

# **Energy Efficient Scotland – The Energy Efficiency (Private Rented Property) Scotland Regulations 2019**

## **Consultation on Draft Regulations**

### **Interim Island Communities Impact Assessment**

#### **Introduction**

The importance of island-proofing was recognised in the ‘Empowering Scotland’s Island Communities prospectus’ published in June 2014. The principle of island-proofing is one of building a broad-based islands awareness into the decision making process of all parts of the public sector.

The Island (Scotland) Act 2018 places a duty on the Scottish Ministers and other relevant authorities, including a number of public authorities, to have regard to island communities in exercising their functions, and for the Scottish Ministers this will also include the development of legislation. This duty is often referred to as ‘island-proofing’.

The Scottish Government recognises the importance of island-proofing and this islands assessment is being produced in line with these instructions.

#### **Background**

Scottish Ministers announced in June 2015 that they would take long-term action to reduce the energy demand of, and decarbonise the heat supply to our domestic and non-domestic sectors, and designated energy efficiency as a national infrastructure priority.

In 2017 Scottish Government consulted on proposals for minimum energy efficiency standards for privately rented sector (PRS) homes. Performance for Government (PfG) confirmed that new standards would be introduced to ensure that tenants are able to enjoy homes that are warmer and more affordable to heat. Private landlords would be able to access support including loan funding through Home Energy Scotland.

In the Energy Efficient Scotland Route Map, published in May 2018, it was reported that the Private Rented Sector (PRS) would be required to meet the minimum standard of EPC Band C by 2030, where technically feasible and cost effective.

These changes, however, will not be in place in time for the PRS regulations which are due to go before the Scottish Parliament in the autumn of 2019. The regulations will therefore propose an EPC rating of Band D or E based on existing EPC processes, with no reference to cost effectiveness.

In 2017 we consulted on proposals to improve the energy efficiency and condition of standards of privately rented housing in Scotland. This consultation explored:

- the need for setting minimum energy efficiency standards in private rented housing
- set out the proposed scope of minimum standards
- looked at how the standard would work at the point of rental, and at a date by which time all properties would need to meet the standard
- set out proposals for raising the minimum standard over time
- explored what would be needed in a new assessment to support the introduction of standards
- sought views on the impact of these proposals.

Informed by this consultation, the Energy Efficient Scotland Route Map confirmed our intention to bring forward regulations based on Energy Performance Certificates, requiring landlords of privately rented homes to meet minimum EPC standards from April 2020. Initially minimum energy efficiency standards will be introduced under Section 55 of the Energy Act 2011, and will require landlords of privately rented homes to ensure their properties achieve EPC Band E from 1 April 2020 at a change of tenancy, and then EPC Band D from 1 April 2022 at a change of tenancy.

In May 2018<sup>1</sup> we asked further questions to develop our thinking on the private rented sector and the draft regulations and guidance presented here have been informed by that. Our current consultation develops the approach informed by that and sets out the draft regulations and draft guidance which will then be laid in Parliament after the Summer recess subject to securing a suitable Parliamentary timeslot.

## **2019 Consultation**

Energy Efficient Scotland will require minimum energy efficiency targets to be met by all buildings in Scotland and so it is vital that the views of individuals and public bodies are taken into consideration and used to shape the programme. Through the 2019 Consultation, we will gather responses to ensure that the Energy Efficient Scotland framework is both supported and deliverable.

We will gather views on the nature of the guidance to support the Regulations and ensure that users are confident that sufficient information is available to them to begin implementation of the standards required.

The Energy Efficiency (Private Rented Property) (Scotland) Regulations 2019 (Annex A) make provision for the introduction and enforcement of minimum standards of energy efficiency within the Private Rented sector.

The Draft Regulations are designed to tackle the least energy-efficient properties in Scotland, those with an EPC rating of F or G on their Energy Performance Certificate (EPC). The Draft Regulations establish a minimum standard of EPC band E for domestic private rented property, affecting new tenancies from 1 April 2020 and **all** tenancies from 31 March 2022. Similarly, from 1 April 2022 the landlord must not let

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<sup>1</sup> [https://consult.gov.scot/better-homes-division/energy-efficient-scotland/user\\_uploads/188061\\_sct0118873760-1\\_energy-p8.pdf](https://consult.gov.scot/better-homes-division/energy-efficient-scotland/user_uploads/188061_sct0118873760-1_energy-p8.pdf)

the property unless the EPC is minimum of D. By 31 March 2025 **all** PRS properties will need to have an EPC rating of D.

The Draft Regulations require that these standards must be met at the prescribed dates or have a valid exemption at the start of the tenancy.

