

Regulatory Impact Statement: Amendments to the Residential Tenancies (Healthy Homes Standards) Regulations 2019

Coversheet

Purpose of Document	
Decision sought:	<i>Analysis produced for the purpose of informing final decisions to be taken by Cabinet</i>
Advising agencies:	<i>Te Tūāpapa Kura Kāinga – The Ministry of Housing and Urban Development</i>
Proposing Ministers:	<i>Associate Minister of Housing (Public Housing)</i>
Date finalised:	<i>5 October 2021</i>
Problem Definition	
<p>Several policy issues relating to the Residential Tenancies (Healthy Homes Standards) Regulations 2019 (Regulations) have arisen since they were introduced. These issues relate to the requirement that the main living room of a rental property must be heated by 1 or more qualifying heaters at the heating capacity specified by a heating formula (heating standard). The issues are:</p> <ul style="list-style-type: none">• Overestimation of the required heating capacity by the heating formula for dwellings built to the current building code¹ requirements for insulation and glazing², and all apartments.• If changes are made to the heating formula, providing sufficient time for industry and landlords to comply with these changes.• A lack of flexibility in the heating standard to assess heating requirements where a home uses innovative and energy-efficient technologies, which are not accounted for by the heating formula. <p>Te Tūāpapa Kura Kāinga – the Ministry of Housing and Urban Development (HUD) is proposing to make targeted amendments to the standards to ensure the policy intent is achieved and to address areas where there have been unintended consequences.</p>	

¹ Building Regulations 1992, Schedule 1.

² In practice these are dwellings that first received building consent on or after the following dates, according to their Zone, as set out in Annex B of NZS 4218:2009: For Zone 1, 30 September 2008; For Zone 2, 30 June 2008; For Zone 3, 31 October 2007. It also includes homes renovated to the building code standards which applied from these dates.

Executive Summary

Approximately 600,000 households rent in New Zealand and research has shown that New Zealand's rental housing stock is of poorer quality than owner-occupied homes.

On 1 July 2019, the Residential Tenancies (Healthy Homes Standards) Regulations 2019 (the healthy homes standards) came into force to improve the quality of our rental stock by ensuring that tenants have a warm and dry rental home.

The healthy homes standards aim to make a significant change to the quality of New Zealand rental homes by setting minimum requirements for heating, insulation, ventilation, draught stopping, and moisture ingress and drainage.

However, a number of issues relating to the healthy homes standards have arisen since they were introduced in 2019. HUD is proposing to make targeted amendments to the standards to ensure the policy intent is achieved and to address areas where there have been unintended consequences.

The proposals in this Regulatory Impact Statement

The proposals that this regulatory impact statement analyses are:

- the development of a revised heating formula specifically for dwellings built to the current building code requirements for insulation and glazing and apartments.
- the establishment of a grace period for complying with a revised heating standard for these types of building.
- an alternative means of complying with the heating standard for all dwelling types.

There are key dependencies between these proposals. If Cabinet decides to not amend the heating formula, there will be no need for a grace period to comply with the revised standard. While each proposal has been assessed individually, they operate in partnership with each other to achieve the policy objectives.

Potential impacts of the preferred options

Overall, the preferred options for addressing these issues will bring benefits to landlords and tenants, but they will result in some costs.

The predominant benefit for tenants is the minimisation of the potential for costs borne by the landlord to be passed on, while also ensuring appropriate heating standards are met. This is particularly relevant to the proposal to amend the heating formula to more accurately determine the required heating capacity. There is also the potential for energy costs to be reduced for tenants by having a more efficient and effective heating device in the rental property.

The proposal to introduce a grace period before implementing the proposed change to the heating standard will allow more of the affected landlords to install the correct sized heater by the compliance date, however the affected tenants may face a delay in the installation of a heating device. We do not believe that this will significantly impact on the policy aim of warm, dry, rental homes because dwellings built to the current building

code requirements for insulation and glazing and apartments are known to be warmer than most homes because they generally lose heat at a lower rate. The tenants will also benefit from lower energy costs once the heating device is installed.

Landlords are likely to benefit from all three proposals. The amended heating formula will reduce the required heating capacity for dwellings built to the current building code requirements for insulation and glazing and apartments. It will subsequently reduce the cost of providing the required heating device. The alternative means of compliance will also offer landlords a more flexible approach to compliance which, despite the cost of engaging a specialist to conduct the assessment, should provide cost savings.

Views of stakeholders

The stakeholders with an interest in the healthy homes standards include landlord and tenant advocacy groups, community housing providers, property managers, developers, industry specialists, and Māori housing advocates. All stakeholders have an interest in ensuring that the standards are effective and align with the policy intent of the regulations. There is also wider public interest in having successful compliance with the healthy homes standards, as part of growing Aotearoa's warm, safe, and dry rental stock.

All stakeholders were supportive of the intent to reduce the unintended consequences of the healthy homes standards, and ensure they align with the policy intent of the regulations. However, in some cases stakeholders felt that the interests of landlords and tenants were not fairly balanced. This occurred predominantly in reference to the proposal to introduce a grace period for complying with the heating standard for certain types of buildings. Consideration was given to those that argued that this was not a proportionate approach for tenants. However, it was decided that not providing for a grace period would place an unreasonable burden on landlords.

