

POLICY NOTE

THE ENERGY EFFICIENCY (DOMESTIC PRIVATE RENTED PROPERTY) (SCOTLAND) REGULATIONS 2020

SSI 2020/XXX

The above instrument was made in exercise of the powers conferred by section 55 of the Energy Act 2011. The instrument is subject to affirmative procedure.

The regulations will require private rented landlords to improve the energy efficiency of domestic private rented sector (PRS) property in Scotland. They prescribe a minimum level of energy efficiency by means of the energy performance indicator included on the energy performance certificate (EPC) for the property. The minimum level is set for the period 1 October 2020 to 31 March 2022 as EPC energy performance indicator E, and from 1 April 2022 as EPC energy performance indicator D. Subject to prescribed exceptions, a landlord of a domestic private rented property must not grant a new tenancy of the property after 1 October 2020, and must not continue to let the property after that date, where the energy efficiency of the property is below the minimum level.

Policy Objectives

The policy intent is to improve the energy efficiency of private rented housing. The Programme for Government (PfG) 2019-2020 states that from 1 April 2020 private rented sector landlords will have to meet minimum energy efficiency standards for new tenancies. This is within the aims of Energy Efficient Scotland, which seeks to improve the energy efficiency of the Scottish existing building stock. Minimum energy efficiency standards in the private rented sector support the Scottish Government's efforts to meet its climate change, energy efficiency and fuel poverty targets. Furthermore, improvements in the energy efficiency in domestic private rented properties will help the Scottish Government achieve broader objectives, which include supporting economic growth and jobs in the green construction industry and improving public health.

These regulations introduce a minimum level of energy efficiency in the domestic private rented sector: initially at EPC band E and then rising to EPC band D. The minimum level is set for the period 1 October 2020 to 31 March 2022 as EPC energy performance indicator E, and from 1 April 2022 as EPC energy performance indicator D. Subject to prescribed exceptions, a landlord of a domestic private rented property is prohibited from letting a sub-standard property from 1 October 2020 where the energy efficiency of the property is below the minimum level. The landlord must carry out relevant energy efficiency improvements to achieve the minimum standard before letting the property. The regulations provide for exemptions including where the landlord has made all the relevant energy efficiency improvements, where such improvements will have a negative impact on the fabric or structure of the property and where the costs actually incurred and/or anticipated (or the sum of cost incurred and anticipated) in making energy efficiency improvements have exceeded or will exceed the prescribed cost cap. Landlords seeking to rely on an exemption must register that exemption on an exemptions register maintained by the local authority in their area. Local

authorities have been granted enforcement powers to serve compliance notices if they consider that a landlord may be in breach of the regulations and penalty notices imposing a financial penalty where the local authority is satisfied that the landlord is in breach of the regulations.

Consultation

The Scottish Government consulted on policy proposals for a minimum standards for energy efficiency sector in the PRS in 2017, and there was support for setting a rising standard of energy efficiency over time, whilst tackling the least energy inefficient properties first. A copy of the consultation report is published online at <https://www.gov.scot/publications/energy-efficiency-condition-standards-private-rented-housing-analysis-responses-public/>

The Scottish Government subsequently consulted on draft regulations and the draft guidance on the minimum standards in the energy efficiency sector in the private rented sector in the summer of 2019, allowing interested parties to provide feedback. A copy of the consultation report is published online at <http://www.gov.scot/ISBN/9781839605154>.

A full list of those consulted and who agreed to the release of their response is attached to the consultation report. Respondents include CoSLA, Scottish Association of Landlords & Council of Letting Agents; Existing Homes Alliance Scotland; Energy Action Scotland; Scottish Land & Estates; Consumer Futures Unit, Citizens Advice Scotland; Chartered Institute of Housing Scotland; Shelter Scotland.

We have engaged with a range of landlord, fuel poverty and climate change interests, as well as local authority interests.

