
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2020 No.

**The Energy Efficiency (Domestic Private
Rented Property) (Scotland) Regulations 2020**

PART 3

Exemptions

Consent exemption

10.—(1) Subject to paragraph (2), regulation 6 does not apply if the landlord has been unable to make relevant energy efficiency improvements to the property to increase the energy performance indicator for the property so that the property meets or exceeds the minimum level of energy efficiency as a result of—

- (a) the current tenant refusing consent to any relevant energy efficiency improvement being made, or the landlord having been unable to obtain that consent despite reasonable efforts having been made by the landlord to obtain that consent,
- (b) within the preceding five years, third party consent having been—
 - (i) refused, or
 - (ii) granted subject to a condition with which the landlord cannot reasonably comply, or
- (c) a failure to obtain third party consent despite reasonable efforts having been made by the landlord to obtain that consent within the preceding five years.

(2) The exemption in paragraph (1) only applies, and the landlord may only rely on the exemption, if the relevant information relating to the exemption has been submitted for registration in accordance with regulation 14(4) and schedule 2.

Negative impact on fabric or structure of the domestic PR property

11.—(1) Subject to paragraph (2), regulation 6 does not apply if, in respect of the only outstanding relevant energy efficiency improvement or improvements, the landlord has obtained a written opinion from a relevant person advising that due to the potential negative impact of the improvement or improvements on the fabric or structure of the domestic PR property, or the building of which it forms part, it is not appropriate to make such improvement or improvements.

(2) The exemption in paragraph (1) only applies, and the landlord may only rely on the exemption, if the relevant information relating to the exemption has been submitted for registration in accordance with regulation 14(4) and schedule 2.

Cost cap exemption

12.—(1) Subject to paragraph (5), regulation 6 does not apply in respect of a domestic PR property—

- (a) during the period beginning on 1 October 2020 and ending on 31 March 2022 in the circumstances set out in paragraph (2),

- (b) during any period after 31 March 2022 in the circumstances set out in paragraph (3).
- (2) The circumstances referred to in paragraph (1)(a) are—
 - (a) the actual costs exceed £5,000,
 - (b) no outstanding relevant energy efficiency improvement can be made to property without the sum of the actual costs and the cost to the landlord of making an outstanding relevant energy efficiency improvement exceeding £5,000, or
 - (c) no outstanding relevant energy efficiency improvement can be made to property without the cost to the landlord of making an outstanding relevant energy efficiency improvement exceeding £5,000.
- (3) The circumstances referred to in paragraph (1)(b) are—
 - (a) the actual costs exceed £10,000,
 - (b) no outstanding relevant energy efficiency improvement can be made to property without the sum of the actual costs and the cost to the landlord of making an outstanding relevant energy efficiency improvement exceeding £10,000, or
 - (c) no outstanding relevant energy efficiency improvement can be made to property without the cost to the landlord of making an outstanding relevant energy efficiency improvement exceeding £10,000.
- (4) In this regulation and in paragraph 3 of schedule 2—
 - (a) “actual costs” means the cost of installation of qualifying energy efficiency improvements to the domestic PR property incurred by a landlord, including expenditure financed by relevant financial assistance but not including expenditure financed by a grant from the Scottish Ministers for that purpose,
 - (b) “qualifying energy efficiency improvement” in relation to a domestic PR property means—
 - (i) in respect of the period beginning on 1 October 2020 and ending on 31 March 2022, any energy efficiency improvement made to the property on or after 1 April 2020 and before 1 April 2022, and
 - (ii) in respect of any period after 31 March 2022, any energy efficiency improvement made to the property on or after 1 April 2020,
 - (c) “relevant financial assistance” means financial assistance for the purpose of making energy efficiency improvements provided by means of a loan from the Scottish Ministers or as mentioned in subparagraphs (b)(i) to (iii) of the definition of “relevant energy efficiency improvements” in section 55(4) of the Act,
 - (d) where the cost of making an outstanding relevant energy efficiency improvement to a property would be shared between the landlord and other persons, the cost to the landlord is the share of that cost which the landlord would be liable to pay in respect of the property.
- (5) The exemption in paragraph (1) only applies, and the landlord may only rely on the exemption, if the relevant information relating to the exemption has been submitted for registration in accordance with regulation 14(4) and schedule 2.

Temporary exemption in certain circumstances

13.—(1) Subject to paragraph (4), regulation 6 does not apply to a landlord during a relevant period.

(2) For the purpose of this regulation “a relevant period” in relation to a domestic PR property is the period of six months beginning with the date on which the landlord becomes, or continues to be, the landlord of that property by virtue of—

- (a) the grant of a lease pursuant to a contractual obligation entered into before the date on which these Regulations came into force,
 - (b) the deemed creation of a new lease by operation of law,
 - (c) the grant of a lease by order of the court, or
 - (d) the circumstances referred to in paragraph (3).
- (3) The circumstances referred to in paragraph (3) are—
- (a) the landlord became the landlord of the domestic PR property on purchasing, or otherwise acquiring, an interest in that property, and
 - (b) on the date of acquisition of that interest, the property was let on an existing tenancy.
- (4) The exemption in paragraph (1) only applies, and the landlord may only rely on the exemption, if the relevant information relating to the exemption has been submitted for registration in accordance with regulation 14(4) and schedule 2.

PRS Exemptions Register

14.—(1) A local authority, in respect of domestic PR properties in its area, must establish and maintain a register (a “PRS Exemptions Register”)—

- (a) of information submitted in accordance with paragraph (4) or regulations 8(1) or (3) or 17(2),
- (b) from which the Scottish Ministers and enforcement authorities may, free of charge, access information registered on it, and held on it, as necessary to enable them to carry out their functions under these Regulations.

(2) The local authority must make the information specified in paragraph (3) available for inspection free of charge.

(3) The information is the following information relating to any domestic PR property, which has been registered in accordance with paragraph (4)—

- (a) the address and post code of the property,
- (b) the exemption relied on,
- (c) a copy of the valid energy performance certificate for the property,
- (d) the date on which information was submitted for registration in accordance with paragraph (4).

(4) In any case where a landlord of a sub-standard domestic PR property wishes to rely on one or more of the exemptions provided for in regulations 10(1), 11(1), 12(1) and 13(1) in respect of the letting, or continued letting, of that property, the landlord must submit the relevant information for registration on the PRS Exemptions Register.

(5) In this Part, “relevant information” is—

- (a) in all cases—
 - (i) the landlord registration number of the landlord⁽¹⁾,
 - (ii) the address and postcode of the domestic PR property, and
 - (iii) a copy of the valid energy performance certificate for the property,
- (b) in respect of the regulation on which the landlord wishes to rely, the information relating to that regulation set out in schedule 2.

(1) “landlord registration number” is defined by section 84(5A) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) introduced by section 3(1) of the Private Rented Housing (Scotland) Act 2011 (asp 14).