Given that the stakeholders shared official's view of the problem and were predominantly supportive of the proposed changes, their influence reinforced the proposals HUD has recommended.

Limitations and Constraints on Analysis

Scope of regulations

The scope of this analysis is limited by the empowering provisions in the primary legislation. Empowering provisions under the Healthy Homes Guarantee Act 2017 enabled regulations to be made which specify minimum standards for rental homes. Any amendments to the subsequent Residential Tenancies (Healthy Homes Standards) Regulations 2019, must be made in line with the primary legislation.

Time constraints

The proposed amendments to the standards are expected to come into effect in early 2022, which is after the date that some private landlords and all boarding houses must comply with the healthy homes standards.

All boarding house tenancies were required to comply with the healthy homes standards by 1 July 2021. Private landlords must comply within 90 days of a new or renewed tenancy from 1 July 2021. Therefore, privately tenanted properties with a new or renewed tenancy on 1 July 2021 will have to comply at the latest by 28 September 2021.

As a result, the Associate Minister of Housing (Public Housing) would like to see any amendments to the healthy homes standards in force as soon as possible. The timeframe for the proposed amendments has subsequently been reduced.

Targeted consultation

Due to the significant time constraints, stakeholder engagement was targeted – focusing on affected parties, industry subject matter experts and key government agencies. HUD considered this a proportionate approach given that public consultation would have taken a considerable length of time, and properties had already started having to comply with the healthy homes standards.

Assumptions regarding the issues raised

The key assumption underpinning our understanding of the problem is that the information provided to HUD by stakeholders and industry specialists is accurate and representative of the rental market. HUD has taken into account evidence from a range of stakeholders and industry specialists (including MBIE, Kāinga Ora and BRANZ) to substantiate the extent and severity of the issues that have been brought to HUD's attention, and the information and evidence we have been provided has informed our proposed amendments.

Overall impact of limitations and constraints on this analysis

While there have been a number of limitations and constraints on this analysis, Ministers should be confident using this analysis to inform their decisions. Officials do not consider these limitations or constraints to have a significant impact on the quality of analysis provided.

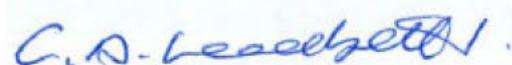
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Tenures and Housing Quality

Te Tūāpapa Kura Kāinga – The Ministry of Housing and Urban Development



5 October 2021

Quality Assurance (completed by QA panel)

Reviewing Agency:	Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development
Panel Assessment & Comment:	<i>The Panel considers that the RIA meets the quality assurance criteria. It concludes that the assessment is complete, concise, clear and convincing. The analysis of costs, benefits and other impacts is framed by assessment criteria based on the intended policy objectives. On balance, based on the analysis presented, the preferred options and the approach to their delivery appear to be appropriate. Although consultation on these proposals was</i>

targeted, we consider this to be appropriate and sufficient in the circumstances.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

On 1 July 2019, the Residential Tenancies (Healthy Homes Standards) Regulations 2019 (the healthy homes standards) came into force to improve the quality of our rental stock by ensuring that tenants have a warm and dry rental home. The Standards aim to make a significant change to the quality of New Zealand rental homes by setting minimum requirements for heating, insulation, ventilation, draught-stopping and moisture ingress and drainage.

However, several policy issues relating to the healthy homes standards have arisen since they were introduced in 2019. If the status quo is allowed to remain unchanged, it is expected that some landlords and tenants would face an unreasonable burden as an unintended consequence of the regulations.

In the absence of government intervention, there is also a risk that the overall system objective of the healthy homes standards may be impacted. This may be through a lack of compliance with the heating standard or increased rents being imposed on tenants due to the extra costs of meeting that standard. Both of which will subsequently affect the efficacy of these standards in improving Aotearoa's rental housing stock or tenants' ability to benefit from those improvements. This issue may affect increasing numbers of properties over time, as rental stock is upgraded.

What is the policy problem or opportunity?

Nature, scope and scale of the problem

Several significant policy issues relating to the healthy homes standards have arisen since they were introduced in 2019.

These issues mostly impact rental properties that are apartments and dwellings built to the current building code requirements for insulation and glazing.

The healthy homes heating standard provides for a heating formula that specifies the heating capacity required for each rental property after specific information is inputted.³ When officials designed the heating formula there were trade-offs and compromises made to keep the formula relatively simple while recognising it will be applied to a wide variety of houses in New Zealand.

Despite these measures to tailor the heating capacity to individual properties, HUD has received a significant amount of feedback from stakeholders - that the heating formula uses very conservative assumptions that leads to overstating the required heating capacity. This is

³ See Residential Tenancies (Healthy Homes Standards) Regulations 2019, clauses 2 to 5.

particularly acute for dwellings built to the current building code requirements for insulation and glazing (which came into effect in 2007/8) and apartment buildings. Experts have identified three discreet assumptions used in the formula that are not appropriate for these types of dwelling and are significant contributors to the oversizing issue:

- A ventilation rate of 1.0 air change per hour.
- A pickup load of 40W/m².
- Heat loss of 50 percent to adjacent internal rooms.

