



**The Energy Efficiency (Private Rented
Property) (Scotland) Regulations 2019
A response from Energy Action Scotland**

12 September 2019

Question 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 to that standard?

Please set out the reasons for your response.

Although it is still technically possible to obtain a “Green Deal Report” i.e. an EPC (RdSAP or SAP Appendix S) with an Occupancy Assessment (SAP Appendix V), the terminology “green deal” may become obsolete to its original purpose and policy intent. Loan products for energy efficiency measures (EEM) can still be obtained via the Green Deal Advice Report system, however these are in effect commercial loan products and not associated to the original Green Deal Government backed scheme. It may be prudent to describe draft Regulation 8(b)(i) in a manner which is purely functional and not reliant on the legal definition of “Green Deal Report” continuing for the lifetime of Energy Efficient Scotland (EES).

The draft regulation defines “green deal report” as “a report produced pursuant to a qualifying assessment,” it further defines the “qualifying assessment” as having “the meaning given in section 3(9) of the Act”. This required that this draft Regulation then details this as that defined in the Energy Act 2011 section 3(9), “a qualifying assessment is an energy efficiency assessment which meets the requirements of the framework regulations and deals with such other matters as specified in those regulations.”

Q1 of this consultation asks if this is “sufficient clarity”, whilst from a legal perspective this eventually gets to a sort of definition which most people tend to understand as a Green Deal Advice Report (GDAR). There is the risk that at some point this route to a definition via the Energy Act 2011 is amended and that the amendment may not fit the purpose of this Regulation, or indeed fully consider the impact of such an amendment on this Regulation. Therefore, it may be prudent for Regulation 8(b)(i) to have a fully intrinsic definition for what the Scottish purpose of a GDAR is under this legislation rather than a referential one?

One of the known issues with the current GDAR process is that it will not allow for the recommendation of a high heat retention storage heater. A supplementary process called Green Deal Improvement Package (GDIP) was required to be able to select this particular measure. In addition, the GDIP process could be employed to give a more representative indication of the likely savings of a measure as it allowed the Green Deal Assessor (GDA) to

adjust the parameter of certain measures e.g. the known U-value of wall and roof insulation and the full details of a PV array installation, kWp size and orientation etc. This kind of detail has implications in how expected savings are communicated to both the landlord and the occupant. The savings attributed under the GDAR process and also within the Appendix T process (described next) are not very sensitive to the performance of what is actually being installed, and they necessarily take an average view of the performance improvement.

For the Regulation 8(b)(ii) it is worth considering that the list of measures that would appear within an EPC “recommendation report” is neither selected by an approved assessor nor is it a comprehensive list. It is an automatically generated list of likely improvement measures from SAP Appendix T for which the selection logic will exclude certain measures e.g. secondary glazing, favouring instead replacement double glazing. The fact that Appendix T has selected this measure is not a guarantee that this is the most appropriate under the dwelling’s particular circumstances. A comprehensive review of these issues with the current

format EPC are available in the research report produced by Energy Action Scotland and Alembic Research¹.

For Regulation 8(2)(b), the terminology “relevant installer standards” is not defined under section 2(1). It cannot therefore be assumed that this means that as defined by e.g. PAS 2030(2017), PAS 2030 (2019), and/or PAS 2035. This should be clarified within the Regulations before it is approved.

Regulation 8(2) further notes that an energy efficiency improvement can be defined as being not relevant where written opinion is sought from a “relevant person”. The definition provided does clearly exclude those designated as EPC assessors or DEAs only. However, it must be pointed out that for the GDA qualification, the learning outcomes do support the view that a GDA in some circumstances should be qualified to determine if a measure selected by the software is appropriate and would not negatively impact on the building:

See – ABBE Level 3 Diploma in Domestic Green Deal Advice Qualification Specification²

Unit 3: Undertake energy inspections - Unit Reference Number: T/503/8165

#5.6 Identify and record any factors that could affect the choice of energy efficiency measures for the property, such as:

- Issues that make them unsuitable for the property
- Listed building status
- Interactions between building fabric and building services

Unit 7: Prepare and Issue Domestic Green Deal Advice Reports - Unit Reference Number: R/503/8187

#2.4 Explain how to check and amend energy efficiency measures generated to ensure they are appropriate for the property and customer.

#2.5 Describe the consequences of making inappropriate suggestions for energy efficiency measures.

