

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

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SCOTTISH STATUTORY INSTRUMENTS

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**2019 No.**

**ENERGY CONSERVATION**

**The Energy Efficiency (Domestic Private Rented Property)  
(Scotland) Regulations 2019**

*Made* - - - - 2019

*Coming into force* - - 1st April 2020

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 55 of the Energy Act 2011(a) 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 2019 and come into force on 1 April 2020.

**General interpretation**

2.—a) 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” means a notice which complies with regulation 17,

“domestic PR property” has the meaning given in regulation 4,

“energy efficiency improvement”, in relation to a property, means a measure listed in Schedule 1 [for improving efficiency in the use of energy in the property],

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(a) 2011 c.16.

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

“enforcement authority” has the meaning given in regulation 14(1),

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

“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 paragraph (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 5,

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

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

“minimum level of energy efficiency” has the meaning given in regulation 6(b),

“penalty notice” means a notice which complies with regulation 18,

“property” means a building or a building unit,

“PRS Exemptions Register” means the register established and maintained in accordance with regulation 16(1),

“publication penalty” has the meaning given in regulation 19(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 regulation 8,

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

“responsible person” means—

(a) where the landlord is an individual, that person,

(b) where the landlord is a company within the meaning given in section 1 of the Companies Act 2006(c), a director within the meaning of section 250 of that Act, or

(c) in any other case, a person exercising management control in relation to the landlord;

“sub-standard” has the meaning given in regulation 6(a),

“superior landlord” has the meaning given in regulation 5,

“surveyor” means a surveyor who is on the Royal Institution of Chartered Surveyors’ register of valuers(d),

“tenant” has the meaning given in regulation 5,

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(a) S.I. 2008/309, amended by

(b) 1997 c.29

(c) 2006 c.46.

(d) The Royal Institution of Chartered Surveyors’ register of valuers can be accessed via their website: [www.rics.org/uk/join/member-accreditations/valuer-registration-scheme-vrs1/](http://www.rics.org/uk/join/member-accreditations/valuer-registration-scheme-vrs1/).

“third party consent” means consent, permission or approval which is required 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 has a holds a heritable 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<sup>(a)</sup> 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, has the meaning given in regulation 6(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—

- (a) in the definitions of “independent” and “responsible person” in paragraph (1), and
- (b) in paragraph 1(i)(ii) of the Schedule,

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) 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.

### **Service of documents**

**3.—b)** Any notice served under these Regulations must be in writing and may be given by post.

(1) Any such notice may be given—

- (a) in the case of a body corporate, to the secretary or clerk of that body,
- (b) in the case of a partnership, to any partner or to a person having control or management of the partnership business.

## **PART 2**

### **Minimum level of energy efficiency**

#### **Domestic PR property**

**4.** 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**

**5.** For the purposes of these Regulations—

“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,

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(a) 1990 c.8.

“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**

**6.** For the purposes of these Regulations—

- (a) a domestic PR property is “sub-standard” where the valid energy performance certificate for the property expresses the energy performance indicator of the property 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 31st March 2022, an energy performance indicator of band E,
  - (ii) in respect of the period from and after 1st April 2022, an energy performance indicator of band 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(1) 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**

7.—c) A landlord of a sub-standard domestic PR property must not let the property unless regulation 9, or one or more of the exemptions in Part 3, applies.

- (1) For the purposes of paragraph (1), “let the property” means—
  - (a) grant a new tenancy which falls within section 54(1)(a) of the Act, or let the property on such a tenancy as a result of an extension or renewal of an existing tenancy, or
  - (b) continue to let the property on such a tenancy.

### **Relevant energy efficiency improvements**

8.—d) Subject to paragraph (2), for the purposes of paragraph (a) in the definition of “relevant energy efficiency improvements” in section 55(4) of the Act, a relevant energy efficiency improvement in relation to a domestic PR property is an improvement which is both—

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

(2) An energy efficiency improvement is not a relevant energy efficiency improvement where the landlord has obtained a written opinion from—

- (a) a relevant person, or
- (b) an independent installer of the energy efficiency improvement in question who meets the relevant installer standards,

advising that it is not an appropriate improvement, due to its potential negative impact on the fabric or structure of the domestic PR property, or the building of which it forms part, and the landlord has registered that opinion on the PRS Exemptions Register.