In addition, from 1 July 2021, private landlords will have to comply with the healthy homes standards within 90 days of a new or renewed tenancy. So, if a tenancy is entered into, or renewed on 1 July 2021, the rental property must comply with the healthy homes standards by 28 September 2021. However, if Cabinet agrees to proceed with the changes recommended in this document, they will not come into effect until early 2022.

While amending the heating formula will allow heating solutions to be finetuned for dwellings built to the current building code requirements for insulation and glazing and apartments, there will still be situations for any home where the tool cannot take specific aspects of a building into consideration. This could be due to specific building elements or potentially new and innovative systems used in the building. In addition to amending the heating formula, officials therefore propose introducing an alternative compliance pathway in the regulations to meet the requirements of the heating standard.

Scale of the problem

In terms of scale, there are no precise figures for rented ‘apartments’ and ‘dwellings’ compliant with the current building code requirements for insulation and glazing. We estimate the number of rented dwellings built since the beginning of 2008, and compliant with the current building code requirements for insulation and glazing is roughly 106,000.⁴ As of October 2020, there were 35,880 bonds lodged for ‘apartments’ with Tenancy Services. Although the definition of apartment used by Tenancy Services⁵ is somewhat broader than the usual understanding of an ‘apartment’ as part of a high-rise development, and a portion of these apartments will form part of the new dwellings built since 2008, this gives some idea of the number of apartments currently rented in Aotearoa.

Root cause of the policy problem

The root cause of the policy problem stems from government regulatory failure. The conservative nature of the assumptions in the heating formula identified above, and a lack of flexibility, have created the unintended consequences of a heating standard which over-estimates the required heating capacity of certain rental properties with negative impacts on landlords and tenants. As a result, outcomes have become misaligned with the original policy intent.

Stakeholder Consultation

HUD first developed a range of options for revising the heating standard using advice from engineers with experience of applying the heating formula on several development projects.

⁴ Stats NZ estimate that around 15% of New Zealand’s 1.8 million private dwellings have been built since 2010.4. Roughly 48,000 new dwellings were built over 2008 to 2009.4. Roughly a third of all New Zealand’s dwellings are rented.

⁵ The Tenancy Services [Bond Lodgement Form](#) defines ‘apartment’ as ‘when you live in a property with self-contained areas (e.g. apartments, units) and shared areas (e.g. building lifts, driveways)’.

Due to time constraint and the technical nature of the proposals, HUD then opted for a targeted stakeholder consultation process. This was undertaken in July. HUD considered this an appropriate and proportionate approach given that public consultation would have taken a considerable length of time, and properties had already started having to comply with the healthy homes standards.

HUD sought the views of:

- Landlord advocacy groups.
- Tenant advocacy groups.
- Property managers.
- Developers.
- Specialists such as mechanical engineers and building scientists.
- Community and council housing providers.
- Groups providing Māori housing.
- Other government agencies.

A list of the stakeholders engaged with is at Annex A.

Some of the stakeholders were likely to be more directly affected by these proposals, these include landlords and tenants, property managers, and community housing providers. These groups tended to assess the proposals on whether they were fair and did not place an unreasonable burden on landlords or tenants as an unintended consequence.

In general, all the stakeholders HUD consulted with shared officials' view of the problem and were supportive of the proposed changes. However, in some cases stakeholders felt that the interests of landlords and tenants were not fairly balanced. This occurred predominantly in reference to the proposal to introduce a grace period for complying with the heating standard for certain types of buildings. Consideration was given to those that argued that this was not a proportionate approach for tenants, however it was decided that not providing for a grace period would place an unreasonable burden on landlords.

What policy objectives are sought in relation to the policy problem?

The policy objectives sought in relation to the problem are to ensure that the healthy homes standards:

- a) Ensure that tenants have a warm, dry rental home.
- b) Ensure that the regulatory costs do not place an unreasonable burden financially or otherwise on landlords, or incentivise non-compliance.
- c) Ensure that the changes do not place an unreasonable burden financially or otherwise on tenants.
- d) Provide flexibility to regulated parties to allow alternative, cost effective and innovative solutions to meet their legal obligations.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

The key criteria to assess the options are the four policy objectives. The criteria have been given equal weighting.

What scope will options be considered within?

The options considered need to be in accord within the powers delegated by the Healthy Homes Guarantee Act and align with the policy intent of the Residential Tenancies (Healthy Homes Standards).

There are no non-regulatory options available because these proposals are solely focused on clarifying the policy intent as set out in the regulations and amending the regulations to reduce the unintended consequences that have occurred as a result.

What options are being considered?

There are three proposals for which officials are considering options. These are:

- Amending the heating formula to better reflect the building characteristics of buildings compliant with the current building code requirements for insulation and glazing and apartments.
- Establishing an alternative means of complying with the heating standards for all dwelling types.
- Introducing a grace period for buildings compliant with the current building code requirements for insulation and glazing and apartments to comply with the revised heating standard.

There are key dependencies between these proposals. If Cabinet decides to not amend the heating formula, there will be no need for a grace period to comply with the revised standard. While each proposal has been assessed individually, they operate in partnership with each other to maximise the policy objectives.

Proposal 1: Amending the heating formula to better reflect the building characteristics of buildings compliant with the current building code requirements for insulation and glazing and apartments.

