

Draft Regulations laid before the Scottish Parliament under section 64(3) of the Energy Act 2011 for approval by resolution of the Scottish Parliament

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2020 No.

ENERGY CONSERVATION

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

<i>Made</i>	-	-	-	-	2020
<i>Coming into force</i>	-	-			1st April 2020

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 55 of the Energy Act 2011⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 64(3) of that Act, a draft of this instrument has been laid before, and approved by resolution of the Scottish Parliament.

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Energy Efficiency (Domestic Private Rented Property) (Scotland) Regulations 2020 and come into force on 1 April 2020.

General interpretation

2.—(1) In these Regulations—

“the Act” means the Energy Act 2011,

“building” means a roofed construction having walls, for which energy is used to condition the indoor climate,

“building unit” means a section, floor or apartment within a building which is designed or altered to be used separately,

“compliance notice” has the meaning given in regulation 17,

“domestic PR property” has the meaning given in regulation 3,

“energy efficiency improvement”, in relation to a property, means a measure specified as an energy efficiency improvement in schedule 1,

“energy performance indicator” has the meaning given in regulation 2(1) of the EPB Regulations,

“enforcement authority” has the meaning given in regulation 15(1),

“the EPB Regulations” means the Energy Performance of Buildings (Scotland) Regulations 2008⁽²⁾,

“EPC assessor” means, in respect of a domestic PR property, a person who is a qualified member of an organisation approved by the Scottish Ministers under regulation 8 of the EPB Regulations as an organisation whose members may issue an energy performance certificate for that domestic PR property,

“former landlord” has the meaning given in regulation 4,

“green deal report” means a report produced pursuant to a qualifying assessment,

“independent”, in relation to a person, means—

- (a) where a landlord or a superior landlord is an individual, a person who is not a spouse or civil partner of that landlord or that superior landlord (as the case may be), or
- (b) where a landlord or a superior landlord is not an individual, a person who is not, and has not been in the last 12 months—
 - (i) a director, partner, shareholder or employee of, or other person exercising management control over, that landlord or that superior landlord, or
 - (ii) a spouse or civil partner of a person falling within subparagraph (i),

“L”, for the purposes of Parts 4 to 6, means a person who is a landlord, or a former landlord,

“landlord” has the meaning given in regulation 4,

“listed building” means a listed building within the meaning of section 1(4) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997⁽³⁾,

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994⁽⁴⁾,

“minimum level of energy efficiency” has the meaning given in regulation 5(b),

“penalty notice” has the meaning given in regulation 18,

“property” means a building or a building unit,

“PRS Exemptions Register” means a register established and maintained in accordance with regulation 14(1),

“qualifying assessment” has the meaning given in section 3(9) of the Act,

“recommendation report” has the meaning given in regulation 6A of the EPB Regulations,

“relevant energy efficiency improvements” has the meaning given in section 55(4) of the Act read with regulation 7,

“relevant person” means an independent architect, an independent chartered engineer, an independent chartered building surveyor or an independent chartered architectural technologist,

(2) S.S.I. 2008/309, as relevantly amended by S.S.I. 2012/190, S.S.I. 2012/208, S.S.I. 2012/315 and S.S.I. 2013/12.

(3) 1997 c.9. Section 1(4) was amended by section 22(2)(a) and schedule 3 of the Historic Environment Scotland Act 2014 (asp 19).

(4) 1994 c.39.

“sub-standard” has the meaning given in regulation 5(a),

“superior landlord” has the meaning given in regulation 4,

“tenant” has the meaning given in regulation 4,

“third party consent” means consent, permission, licence or approval which is required (other than from a tenant) before an energy efficiency improvement can be made, including in particular—

- (a) where the property is one of two or more properties comprised in a building, the consent of an owner, a tenant or other occupier of any other property in the building,
- (b) the consent of any person who holds a standard security over the landlord’s, or a superior landlord’s, interest in the property,
- (c) the consent of the owner of the domestic PR property or of any superior landlord,
- (d) planning permission required under the Town and Country Planning (Scotland) Act 1997⁽⁵⁾ or any approval or consent required by virtue of such planning permission, and
- (e) consent required as a result of the property being a listed building,

“valid”, in relation to an energy performance certificate⁽⁶⁾, has the meaning given in regulation 5(c).

(2) Where two or more persons together are the tenant, the landlord, former landlord or the superior landlord, then any reference to the tenant, the landlord, the former landlord or the superior landlord (as the case may be), except in the definition of “independent” in paragraph (1), is a reference to all the persons who are the tenant, the landlord, the former landlord or the superior landlord (as the case may be).

(3) References to the submission of information (including evidence or copies of documents) for registration in the PRS Exemptions Register in relation to a domestic PR property are references to the submission of information (including evidence or copies of documents) to the local authority for the area in which that property is situated for registration in the PRS Exemptions Register for that area.

(4) Nothing in these Regulations affects any duty to carry out works to a property (including works to repair or to improve) imposed on a tenant, a landlord, or a superior landlord, by the terms of a tenancy agreement or by any other enactment.

PART 2

Minimum level of energy efficiency

Domestic PR property

3. For the purposes of these Regulations, “domestic PR property” means a property which is a Scottish domestic PR property other than a property which is a temporary building with a planned time of use of two years or less.

