
To: COMMUNITIES, HOUSING AND PLANNING POLICY BOARD

On: 20 AUGUST 2019

Report by: DIRECTOR OF COMMUNITIES, HOUSING AND PLANNING

Heading: THE ENERGY EFFICIENCY (PRIVATE RENTED PROPERTY) (SCOTLAND) REGULATIONS 2019 HOUSING - DRAFT REGULATIONS AND DRAFT GUIDANCE. SCOTTISH GOVERNMENT CONSULTATION

1. Summary

- 1.1 A response to a previous Scottish Government consultation on proposals to improve energy efficiency within privately rented accommodation was approved at the Communities, Housing and Planning Policy Board meeting on 29 August 2017.
- 1.2 The Scottish Government is now consulting on draft regulations and associated draft guidance to implement these proposals; to raise awareness within the sector in advance of formal parliamentary consideration of the Regulations and is seeking views on the guidance to ensure users are confident that sufficient information is provided to begin implementation of the standards.
- 1.3 The Scottish Government is seeking responses to its consultation by 13 September 2019 and a proposed Council response is attached as Appendix 1 to this report for the consideration of members.
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2. Recommendations

- 2.1 It is recommended that the Communities, Housing and Planning Policy Board:

- (i) Notes the consultation on Energy Efficiency and Condition Standards in Private Rented Housing along with the requirement to respond by 13 September 2019.
 - (ii) Approves the response for submission to the Scottish Government, as detailed within Appendix 1 of this report
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3. **Background**

- 3.1 At its meeting on 29 August 2017, the Communities, Housing and Planning Policy Board approved a Council response to Scottish Government consultation on proposals to improve energy efficiency within privately rented housing accommodation and the Government has now further developed draft regulations and guidance which it is currently seeking to consult on.
- 3.2 It is nationally recognised that homes in the private rented housing sector are generally the least energy efficient of all housing tenures. The introduction of a new energy efficiency standard for the private rented sector seeks to benefit tenants living in some of the coldest homes. The proposed amendments to the minimum requirements for privately rented housing will also assist in ensuring that energy efficiency improvements are not compromised by elements of disrepair.
- 3.3 Currently there is no minimum standard for energy efficiency within the private rented housing sector. The intention in setting a standard is that homes which are the worst insulated will be required to be brought firstly up to an energy standard of E by 2022 and then to an energy standard of D by 2025. Estimates contained within the consultation indicate that there are currently around 30,000 private rental properties in Scotland within the two worst energy efficiency bands of F and G. In Renfrewshire it was estimated in 2017 that there were 900 private rental properties in these lower energy efficiency categories.
- 3.4 The Draft Regulations and guidance provide a mechanism to enforce that an improvement in standards of energy efficiency is delivered, or that properties have valid exemptions at the start of tenancies in place by these dates. The draft regulations propose that existing Energy Performance Certificates are used as the measure for this standard and sets out the process to identify the relevant improvements to reach the required standard. Local Authorities will be responsible for enforcing the regulations.

- 3.5 Proposed exemptions allow for issues with obtaining consent for any works, excessive costs and other temporary exemptions which may occur in certain circumstances.
- 3.6 Should landlords fail to meet their obligations in terms of the Regulations within the proposed timescales, sanctions are proposed whereby Local Authorities can issue financial penalties, up to a maximum of £5000 per offence.
- 3.7 The guidance provides advice and supplementary information to both landlords, as those seeking to implement the regulations as they affect their properties, and local authorities, as the key bodies implementing and enforcing the regulations.
- 3.8 The guidance further highlights a number of support mechanisms to assist landlords in improving the energy efficiency of their property, including interest free loans being made available from organisations such as Home Energy Scotland, Resource Efficient Scotland and though the Home Energy Efficiency Programme for Scotland.
- 3.9 The proposed response within Appendix 1 of this report expresses support for the Regulations and the aim of improving energy efficiency within the private rented housing sector. It is clear that the standards will improve the living conditions for some of our most vulnerable tenants within this sector, and also assist in tackling associated fuel poverty. It is however acknowledged within the response that there are potential significant resource implications for Local Authorities in enforcing the Regulations and the proposed exemptions, particularly relating to the financial cap, appear overly lenient for landlords who are profiting from the rental of private property.