Option One – Status quo

Under this option the current heating formula would be retained with the three existing assumptions identified by stakeholders as being too conservative for certain types of building and therefore likely to overestimate the required heating capacity in certain cases.

Maintaining the status quo would not be effective in resolving the issue that the heating formula overstates the required heating capacity for certain building types. As it stands, the heating formula, with its conservative assumptions for dwellings built to the current building code requirements for insulation and glazing and apartments, places an unreasonable regulatory burden on some landlords by requiring a larger and typically more expensive heating device than intended to meet the policy intention.

The impact of inaction under this option would be direct and ongoing for dwellings built to the current building code requirements for insulation and glazing or apartment rental properties,

with the magnitude of the impact set to continue as the rental market grows and incorporates an increasing number of new and apartment buildings⁶.

An oversized heat pump or other qualifying heater will allow a dwelling to meet the policy intention of the healthy homes heating standard – giving tenants a warm and dry rental home which can be heated to and maintained at 18 °C. However, the additional costs of installing oversized heating devices may incentivise landlords not to comply with the heating standard by refusing to install the qualifying heater. Furthermore, if the oversized heating device is installed, tenants may be discouraged from keeping their house sufficiently warm by its higher running costs compared to smaller units.

In addition, the cost of purchasing an overpowered qualifying heater (when a cheaper device may have satisfied the policy intention) results in unreasonable regulatory costs on landlords and potentially unreasonable costs for tenants, particularly if the costs of purchasing and maintaining this device are passed on to tenants through rent increases.

HUD's assessment of the need for the status quo to change was shared by all the stakeholders who responded to the targeted consultation.

Option Two – Amending three assumptions of the heating formula

Option Two proposes to amend three of the assumptions in the heating formula, when assessing the required heating capacity of apartments and dwellings built to the current building code requirements for insulation and glazing, to:

- A ventilation rate of 0.5 air changes per hour.
- A constant pickup load calculated by adding 20 percent to the base heat requirement⁷.
- Heat loss of 25 percent to adjacent internal rooms.

Under this option:

- 'Dwellings built to the current building code requirements for insulation and glazing' are defined as:
 - dwellings that have first received building consent on or after the following dates, according to their Zone, as set out in Annex B of NZS 4218:2009:
 - For Zone 1, 30 September 2008.
 - For Zone 2, 30 June 2008.
 - For Zone 3, 31 October 2007.
 - dwellings which first received building consent prior to the relevant date above but which have been renovated throughout to the building code requirements for insulation and glazing which applied from the dates above.
- 'Apartments', are defined as residential buildings that consist of three storeys or more, and contain 6 or more dwellings or individual units within the building.

The Building Research Association of New Zealand (BRANZ) has conducted modelling of these new assumptions for HUD using data for approximately 800 dwellings (including apartments) constructed after 2008 extracted from MBIE's heating assessment tool, and

⁶ For example Stats NZ's analysis is that around 40% of new developments consented since mid-2019 are multi-unit (Stats NZ, Housing in Aotearoa: 2020, Updated 2021, p.10).

⁷ Under this assumption, the transmission heat loss of the living room and the ventilation heat loss of the living room are added together and then a further 20% added, before being divided by 1000.

approximately 2,000 apartments provided by Wellington City Council (WCC). The heating tool data shows that the dwellings constructed after 2008 received significantly reduced required heating capacities under the revised heating formula with, for example, a building given a 5kW requirement under the current heating formula assumptions typically being reduced to a requirement of around 3.5kW when using the new assumptions. For a retail customer this could represent a saving of around \$400 in the capital outlay if they elected to use a heat pump, with further downstream reductions in operating costs.⁸ The WCC apartment data shows a similar trend with the required heat capacity under the current formula of 3kW typically reduced to around 2kW using the new assumptions. The modelling indicated the policy intention of the heating standard of heating to, and maintaining the living room of a rental home at, 18 °C on the coldest day of the year should still be achieved using the new assumptions in the heating formula.

Based on the advice of engineers and building scientists, as well as on the above modelling, amending these three assumptions of the heating formula should mean that the risk of overstating of the required heating capacity for dwellings compliant with the current building code requirements for insulation and glazing and apartments would be significantly reduced, and the formula would more accurately determine the required heating capacity. The revised formula will continue to ensure that the policy objective of the standards in the regulations are met: heating to, and maintaining the living room of a rental home at, 18 °C on the coldest day of the year.

There is still a risk of this revised heating formula oversizing the required heat capacity for these homes in a small number of cases – including, we expect, for a small number of high performing developments. On this basis we propose also to introduce an alternative route to compliance, as discussed below.

The impact of amending the assumptions would be direct and ongoing and would affect all current and future dwellings built to the current building code requirements for insulation and glazing or apartment rental properties.

Stakeholders generally agreed on the changes to the assumptions proposed in this option, although there was some debate about precisely which sorts of building should use this revised formula. The data on the risk of over-estimating the heat requirement for apartments is clear. Based on advice from specialists, HUD also considers that dwellings compliant with the current building code requirements for insulation and glazing are also likely to be affected by the oversizing in the current formula and should benefit from these revised assumptions.