The Draft Regulations propose the use of Energy Performance Certificates as the measure for this standard and sets out the process of identification of the relevant required improvements to reach that standard (Part 2).

The Draft Regulations allow for exemptions and set out the details of this at Regulations 11-13 (Part 3) and relate to consent, cost and other temporary exemptions which may occur in certain circumstances.

Local Authorities will enforce the regulations (Part 4) and as part of this will hold an exemptions register (Schedule 2). Powers to gather information to support the work being undertaken by local authorities may be done through the serving of a Compliance notice (Regulation 17).

The Draft Regulations allow for the serving of a penalty notice (Part 5) which imposes a financial penalty, a publication penalty or both. Such penalty notices can be the subject of an appeals process (Part 6).

Within the consultation we will be seeking views on situations where it is appropriate for the lower standard to be acceptable for the private rented sector.

## **Questions in the 2019 Consultation**

### **Exemptions**

In the 2017 we sought views on situations where it is appropriate for a lower standard to be acceptable for private rented sector. This was followed up in the 2018 consultation where options for exemptions were sought.

Draft exemptions have been set in the draft regulations and been expanded in detail in the guidance. We currently seek vicews on the approach to these exemptions as follows:

#### **Question 1**

Do you think that the proposed approach to exemptions both within the Regulations (Regulations 11-13) and amplified in the Guidance (Chapter 4) provides you with sufficient clarity on meeting the standard or seeking an exemption to that standard?

### **Impact on island and rural communities.**

We know from previous consultation that the majority of respondents supported some form of exemptions. Exemptions have been proposed to address concerns expressed regarding properties in remote, rural or island locations where properties

are often of traditional construction type and off-gas grid, and installation costs are high. This is also echoed in the approach taken regarding cost cap (see below) .

### **Doing the work**

We aim to introduce new tailored support as we introduce the regulations. We are keen to understand how such an incentive might help improve the energy efficiency of properties in the private rented sector. This additional support will complement the financial support already available from Scottish Government:

- **Home Energy Scotland (HES)**<sup>2</sup> makes interest free loans of up to £15,000 available to private sector households to support installation of energy efficiency measures. Loans are available to owner occupiers, with private landlords also eligible to borrow to fund measures in a maximum of 3 properties. Up to 25% cashback has been available on loans for most energy efficiency measures. In May 2017, the loan was combined with renewables for a more cost-effective and streamlined process for householders wanting to install both energy efficiency and renewable measures. Further information is available by calling Home Energy Scotland on 0808 808 2282.
- **Resource Efficient Scotland SME (Small and Medium Enterprises) Loans**<sup>3</sup> Scheme provides interest free loans of £1,000 to £100,000 to Scottish businesses that fall within the European Commission definition of SME (including private sector landlords) to finance the installation of energy, resource and water efficiency measures. Further information on RES SME loans is available by calling 0808 808 2268.
- **Home Energy Efficiency Programme for Scotland (HEEPS) Area Based Schemes (ABS)**<sup>4</sup> gives interest free loans to support householders pay their contributions towards the cost of grant funded insulation measures delivered through the Scottish Government's Home Energy Efficiency Scotland (HEEPS) Programme. Local authorities select priority areas for delivering programmes and can supply further information if needed.
- **The HEEPS Equity Loans Pilot**<sup>5</sup> is currently available to homeowners or private rented sector landlords in eight local authority areas (Perth and Kinross, Stirling, Dundee, Glasgow City, Inverclyde, Renfrewshire, Argyll and Bute or the Western Isles), we will look to expand availability to other local authority areas going forward. HEEPS Equity Loans enable householders to make energy improvements and repairs to their properties. Funding is borrowed against the asset value of the property and there are no ongoing repayments. The householder pays back what they've borrowed when they sell the property or when the last applicant for the loan is deceased.
- **Warmer Homes Scotland (WHS)**<sup>6</sup> provides interest free loans to support eligible householders with their contributions towards the cost of grant funded energy efficiency measures being delivered through the Home Energy Efficiency Programmes WHS programme. The maximum amount for WHS

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<sup>2</sup> <https://www.energysavingtrust.org.uk/scotland/home-energy-scotland>

<sup>3</sup> <https://www.resourceefficientscotland.com/SMELoan>

<sup>4</sup> <https://www.energysavingtrust.org.uk/scotland/grants-loans/heeps>

<sup>5</sup> <https://www.energysavingtrust.org.uk/scotland/grants-loans/heeps/heeps-equity-loan-scheme>

<sup>6</sup> <https://www.energysavingtrust.org.uk/scotland/grants-loans/heeps/heeps-warmer-homes-scotland-scheme>

loans has been increased from £5000 to £10,000 to help support new renewable measures which have been added to the scheme. It is targeted at the most vulnerable households and helps install energy efficiency and renewable energy measures. Further information on Warmer Homes Scotland is available by calling Home Energy Scotland on 0808 808 2282.