(3) 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 and installing it can be financed by means of funding provided by a grant or loan from the Scottish Ministers.

### **Relevant energy efficiency improvements undertaken**

9.—e) Subject to paragraph (2), this regulation applies where—

- (a) the landlord of a sub-standard domestic PR property has made all the relevant energy efficiency improvements for the property, or
- (b) there are no relevant energy efficiency improvements that can be made to the property.

(2) This regulation applies for a period of five years starting with the date on which the landlord registers information in accordance with regulation 16(5).

### **Sub-standard property let in breach of these Regulations**

10. In any case where a landlord lets, or continues to let, a domestic PR property in breach of regulation 7, that breach does not affect the validity or enforceability of any provision of the tenancy.

## **PART 3**

### **Exemptions**

#### **Consent exemption**

11.—f) Subject to paragraph (2), regulation 7 does not apply if the landlord has been unable to make relevant energy efficiency improvements to the property to increase the energy performance indicator for the property so that the property meets or exceeds the minimum level of energy efficiency as a result of—

- (a) the current tenant refusing consent to any relevant energy efficiency improvement being made, or the landlord having been unable to obtain that consent despite reasonable efforts having been made by the landlord to obtain that consent,
- (b) within the preceding five years period, third party consent having been—
  - (i) refused, or
  - (ii) granted subject to a condition with which the landlord cannot reasonably comply, or
- (c) third party consent having not been granted despite reasonable efforts having been made by the landlord to obtain that consent within the preceding five years period.

(2) A landlord may rely on the exemption in paragraph (1) only where the landlord has registered information in accordance with regulation 16(5).

#### **Cost cap exemption**

12.—g) Subject to paragraph (3), regulation 7 does not apply if the cost of making relevant energy efficiency improvements to the property to increase the energy performance indicator for the property so that the property meets or exceeds the minimum level of energy efficiency—

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

(2) A landlord may rely on the exemption in paragraph (1) only where the landlord has registered information in accordance with regulation 16(5).

#### **Temporary exemption in certain circumstances**

13.—h) Subject to paragraph (5), regulation 7 does not apply to a landlord until six months after whichever is the later of—

- (a) the date on which the landlord becomes, or continues to be, the landlord of that property by virtue of any of the circumstances set out in paragraph (2), or
  - (b) the date on which an order falling within paragraph (2)(c) is made.
- (2) The circumstances referred to in paragraph (1) are—
- (a) the grant of a lease pursuant to a contractual obligation,
  - (b) the deemed creation of a new lease by operation of law,
  - (c) the grant of a lease by order of the court.
- (3) Subject to paragraph (5), regulation 7(2)(b) do not apply to a person until six months from the date on which the person becomes the landlord by virtue of the circumstances set out in paragraph (4).
- (4) The circumstances referred to in paragraph (3) are—
- (a) the landlord became the landlord of the domestic PR property, on purchasing an interest in that property, and
  - (b) on the date of the purchase, the property was let on an existing tenancy.
- (5) A landlord may rely on a temporary exemption in paragraph (1) or paragraph (3) only where the landlord has registered information in accordance with regulation 16(5).

### **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.

(2) For the purposes of this regulation a person is an existing tenant of a property if that person is the tenant of the property on 31 March 2022 and has continued to be tenant of the property since that date on the same tenancy or an extension or renewal of that tenancy.

## **PART 4**

### **Enforcement Authorities and Compliance**

#### **Enforcement authorities**

**14.**—i) In these Regulations “enforcement authority” in relation to a domestic PR property means the local authority for the area in which the domestic PR property is situated.

(1) An enforcement authority must enforce compliance with the requirements of this Part in relation to properties in its area.

#### **Authorised officers**

**15.** Where an enforcement authority appoints an authorised officer of that enforcement authority to exercise its powers under this Part, except in this regulation any reference to an “enforcement authority” is to be read as including a reference to that authorised officer of that enforcement authority.