⁸ Based on a comparison of the Mitsubishi Avanti SETSRK50ZSA-W 5.8kW heat pump priced at \$1,799 and the Mitsubishi Avanti SETSRK35ZSA-W 3.7kW heat pump priced at \$1,338 at bunnings.co.nz.

How do the options compare to the status quo?

	Option One – <i>Status Quo</i>	Option Two – Amending the assumptions
Tenants have a warm and dry rental home	0	0 Ensures a warm and dry rental home. No change from the status quo.
Unreasonable regulatory burden not placed on landlords	0	++ Generally ensures that the regulations do not impose unreasonable and unnecessary regulatory burdens on landlords through over-sized heating requirements. The modelling suggests the reduced heating requirements will lead to cheaper heating devices being purchased.
Unreasonable costs not imposed on tenants	0	++ Reduces the ongoing costs for tenants by ensuring heaters are of an appropriate size for the property.
Flexible to allow innovation and cost effective solutions	0	0 Revised formula does not provide any additional flexibility.

Example key for qualitative judgements:

++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
--	much worse than doing nothing/the status quo/counterfactual

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Officials recommend Option Two – amending three assumptions of the heating formula. This option when measured against the four chosen criterion, outperforms the status quo. Based on the modelling data we expect this option to better meet the policy objective of tenants having a warm and dry rental home without the unreasonable regulatory burden on landlords, and the unreasonable higher running costs of tenants, of an over-sized qualifying heater.

Proposal 2: Introducing a grace period for dwellings built to the current building code requirements for insulation and glazing and apartments to comply with the revised heating standard.

Option One – Status quo

Option one is the status quo - keeping the existing compliance timeframe for the heating standard.

Although Option One would require compliance with the new heating standard within the standard 90-day timeframe after the date of a new or renewed tenancy, we do not consider it would deliver the policy objective of a warm and dry rental home for many tenants as the timelines it requires are not realistic. This is because any amendments to the healthy homes standards will not come into force before early 2022. Developers will wish to begin applying the new heating formula as soon as possible to new developments, however landlords of existing apartments and dwellings compliant with the current building code requirements for insulation and glazing whose compliance deadline falls before the 2022 commencement date for the amendments will also need to ensure that their properties comply with the unamended healthy homes standards.

As a result, landlords may feel that compliance is not possible within the standard 90-day timeframe and may not comply at all.

The landlords who do attempt to comply within the 90-day timeframe will have fewer options from which to source their heating system and less time to obtain competitive quotes from heating installers. This is particularly the case if this compliance clock begins close to the date the changes come into force, and the landlord has had little time to plan their compliance. This may result in higher costs for the landlord which could be passed on to the tenants. We consider this regulatory burden and potential costs to tenants to be unacceptable. For these reasons Option One may also inhibit a landlord's flexibility to consider innovative and cost-effective solutions to meet the heating standard.

Option Two – Introducing a 'sliding scale' grace period of up to six months (including the current 90 day compliance period) to comply with the amended heating standard

Option Two is to introduce a 'sliding scale' grace period of up to six months to comply with the amended heating standard. This grace period applies solely to dwellings built to the current building code requirements for insulation and glazing and apartments. If there is a new or renewed tenancy during the three-month period starting when the changes come into force, the 90 day compliance period will only start once this three month period ends, meaning landlords in this position will have up to six months rather than 90 days to comply. This grace period will not apply retrospectively to rental homes where a tenancy agreement was entered into or renewed between 1 July 2021 and the date the proposed changes come into effect.

This option provides additional time for industry and regulated parties to comply with changes to the heating standard compared to the status quo. This is the case regardless of whether a full six-month period elapses between a new or renewed tenancy and the expiry of the 90 day compliance period, as planning may commence as soon as the new heating standard comes into force.

Given the potential regulatory uncertainty, the introduction of a grace period of up to six months would be effective at reducing confusion around the heating standard, and also

allows for difficulties in obtaining heating devices and building and construction services to satisfy the heating portion of the healthy homes standards.

We consider the higher performing nature of the properties impacted by the new heating formula should mean a grace period of up to six months has less of an impact on tenants than it would do for other types of rental building.

In addition, a grace period of up to six months will provide flexibility for some landlords to source necessary heating devices which are more cost effective and potentially consider innovative solutions, rather than having to obtain a device at short notice potentially at a higher price. The landlords who are able to do this within the grace period will not face unreasonable regulatory burdens, and tenants will not face unreasonable costs which may be passed on in their rent due to expensive heating systems.

On this basis, although Option Two is superior to the status quo, it is still only of limited consistency with the policy intent of the heating standard because it may not provide a realistic timeframe for compliance for many landlords.

In addition, under Option Two, landlords who cannot comply in time or who are forced to purchase more expensive devices than required to meet the standard within the required timeframe will still face an unreasonable regulatory burden and will not have the flexibility to provide cost-effective heating systems. This in turn may cause unreasonable costs on tenants.

Option Three – Introducing a ‘sliding scale’ grace period of up to nine months (including the current 90 day compliance period) to comply with the amended heating standard

Option Three is to introduce a ‘sliding scale’ grace period of up to nine months to comply with the amended heating standard. This option applies in exactly the same way as Option Two but with a 90-day compliance period starting on the expiry of a six month rather than three month period starting when the changes come into force.