- As well as funded support, private sector landlords and tenants can get **free and impartial advice**<sup>7</sup> from Home Energy Scotland (HES) on energy saving, renewable energy and access to funding, including access to schemes provided by the UK Government. HES can direct people to loans and grants, as appropriate, and more information can be found online or by calling 0808 808 2282. The Resource Efficient Scotland (RES) programme, funded by the Scottish Government, offers free, specialist advice and support to businesses to implement energy, resource and water efficiency measures that will reduce carbon emissions and translate to cost savings.

We are therefore seeking views on the nature of the existing support as follows:

### **Question 2**

What are your views on the existing mixed nature of support (financial and advice) available to landlords and tenants? Include any additions or changes you think would assist.

### **Question 3**

How would the changes you suggest influence the speed with which you would expect improvements to occur?

### **Impact on island and rural communities.**

Previous consultation responses have evidenced the need for ongoing support, with many respondents seeking additional support as standards are introduced. The support offered is designed to provide help where appropriate, to all property owners across the whole of Scotland and we would encourage all landlords to take advantage of any funding schemes available to carry out improvements.

### **Cost Cap**

Regulation 12 proposes an exemption based on the cost of the recommended measures - a cost cap. The regulations would not apply if the cost of making the relevant energy efficiency improvement to the property to increase the EPC rating exceeds:

- (a) £5,000 in respect of the period from 1st April 2020 to 31st March 2022; and
- (b) £5,000 in respect of the period after 31st March 2022.

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<sup>7</sup> <https://www.energysavingtrust.org.uk/scotland/home-energy-scotland>

We do, however, understand that landlords may seek to implement improvements earlier or on a rolling basis. Where this is the case landlords will wish to have these measures, and their costs, taken into account once the regulations come in to force.

In the 2017 we sought views on the use of a cost cap and this was further discussed in the 2018 consultation where there was support for the use of a cap. We currently seek views on the use of a cost cap as follows:

#### **Question 4**

How long in advance of the regulations coming in to force should local authorities take account of expenditure outlay on measures which are intended to meet the standards set, and how would you expect to provide information to local authorities to seek an exemption based on the cost cap proposed.

#### **Impact on island and rural communities.**

The cap set will apply across all properties within scope of the Regulations. The provision does allow for differences in cost of works to be reflected in the information submitted to the relevant local authority, and this therefore allows for the additional costs which may be incurred in island and rural communities.

#### **Enforcement and fines**

The 2018 consultation indicated that enforcement carried out by local authority could provide a common approach across different tenures and could provide for faster action than possible at a national level. This is the route being followed in the Regulations.

The standard will apply to privately rented properties covered by the repairing standard. This standard will be enforced by Local Authorities. Primary legislation provides us with the parameters of any civil fines which may be applicable in the event of non-compliance. Within these parameters, we propose a breakdown of:

- a financial penalty not exceeding £2,000 and the publication penalty where the breach is less than 3 months;
- a financial penalty not exceeding £4,000 and the publication penalty where the breach exceeds 3 months;
- where a landlord provides false or misleading information in connection with the compliance notice set out in regulation 16(2) a financial penalty not exceeding £1,000 and the publication penalty
- where the landlord fails to comply with the compliance notice in breach of regulation 17(4) the penalties are a financial penalty not exceeding £2,000 and the publication penalty

The total of the financial penalties imposed must be no more than £5,000 in accordance with the provisions of the Energy Act 2011.

Whilst we are bound by the limitations of the maximum financial penalty set out in the Energy Act 2011, the regulations can break down this total to best fit with our

intentions to achieve compliance and improvement under the Regulations. We are therefore seeking views on the breakdown of fines as follows:

#### **Question 5**

What are your views on the proposed penalties, in terms of the impact they will have on achieving compliance with the Regulations and ensuring the completion of carry out improvement works across the Private Rented Sector.

#### **Impact on island and rural communities.**

The approach proposed will apply across the whole of Scotland, with each local authority acting as the relevant monitoring and enforcement body. Scottish Government will provide tools to assist in this.

#### **Conclusion**

Scottish Ministers are aware of the duty to consult island communities before making a material change to any policy, strategy or service which, in the Scottish Minister's opinion, is likely to have an effect on an island community which is significantly different from its effect on other communities.

Scottish Minister are aware that there may be financial burdens put on island owners of privately rented properties to meet these minimum standards.

All views and comments received during the consultation will be taken into account going forward.