



# Energy Act 2011

## 2011 CHAPTER 16

### PART 1

#### ENERGY EFFICIENCY

VALID FROM 01/07/2019

### CHAPTER 3

#### PRIVATE RENTED SECTOR: SCOTLAND

##### *Introductory*

#### **54 Meaning of “domestic PR property” and “non-domestic PR property”: Scotland**

- (1) For the purposes of this Chapter—
  - (a) a property is a “Scottish domestic private rented property” if it is let under a tenancy to which Chapter 4 of Part 1 of the Housing (Scotland) Act 2006 (asp 1) applies;
  - (b) a property is a “Scottish non-domestic private rented property” if it—
    - (i) is situated in Scotland,
    - (ii) is let under a tenancy, and
    - (iii) is not a dwelling.
- (2) In subsection (1)(b) “dwelling” has the meaning given by the Energy Performance of Buildings (Scotland) Regulations 2008 (S.S.I. 2008/309) (“the Energy Performance (Scotland) Regulations”).
- (3) A Scottish domestic private rented property is referred to in this Chapter as a “Scottish domestic PR property”.

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- (4) A Scottish non-domestic private rented property is referred to in this Chapter as a “Scottish non-domestic PR property”.

*Scottish domestic energy efficiency regulations*

**55 Scottish domestic energy efficiency regulations**

- (1) The Scottish Ministers may make regulations for the purpose of securing that a landlord of a Scottish domestic PR property—
- (a) which is of such description of Scottish domestic PR property as is provided for by the regulations,
  - (b) in relation to which there is an energy performance certificate, and
  - (c) which falls below such level of energy efficiency (as demonstrated by the energy performance certificate) as is provided for by the regulations,
- may not let the property until the landlord has complied with the obligation mentioned in subsection (2).
- (2) The obligation is to make to the property such relevant energy efficiency improvements as are provided for by the regulations.
- (3) Regulations under this section are referred to in this Chapter as “Scottish domestic energy efficiency regulations”.
- (4) For the purposes of Scottish domestic energy efficiency regulations—
- “energy performance certificate” has the meaning given by the Energy Performance (Scotland) Regulations;
- “landlord” and “let the property” have the meaning given by the regulations (and “let the property” may be defined to include “continue to let the property”);
- “relevant energy efficiency improvements” means improvements which—
- (a) are of such description as the regulations provide, and
  - (b) can be—
    - (i) wholly paid for pursuant to a green deal plan as provided for by Chapter 1 of this Part,
    - (ii) provided free of charge pursuant to an obligation imposed by an order made under section 33BC or 33BD of the Gas Act 1986 or section 41A or 41B of the Electricity Act 1989,
    - (iii) wholly financed pursuant to a combination of such a plan and such an obligation, or
    - (iv) financed by such other description of financial arrangement as the regulations provide.
- (5) The Scottish Ministers may by order amend the definition of “energy performance certificate” in subsection (4).
- (6) Scottish domestic energy efficiency regulations may come into force no earlier than 1 April 2015.

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## **56 Further provision about Scottish domestic energy efficiency regulations**

- (1) Scottish domestic energy efficiency regulations may, in particular, include provision about—
  - (a) the period within which improvements required by the regulations must be started or completed;
  - (b) exemptions from any requirement imposed by or under the regulations;
  - (c) evidence relating to any requirement imposed by or under the regulations.
- (2) Provision falling within subsection (1)(b) includes, in particular, provision about exemptions—
  - (a) relating to any necessary permissions or consents;
  - (b) relating to the likely negative impact on the value of a property of complying with a requirement imposed by or under the regulations.
- (3) Provision falling within subsection (1)(c) includes, in particular, provision about evidence for the purpose of demonstrating—
  - (a) an exemption from a requirement imposed by or under the regulations;
  - (b) that a property is not one in relation to which the regulations have effect;
  - (c) that the improvements required by or under the regulations are not relevant energy efficiency improvements within the meaning given by the regulations.

## **57 Sanctions for the purposes of Scottish domestic energy efficiency regulations**

- (1) Scottish domestic energy efficiency regulations may include provision for the purpose of securing compliance with requirements imposed on landlords by or under the regulations.
- (2) Provision falling within subsection (1) includes, in particular, provision—
  - (a) for a local authority to enforce any requirement imposed by or under the regulations;
  - (b) about the sanctions for non-compliance with a requirement imposed by or under the regulations;
  - (c) about the sanctions for the provision of false information in connection with such a requirement;including, in cases falling within paragraph (b) or (c), the imposition of a civil penalty by a local authority.
- (3) The amount of any civil penalty provided for by Scottish domestic energy efficiency regulations must not exceed £5,000.
- (4) Where Scottish domestic energy efficiency regulations make provision for the imposition of a civil penalty, the regulations must also include provision for a right of appeal to a court or tribunal against the imposition of the penalty.
- (5) Provision falling within subsection (4) includes, in particular, provision—
  - (a) as to the jurisdiction of the court or tribunal to which an appeal may be made;
  - (b) as to the grounds on which an appeal may be made;
  - (c) as to the procedure for making an appeal (including any fee which may be payable);

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- (d) suspending the imposition of the penalty, pending determination of the appeal;
  - (e) as to the powers of the court or tribunal to which an appeal is made;
  - (f) as to how any sum payable in pursuance of a decision of the court or tribunal is to be recoverable.
- (6) The provision referred to in subsection (5)(e) includes provision conferring on the court or tribunal to which an appeal is made power—
- (a) to confirm the penalty;
  - (b) to withdraw the penalty;
  - (c) to vary the amount of the penalty;
  - (d) to award expenses.
- (7) If the Scottish Ministers consider it appropriate for the purpose of, or in consequence of, any provision falling within subsection (5)(a), (c), (e) or (f), Scottish domestic energy efficiency regulations may revoke or amend any subordinate legislation if the provision making the revocation or amendment would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament.
- (8) In this section “subordinate legislation” has the meaning given in section 21(1) of the Interpretation Act 1978, except that it includes any instrument made under an Act of the Scottish Parliament.