In addition to the benefits of Option Two, compared to the status quo, a grace period of up to nine months would not only account for concerns around legislative uncertainty and for there to be a lead in time for landlords to reassess their required heating capacity under the new formula and then for products and services to be requested. As above, landlords could begin planning as soon as the new heating standard came into force even if they do not benefit from the full nine-month grace period between a new or renewed tenancy and the expiry of the 90 day compliance period.

We consider that Option Three will ensure that most landlords will be able to comply with the amended heating standard in time. On this basis we consider that Option Three achieves the overall intent of the healthy homes standards – which is for warm, dry, and safe rental homes for New Zealanders in an effective as well as realistic timeframe.

In addition, Option Three, with its grace period of up to nine months, also provides greater flexibility, compared to the status quo, for landlords to source cost-effective and potentially innovative heating devices with a reasonable chance of obtaining them in time. This should mean unreasonable costs are not imposed on tenants and landlords are free from unreasonable regulatory burdens.

How do the options compare to the status quo?

	Option One – Status Quo	Option Two – grace period of up to six months	Option Three – grace period of up to nine months
Tenants have a warm and dry rental home	0	0 Ensures a warm and dry rental home. No change from the status quo.	0 Ensures a warm and dry rental home. No change from the status quo.
Unreasonable regulatory burden not placed on landlords	0	+	++ Most landlords will have time to source devices at a reasonable price.
Unreasonable costs not imposed on tenants	0	0 A delay on complying with the heating standard will mean some tenants have under-powered heating devices. This is balanced against the better thermal properties of the buildings subject to the changed heating formula, and the lower running costs and potentially lower rent linked to a device which is not over-powered (where compliance is possible under this Option).	+ As with Option 2, however we expect most affected landlords to be able to comply with the revised heating standard under this Option. This should result in more tenants benefiting from costs savings.
Flexible to allow innovation and cost effective solutions	0	+ Some landlords will have time to source heating systems which are cost-effective and potentially innovative. However we expect other landlords either not to comply in time or to source devices which do not meet this criteria.	++ We expect most landlords to have sufficient time to source heating systems which are cost-effective and potentially innovative. A much lower risk of landlords having to purchase more expensive or inferior devices.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Officials recommend Option Three. Officials recommend that the grace period for dwellings built to the current building code requirements for insulation and glazing and apartments to comply with the heating aspect of the healthy homes standards should be up to nine months. This takes into consideration the impact on both tenants and landlords which Option Two's grace period of up to six months may not be able to do adequately. By having an extended grace period of up to nine months rather than six, Option Three will allow more landlords to install the correct sized heater and have an increased likelihood of achieving compliance by

the compliance date. While this means that the tenants affected may face an additional delay in the installation of a heating device, dwellings built to the current building code requirements for insulation and glazing and apartments are known to be warmer than most homes because of a lessened loss of heat.

Some stakeholders have opposing views to officials, and do not agree with the introduction of a grace period. Many thought that it would cause harm to tenants and was not necessarily needed. Officials are confident, however, that a grace period is warranted due to the concerns outlined above.

Proposal 3: Establishing an alternative means of complying with the heating standards for all dwelling types.

Option One – Status quo

Under this option the required heating capacity for all rental properties would continue to be determined by reference to the heating formula alone. While the proposed amendments to the heating formula are expected to resolve the majority of issues identified above with oversizing, the formula does not take into consideration innovative design elements that may reduce the required heating capacity. These approaches are often used by developers and those creating homes with alternative methods and design (e.g. high performance windows and insulation which significantly exceeds current building code requirements for insulation and glazing on properties which might not fully meet the exemption for ‘passive houses’ in the Regulations).⁹ The status quo limits the flexibility of parties to adapt to innovative design elements, and reduces the opportunity for the heating formula to be future-focused.

The status quo is consistent with the policy intention of the heating standard, as the heating formula and the revisions proposed above should ensure that the living rooms of most dwellings can be heated to and maintained at 18 °C on the coldest day of the year. However, it rules out other methods of meeting this objective which could be proposed for high performing energy efficient buildings. As a result, there is a risk of non-compliance if the heating formula requires an over-powered heating system. This non-compliance may undermine the policy intention of the heating standard.

Although we consider that the changes to the heating formula proposed above should significantly reduce the risk of over-sized heating devices being required in rental properties, there is a risk that this may still occur for high performing developments such as those using ‘passive house’ design principles. Where this occurs, this will impose unreasonable regulatory burdens on the affected landlords as well as the developers of these buildings. Over-sized heaters may also mean unreasonable costs for tenants, as noted above.