Regulation 8(3) defines “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.” This is not clear as to whether the use of “can” in this is imperative i.e. that the landlord in defining a “relevant energy efficiency improvement” is only able to do so if a grant or loan from the Scottish Government can be secured. This is treated somewhat differently in the Draft Guidance where it notes:

“3.1.1 Regulation 8(3) requires that the cost of purchasing and installing the relevant energy efficiency improvements **may** be financed by means of a financial arrangement provided by a public authority, in this case the Scottish Government through Home Energy Scotland (HES), towards the cost of works (not necessarily the whole cost of the work).”

At the risk of labouring a semantic difference, in order to avoid any confusion these terms should be the same. In the Draft Guidance para 3.1.1 does end with “Landlords may, however, fund energy efficiency improvements as they wish.” Which on balance might actually be better described at the beginning of 3.1.1 i.e. that landlords can of course fund

¹ [A Review of Domestic and Non-Domestic Energy Performance Certificates in Scotland](#)

² <https://www.abbega.co.uk/repository/documents/specification-level-3-diploma-in-domestic-green-deal-advice-april-19.pdf>

these required measures in any way they like and that the opportunity to reduce the burden of cost is available, but of course not all landlords would be eligible e.g. where a landlord has more than 3 properties.

This raises a second point around the language used to qualify the term “relevant energy efficiency improvements”, which is an important definition as the legislation is predicated on whether a measure is or is not **relevant**. There could be a risk that failure to obtain support funding from the Scottish Ministers may render a useful energy efficiency measure as not relevant from a legal position, a point expanded on in our response to Q2. In addition, defining the relevancy in this way necessarily limits the range of EEM to only those listed in Schedule 1. Whilst this list is wide in its scope and sufficiently generic to cover most recognisable EEM, the introduction of version 9.94 of RdSAP³ will bring with it the opportunity to improve energy efficiency with more innovative solutions to improve the SAP score for existing dwellings. This point was raised in our research report with Alembic Research¹.

Having a defined list in legislation means that only measures explicit to this would ever be considered as relevant. This both misses the opportunity for encouraging innovation and also perhaps more importantly, could be a mandate for inaction, i.e. that in meeting the higher levels of EES, e.g. band ‘B’ for fuel poor occupants later in the policy, may only be achievable with measures not listed. This should not be considered as a reason for inaction and the process for defining relevancy for EEM needs to also recognise the opportunities under the new RdSAP methodology incorporating Appendix Q and also the innovation work underway with ECO3 obligated suppliers.

Note on Schedule 1

Insulation measures for the roof does not include rafter insulation, this is not necessarily the same thing as “room in the roof insulation” as a normal pitched roof which could take loft insulation may elect to install that insulation in the rafters, rather than the loft joists. This may be a precursor to extending the living space into the roof, but it in itself does not define a roof room.

(7) and (9), rather than being specific about double and triple glazing, these both could simply be defined as “replacement multiple glazing”.

(10) is mostly concerned with measures to reduce the energy for cooling buildings, i.e. summer overheating. This is not currently a concern for RdSAP, however it may be something that could be accounted for under Appendix Q via version 9.94? The impact of shutters to reduce heat loss from glazing was raised in our research report¹ to the Scottish Government and is widely supported by Historic Environment Scotland. At present, there is no facility under RdSAP to account for this, a point which was again raised in our EPC research report¹.

(12) whilst the material being applied is insulation, in energy efficiency terms the impact is to improve the heating system efficiency, so this is really a heating measure.

(19) fan-assisted storage heaters will really only have a positive impact on the rating of a property where they are used to replace an existing storage heater of a lower response (R) rating. In certain cases, a bigger energy efficiency improvement could be obtained by switching to an electricity tariff which is defined as 24-hour, which then also confers an automatic charging improvement to the heating system i.e. described under (28). An

³ <https://www.elmhurstenergy.co.uk/latest-rdsap-v9-94-update-is-coming-soon>

example of this would be something like ScottishPower's ComfortPlus Control with "Weathercall" or SSE's Total Heat Total Control tariffs.

(20) please note that "Quantum" is a brand name, the generic term "high heat retention heaters" should suffice. Whilst it is true that they are often referred to as "Quantum", this position is similar to "Hoover" and vacuum cleaner. There may be other entrants to the market all trading on the idea of providing a high heat retention store.

(21) does this also include direct wet electric boilers (not thermal store)?

(29) should say "Solar **Thermal** Hot Water".

Question 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.

