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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2020 No.**

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

**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—

“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(1),

(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—

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(1) 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) 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—
  - (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<sup>(2)</sup>,
  - (b) the address and post code of the property,
  - (c) a copy of the valid energy performance certificate for the property,
  - (d) details of any energy efficiency improvement identified as a recommended improvement for the property in—
    - (i) a green deal report, or
    - (ii) an energy performance certificate and the related recommendation report,
  - (e) details of any relevant energy efficiency improvements undertaken and the date on which they were completed, and
  - (f) a copy of evidence on which the landlord relies to demonstrate that such relevant energy efficiency improvement have been completed.

(3) Where the landlord has not made an energy efficiency improvement to a domestic PR property on the grounds that the improvement is not a relevant energy efficiency improvement, the landlord must submit for registration on the PRS Exemptions Register—

- (a) the information specified in paragraphs (2)(a) to (c), and
- (b) 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.

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

9. In any case where a landlord lets, or continues to let, a domestic PR property in breach of regulation 6, that breach does not affect the validity or enforceability of any provision of the tenancy.

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(2) “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).