TURCAN CONNELL

BRIEFING NOTE

Proposals for minimum standards of energy efficiency in the private rented sector

The Scottish Government has published a new consultation in respect of proposed regulations which will require most tenancies within the private rented sector as far as possible to meet or exceed a reformed "EPC HRR Band C" from 1 April 2028 for new tenancies and from 1 April 2033 for all privately rented homes (the "Proposed Regulations").

The consultation (including the Proposed Regulations) is available here and closes on 29 August 2025.

Previous consultations

The Scottish Government has previously consulted on minimum energy efficiency standards in the private rented sector. In 2017, compliance with energy performance certificate ("EPC") Category D by the end of 2025 was proposed but these plans were withdrawn during the Covid pandemic. In 2023, compliance with a "minimum energy efficiency standard" (which would be achieved by the installation of certain measures or by EPC Category C) by 2028 was proposed but again these plans were withdrawn.

This briefing note sets out an overview of the current proposals as set out in the Proposed Regulations. It is important to be aware that these are proposals and that they may be subject to change following consultation and/or as part of the parliamentary process should they be taken forward.

What is "EPC HRR Band C"?

The Scottish Government is reforming EPCs as part of a separate exercise and intends to lay new EPC regulations in September 2025, coming into force in autumn 2026 (subject to UK Government's timetable for development of the "Home Energy Model", which is a new methodology to assess the energy performance of dwellings). The new EPC will provide three headline ratings, one of which will be the Heat Retention Rating ("HRR") which will focus on the fabric of the building i.e. how well it retains heat. The Scottish Government's response to the EPC reform consultation sets out that EPC HRR Band C would be achieved by homes with a HRR of 71 to 120 kWh/m2/year, although this rating will only be confirmed if and when the new EPC regulations are passed.

It is important to note that an existing EPC Category C would not be evidence of compliance with EPC HRR Band C and that a new reformed EPC would be required. The consultation notes that around 80% of homes with EPC Category C would also meet EPC HRR Band C. However, it goes on to say that some homes which currently meet EPC Category C may fall below the proposed EPC HRR Band C, and that some homes which currently fall below EPC Category C may achieve proposed EPC HRR Band C or above.

To which tenancies would the Proposed Regulations apply?

The Proposed Regulations would apply to all tenancies covered by the Repairing Standard. The Repairing Standard is the minimum level of repair a house must achieve to be used as privately rented accommodation in Scotland and only limited exceptions apply.

The following would be excluded from the Regulations:

- Short-term lets.

  While short-term lets are excluded from the current proposals, the consultation notes that any future development of minimum energy efficiency standards could consider the potential for standards to be applied to short-term lets.

- The specific types of tenancies on agricultural holdings, crofts and smallholdings which are currently excluded from the Repairing Standard – even once they become part of the Repairing Standard from 28 March 2027.

  The consultation says that extending a prohibition on letting where the required standard is not met would not be appropriate for these types of tenancies, many of which can be lifelong, intergenerational or legally required.

  Note: Where a residential property included in an agricultural tenancy is sub-let by the tenant to a third party, it is likely that the property would fall within the scope of the Proposed Regulations. It seems that responsibility for minimum energy efficiency standards in this case may well lie with the farm tenant, although this would benefit from clarification in the Proposed Regulations. We understand that the Scottish Government is intending to address similar issues which arise across housing legislation where the owner is not the direct landlord as part of wider reforms to the private rented sector as set out in the Housing (Scotland) Bill, and so it is hoped that the point will also be clarified in any regulations laid before the Scottish Parliament should the proposals for minimum energy efficiency standards be taken forward.

What happens if a property does not meet EPC HRR Band C?

A landlord would be prohibited from letting a property unless it (1) meets or exceeds EPC HRR Band C or (2) has all "relevant energy efficiency improvements" installed or (3) is exempt. The prohibition would apply from 1 April 2028 to all new tenancies and from 1 April 2033 for all tenancies.

The Proposed Regulations include a suggested list of "energy efficiency improvements" such as insulation, double glazing and draught proofing. A "relevant energy efficiency improvement" is an improvement from this list which is identified in an EPC issued under the proposed new system as one which will improve the energy performance of that property and for which the cost of purchase or installation can be financed wholly or partly by a grant or loan from the Scottish Government.

Proposals for a separate bespoke technical assessment are being developed which, according to the consultation, could be used to help an owner understand which energy efficiency improvements would and/or would not be technically suitable for their property. The consultation goes on to say that this would provide "an additional safeguard for consumers, particularly those with traditional or protected buildings, those in rural areas or tenements where concerns have been raised about risks such as damp, condensation or mould if measures were recommended which would not be appropriate".

