

Consultation Title	<b>Scottish Government - The Energy Efficiency (Private Rented Property) (Scotland) Regulations 2019</b>
Date	<b>13<sup>th</sup> September 2019</b>
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Scottish Land & Estates is the voice of rural businesses throughout Scotland. We are a membership-based organisation representing a wide range of rural businesses, including farmers, foresters, tourism operators, housing providers, leisure companies, and renewable energy providers.

Our members provide a wide range of economic, environmental and social benefits which are vital to the success and survival of communities throughout rural Scotland. They play a critical role in ensuring sustainable, healthy and empowered rural communities, providing housing, employment and a wide range of economic, environmental and social benefits.

**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 of that standard? Please set out the reasons for your response.**

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We feel further clarity and explanation is needed in both the Regulations and the Guidance in connection to the exemptions:

Relevant Energy Efficiency Improvements:

In the Regulations 'relevant energy efficiency improvements' is not listed as an exemption. However, it is listed as one in the Guidance. If this is an exemption it should be listed in the regulations.

Consent exemption

There is no detail as to what the Local Authority will consider 'reasonable effort' or what evidence should be submitted to prove this exemption.

Cost Cap exemption:

We seek clarity on the fact that if a landlord spends £5,000 but fails to achieve EPC Band E by 31 March 2022 will they then be required to spend a further £5,000 by 31 March 2025?

We also seek clarification over the fact that if there are no suggested recommendations, which cost below £5,000, can a landlord be granted a cost cap exemption without having to incur any expense?

We would also ask for clarity on whether this cap is inclusive or exclusive of VAT.

We would also ask how long term investment programmes to carry out energy efficiency measures will be taken into account. Many of our members have a large number of properties and are already carrying out work as part of long term planned maintenance and improvement works. This should be factored into the cost cap exemption rather than using an arbitrary start date for eligible expenditure.

We would also suggest that rather than being viewed as a blanket cost cap exemption, consideration should be given to lower the cost cap where the properties are rented below market rent – as is often the case for SLE members who provide much needed affordable housing in rural areas. It will not be possible for these landlords to recover any return in investment and low rental levels will have affected the level of working capital available. Anything which makes the costs prohibitive could result in a reduction in the supply of quality affordable rural housing.

Tenancies let before 4 January 2009 OR the current tenant has been in the same property for more than 10 years:

In the Guidance there is a reference to tenancies let before 4 January 2009 or a circumstance where the current tenant has been in the same property for more than 10 years. Stating that, “*if, since 4 January 2009, the dwelling has not been let to a new tenant or sold as a single rental, then an EPC is not required.*” However, this is not mentioned in the regulations. We need clarification on this point. Are these tenancies exempt from the standards until there is a change of tenant or if an EPC is granted for any other reason?

Exemption for continuation or renewal of tenancy to existing tenant between 1 April 2022 and 31 March 2025

*13A. (1) Regulation 7 does not apply during the period beginning on 1 April 2022 and ending on 31 March 2025 to prohibit the letting of a property during that period to a person who is an existing tenant of that property.*

This exemption is not clarified in the Guidance. What is the effect of the exemption?

**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. ?**

We have substantial concerns regarding the funding that will be available to private sector landlords. Of the six financial support options that are published by Home Energy Scotland, only the Resource Efficient Scotland SME Loans would be suitable for the majority of our members. These owners rent their properties through their estates and therefore do not qualify as a ‘natural person’. Furthermore, they typically have more than three properties barring them from further current financial support options.

A large proportion of housing in rural areas is provided by estate owners, much of which is often rented at an affordable level. If these owners are not supported in their efforts to reach the new minimum standards, many may feel they have no choice but to remove their properties from the private rented sector. This would have a very detrimental effect on the demand for housing in rural areas and significantly increase the burden on local authorities. It is stated that the Scottish Government propose ‘to introduce new tailored financial support based on loans for the Private Rented Sector.’ We would suggest that the Scottish Government consider giving private sector landlords, who are providing affordable accommodation, access to the same financial support as public sector housing.

We support the aim of increasing the condition of the housing stock in Scotland but are concerned that the financial burden is currently expected to fall on large landlords. This will result in a loss of housing stock or a high percentage of applications for exemptions.

