by the Renters (Reform) Bill, will encourage tenants to ask for those energy efficiency upgrades. Kantamneni and Haley find that, while tenants are concerned about rent increases due to efficiency upgrades, those with more security ‘are willing to work with their landlords to prioritize and pick energy efficiency measures in exchange for negotiating modest rent increases for a fixed time to recoup a portion of upfront costs of the

¹⁹¹ See 3.6.1.

¹⁹² Brenda Boardman, *Fuel Poverty: From Cold Homes to Affordable Warmth* (Belhaven Press, London, 1991), Ch. 3.

¹⁹³ See 4.6.

¹⁹⁴ British Gas, ‘Greening the Private Rental Sector’ (Renters’ Report 2023) 16 November 2023, p. 13.

upgrades'.¹⁹⁵ This allows some of the split incentive problem to be solved, and legislation would be an important part of this to ensure that such negotiated increases do not take advantage of vulnerable customers, and stay equal to or below the savings to energy bills.

A policy in this area which could be taken from the EU is the inclusion under most energy legislative documents, and separately as a recommendation, the duty to consider and aid vulnerable customers and those living in energy poverty as part of every policy design. A more explicit and detailed duty for policymakers and regional/local authorities to consider these vulnerable groups and act in ways which benefit them would lead to greater inclusion of energy poverty as a consideration in future acts, unlike how it was left by the wayside in the drafting of the Energy Act 2023. This would also allow energy poverty to be considered more widely under policy areas currently considered tangential to energy poverty. As the charity National Energy Action stated,

‘It is not sufficient to have plans that sit solely within a single department. Fuel poverty spans energy, income, housing, and health policies so all new and refreshed fuel poverty strategies should be put together on a cross-departmental basis, including at least the relevant departments with responsibility for energy, housing and health’,¹⁹⁶

and this kind of duty to consider would enable such a cross-departmental strategy.

A ‘one stop shop’ led by consumer advice services has been recommended by British Gas for landlords,¹⁹⁷ and something similar for tenants would also be beneficial. This would be along the lines of the schemes previously in operation under the Warm Front Programme, with financial and technical consultations for improvements all carried out under the same umbrella.

5.4: Increased obligations for landlords

¹⁹⁵ Abhilash Kantamneni and Brendan Haley, ‘Energy Efficiency in Rental Housing: Policy Mixes for Efficient, Affordable and Secure Housing’ (2023) Efficiency Canada, Carleton University, Ottawa, ON, p. 24.

¹⁹⁶ National Energy Action, ‘UK Fuel Poverty Monitor 2022-2023’ (31 January 2024), p. 43.

¹⁹⁷ British Gas, ‘Greening the Private Rental Sector’ (Renters’ Report 2023) 16 November 2023, p. 35.

Alongside rights for tenants come obligations for landlords. Implementing the steps proposed earlier by the Government would be beneficial; raising the Minimum Energy Efficiency Standard for rented dwellings to band C, rather than band E as it currently stands, for new tenancies immediately and existing tenancies by 2028 and increasing the maximum amount landlords are required to contribute to the costs of this from the current £3,500 to £10,000.¹⁹⁸ This would go some way towards solving the current problem of costs above the cap which prevents some dwellings from being upgraded even to band E. These obligations are required to counter the widespread belief of 54% of landlords that environmental improvements tend not to be worth the costs-¹⁹⁹ voluntary schemes therefore seem insufficient.²⁰⁰

More broadly, and in the long term, to bring the English rental sector more in line with much of Europe, it must be more professionalised. This would also contribute to solving the cash flow problems which currently restrict many landlords' actions. 'Buy-to-let' landlords often rely on rent payments to cover their own mortgages, and British Gas found that '[w]hether [a landlord] did or didn't have a mortgage significantly affected their ability to afford large surprise purchases'.²⁰¹ It would therefore be better to move away from a system with so many of these landlords, and towards a more heavily regulated private rental sector as can be found in other EU countries such as Germany or Denmark, removing the ability for landlords to have a mortgage for their rental property which is reliant on rental income.²⁰²

5.5: Increased financial support for landlords

Alongside rights and obligations, financial and technical support is needed for landlords to ensure that costs do not get passed on to vulnerable customers, and that the maximum number of upgrades are done.

¹⁹⁸ Secretary of State for Business, Energy & Industrial Strategy, 'Sustainable Warmth: Protecting Vulnerable Households in England' (Cm 391, 2021) 'Minimum Energy Efficiency Standards'.

¹⁹⁹ British Gas, 'Greening the Private Rental Sector' (Renters' Report 2023) 16 November 2023, p. 24.

²⁰⁰ Clive Shrubsole and others, '100 unintended consequences of policies to improve the energy efficiency of the UK housing stock' (2014) 23(3) *Indoor and Built Environment* 340, ln. 343-345.

²⁰¹ British Gas, 'Greening the Private Rental Sector' (Renters' Report 2023) 16 November 2023, p. 21.

