

Energy Efficient Scotland

The Energy Efficiency (Domestic Private Rented Property) (Scotland) Regulations 2020 and Draft Associated Guidance
Island Communities Impact Assessment



Energy Efficient Scotland - The Energy Efficiency (Domestic Private Rented Property) (Scotland) Regulations 2020 and Draft Associated Guidance

Island Communities Impact Assessment (ICIA)

Introduction

1. The Island (Scotland) Act 2018¹ places a duty on the Scottish Ministers and other relevant authorities, including a number of public authorities, to have regard to island communities in exercising their functions, and for the Scottish Ministers this will also include the development of legislation. This duty is often referred to as 'island proofing'.
2. The importance of island-proofing was recognised in the 'Empowering Scotland's Island Communities'² prospectus published in June 2014. The principle of island-proofing is one of building a broad-based islands awareness into the decision making process of all parts of the public sector.
3. Guidance on how an ICIA should be carried out is not present in the Act. Rather, the Act enables Ministers to develop guidance about the duty to have regard to island communities, of which the ICIA forms part (Section 11). The Scottish Government's Islands Team are consulting with islanders and those with an interest in islands on the development of guidance on how these assessments will operate. This follows on from the online consultation on Citizen Space³ that closed on 26 July 2019. In the meantime, Ministers have asked that ICIA's are undertaken in the spirit of the Act in respect of any new policies, strategies and services.
4. In recognition of the importance of island-proofing, this islands assessment is being produced to highlight issues raised from the consultation and other issues that were highlighted by the consultation on the Fuel Poverty Bill which are particularly relevant to island communities, and explain mitigating action aimed to address these issues.

Background

5. Scottish Ministers announced in June 2015 that they would take long-term action to reduce the energy demand of, and decarbonise the heat supply to our domestic and non-domestic sectors, and designated energy efficiency as a national infrastructure priority.
6. The Scottish Government aims to deliver the National Infrastructure Priority through the Energy Efficient Scotland Programme⁴ – a new, twenty year

¹<http://www.legislation.gov.uk/asp/2018/12/enacted>

²<https://www.gov.scot/publications/empowering-scotlands-island-communities/>

³ <https://www.gov.scot/publications/national-islands-plan-islands-communities-impact-assessment-guidance-consultation/>

⁴<https://www.gov.scot/policies/energy-efficiency/energy-efficient-scotland/>

programme which aims to make Scotland's buildings near zero carbon wherever feasible by 2050, in a way that is socially and economically sustainable.

7. In 2017 Scottish Government consulted on proposals for minimum energy efficiency standards for privately rented sector (PRS) homes.⁵ The Programme for Government (PfG) confirmed that new standards would be introduced to ensure that tenants are able to enjoy homes that are warmer and more affordable to heat. The consultation:
 - Explored the need for setting minimum energy efficiency standards in private rented housing;
 - set out the proposed scope of minimum standards;
 - looked at how the standard would work at the point of rental, and at a date by which time all properties would need to meet the standard;
 - set out proposals for raising the minimum standard over time;
 - explored what would be needed in a new assessment to support the introduction of standards; and
 - sought views on the impact of these proposals.
8. Informed by this consultation, our intention to bring forward regulations based on Energy Performance Certificates (EPC) was then confirmed in the Energy Efficiency Programme Route Map, published in May 2018⁶.
9. The Route Map reported that the PRS would be required to meet the minimum standard of EPC Band C by 2030, where technically feasible and cost effective. However, the requirement to reach EPC Band C is not part of these regulations.
10. To progress to the 2030 target, the Route Map reported that regulations would be brought forward to require landlords to meet a minimum standard. Private rented properties will be expected to meet a minimum standard of EPC Band E, at change of tenancy, after 1 October 2020, extending to all private rented properties to be EPC Band E by 31 March 2022.
11. For properties where there is a change of tenancy after 1 April 2022, the property will need to be EPC Band D, extending to all private rented properties to be EPC Band D by March 2025.