#### **PRS Exemptions Register**

**16.**—j) A local authority, in respect of domestic PR properties in its area must establish and maintain a register (a “PRS Exemptions Register”)—

- (a) of information registered in accordance with paragraph (5) or regulation 17(2),

- (b) from which the Scottish Ministers and enforcement authorities may access information registered on it, and held on it, as necessary to enable them to carry out their functions under these Regulations.

(2) The local authority must make the information specified in paragraph (3) available for inspection free of charge.

(3) The information is the following information relating to any domestic PR property, in respect of which information has been registered in accordance with paragraph (4)—

- (a) the address of the property,
- (b) where the landlord is not an individual, the name of the landlord,
- (c) the exemption relied on,
- (d) a copy of the valid energy performance certificate for the property,
- (e) the date on which information was registered in accordance with paragraph (2).

(4) Every enforcement authority to publish information in accordance with regulation 19.

(5) In any case where a landlord of a sub-standard domestic PR property, wishes to rely on one or more of the following regulations, the landlord must register the information set out in Schedule 2 on the PRS Exemptions Register for the area in which the property is situated—

- (a) regulation 11(1),
- (b) regulation 12(1),
- (c) regulation 13(1) or (3).

### **Compliance notices**

**17.—k)** An enforcement authority may serve a notice (a “compliance notice”) on L where L appears to it to be, or to have been at any time within the 12 months preceding the date of service of the compliance notice, in breach of regulation 7 requesting such information as it considers necessary to enable it to monitor compliance with these Regulations.

(1) A compliance notice may in particular request L to produce for inspection originals, or copies, of the following—

- (a) the energy performance certificate for the property which was valid at the time the property was let,
- (b) any other energy performance certificate for the property in L’s possession,
- (c) any current tenancy agreement under which the property is let,
- (d) any qualifying assessment in relation to the property,
- (e) any other document which the enforcement authority considers necessary to enable it to carry out its functions under this Part,

and may request L to register copies of any of them on the PRS Exemptions Register

(2) A compliance notice must specify—

- (a) the name and address of the person to whom the documents or other information required must be provided, and
- (b) the date by which they must be provided which must be no less than one month from the date on which the compliance notice is served.

(3) L must—

- (a) comply with the compliance notice, and
- (b) allow the enforcement authority to take copies of any original document produced.

(4) A compliance notice may be varied or revoked in writing at any time by the enforcement authority that issued it.

(5) An enforcement authority may take into account any information held by it, whether or not provided to it in accordance with this regulation, in determining whether L has complied with these Regulations.

## PART 5

### Penalties

#### Penalty notices

**18.**—l) An enforcement authority may serve a notice on L (a “penalty notice”) in any case where it is satisfied that L is, or has been at any time in the 18 months preceding the date of service of the penalty notice, in breach of one or more of the following—

- (a) regulation 7,
- (b) regulation 17(4)(a),

imposing a financial penalty, a publication penalty, or both a financial penalty and a publication penalty, in accordance with this Part.

(2) A penalty notice must—

- (a) specify the provision of these Regulations which the enforcement authority believes L has breached,
- (b) give such particulars as the enforcement authority considers necessary to identify the matters constituting the breach,
- (c) specify—
  - (i) any action the enforcement authority requires L to take to remedy the breach,
  - (ii) the period within which such action must be taken,
- (d) specify—
  - (i) the amount of any financial penalty imposed and, where applicable, how it has been calculated,
  - (ii) whether the publication penalty has been imposed,
- (e) require L to pay any financial penalty within a period specified in the notice,
- (f) specify the name and address of the person to whom any financial penalty must be paid and the method by which payment may be made,
- (g) state the effect of regulations 21 to 24, and
- (h) specify—
  - (i) the name and address of the person to whom a notice requesting a review in accordance with regulation 21 may be sent (and to whom any representations relating to the review must be addressed), and
  - (ii) the period within which such a notice may be sent.

(3) Each of the periods specified under paragraph (2)(c) and (e) must not be less than 28 days, beginning on the day on which the penalty notice is served.