²⁰² Justine Piddington et al, 'The Housing Stock of The United Kingdom' BRE Trust (February 2020) https://files.bregroup.com/bretrust/The-Housing-Stock-of-the-United-Kingdom_Report_BRE-Trust.pdf, p. 33.

Greater availability of information is crucial. As discussed above, nearly half of the landlords surveyed by British Gas (44%) did not know their EPC rating, and of those with a property rating below EPC C, 88% had not received a quote for bringing the home to that standard.²⁰³ These landlords also had minimal awareness of the financial help available from the government, with over half (52%) responding that they ‘do not know enough about them’.²⁰⁴ British Gas therefore recommends a ‘one-stop shop’ of information services, run by consumer advice groups, as is already used in Scotland. ‘The Scottish Energy Saving Trust provides customers with a “one-stop shop” for high quality, impartial advice to support homeowners, including landlords, to upgrade their homes. Home Energy Scotland offers personalised advice on home energy improvements with the option of home visits, as well as accessing Scottish Government funding programmes with specialist financial advisors’;²⁰⁵ however, a service tailored for landlords would be even more beneficial. Given the split incentive issues and lack of perceived financial benefits which currently prevent landlords from taking actions to improve the energy efficiency of their properties, a tailored service would allow specific advice to be given to combat these problems. For example, analysis from real estate consultancy Knight Frank has found that homes which moved from an EPC rating of D to C added an additional 3% to their value in addition to local house price growth.²⁰⁶ Although ideally a financial motive would not be necessary, availability of information like this could encourage more sceptical landlords to make energy efficiency improvements to their properties.

Tax-based strategies have also been proposed, and would form a useful part of a wider package of measures to support landlords and encourage improvements. British Gas recommends a ‘Green Upgrade Relief’ measure, which would allow some of the cost of energy efficiency measures to be deducted from landlords’ taxable rental income.²⁰⁷ Their recommendation specifies that ‘[g]iven landlords’ preference for more cosmetic property enhancements, the relief should only be eligible for a list of specified measures, such as loft and wall insulation, double glazing, heat pumps, solar panels and EV charge points’.²⁰⁸

²⁰³ British Gas, ‘Greening the Private Rental Sector’ (Renters’ Report 2023) 16 November 2023, p. 4.

²⁰⁴ British Gas, ‘Greening the Private Rental Sector’ (Renters’ Report 2023) 16 November 2023, p. 20.

²⁰⁵ *Ibid.*, p. 35.

²⁰⁶ *Ibid.*, p. 10.

²⁰⁷ *Ibid.*, p. 32.

²⁰⁸ *Ibid.*, pp. 32-33.

Although further research would be needed, there is evidence that the wider public would support this kind of measure, with 45% of those recently surveyed in favour of tax incentives to make landlords' rental properties more energy efficient.²⁰⁹

A final financial support mechanism which could be put in place for landlords would be a government-backed loan scheme for energy efficiency upgrades. A similar scheme is already in place in Scotland, and therefore could be implemented in England relatively easily. The Scottish government's scheme comprises 'a government-backed interest free loan specifically for private rented sector landlords to use on energy efficiency upgrades, renewable energy systems and storage'.²¹⁰ Landlords with five properties or fewer can borrow up to £15,000 for each property with zero interest and with 3.5% interest for landlords with six or more properties. Given the current high rates of interest, and the fact that it is estimated that only 5% of rental homes would require expenditure of more than £15,000 to be brought to EER band C,²¹¹ this seems like a good incentive to encourage these measures to be implemented, and would help those landlords who do not have the capital to be able to invest those kinds of sums otherwise.

I would, however, argue that the scheme would need to be cautiously designed with measures in place to protect tenants from overly high rent increases made by landlords who reap the benefits of this scheme without passing on the savings to their tenants.

5.6: Reform energy pricing and efficiency subsidies

A final area of improvement would be the broader reform to the pricing of energy and the choice of support measures. Although this is not directly tied to rental housing, the pricing of energy

²⁰⁹ Ibid, p. 33.

²¹⁰ Ibid, p. 34.

²¹¹ Department for Levelling up, Housing and Communities, 'English Housing Survey 2021 to 2022: private rented sector' 13 July 2023 <https://www.gov.uk/government/statistics/english-housing-survey-2021-to-2022-private-rented-sector/english-housing-survey-2021-to-2022-private-rented-sector> 'Cost to make energy efficient'.

is a significant factor in the rising level of energy poverty, and therefore an important part of the wider policy mix to work towards a solution.²¹²

ECOs are controversial as they allow energy companies to pass the burden onto consumers, and the extent to which they actually support vulnerable customers, or help lower environmental impacts, is highly debated.²¹³ This kind of support, through the energy companies directly, is currently the main pillar of the English government's energy poverty policy, and this leads to customer dissatisfaction, and lack of progress. As Sovacool et al report,

‘[l]ess popular among focus group participants was the policy option of increasing financial support to the large energy firms so that they can support people struggling with their bills via energy efficiency measures. Participants would rather see these firms help from their own resources [...]. Reasons given by the public include anger at being ripped off, being manipulated by energy providers and providers pocketing money they should be putting into efficiency or more affordable heating members’.²¹⁴

The increasing profits recorded by companies in the face of climate change and the current energy crisis have deepened feelings that the current system is not working, and that ‘the cost-of-living crisis in the United Kingdom [is] an opportunity for different types of system redesign for just transitions’.²¹⁵ This therefore seems the perfect opportunity to move away from the ECOs that have been used for the past decade, and rethink the financial support mechanisms for the energy transition.