Option Two – Introducing an alternative means of compliance for all rented dwellings

Option Two is the introduction of an alternative means of compliance for all rented dwellings, not just those subject to the revised heating formula. The alternative compliance pathway would involve a specialist certifying that the heating device or system used will meet the policy intent of the regulations. The specialist will have to assess the heating device against the following criteria, and supply documentation to demonstrate how the heater or heating

⁹ See Residential Tenancies (Healthy Homes Standards) Regulations 2019, Regulation 11 and details about passive house standards at <https://passivehouse.com>.

system complies with this criteria. The documentation should show how the specialist has taken the following into consideration:

- the heating device or system will need to be able to heat the living room of the dwelling to 18°C on the coldest day of the year by using the assumed external temperature assumptions for the location in Schedule 2 of the healthy homes standards.
- the heating device or system must be a 'qualifying heater' under the healthy homes standards. The electric heater 'top up' allowance or the large heater tolerance may be used if any existing qualifying heaters or qualifying large heaters were installed before 1 July 2019.
- the heating device or system must have a sufficient pick up load to be able to heat the living room to 18°C within 2 hours after a period of 8 hours disuse.
- the heating device or system must be sufficiently sized for the expected transmission, infiltration and ventilation heat losses of the living room during very cold and windy external conditions, based on assumed external temperature assumptions for the location in Schedule 2 of the healthy homes standards. This includes heat losses to:
 - external air.
 - ground.
 - adjoining spaces within the same dwelling or other building entities within the same building or to another adjoining building.

A suitably qualified specialist to conduct the alternative route to compliance assessment will be defined as at least one of the qualifications below:

- a registered chartered engineer under the Chartered Professional Engineers of New Zealand Act 2002.
- an International Professional Engineer (IntPE).
- a person that has completed a tertiary engineering, physics or building science qualification (at New Zealand Qualification Framework Level 7 or above) , with an additional 5 years of experience in heating system design whether commercially or otherwise.

This proposal ensures that the policy intent of the heating standard is upheld and properties are compliant with the intentions of the heating standard in a flexible way which does not stifle innovation. This also means that compliance with the heating standard should be incentivised, as landlords and developers feel they can install a more suitable heating system than that which may be required by the heating formula.

Option Two will be available to all rental homes and take into account any additional factors of the building that may not be taken into consideration by the heating formula. It will allow the heating standard the flexibility, lacking under the status quo, to take account of technologies which promote innovative, energy efficient and cost effective heating solutions in high performing buildings, such as those using 'passive house' design principles.

Option Two, where it is utilised, should also mitigate any residual risks of the heating formula requiring an over-sized heating device which remain after the changes recommended above have been made, although we expect the formula usually to require a suitably powered heating device. In addition, our intention is that the definition of the ‘specialist’ is broad enough that a suitably qualified person can be engaged relatively easily and at a reasonable cost. Landlords and developers then have the flexibility to choose whether to use the heating formula and in the unlikely event that the formula over-estimates the heating required, mitigate any burden by paying a reasonable amount to ensure compliance through an assessment by a specialist.

Our view, therefore, is that this option should not create additional limitations or impose unreasonable regulatory burdens on landlords, developers or Kāinga Ora. It should also assist with ensuring tenants are not subject to the unreasonable costs of oversized heating devices in combination with any innovative, energy saving technology in their home.

How do the options compare to the status quo?

	Option One – <i>Status Quo</i>	Option Two – An alternative means of compliance
Tenants have a warm and dry rental home	0	0 Ensures a warm and dry rental home. No change from the status quo.
Unreasonable regulatory burden not placed on landlords	0	+
Unreasonable costs not imposed on tenants	0	+
Flexible to allow innovation and cost effective solutions	0	++

	such as those using 'passive house' design principles.
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What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Officials recommend Option Two – introducing an alternative means of compliance for all rented dwellings.

Option Two better delivers on meeting the policy objective of a warm and dry rental home, compared to the status quo, because it provides more flexibility in meeting it and removes any incentive for non-compliance in the unusual event that the heating formula or the revised heating formula do not require a suitably sized heating system – particularly for dwellings using innovative, energy efficient designs.

Although there is some cost to engaging the 'specialist' we consider that the broad definition should ensure this can be done at a reasonable price. The cost of this should be offset by the savings made from using the recommendation of the heating formula.

We do not consider that unreasonable costs will be imposed on tenants through Option Two. If use of the alternative route to compliance results in a more suitably powered heating device being installed, we expect tenants to save money. In addition, there is less chance of landlords passing higher running costs on to tenants where a heating device is not oversized.

Finally Option Two preserves the ability of developers and landlords to install innovative and cost effective technology in rental homes and then decide on the best approach to calculate the required heating capacity. This is particularly useful in the small number of high performing, energy efficient homes currently being built where the current or revised heating formulas may still not be suitable.

What are the marginal costs and benefits of the options?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Tenants	<i>Amending the heating formula</i> Amending the heating formula will mean that the required heating capacity will decrease for dwellings built to the current building code requirements for insulation and glazing and apartments. The formula will only decrease however, to determine more accurately the heating capacity required to heat, and maintain, the living room of a rental property to 18 °C on the coldest day of the year.	None	Medium
	<i>Introducing a grace period</i>	Low	Medium

	The introduction of a grace period will mean that some rental properties will be without a heating device for longer than what was originally intended. However the types of property affected are likely to be warmer due to their better airtightness, insulation and lower heat loss to adjacent internal rooms.		
	<i>Establishing an alternative means of complying</i> An alternative means of complying with the heating standard will have no cost affect on tenants. Rental properties will have the means to heat and maintain their living rooms to 18 °C on the coldest day of the year.	None	Medium
Landlords	<i>Amending the heating formula</i> Once the amendments come into force we expect affected landlords to face lower costs compared to the status quo because they will not be required to install oversized heating devices.	None	Medium
	<i>Introducing a grace period</i> Introducing a grace period will have no cost affect on landlords.	None	Medium
	<i>Establishing an alternative means of complying</i> An alternative means of complying will have little to no required cost on landlords. Landlords can choose whether to spend an additional amount to use this alternative compliance route.	Low	Medium
Total monetised costs		Low	Medium
Non-monetised costs		Low - Medium	Medium
Additional benefits of the preferred option compared to taking no action			
Tenants	<i>Amending the heating formula</i> Amending the heating formula will allow for more accurately sized	Low - Medium	Medium