2019 Consultation

12. The consultation on the draft Private Rented Sector Regulations and draft Associated Guidance⁷, which was launched in June 2019 and closed in September 2019, was informed by responses received from past consultations. These responses were used to set out the draft regulations and the draft guidance. Through the 2019 consultation, we gathered views on the nature of the draft guidance to support the draft Regulations to ensure that sufficient

⁵<https://consult.gov.scot/better-homes-division/energy-efficiency-programme/>

⁶<https://www.gov.scot/publications/energy-efficient-scotland-route-map/>

⁷ <https://consult.gov.scot/better-homes-division/private-rented-property/>

information would be available for users to begin the implementation of the standards required.

13. The draft Regulations make provision for the introduction and enforcement of minimum standards of energy efficiency with the Private Rented Sector.
14. The draft Regulations are designed to tackle the least energy-efficient properties in Scotland, those with an EPC rating of F or G on their Energy Performance Certificate (EPC). The draft Regulations establish a minimum standard of EPC Band E for domestic private rented property, affecting new tenancies from 1 April 2020 and all tenancies from 31 March 2022. Similarly, from 1 April 2022 the landlord must not let the property to a new tenant unless the EPC is at least band D. By 31 March 2025 all PRS properties will need to have an EPC rating of D.
15. The draft Regulations require that these standards must be met at the prescribed dates or have a valid exemption at the start of the tenancy.
16. The draft Regulations propose using Energy Performance Certificates as the measure for this standard and sets out the process to identify the relevant required improvements to reach that standard (Part 2).
17. The draft Regulations allow for exemptions and set out the details of this at Regulations 10 -13 (Part 3) and relate to consent, cost and other temporary exemptions which may occur in certain circumstances.
18. Local Authorities will enforce the regulations (Part 4) and as part of this will hold an exemptions register (regulation 14). Powers to gather information to support the work being undertaken by local authorities may be done through the serving of a Compliance notice (Regulation 17).
19. The draft Regulations allow for the serving of a civil penalty notice (Part 5) which imposes a financial penalty. Landlords may ask a local authority to review the penalty notice and may ultimately appeal to the Sheriff Court.

Responses to the Consultation

20. In total, 40 responses from individuals/housing providers/landlords/or their representatives were received:
 - 11 were from individuals owning properties, housing providers, landlords and their representative bodies;
 - 5 were from industry associations/manufacturers and commercial organisations;
 - 10 were from local authorities;
 - 7 were from voluntary or charitable organisations
 - 3 were from other types of organisation
 - 1 was from a Non-Departmental Public Body (NDPB)
 - 3 were from professional bodies

21. From the responses received, none were from members of the public or groups within the island communities. However, some responses did raise issues that are relevant to island communities. even though they were not raised in the context of the islands, and we have taken account of these in this assessment.
22. To assist our assessment we have also referred to recent work carried out during the preparation of the Fuel Poverty Bill. In May 2019 the Fuel Poverty (Targets, Definition and Strategy) (Scotland) Bill: island communities impact assessment⁸ was published. Within this impact assessment responses on the recent Fuel Poverty consultation were taking into consideration and a number of these responses were applicable to the private rented sector of the island communities.
23. In summary, the particular challenges facing the island communities include:
- Environment and geography
 - Logistics of getting the work done
 - The condition of housing stock
 - Long periods of heating use - fuel costs
 - High costs of improvements – due to additional cost to transport materials, additional cost for labour eg accommodation

Issues and mitigating actions

- **The level of investment in energy efficiency improvements in rural properties would not be reflected in its uplift in capital value, nor rental value.**
 - Regulation 12 provides for exemptions on the basis of the cost of making relevant improvements. The property may be exempt from meeting the standard provided the landlord has made relevant energy efficient improvements up to the cost cap. The landlord must supply proof to the local authority that all relevant improvements have been carried out up to the cost cap and register the exemption with the local authority.
- **The Cost cap is too low as the cost to improve island properties is much higher that on the mainland once travel and accommodation costs are factored into quotes.**
 - This will be addressed under Regulation 12. There is a cost cap of £5,000 on improvements to reach an EPC E and a further £5,000 for improvements to a D. If a landlord has carried out all relevant energy efficiency improvements up to the cost cap, they may seek an exemption if the property still does not meet minimum standards. Work to reach EPC E should cost less than £5,000 for most properties with an EPC of band F or G.

