



Consultation Briefing: The Energy Efficiency (Private Rented Property) (Scotland) Regulations 2019

About this briefing - This is a new type of briefing exclusively for CIH members. These briefings are designed to inform you about current consultations, highlight potential implications for the sector that you might want to consider in your own response and set out CIH Scotland's position.

Background

In 2017, the Scottish Government consulted on proposals to improve the energy efficiency and condition standards of homes in the private rented sector (PRS) in Scotland.

Informed by the responses, the Energy Efficient Scotland Route Map will require private landlords to ensure that their homes meet minimum energy efficiency standards. From 1 April 2020, all PRS properties must achieve EPC Band E at a change of tenancy, and then EPC Band D at a change of tenancy from 1 April 2022.

The Scottish Government is not seeking further views on the minimum standards. This consultation seeks to raise awareness of the energy efficiency standards proposed and the means by which they will be introduced in advance of formal parliamentary consideration of the Regulations to follow later this year. It also seeks views on accompanying guidance to support the Regulations.

What is being consulted on now?

Exemptions

The draft Regulations set out proposed exemptions where a lower energy efficiency standard would be allowed. These are as follows:

- 1. Relevant energy efficient improvements:** Where no relevant energy efficiency improvements can be made to the property or where the landlord has carried out all possible relevant improvements but the property still does not meet the minimum standard, an exemption will be made.
- 2. Consent exemptions:** If a landlord has not been able to make relevant energy efficiency improvements to the property to meet minimum standards as a result of a refusal of third-party consent. In these

cases, the landlord must register a valid exemption with the local authority.

- 3. Cost cap exemption:** The Regulations also provide for exemptions on the basis of the cost of making the relevant improvements; the property will be exempt provided the landlord gives proof of this to the local authority. The landlord will be expected to make any other relevant energy efficient improvements up to the cost cap (see below for details on the proposed cost caps).
- 4. Temporary exemptions:** These exemptions relate to particular circumstances where a property is exempt from minimum standards for a temporary period. This allows for a grace period when there is a change of circumstance between the landlord and the tenant i.e. if a landlord inherits a property with a sitting tenant.

Most exemptions will last for five years, unless there is a temporary abeyance i.e. where there are protected species that cannot be disturbed in which case the exemption could be extended.

Local authorities will be required to establish and maintain their own register of exemptions that will record the type of exemption, proof of the exemption and the date that the exemption is valid until. The Scottish Government will provide a template for local authorities.

Doing the work

The consultation also seeks views on the current range of support (both financial and advice-based) available to private landlords and tenants:

- Home Energy Scotland (HES)** makes interest free loans of up to £15,000 available to private landlords to support installation of energy efficiency



measures. In May 2017, the loan was combined with renewables for householders who want to install both energy efficiency and renewable measures.

- **Resource Efficient Scotland's SME Loans Scheme** provides interest free loans from £1,000 to £100,000 for small and medium enterprises (including private landlords) to finance the installation of energy resource and water efficiency measures.
- **Home Energy Efficiency Programme for Scotland (HEEPS) Area Based Schemes** gives interest free loans to support householders to pay their contributions to the cost of grant funded insulation measures delivered through the HEEPS Programme.
- **The HEEPS Equity Loans Pilot** is currently available to homeowners or private landlords in eight local authority areas and the Scottish Government is looking to expand this going forward. Funding is borrowed against the asset value of the property and the householder or landlord pays back what they've borrowed when they sell the property or when the last applicant for the loan is deceased.
- **Warmer Homes Scotland** provides interest free loans to support eligible householders with their contributions towards the cost of grant-funded energy efficiency measures being delivered by the HEEPS Warmer Homes Scotland Fund. These are targeted at the most vulnerable households and the maximum amount for loans has been increased from £5,000 to £10,000.
- **Free and impartial advice** is also available for private landlords and tenants through HES.

The consultation also proposes the introduction of new tailored financial support based on loans for the private sector and is seeking views on the impact of such an incentive on the energy efficiency of properties in the PRS.

Cost cap

As outlined above, the Regulations propose an exemption based on the cost of the recommended energy efficiency improvement measures. The regulations would not apply if the cost of making the relevant improvements to the property exceeds:

- **EPC Band E:** £5,000 in respect of the period from 1st April 2020 to 31st March 2022; and

- **EPC Band D:** a further £5,000 in respect of the period after 31st March 2022.

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Enforcement and fines

Views are also being sought on the proposed penalties for non-compliance. The Regulations provide local authorities with the powers to impose a financial penalty in relation to breaches of the standard, and discretion to decide on the amount of the penalty up to maximum limits set by the Regulations.

The proposed maximum financial penalties are as follows:

- **£2,000:** where the landlord has let a property that does not meet the minimum standards, in breach of the Regulations for a period of less than three months.
- **£4,000:** where the landlord has let a property that does not meet the minimum standards in breach of the Regulation for three months or more.
- **£1,000:** where the landlord has registered false or misleading information on the PRS Exemptions Register.
- **£2,000:** where the landlord has failed to comply with the compliance notice.
- Where the local authority imposes financial penalties on the landlord as set out above, the total of the financial penalties must not be more than **£5,000**.

In addition to financial penalties, the local authority may also add a publication penalty, allowing them to publish details of the breach and the penalty imposed.



Guidance

The consultation also provides new draft guidance to support the Regulations and to ensure that private landlords are confident that sufficient information is available to them to begin implementation of the standards required.

What does this mean for private landlords?

Private landlords should ensure that they are fully aware of the proposed Regulations set out in this consultation and should familiarise themselves with the accompanying guidance to ensure their compliance with the new measures.

Landlords should also look to identify any potential gaps in the guidance and should start to make preparations as soon as possible to ensure that any costs associated with carrying out energy efficiency improvements are manageable.

CIH Scotland's position

CIH Scotland welcomes this consultation as a means to help raise awareness of the proposed Regulations and welcomes the publication of guidance to support private landlords to carry out the required energy improvement works to meet the minimum standard.

As well as new guidance, it is important that landlords are fully aware of the range of advice and support, including financial incentives, that is available to help them meet the minimum standards and that they are supported to make an informed decision about the improvements that they choose, or are able, to make.

It is important that standards of energy efficiency in the PRS are improved but costs for landlords, and the use of financial penalties, should be kept to a minimum in order to ensure that any additional costs do not impact on the completion of improvement works and are not passed on to tenants through their rents.

Have your say

CIH Scotland will be developing a response to this consultation. If you would like to contribute to the response, please send your feedback to scotland.contact@cih.org

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