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We also remain concerned about the advice that is available to landlords and tenants because the EPC standards and the related advice are all connected to a methodology which is not fit for purpose when used to set a minimum energy efficiency requirement. If the weaknesses in the RdSAP and support systems could be addressed, it would help to improve the credibility of the policy and enable proper advice to be given to landlords.

A large part of the problem is that RdSAP EPCs were originally created to give a quick, simple and relatively cheap method of reporting energy efficiency levels of houses to the European Commission; to implement the requirements of the Energy Performance Building Directive (EPBD). The proposal is

to use the EPC as the main regulatory tool to improve energy efficiency across the private rented sector (PRS) housing stock in Scotland is highly flawed.

There are a number of weaknesses in the RdSAP/EPC system:

- The Product Characteristics Data File (PCDF) within the RdSAP/EPCs system that generates a range of the indicative costs for energy efficiency improvements is based on historic data from 2011. Therefore, any advice given based on these costs may give inappropriate signals to the market. There is no robust and transparent system for updating these costs.
- Dependence on a backward looking system to support forward looking long term investment for example as electricity generation is de-carbonised, electric heating systems will become greener and more attractive options and with innovation and economies of scale, renewables will also become cheaper, so the reliance on RdSAP means that better long term options will be missed.
- RdSAP/EPCs, are in flux and still generating significant criticism (even the latest model) for: inability to input all energy efficiency measures, and lack of accuracy, especially with traditional buildings, including the appropriateness and costs of measures.
- A general lack of transparency of the input data and information analysis. The system, including inputs are controlled by commercial companies e.g. Elmhurst, BRE, Sutherland Tables. It should be easy for consumers / end-users to drill down through the RdSAP system to find out exactly what the raw data inputs are for all parts of the system. It is currently not easy or transparent.
- Lack of transparent fuel cost inputs. This could lead to inappropriate decisions being made on which fuel type to choose for a heating system in a particular situation.
- Assumed fuel costs, at the date the EPC is generated are not shown on the EPC report. The householder is therefore unable to check and compare local current fuel prices with the EPC report.
- Use of 3 year rolling average historic fuel costs. Investment appraisal is a forward-looking process. All key assumptions like this should be transparently stated, in a form the end-user can understand easily.
- Assumed occupier comfort levels are not stated on the EPC report. A user therefore has no means of comparing what they know about their own heat use, heating system and insulation etc with the comfort/heat level it can create, compared to the cost.
- Poor structure of the EPC approved software, in that separate reports have to be generated each time a slight change to the input data is made. The process of doing cost/benefit analysis is an iterative one. The lack of core data retention and the inability to respond flexibly to changes severely restricts the usability of the system.
- Standardised assumed levels of comfort may affect investment decisions by over-stating savings that could be made from investment in insulation or heating system options. This could mean that households may invest more than the potential savings from improved energy efficiency.
- An EPC becomes out-of-date as soon as any additional measure is done, and it seems that the only way to have the improvement registered is to have a totally new EPC. This costs more and creates cost/benefit questions in the minds of end-users.
- There is some doubt over the accuracy of some of the surveys done to date. Due to auditing concerns surveyors only record what they can see, as the surveys are non-intrusive. However, surveyors do not ask occupiers if any insulation or other energy efficiency measure have been done or ask for evidence.

As a tool for the mass market RdSAP/EPC is not a good product. At the moment it is a product that can only be understood by trained assessors and even then, they often cannot explain the output. The RdSAP/EPC system needs to be made more accurate, visible, transparent and user-friendly. There is potential to use a variety of innovative communication methods, including: website, FAQs,

helpline virtual reality houses, etc. that can be used to improve understanding of the RdSAP/EPC system.

The level of training and qualification of the surveyors is very limited, and a lot of issues are left to the owners of the complex software to sort out e.g. Elmhurst. The system as a whole seems to struggle with pre-1919 houses, which require specialist knowledge and skills right through the supply chain.