Scottish Government interest free loans from HES are for both energy EEM and also for renewables. For the PRS, landlords are eligible only where they own 3 or less properties and not owned by a business nor listed as a business asset. NB an admin fee is necessary for the loan application of 1.5% of loan (max. £150). For the EEM part of the loan (£15k), the proposed work must be recommended on an EPC. NB EEM recommendations on an EPC are generated automatically from SAP Appendix T, and do not represent the views or experience of the landlord or the property assessor.

See Draft Regulation para 8(1) – this goes beyond that which could be recommended via Appendix T

- (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.

This in effect means that an EEM could be suggested for a PRS landlord which qualifies under “relevant energy efficiency improvements” e.g. the measure is listed on a Green Deal Advice Report but does not fulfil the loan terms for the HES loan because the same measure is not listed on the “Recommended Measures” section of the EPC.

Draft Guidance for the Regulation states:

4.1.3 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 Scottish Ministers.

Thus, it may be possible that a landlord could seek an exemption from meeting minimum standards on the basis that they are not able to secure a HES loan for that type of measure even though it passes the rigor defined for “relevant energy efficiency improvements” under section 8(1) and perhaps could be financed by ECO funding, or by any other means?

4.1.4 The landlord does not need to meet minimum standards subject to:

- *The landlord making all relevant energy efficiency improvements; or*
- *There are no relevant energy improvements that can be made to the property.*

Scope and Clarity of Information Provided

Landlords should be offered an opportunity to receive an options appraisal report, including an occupancy assessment (SAP Appendix V) report which would allow real costs of energy and of measures to be fully accounted for. This would detail a number of costed scenarios by which they could achieve EPC ratings ‘E’, ‘D’, ‘C’ and ‘B’. Landlords can then make informed decisions about timescales and the necessity for investment.

Mix of Funding Advice

1. Some guidance on the measures and process for applying for the Landlords Energy Saving Allowance (LESA) would be helpful⁴, particularly for smaller landlords or those with 1-3 properties.
2. Relevant to this consultation is the proposed expansion of the current ECO3 scheme “First Time Central Heating” route for private sector landlords. This should be in place by 2020⁵.

Question 3

How would the changes you suggest influence the speed with which you would expect improvements to occur?

This is not necessarily about rushing into front loading energy efficiency improvements at the minimum level at each phase of the introduction of the legislation. Landlords need clear, costed and primarily realistic projections of the impacts of the investment in the property asset. This is both to the performance of the property, and also to the energy savings that can be realised for the tenant. The key in this is adopting a better format for the EPC, the ability to account for real energy costs and real (EEM) re performance.

Question 4

We propose that 6 months in advance of the Regulations coming into force local authorities should take account of expenditure outlay on measures 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?

It may be necessary for the upper cost cap to be considered to also include for necessary repair work in particular where that repair work is necessary for the continued occupation of the property i.e. defined Below Tolerable Standard. These could be considered as enabling works i.e. that without these there is little point in making other parts of the property energy efficient, no point in insulating the wall if the roof has lost integrity following a severe storm.

The upper cost cap should not just be defined as being the total capital of the proposed measures; grants could be applied for, ECO funding and even a tenant contribution, e.g. if the total cost of the works is £10,000, but a mix of grant, ECO funds and a small contribution from the occupant can bring this below the £5,000 mark, then this improvement work should be mandated. Where the only support that can be secured is a loan, then the cost cap would apply in full i.e. a loan for £10,000 is still over the £5,000 threshold and so would not be mandated.

There needs to be a review period for the cost cap, the cost of measures is fluid in the marketplace and could at some point fall within the cap level. It should not simply be established in 2020 that a measure is over the £5,000 threshold and then never reviewed.

⁴ <https://www.gov.uk/hmrc-internal-manuals/property-income-manual/pim7070>

⁵ <https://www.gov.uk/government/consultations/energy-company-obligation-eco3-improving-consumer-protection>

Should the cost cap be successfully applied for, but it would still be possible to do low cost measures within e.g. the cost of one month's rent, then there should be an onus to install something rather than nothing. This would in effect bring in the idea of a lower cost threshold. These low-cost measures could include e.g. simple draughtproofing and the installation of LED lights.

Question 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.

EAS has no particular view on the level of fines levied. However, we would like to see some commitment that the fines generated should benefit the sector and its tenants and that local authorities would agree to pass on a proportion of these fines per year to a charitable body which is focussed on growing the positive aspects of the sector, its landlord and benefitting the tenants to sustain useful tenancies. SafeDeposit Trust Scotland⁶ is an example of a charitable organisation supporting the sector.

⁶ <https://www.safedepositsscotlandtrust.com/>