(4) Where L fails to take the action required by a penalty notice within the period specified in that penalty notice in accordance with paragraph (2)(c), the enforcement authority may issue a further penalty notice.

#### Publication penalty

**19.**—m) In these Regulations, the “publication penalty” means publication on the PRS Exemptions Register of such of the following information in relation to a penalty notice as the enforcement authority decides—

- (a) where L is not an individual, L's name,
  - (b) details of the breach of these Regulations in respect of which the penalty notice has been issued,
  - (c) the address of the property in relation to which the breach has occurred, and
  - (d) the amount of any financial penalty imposed.
- (2) The information in paragraph (1) must be published for a minimum period of 12 months, and may be published for such longer period as the enforcement authority may decide.
- (3) A publication penalty does not take effect until—
- (a) the period specified for requesting a review under regulation 18(2)(h) has expired or, where a review has been requested, the enforcement authority has not served notice of its decision under regulation 21(2)(c), and
  - (b) the period specified for any appeal against the penalty notice has expired or, where an appeal is made, until the appeal has been determined.

### **Breaches in relation to domestic PR property**

**20.—n)** The penalties set out in this regulation apply where L is, or was, the landlord of a domestic PR property.

(1) Where L has breached regulation 7 and, at the time the penalty notice is served has, or had, been in breach for less than three months, the penalties are—

- (a) a financial penalty not exceeding £2,000, and
- (b) the publication penalty.

(2) Where L has breached regulation 7 and, at the time the penalty notice is served has, or had, been in breach for three months or more, the penalties are—

- (a) a financial penalty not exceeding £4,000, and
- (b) the publication penalty.

(3) Where L has registered false or misleading information under regulation 16(2), the penalties are—

- (a) a financial penalty not exceeding £1,000, and
- (b) the publication penalty.

(4) Where L has failed to comply with a compliance notice in breach of regulation 17(4)(a), the penalties are—

- (a) a financial penalty not exceeding £2,000, and
- (b) the publication penalty.

(5) Where an enforcement authority imposes financial penalties on L in relation to a breach of regulation 7 in respect of a domestic PR property—

- (a) under paragraph (2) or (3), and
- (b) under one or both of paragraphs (4) and (5),

the total of the financial penalties imposed on L must be no more than £5,000.

### **Reviews, waiving and modification of penalties**

**21.—o)** L may, within the period specified under regulation 18(2)(h)(ii), serve notice on the enforcement authority requesting a review of its decision to serve a penalty notice.

(1) Where L gives notice in accordance with paragraph (1), the enforcement authority must—

- (a) consider any representations made by L and all other circumstances of the case,
- (b) confirm or withdraw the penalty notice, and
- (c) serve notice of its decision to L.

- (2) If, on a review under paragraph (2), the enforcement authority—
  - (a) ceases to be satisfied that L committed the breach specified in the penalty notice,
  - (b) is satisfied that L took all reasonable steps and exercised all due diligence to avoid committing the breach specified in the penalty notice, or
  - (c) decides that in the circumstances of the case it was not appropriate for a penalty notice to be served on L,

the enforcement authority must serve a further notice on L withdrawing the penalty notice.

- (3) A notice confirming the penalty notice must state the effect of regulations 22 to 24.
- (4) On a review under paragraph (2), the enforcement authority may—
  - (a) waive a penalty,
  - (b) allow L additional time to pay any financial penalty,
  - (c) substitute a lower financial penalty where one has already been imposed, or
  - (d) modify the application of a publication penalty.

## PART 6

### Appeals and recovery of financial penalties

#### **Appeals**

**22.—**(1) If after a review the penalty charge notice is confirmed by the enforcement authority, the recipient may appeal against the penalty charge notice to the sheriff court of the sheriffdom in which the domestic PR property is situated.

- (2) An appeal against a penalty charge notice must be made within the period of 28 days beginning with the day after that on which the notice under regulation 21(2)(c) is given.
- (3) The sheriff may extend the period for appealing against the notice on cause shown.
- (4) An appeal must be on one (or more) of the following grounds—
  - (a) the issue of the penalty notice was based on an error of fact,
  - (b) the issue of the penalty notice was based on an error of law,
  - (c) the penalty notice does not comply with a requirement imposed by these Regulations, or
  - (d) in the circumstances of the case it was inappropriate for the penalty notice to be served on L.
- (5) An appeal against a penalty charge notice must be by summary application.