⁸ <https://www.gov.scot/publications/island-communities-impact-assessment-fuel-poverty-targets-definition-strategy-scotland-bill/>

- **Further support for the upgrade of island and rural properties is essential. More detailed knowledge of building structures needed to give out accurate advice to property owners**
 - These regulations are part of a wider framework of Energy Efficient Scotland that aims to make all buildings warmer, greener and more efficient. Through the Energy Efficient Scotland skills workstream we are working with industry and education to improve the knowledge of assessors regarding all building types.
- **Where there is an ageing population on the islands, they may require more explanation of what is needed to meet the standard, what work would be involved and why they are being asked to do it.**
 - Guidance will support the regulations which will be aimed at all landlords including those who may need additional support. Home Energy Scotland (HES) also provide free and impartial advice and information for all landlords and all tenants.
- **Where there is hard to treat housing stock the building fabric needs to be considered prior to improvements implemented or further problems could occur and costs could increase dramatically**
 - If a landlord cannot carry out relevant energy efficiency improvements without causing damage to the fabric of the building the landlord can seek an exemption and will be required to provide proof to the local authority and register the exemption with the local authority. The proof must be a letter from a relevant person or independent installer, confirming that the proposed improvement would cause damage to the fabric of the building. Guidance to accompany the regulations will give more details on exemptions and will direct landlords to agencies such as Historic Environment Scotland for advice where relevant.
- **Energy efficiency improvement costs are often high for island properties and loans and grants currently available are sometimes not enough.**
 - Regulation 12 provides for exemptions on the basis of a cost cap on the cost of making relevant improvements. Landlords will be expected to make any other relevant energy efficient improvements up to the cost cap.
 - The Energy Act 2011 (Part 1 para 55) sets out the meaning of relevant energy efficiency improvements and as part of this provision is made for works to be financed by a green deal plan, an obligation imposed by an order made under sec. 33bc or 33bd of the Gas Act 1986, or section 41a or 41b of the Energy Act 1989, ECO, and combination of these, or a financial arrangement as set out in regulations. Scottish Government already provides for landlords to seek loan funds through Energy Saving Trust, based on Home Energy Scotland loans, or Resource Efficient Scotland loans.

- **Local authorities need some discretion regarding the timing if the work including quotes and receipts, particularly where local authority areas contain a large portfolio of PRS stock. Island local authority resources to deal with an influx of work may just not be available and may need more time to put in place.**
 - Local authorities have discretion about whether to take action to enforce a breach of the regulations. Local authorities are well placed with knowledge of local circumstances with regard to the time taken to get quotes and get work done, both in relation to having the work completed and when a landlord is seeking to register an exemption.

- **The availability of assessors, installers and suppliers to the islands has been difficult in the past. The forthcoming PRS energy efficiency regulations could increase demand and put further pressure on this area.**
 - We are aware of the issues experienced by householders and private sector landlords in remote rural and island areas with regards to finding quality assured suppliers including energy assessors and installers. Based on research carried out by Energy Saving Trust in this area we understand a key reason for this is the high costs associated with suppliers, particularly installers in relation to certification costs. This is compounded by the fact that many of these suppliers are micro-sized businesses employing 10 people or less. These issues were included in discussions through the Energy Efficient Scotland Quality Assurance Short Life Working Group with a recommendation made that any quality assurance requirements for Energy Efficient Scotland should be fair, proportionate and not cost prohibitive to SMEs. As a result this should increase the pool of available suppliers in these areas thus addressing the issues experienced by householders and private sector landlords.

- **The 6 months preceding the regulations coming in to force runs between October and end March, during which time work is often delayed because of weather**
 - Relevant improvements for energy efficiency that are carried out in the six months preceding the introduction of the regulations can be taken into account if a landlord is seeking an exemption based on the cost cap. This is to assist landlords who have already carried out work.

Conclusions

24. The impact assessment has helped us to develop an understanding of some of the challenges island communities face in improving the energy efficiency of properties in the domestic private rented sector and also the relationship with fuel poverty.

25. These regulations are intended to tackle the energy efficiency of the poorest performing homes in terms of energy efficiency in the PRS, and to contribute to the aim of the wider Energy Efficient Scotland Programme to make our homes and buildings more energy efficient and to transition heating systems to renewable or low carbon sources will be critical.



Cationa MacKean
Head of Better Homes Division

19 December 2019



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2020

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-83960-505-5 (web only)

Published by The Scottish Government, January 2020

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS685074 (01/20)

W W W . g o v . s c o t