Implications of the Report

1. **Financial** - none
2. **HR & Organisational Development** - none
3. **Community/Council Planning –**
 - Our Renfrewshire is safe – improvements to energy efficiency within the worst performing privately rented property, often rented by the most vulnerable members of our society, will improve living standards and assist to tackle fuel poverty making Renfrewshire a safer place for everyone to live.

4. **Legal**– none
5. **Property/Assets** – none
6. **Information Technology**– none
7. **Equality & Human Rights**
 - (a) The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals’ human rights have been identified arising from the recommendations contained in the report. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council’s website.
8. **Health & Safety** – none
9. **Procurement** – none.
10. **Risk** – none
11. **Privacy Impact** – none
12. **Cosla Policy Position** - not applicable
13. **Climate Risk** – By improving the energy efficiency in Private Rented Accommodation it will ensure that tenants use less energy, thus emissions will be reduced.

List of Background Papers

- (a) Background Paper 1. Draft response to the Scottish Government consultation on The Energy Efficiency (Private Rented Property) (Scotland) Regulations 2019 Housing - Draft Regulations and Draft Guidance.

The foregoing background papers will be retained within Communities, Housing and Planning Services for inspection by the public for the prescribed period of four years from the date of the meeting. The contact officer within the service is the Communities and Regulatory Manager

Author: Oliver Reid, Head of Communities and Public Protection
Email: oliver.reid@renfrewshire.gov.uk

ENERGY EFFICIENT SCOTLAND



Scottish Government
Riaghaltas na h-Alba
gov.scot

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:

<https://beta.gov.scot/privacy/>

Are you responding as an individual or an organisation?

☐

Individual

☒

Organisation

Group/Org Type (please tick one)

Local Authority	<input checked="" type="checkbox"/>	Commercial Organisation	<input type="checkbox"/>
Professional Body	<input type="checkbox"/>	Voluntary Organisation	<input type="checkbox"/>
Contractor/Developer	<input type="checkbox"/>	Housing Provider / RSL	<input type="checkbox"/>
Designer/Consultant	<input type="checkbox"/>	NDPB/Agency	<input type="checkbox"/>
Academic Body	<input type="checkbox"/>	Advisory Body/Committee	<input type="checkbox"/>
Industry Association/ Manufacturer	<input type="checkbox"/>	Other (Please Specify)	<input type="checkbox"/>

Full name or organisation's name

Renfrewshire Council

Phone number

0141 618 7598

Address

Renfrewshire Council, Renfrewshire House, Cotton Street, Paisley

Postcode

PA1 1BR

Email

colin.hunter@refrewshire.gov.uk

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- ☒ Publish response with name
☐ Publish response only (without name)
☐ Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- ☒ Yes
☐ No

Consultation questions

Consultation questions are noted here for reference. Please provide your input to the consultation via [Citizenspace](#). If unable to access the online consultation, you can use the separate Respondent Information Form (RIF), published alongside this consultation paper and the questions below.

Please note that it is important that, in answering each question, you also provide the reasons for your response. This is essential in understanding your view and greatly assists in developing an overall picture of the issues that relate to the proposals.

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?

The draft Regulations and draft guidance do generally provide clarity for Landlords within the private rented sector to ensure they either meet the required standard or seek an appropriate exemption to the standard. However, there are some issues which require to be addressed, as detailed below.

Firstly, the definition of a “domestic PR property” is not specific to what property will fall within the regulations, It is suggested that the definition provided within the Energy Act 2011 should be specifically referred to within these proposed Regulations.

In terms of the consent objections (Regulation 11(1)(a)), where a tenant refuses a landlord entry to the property, the landlord currently has recourse through the Housing and Property Chamber First Tier Tribunal to obtain permission to enter the property and this should be explained clearly within the guidance and that a landlord should seek to utilise this and provide evidence of this, prior to applying for an exemption under this paragraph. Further, the term within Regulation 11(1)(a) “reasonable efforts” requires to be further defined to provide explicit clarity on what would be considered to be reasonable i.e. making an application for access to the Housing and Property Chamber would be a reasonable effort in the circumstances.

Under the Energy Act 2011, domestic PR Properties applies to properties that are subject to the Repairing Standard. The guidance suggests that this is seen as part of the Repairing Standard. Accordingly, Regulation 14(2) appears to be at odds with the rest of the Repairing Standard. The Repairing Standard is enforced by the Housing and Property Chamber First Tier Tribunal however, the Energy Efficiency (Private Rented Property) (Scotland) Regulations 2019 seek to place enforcement of energy efficiency onto Local Authorities.