Each house owner and tenant in the PRS will likely want to be able to manage their finances and situation. They will want to be able to do a cost / benefit appraisal either formally or informally of a variety of options. As such they will want to cost the options in capital and revenue terms, considering aesthetic and amenity issues such as impact on decoration, security, mess and hassle, as well as the energy saving, before they make their decision.

### **3. How would the changes you suggest influence the speed with which you would expect improvements to occur?**

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We do not believe the speed of improvements should be the primary concern for the Scottish Government. The focus must be on carrying out the work in a way which does not impact negatively on supply and also in a way which does not cause future problems for the fabric of the building. For example, cheap 'one size fits all' loft insulation works have resulted in ventilation issues. Many of our members have drawn up scheduled maintenance lists to improve their properties. However, as some landowners can have over 100 houses this is a project that will have to be tackled over several years.

We are very supportive of improving the condition of housing stock, and we feel this should be the primary focus and the long-term goal of the energy efficiency regulations. Trying to speed up improvements and bring forward targets when many landlords will already struggle to meet the current targets is counterproductive. The result of this is that landlords will spend enough to reach the cost cap, and there will be a minimal improvement to the overall EPC average across Scotland. A more gradual well-supported approach, where landlords have access to financial support, will have a much better chance at significantly improving the condition of housing stock. This will have the advantage of tackling fuel poverty for tenants, considerably contributing to Scotland's climate change targets and ensure a long-term supply of houses in good condition for the private rental sector.

### **4. We propose that 6 months in advance of the Regulations coming into force local authorities should take account of expenditure outlay on measure 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?**

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We feel it is positive that this lead-in time has been introduced. However, as per our answer to question 1, we still have concerns that this time period is not long enough. Landlords who have multiple properties at low EPC bands will be required to make a substantial investment. Many will struggle to raise the EPC of their property, so they may need to apply for a cost cap exemption. This means they are holding off works until October so that the expenditure will be counted. This puts enormous time pressure on the landlords, the tenants, contractors and suppliers.

Issues such as seasonality need to be considered. In the uplands it is not advisable to change heating systems in the winter months. In addition, many rural properties will also not be accessible for trades vans for example during periods of winter weather.

An allowance must be made where a landlord is unable to make the improvements in the timescale through no fault of their own. For example, where the tenant will not grant access within the timescale required to do the work in a consistent block. A member gives the example of a tenant who wanted to be home when double glazed was installed. It had to be negotiated that works would be done during a period where the tenant took a one-month sabbatical from work. It took 18 months to get the double glazing installed from the point of order of the windows.

Furthermore, this system is penalising landlords who have had a systematic programme of maintenance and improvements for many years. The current EPC methodology is flawed, and many of our members report making the recommended improvements, and this having almost no impact on the EPC. We feel in cases where properties will struggle to reach higher EPC grades continued previous investment should be considered.

**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?**

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We agree that landlords that make no effort to improve their tenants' accommodation, simply because they do not wish to, and those that provide false information should be tackled. However, we remain concerned that there is a focused-on penalising non-compliant landlords without having an equivalent system of financial support from which all landlords can benefit. We feel that the majority of landlords have a programme of annual maintenance and wish to improve the energy efficiency of their properties.

However, the Scottish Government does not seem to have adequately considered the financial support that landlords will require to be able to make these improvements. The guidance suggests that landlords contact Home Energy Scotland for funding options. However, they only offer one funding option for landlords that rent their properties through the business and have more than three properties.

Rural estates provide a high percentage of properties in the private rental sector in rural areas. These properties usually have a lower EPC band and are rented out at a lower level. Some rural landlords have over 100 properties, which will require substantial investment. It would be beneficial for these landlords to be supported in bringing their properties up to the minimum standard. Instead of giving them no option but to spend up to the cost cap. For the majority of properties this will have a minimal impact on the energy efficiency rating of their property.

This is particularly important in the case where a landlord may have many properties, all of which are rented out at a low or affordable level. We want the Scottish Government to consider allowing private landlords, who are willing to provide affordable accommodation, to be given access to the same funding as social landlords.

We feel the most effective way of ensuring compliance with the Regulations and ensuring the completion of improvement works across the Private Rented Sector is to support willing landlords and penalise those who are unwilling.