Landlord and tenant

4. For the purposes of these Regulations—

⁽⁵⁾ 1997 c.8.

⁽⁶⁾ “energy performance certificate” is defined for the purposes of these Regulations by section 55(4) of the Energy Act 2011 and has the same meaning as given in the Energy Performance of Buildings (Scotland) Regulations 2008 (S.S.I. 2008/309).

“former landlord”, in relation to a domestic PR property, means a person who used to let the property on a tenancy which falls within section 54(1)(a) of the Act but no longer does so,

“tenant” means a person to whom a domestic PR property is let on a tenancy which falls within section 54(1)(a) of the Act,

“landlord” means a person who lets, or proposes to let a domestic PR property on a tenancy which falls within section 54(1)(a) of the Act,

“superior landlord” means any person who lets a domestic PR property other than the landlord.

Sub-standard property

5. For the purposes of these Regulations—

- (a) a domestic PR property is “sub-standard” where the energy performance indicator of the property included in the valid energy performance certificate for the property indicates that the energy efficiency or performance of the property is rated as being below the minimum level of energy efficiency,
- (b) “minimum level of energy efficiency”, means—
 - (i) in respect of the period from the date of commencement of these Regulations until 31 March 2022, an energy performance indicator of E(7),
 - (ii) in respect of the period from and after 1 April 2022, an energy performance indicator of D,
- (c) an energy performance certificate for a property is “valid” where—
 - (i) it was entered on the register required to be maintained by regulation 10 of the EPB Regulations no more than 10 years before the date on which it is relied on for the purposes of these Regulations, and
 - (ii) no other energy performance certificate for the property has since been entered on that register.

Prohibition on letting of sub-standard property

6.—(1) A landlord of a sub-standard domestic PR property must not let the property, or part of the property on or after 1 October 2020, unless—

- (a) there are no relevant energy efficiency improvements that can be made to the property,
 - (b) all the relevant energy efficiency improvements for the property have been made, or
 - (c) one or more of the exemptions in Part 3, applies.
- (2) Paragraph (1) does not—
- (a) during the period beginning on 1 October 2020 and ending on 31 March 2022, prohibit a landlord from continuing to let a sub-standard domestic PR property under an existing tenancy to a person who is an existing tenant,
 - (b) during the period beginning on 1 April 2022 and ending on 31 March 2025, prohibit a landlord from continuing to let a domestic PR property to a person who is an existing tenant if the energy performance indicator of the property indicates that the energy efficiency or performance of the property is rated as being E or above.
- (3) For the purposes of this regulation—
- (a) “let the property” (cognate terms being construed accordingly) means—

(7) In terms of regulation 2(1) of the Energy Performance of Buildings (Scotland) Regulations 2008 as amended by [S.S.I. 2012/208](#) the energy performance indicator is an indication of the energy efficiency or performance rating of a property and is expressed on a scale of A to G with G representing the lowest rating.

- (i) to grant a new tenancy which falls within section 54(1)(a) of the Act,
 - (ii) to let the property on a tenancy which falls within section 54(1)(a) of the Act as a result of an extension or renewal of an existing tenancy, or
 - (iii) to continue to let the property on a tenancy which falls within section 54(1)(a) of the Act,
- (b) “existing tenancy” means, in respect of a domestic PR property—
 - (i) in relation the period beginning on 1 October 2020 and ending on 31 March 2022, a tenancy under which the tenant has a right to occupy that property on 30 September 2020, and
 - (ii) in relation the period beginning on 1 April 2022 and ending on 31 March 2025, a tenancy under which the tenant has a right to occupy that property on 31 March 2022,
- (c) “existing tenant” means—
 - (i) for the purposes of paragraph (2)(a) is a person who is a tenant of the property on 30 September 2020 or a person who is the tenant of the property after that date by virtue of an assignation, or partial assignation, of rights in respect of the existing tenancy,
 - (ii) the purposes of paragraph (2)(b) is a person who is a tenant of the property on 31 March 2022 or a person who is the tenant of the property after that date by virtue of an assignation, or partial assignation, of rights in respect of the existing tenancy.

Relevant energy efficiency improvements

7.—(1) For the purposes of paragraph (a) in the definition of “relevant energy efficiency improvements” in section 55(4) of the Act, a measure is an improvement in relation to a domestic PR property if it is both—

- (a) an energy efficiency improvement, and
- (b) identified as a recommended improvement for that property in—
 - (i) a green deal report, or
 - (ii) a valid energy performance certificate and its related recommendation report.

(2) For the purposes of paragraph (b)(iv) in the definition of “relevant energy efficiency improvements” in section 55(4) of the Act, an energy efficiency improvement is a relevant energy efficiency improvement where the cost of purchasing or installing it can be financed, wholly or partially, by means of funding provided by a grant or loan from the Scottish Ministers.

Relevant energy efficiency improvements undertaken

8.—(1) Where the landlord of a sub-standard domestic PR property has made all the relevant energy efficiency improvements for the property, the landlord must submit for registration on the PRS Exemptions Register the information specified in paragraph (2).

- (2) The information referred to in paragraph (1) is—
 - (a) the landlord registration number of the landlord⁽⁸⁾,
 - (b) the address and post code of the property,
 - (c) a copy of the valid energy performance certificate for the property,

(8) “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).