#### **Effect and determination of Appeal**

**23.—**p) The bringing of an appeal suspends the penalty notice being appealed taking effect, pending determination or withdrawal of the appeal.

- (1) The sheriff may—
  - (a) quash the penalty notice, or
  - (b) affirm the penalty notice, whether in its original form or with such modification as the sheriff sees fit.
- (2) If the penalty notice is quashed, the enforcement authority must repay any amount paid as a financial penalty in pursuance of the notice.

(3) A decision of a sheriff may be appealed against as if it were a decision constituting final judgment in civil proceedings within the meaning of the Courts Reform (Scotland) Act 2014(a).

### **Recovery of financial penalty**

**24.—**q) The amount of an unpaid financial penalty is recoverable from L as a debt owed to the enforcement authority unless the notice has been withdrawn or quashed.

- (1) Proceedings for the recovery of the financial penalty may not be commenced—
  - (a) before the expiry of the period specified for requesting a review under regulation 18(2)(h)(ii),
  - (b) where a review has been requested under regulation 21(1), before the enforcement authority has served notice of its decision under regulation 21(2)(c), and
  - (c) where the enforcement authority has served a notice of its decision under regulation 21(2)(c) confirming the penalty notice, before the expiry of the period within which L may appeal under regulation 22.
- (2) In proceedings for the recovery of a financial penalty, a certificate which—
  - (a) purports to be signed by or on behalf of the person having responsibility for the financial affairs of the enforcement authority, and
  - (b) states that payment of the financial penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

St Andrew's House,  
Edinburgh  
Date

*Name*  
Authorised to sign by the Scottish Ministers

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(a) 2014 asp 18.

## SCHEDULE 1

Regulation 8(1)(a)

### RELEVANT ENERGY EFFICIENCY IMPROVEMENTS

1. The improvements specified for the purpose of regulation 8(1)(a) are—

#### Insulation measures

- (1) loft insulation, including top-up loft insulation
- (2) flat roof insulation
- (3) room in the roof insulation
- (4) cavity wall insulation
- (5) solid wall insulation
- (6) floor insulation , both beneath suspended timber floor insulation, and insulation on top of solid floors
- (7) double glazing
- (8) secondary glazing
- (9) triple glazing
- (10) solar blinds, shutters and shading devices
- (11) insulated external doors
- (12) hot water cylinder insulation jackets

#### The ventilation measures

- (13) draught proofing of windows, doors and loft hatch as necessary
- (14) fit baffles / dampers to block open chimneys when not in use

#### The heating measures

- (15) replacement /renewal of an existing gas, oil or LPG central heating boilers with condensing boilers
- (16) new gas central heating system (where none before)
- (17) new oil or LPG central heating system (where none before)
- (18) biomass central heating system
- (19) fan-assisted electric storage heaters
- (20) high heat retention electric storage heaters (also referred to as Quantum storage heaters)
- (21) direct electric heating appliances on an off-peak tariff
- (22) electric thermal store (CPSU) wet central heating system
- (23) air source heat pumps (both air-to-water and air-to-air systems)
- (24) ground source heat pumps
- (25) replacing the secondary heating with a more efficient / appropriate appliance

The space and water heating control measures

(26) fitting central heating controls such as room thermostats, programmers, and thermostatic radiator valves either individually, or as a package of controls

(27) fitting a cylinder thermostat on the hot water cylinder

(28) switching from manual charge control to automatic charge control for electric storage heating

The renewables or low carbon technology measures

(29) solar hot water

(30) photovoltaic panels (PVs)

## SCHEDULE 2

Regulation 16(5)