Enforcement of the Repairing Standard should be consistent and enforcement of energy efficiency standards should therefore rest with the Housing and Property Chamber First Tier Tribunal. Local Authorities would continue to have the power to make a third-party application to the Chamber in circumstances where a landlord is deemed not to have complied with the Regulations.

Regulation 19 sets out details of the “Publication Penalty”. It is likely that this will have limited impact on landlords who fail to comply with the standard as all statutory notices are already publicly available; this would also apply to any Penalty Notices or Compliance Notices which are issued to landlords under these proposed Regulations.

Further guidance is required in relation to the cost cap exemption. Regulation 12 (the cost cap exemption) should require works to be carried out to the cost cap value. For example, a property might require several types of works to be carried out to meet the standard which, when taken together, would exceed £5,000. It would be in line with the aims of the regulation for some of the works to be carried out rather than making a provision for a complete exemption. There is also no indication on what the position would be if works are carried out to meet the standard one year and then further works are required in a subsequent year. Would the cost of work completed in one year be taken into account for costs of future works when assessing if the exemption should apply?

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.

There is a significant amount of information and financial support available for landlords to assist in meeting the standard. Given this, and particularly with regard to the financial assistance available, it is our view that the financial cost cap applied to achieving the standards is set too low and will provide landlords who are looking to avoid carrying out works a ready opportunity to apply for a cost exemption.

If the Scottish Government is being ambitious and seeking to achieve real improvements to energy efficiency in this sector, the cost cap should be raised significantly - or if being maintained as is, should only be applied for a finite period of time e.g. 5 years and after that time, they will be unable to rely on this exemption and be required to comply with the relevant standard.

Similarly, if the Government is seeking robust enforcement and regulation to support achievement of improved energy efficiency standards, recognition of the potentially significant resource implications for local authorities in enforcing the regulations will be required.

Question 3

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

The support available to landlords should permit the achievement of the standards within the proposed timeframes (subject to availability of competent installers of energy efficiency improvements). It is reasonable to assume that responsible landlords will be able to achieve the works by these dates. There will always be some landlords who do not, for various reasons, seek to comply with the regulations and the proposed enforcement provisions are therefore necessary.

Question 4

We propose that 6 months in advance of the Regulations coming in to force local authorities should take account of expenditure outlay on measures which are intended to meet the standards set. Do you agree that this is a reasonable lead in time period? If not, what alternative lead in time would you propose? What information would you expect to provide to local authorities to seek an exemption based on the cost cap proposed.

A six month period for Local Authorities to take account of expenditure outlays on measures to meet the standard is appropriate and any works undertaken outwith this period should not be considered within the cost cap exemption.

Information provided to Local Authorities requires to be sufficiently robust to demonstrate (and be verifiable) that the cost of any works exceed the cost cap.

It should be stated with greater clarity within the regulations or guidance that the cost cap applies to each recommended energy efficiency measure and would not apply to multiple measures which may be recommended to improve efficiency.

Consideration should be given to making the cost cap exclusive of Value Added Tax as in most cases landlords will be in a position to reclaim VAT paid on goods and services purchased for use in their business.

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.

It is considered that the proposed penalties are likely to drive landlords towards ensuring compliance with the standard. However, the penalties should be fixed within the regulations to ensure that there is consistency across the country. A large number of landlords own property across a number of local authority areas and there may be greater likelihood of challenge to penalty notices where the penalties are not standardised.

If the penalties are not fixed, there should be clear guidance on how levels of penalties should be determined, particularly as Regulation 18(2)(d)(i) requires a local authority to state how any penalty has been calculated. If it is the Scottish Government's intention that these are varied by each Local Authority depending on the 'severity' of a breach of the regulations guidance should include how this is to be assessed.

Regulation 19 sets out details of the "Publication Penalty". It is likely that this will have limited impact on landlords who fail to comply with the standard as all statutory notices are publicly available and this would also apply to any Penalty Notices or Compliance Notices which are issued to landlords.

It is appropriate that any appeal against a penalty notice or compliance notice should be made to the Housing and Property Chamber who already deal with appeals against Rent Penalty Notices, rather than to a Sheriff.