The proposals for this separate assessment (which would be known as the "Heat and Energy Efficiency Technical Suitability Assessment") are the subject of a separate consultation which is available here and which also closes on 29 August 2025.

What are the exemptions?

Lack of consent

A landlord would be entitled to an exemption where the current tenant refuses consent for the work installing the relevant energy efficiency improvements to be carried out or where the tenant's consent (despite reasonable efforts by the landlord) could not be obtained. This exemption would last for five years but would expire earlier if the tenancy came to an end before that.

If consent from a third party (such as the planning authority, a lender or a neighbour) is required for the installation of the relevant energy efficiency improvements but is refused (or despite reasonable efforts by the landlord) could not be obtained, a five year exemption would be available.

Negative impacts on fabric or structure of property

A landlord would be entitled to an exemption if an independent chartered building surveyor or other expert has given a written opinion that installing relevant energy efficiency improvements would be inappropriate or could have a negative impact on the fabric or structure of the property. This might be e.g. where a property is in a designated in conservation areas or where the measures might lead to other issues such as damp or condensation. This exemption would only last for five years on the basis that new technologies may become available.

Temporary exemption

A six month temporary exemption would be available in certain limited circumstances such as where a new landlord inherits or purchases a sub-standard property with a sitting tenant.

Cost cap

There would be a cost cap which would provide a ceiling on the maximum figure that a landlord would be required to spend on relevant energy efficiency improvements. If a landlord was unable to improve the property without spending more than the cost cap, they would have to make all relevant improvements which can be made up to the amount of the cap, then register for an exemption.

The proposed cap is £10K. This would include the cost of getting a new EPC and expenditure made on relevant energy efficiency improvements intended to meet the required standard within the 12 month period before the Proposed Regulations come into force. The cost cap exemption would remain in place until the ownership of the property changes to a new landlord.

Registering for an exemption

The landlord would need to register for an exemption in all cases where one is being sought. The information which the landlord would need to supply when registering depends on the exemption in question but would include the landlord registration number, address and postcode of the property and a copy of the EPC.

Would any financial support be available?

Loans for certain energy efficiency improvements are available for eligible private rented sector landlords via the existing Private Rented Sector Landlord Loan Scheme operated by Home Energy Scotland. Currently, the maximum funding available per property is £38.5K. Landlords with up to five properties can borrow up to £100K with 0% interest while landlords with more than five properties can borrow up to £250K subject to 3.5% APR interest.

What are the penalties for non compliance?

Local authorities would be responsible for enforcement and would be able to serve compliance notices. A breach of the Proposed Regulations risks a fine of between £600 and £3K depending on the nature and length of breach in question, while a breach of a compliance notice risks a fine of up to £600. Providing false or misleading information when registering for an exemption risks a fine of up to £600.

These are set within the £5K maximum penalty permitted under UK wide legislation. As part of similar proposals for England & Wales, the UK Government consulted on proposals to increase the maximum penalty to £30K. The Scottish Government are seeking views to align with this proposal as part of the consultation on the Proposed Regulations.

The consultation also notes that local authorities would also have powers to serve a publication order for acts of non-compliance in addition to (or instead of) a fine.

Summary and timing

Letting properties within the Scottish private rented sector is a highly regulated activity and the Proposed Regulations are the latest development in the ever-increasing amount of regulation. However, minimum energy efficiency standards have long been on the legislative agenda having been the subject of two previous consultations and so the latest proposals will not altogether be a surprise. In addition, minimum energy efficiency standards have been in force in the private rented sector in England & Wales since 2015 with proposed amendments to the standards undergoing consultation by the UK Government earlier this year.

While the Proposed Regulations are just proposals, landlords in the Scottish private rented sector will want to keep updated so that they can plan ahead for any new reformed EPCs and/or relevant energy efficiency improvements which might be required under any regulations laid before and passed by the Scottish Parliament.

The consultation closes on 29 August 2025 and assuming that the proposals are taken forward, it can be expected that regulations will be laid formally before the Scottish Parliament in early 2026 before coming into force on 1 April 2028 (when they will apply to all new tenancies) with a backstop for compliance for all tenancies from 1 April 2033.

Heat in Buildings Bill

A separate Heat in Buildings Bill is expected later this year, including powers to introduce regulations setting minimum energy efficiency standards for owner-occupier and non-domestic properties and setting out a target for decarbonising heating systems by 2045.

This note is intended as a brief summary of the Scottish Government's Consultation on Draft Energy Efficiency (Domestic Private Rented Property) (Scotland) Regulations. No responsibility can be accepted for any action taken in reliance of this note and specialist advice should be taken in every case. Turcan Connell will be happy to provide such advice. Should you have any queries, please get in touch with your usual Turcan Connell contact or email enquiries@turcanconnell.com where we can help direct assistance.© Turcan Connell – August 2025

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