The evidence shows that a higher proportion of properties in the private rented sector fall into the worst energy efficiency bands (E, F and G) than is the case for other tenures. Tenants in the social rented sector (the tenure with the highest levels of energy efficiency) have benefitted from the strong regulatory framework set by the Scottish Housing Quality Standard and the Energy Efficiency Standard for Social Housing. There are also likely to be market failures, such as misaligned incentives between landlords, who pay for energy efficiency measures, and tenants, who benefit from them, which cause energy efficiency in the private rented sector to lag the owner- occupier sector. This indicates that regulation is now required if private sector tenants are to enjoy the warmer and easier to heat homes more prevalent in other tenures.

It is recognised that as this is a new requirement on private landlords, a range of support will be required, including landlord specific guidance and ensuring that a loan offer is available from the Scottish Government to support landlords to improve energy efficiency.

To provide an adequate lead in time for landlords to meet the new standard, and allow time for those landlords seeking to rely on an exemption (evidence of which must be submitted for registration) with local authorities, the prohibition on letting a sub-standard property in respect of new tenancy agreements will commence on 1 October 2020 . This lead in time will also address concerns raised by COSLA and SOLACE regarding the preparations required on the part of local authorities, as enforcement authority for the regulations. Further, regarding the introduction of the regulations, we intend for the first phase of the regulations (to reach EPC E) to support local authorities in their role as enforcement authority, working in partnership with local areas to establish how the regulations bed down in practice. This will mean initially gathering evidence about non-compliance, identifying and eliminating barriers and considering how these regulations can be used to strengthen existing programmes. We will review this

approach by 2022, for the second phase of the regulations and look to deliver a strengthened enforcement approach at this point. We have worked with local authorities and local authority tailored guidance and a ‘toolkit’ has been developed to aid the monitoring and enforcement of the regulations.

Impact Assessments

A Business and Regulatory Impact Assessment , an Equality Impact Assessment; the Fairer Scotland Duty Assessment; Island Communities Impact Assessment; and the Children’s Rights and Wellbeing Impact Assessment are also available

BRIA – <http://www.gov.scot/ISBN/9781839605048>

EQIA – <http://www.gov.scot/ISBN/9781839605062>

Fairer Scotland Duty –<https://www.gov.scot/publications/energy-efficiency-private-rented-property-scotland-regulations-2019-fairer-scotland-duty-impact-assessment/>

ICIA – <http://www.gov.scot/ISBN/9781839605055>

The Information Commissioner’s Office (ICO) has confirmed that they are satisfied no further action is required in terms of data protection.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is available at the link above.

Rather than requiring all properties to reach an EPC D immediately, the regulations have been designed to come into effect in a phased manner, by first applying to properties where there is a change in tenancy before applying to all properties by a backstop date, coupled with setting a trajectory so that the minimum standard is initially set at an EPC E and only subsequently raised to an EPC D. This will help minimise any disruption to landlords and tenants, and reduce pressure on the supply chain, while ensuring that within a reasonable time period all tenants in the private rented sector enjoy a minimum standard of energy efficiency.

The average projected cost of upgrading dwellings which currently have an EPC F or G to an EPC E is around £1,140. These upgrades are expected to produce substantial savings in fuel bills, of around £330 per year even on a more conservative basis of applying in-use factors. Once these dwellings have been improved to an EPC E, the cost of raising these dwellings, as well as dwellings with an initial EPC of E, to an EPC D is projected to be around £2,010 on average, and will produce fuel bill savings of around £190 per year on average (applying in-use factors). As a result, the average net present value of the regulations (which in addition to upgrade costs and fuel bill savings also takes into account the cost of obtaining a post-upgrade EPC report, makes an allowance for hidden costs, such as the hassle factor of clearing lofts, and discounts future costs and benefits) is expected to be significantly positive, at around £5,480 for the first stage to EPC E and £1,110 for the second stage to EPC D. In addition there will be benefits to society from lower greenhouse gas emissions.

Modelling suggests that the most common measures required to raise dwellings from an EPC E, F or G to an EPC D are loft insulation, low energy lighting, a hot water tank jacket and cavity wall insulation, which are all simple, low cost measures. Having a staggered trajectory to EPC E first and then to EPC D gives landlords flexibility to plan their investment in a cost effective manner.

Scottish Government
Housing and Social Justice Directorate

28 January 2020