	<p>heating devices to be used by tenants. This may reduce excessive electricity and energy costs. It may also reduce the risk of landlords passing on costs to tenants through rent increases.</p>		
	<p><i>Introducing a grace period</i> Introducing a grace period will help ensure tenants receive a more cost-effective heating source than they would if the current standard continues to apply.</p>	Low - Medium	Medium
	<p><i>Establishing an alternative means of complying</i> An alternative means of complying with the heating standard helps ensure tenants receive a more cost-effective heating source than they would if the current standard continues to apply.</p>	Low - Medium	Medium
Landlords	<p><i>Amending the heating formula</i> Amending the formula will reduce the required heating capacity for dwellings built to the current building code requirements for insulation and glazing and apartments. This will reduce the upfront cost of the heating device and ongoing maintenance costs for landlords.</p>	Medium	Medium
	<p><i>Introducing a grace period</i> Introducing a grace period will allow landlords additional time to comply with the updated and more accurate heating standard. It will also reduce the regulatory uncertainty around compliance and may reduce their costs compared to sourcing a heating source to a shorter timescale.</p>	Medium	Medium
	<p><i>Establishing an alternative means of complying</i> Establishing an alternative means of compliance will mean that buildings that are built using alternative, innovative and potentially energy saving design and methods will be able to show compliance with the heating standard away from the simplistic heating formula.</p>	Low - Medium	Medium

Total monetised benefits		Medium	Medium
Non-monetised benefits		Medium	Medium

Section 3: Delivering an option

How will the new arrangements be implemented?

Legislative change

The proposed changes will be given effect through an amendment to the Residential Tenancies (Healthy Homes Standards) Regulations 2019 (the regulations).

Implementation Risks

Amendments to the regulations will not come into effect until early 2022, which is after the date that some private landlords and all boarding house tenancies must comply with the healthy homes standards.

All boarding house tenancies must comply with the healthy homes standards by 1 July 2021. Private landlords must comply within 90 days of a new or renewed tenancy from 1 July 2021. Therefore, privately tenanted properties with a new or renewed tenancy on 1 July 2021 will have to comply at the latest by 28 September 2021.

s 9(2)(g)(i)

. This would not capture any tenancies that are renewed in those months or tenancies where a bond was not lodged. A relatively small proportion of these properties will be compliant with the current building code requirements for insulation and glazing and/or be apartment-style buildings.

HUD officials have asked the Tenancy Compliance and Investigation team (TCIT) at Tenancy Services how they would approach complaints about non-compliance during this period. TCIT has advised that if they are aware changes to the healthy homes standards are being made, they are unlikely to take enforcement or punitive action related to the upcoming changes. However, if a tenant would still like to pursue the complaint, TCIT would explain they could take the complaint to the Tenancy Tribunal.

s 9(2)(g)(i)

Implementation

The amendments to the healthy homes standards will be implemented in the same way as the original healthy homes standards. There are already operational policies, processes, and systems in place.

Information and education relating to the amendments to the healthy homes standards would need to include information on how the changes apply to rental homes. This will be targeted to relevant stakeholder groups, including government agencies, industry specialists, and private landlord, property management, and tenant advocacy groups.

Operational oversight

Operational oversight will be carried out by Tenancy Services in MBIE. They are responsible for the operational oversight of the healthy homes standards.

Tenancy Services as the enforcement and compliance office will also be responsible for compliance with these amendments. The amendments will fall under the existing enforcement strategy for the healthy homes standards overall.

The amendments will come into effect following a decision from Cabinet and Executive Council. We expect the amendments to come into effect in early 2022.

How will the new arrangements be monitored, evaluated, and reviewed?

General system-level monitoring and evaluation of the healthy homes standards

HUD is the regulatory steward for the residential tenancy system and are already monitoring the healthy homes standards. HUD will further monitor the implementation of these amendments. As part of this ongoing work, HUD policy officials are in regular contact with Tenancy Services within MBIE, which holds compliance, enforcement, information and education, and mediation functions for the standards.

HUD has commissioned annual surveys to be undertaken of the healthy homes standards. There is the potential for future reports to include questions focused on these amendments and the reception of them.

Specific monitoring and evaluation of the amendments to the healthy homes standards

To gain an understanding of whether these amendments have solved the policy issues raised, HUD will consult with:

- groups representing landlords, property managers, and tenants
- Tenancy Services (in MBIE)
- developers
- industry specialists
- Māori housing providers and advocates
- public housing providers.

HUD will work across government and with key stakeholder groups to review the amendments to the healthy home standards after implementation. This will enable the Ministry to determine the effectiveness of the new regulatory standard and identify any issues that prompt the need for policy work leading to further legislative, regulatory, or operational policy change.