The public are also unhappy with the extent to which energy companies are allowed to profit from cheaper forms of renewable energy, while not passing these savings on to consumers.²¹⁶ Energy pricing is currently set on the wholesale market by the cost of the most

²¹² Paul Bridgen, ‘An eco-social solution to energy poverty? Substance and symbolism in the England’s use of domestic energy efficiency policy to achieve social and environmental synergies, 1997–2023’ (2023) 25(4) *European Journal of Social Security* 388, p. 392.

²¹³ *Ibid.*, particularly p. 399.

²¹⁴ Benjamin K Sovacool and others, ‘Policy prescriptions to address energy and transport poverty in the United Kingdom’ (2023) 8 *Nature Energy* 273, p. 279.

²¹⁵ *Ibid.*

²¹⁶ *Ibid.*

expensive source: usually natural gas.²¹⁷ This means that the benefits of increased renewable generation cannot be passed on to consumers, and companies' profits are instead increasing at their expense.²¹⁸ Sovacool et al recommend the removal of renewable sources from the marginal pricing rules, to enable them to be sold at costs genuinely relative to their production.²¹⁹ The removal of this policy as we move through the green transition, and renewable sources of energy continue to increase in availability, and decrease in cost, would enable consumer bills to be much lower, and energy much more affordable.

5.7: Conclusion

There are many potential strategies which could be used to improve the energy efficiency of rented dwellings in England, and to reduce the high levels of energy poverty. Some solutions can work to improve both problems simultaneously, whilst others will target mainly one or the other. There is no one 'magic wand' solution, and it will take time to find the ideal policy mix, which will vary from place to place. A range of flexible and adaptable measures, which can be tailored to fit the particular issues which affect different parts of the country, is needed, along with shifts in focus of policy towards an 'energy efficiency first' approach as is used in the EU, and a stronger focus on energy poverty as an issue separate from general poverty. Immediate support for both landlords and tenants to increase the energy efficiency of their dwellings is necessary alongside a more long-term shift of the balance of power more in favour of tenants, away from its current position. A general increase in the rights of tenants will, as discussed be likely to lead to more willingness to share the cost and burden of energy efficiency upgrades with landlords.

²¹⁷ Tom Jones, 'What drives wholesale electricity prices in Britain?', OFGEM (15 July 2016) <https://www.ofgem.gov.uk/news-and-views/blog/what-drives-wholesale-electricity-prices-britain>.

²¹⁸ Benjamin K Sovacool and others, 'Policy prescriptions to address energy and transport poverty in the United Kingdom' (2023) 8 *Nature Energy* 273, p. 279.

²¹⁹ *Ibid.*

Ch. 6: Conclusions

This thesis has attempted to propose some possible solutions and directions for change for the energy efficiency regime in rental housing in England, taking inspiration from the comparable EU regime. Firstly, this research laid down a conceptual basis and defined key terms as necessary, before discussing the significant interactions between issues seen separately as either social or environmental: energy poverty, and energy efficiency. Then, each of the two regimes studied were discussed separately, setting out the key mechanisms and acts within each, before a comparison between the two was made. Finally, recommendations for possible regulatory and structural improvements to the English system were made based on the gaps revealed within it as a result of the comparison to the EU's regime.

The key differences found between these regimes were the holistic and joined-up nature of the EU's regime, when compared to the more ad hoc and sectoral approach currently in place in England; the stability and consistency of the EU regime throughout time; and the differing financial focus. These differences can be used to inform regulatory changes to the English regime to enable it to target these problems more effectively than it currently does.

Discussion of both of these regimes, and the current gaps in the English regime exposed by comparing their differences and similarities, has shown that there is no one solution, and instead change is needed both as a range of measures, and a change of focus and attitude. These changes will not be easy, but they are necessary if the energy savings required by government climate pledges are to be met.²²⁰ As Kantamneni and Haley argue 'a large-scale transition to efficient and high-performance buildings requires a social and technical structural change'.²²¹ Measures must target the problem from all sides and angles, not merely as a problem of tenant actions or landlords needing to invest more, but also considering the more general pricing of energy and status of tenants. The most important finding from this research is the confirmation that there is no choice between environmental *or* social improvements in this area of law: both are necessary for overall improvement.

²²⁰ Abhilash Kantamneni and Brendan Haley, 'Energy Efficiency in Rental Housing: Policy Mixes for Efficient, Affordable and Secure Housing' (2023) Efficiency Canada, Carleton University, Ottawa, ON, p. 47.

²²¹ *Ibid*, p. 11.

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