### Information to be registered on the PRS Exemptions Register

**1.** The information referred to in regulation 16(5) to be registered where regulation 9 applies is—

- (a) the name, address, email address and telephone number of the landlord,
- (b) the address of the property,
- (c) which provision or provisions of regulation 9 applies,
- (d) a copy of the valid energy performance certificate for the property,
- (e) details of any energy efficiency improvement identified as a recommended improvement for the property in—
  - (i) a green deal report,
  - (ii) an energy performance certificate and the related recommendation report, or
  - (iii) a report prepared by a surveyor,
- (f) where the landlord relies on regulation 9(1)(a) details of any relevant energy efficiency improvements undertaken and the date on which they were completed,
- (g) where the landlord has not made an energy efficiency improvement, in reliance on regulation 8(2) a copy of any written opinion described in regulation 8(2),
- (h) where the landlord has not made an energy efficiency improvement which was identified as a recommended improvement for the property in a green deal report, a recommendation report, or a report prepared by a surveyor, on the grounds that it does not fall within the definition of “relevant energy efficiency improvements” in section 55(4) of the Act and regulation 8(3), a copy of any evidence on which the landlord relies to demonstrate that the energy efficiency improvement is not a relevant energy efficiency improvement for the property.

**2.** The information referred to in regulation 16(5) to be registered where regulation 11(1) applies is—

- (a) the name, address, email address and telephone number of the landlord,
- (b) the address of the property,
- (c) which provision of regulation 11(1) applies,
- (d) a copy of the valid energy performance certificate for the property,
- (e) a copy of any correspondence and documents evidencing that—
  - (i) consent was required and sought, and
  - (ii) consent was refused or granted subject to a condition with which the landlord could not reasonably comply,

(2) The information required by paragraph (1) must be registered before the landlord lets the property within the meaning of regulation 7.

**3.** The information referred to in regulation 16(5) to be registered where regulation 12 applies is—

- (a) the name, address, email address and telephone number of the landlord,
- (b) the address of the property,
- (c) for each energy efficiency improvement to the property relied on in calculating the cost cap, details of the improvement and its cost;
- (d) for each relevant energy efficiency improvement that has not been made—

(i) copies of three quotations for the cost of purchasing and installing the improvement (from installers of that improvement who meet the relevant installer standards), which demonstrate that the total cost (including value added tax) would exceed the cost cap, and

(ii) the name of the responsible person (or, where two or more persons are the landlord, the name of the responsible person in relation to each landlord),

and confirmation that the responsible person (or each of them) is satisfied that the total cost (including value added tax) would exceed the cost cap.

**4.** The information referred to in regulation 16(5) to be registered where regulation 13(1) or (3) applies is—

- (a) the name, address, email address and telephone number of the landlord,
- (b) the address of the property,
- (c) whether paragraph (1) or (3) of regulation 13 applies,
- (d) a copy of any valid energy performance certificate for the property,
- (e) the date on which the landlord became, or continued to be, the landlord by virtue of a circumstance in regulation 13(2) or (4).

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

These Regulations introduce measures to improve the energy efficiency of certain private rented property in Scotland.

The Regulations apply to domestic private rented property. They prescribe a minimum level of energy efficiency for such properties: that is, is an energy performance indicator (evidenced on the energy performance certificate for the property) of band E.

It provides that, subject to prescribed exceptions, a landlord of a domestic private rented property must not grant a new tenancy of the property after 1 April 2020, and must not continue to let the property after that date, where the energy performance of the property is below the minimum level;

It makes provision for the enforcement of the requirements of the Regulations by local authorities in relation to domestic private rented properties. (“enforcement authority”). Landlords seeking to rely on a prescribed exemption when letting a private rented property which falls below the minimum level of energy efficiency must register that exemption on a register maintained by the local authority for their area. Where an enforcement authority considers that a landlord may be in breach of a requirement of the Regulations, it may serve a compliance notice requiring the landlord to provide evidence to the enforcement authority. Where an enforcement authority is satisfied that a landlord is in breach, it may issue a penalty notice imposing a financial penalty, and a publication penalty (which consists of publishing the details of the breach on the register). The landlord may request a review of the penalty notice by the enforcement authority and, where a penalty notice is confirmed on review, may appeal against the imposition of the penalty notice to Sherriff court.