*Scottish tenants' energy efficiency improvements regulations*

**58 Scottish tenants' energy efficiency improvements regulations**

- (1) The Scottish Ministers may make regulations for the purpose of securing that a landlord of a Scottish domestic PR property which is of such description of Scottish domestic PR property as is provided for by the regulations does not unreasonably refuse a request mentioned in subsection (2).
- (2) The request is one by the tenant of the property to consent to the making of such relevant energy efficiency improvements as are identified in the request.
- (3) Regulations under this section are referred to in this Chapter as “Scottish tenants' energy efficiency improvements regulations”.
- (4) For the purposes of Scottish tenants' energy efficiency improvements regulations—
- “landlord” and “tenant” have the meaning given by the regulations;
  - “relevant energy efficiency improvements” means improvements which—
    - (a) are of such description as the regulations provide, and
    - (b) can be—
      - (i) wholly paid for pursuant to a green deal plan as provided for by Chapter 1 of this Part,
      - (ii) provided free of charge pursuant to an obligation imposed by an order made under section 33BC or 33BD of the Gas Act 1986 or section 41A or 41B of the Electricity Act 1989,
      - (iii) wholly financed pursuant to a combination of such a plan and such an obligation, or
      - (iv) financed by such other description of financial arrangement as the regulations provide.

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- (5) Scottish tenants' energy efficiency improvements regulations may come into force no earlier than 1 April 2015.

## **59 Further provision about Scottish tenants' energy efficiency improvements regulations**

- (1) Scottish tenants' energy efficiency improvements regulations may, in particular, include provision about—
- (a) the form, content and service of a request under the regulations;
  - (b) the form, content and service of any response by the landlord to a request (including the period within which any response must be given);
  - (c) exemptions from any requirement imposed by or under the regulations;
  - (d) evidence relating to any requirement imposed by or under the regulations.
- (2) Provision falling within subsection (1)(c) includes, in particular, provision about exemptions—
- (a) relating to any necessary permissions or consents;
  - (b) relating to the likely negative impact on the value of a property of consenting to the request.
- (3) Provision falling within subsection (1)(d) includes, in particular, provision about evidence for the purpose of demonstrating—
- (a) an exemption from a requirement imposed by or under the regulations;
  - (b) that a property is not one in relation to which the regulations have effect;
  - (c) that the improvements for which consent has been requested are not relevant energy efficiency improvements within the meaning given by the regulations.

## **60 Sanctions for the purposes of Scottish tenants' energy efficiency improvements regulations**

- (1) Scottish tenants' energy efficiency improvements regulations may include provision for the purpose of securing compliance with requirements imposed on landlords by or under the regulations.
- (2) Provision falling within subsection (1) includes, in particular, provision for a tenant to apply to a court or tribunal for a ruling that a landlord has not complied with a requirement imposed by or under the regulations.
- (3) Where the regulations make provision for a tenant to make an application such as is mentioned in subsection (2), the provision may, in particular, include provision—
- (a) as to the jurisdiction of the court or tribunal to which an application may be made;
  - (b) as to the grounds on which an application may be made;
  - (c) as to the procedure for making an application (including any fee which may be payable);
  - (d) as to the powers of the court or tribunal to which an application is made (including as to expenses which may be awarded);
  - (e) as to how any sum payable in pursuance of a decision of the court or tribunal is to be recoverable.

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- (4) Where the regulations make provision for a tenant to make an application such as is mentioned in subsection (2), the regulations must also include provision for a right of appeal by the tenant or landlord against any decision of a court or tribunal on an application.
- (5) Provision falling within subsection (4) includes, in particular, provision—
- (a) as to the jurisdiction of the court or tribunal to which an appeal may be made;
  - (b) as to the grounds on which an appeal may be made;
  - (c) as to the procedure for making an appeal (including any fee which may be payable);
  - (d) suspending the effect of the decision being appealed against, pending determination of the appeal;
  - (e) as to the powers of the court or tribunal to which an appeal is made;
  - (f) as to how any sum payable in pursuance of a decision of the court or tribunal is to be recoverable.
- (6) The provision referred to in subsection (5)(e) includes provision conferring on the court or tribunal to which an appeal is made power—
- (a) to confirm the decision;
  - (b) to quash the decision;
  - (c) to make a different decision;
  - (d) to remit the decision or any matter relating to the decision to the person who made it;
  - (e) to award expenses.
- (7) If the Scottish Ministers consider it appropriate for the purpose of, or in consequence of, any provision falling within—
- (a) subsection (3)(a), (c), (d) or (e), or
  - (b) subsection (5)(a), (c), (e) or (f),
- Scottish tenants' energy efficiency improvements regulations may revoke or amend any subordinate legislation if the provision making the revocation or amendment would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament.
- (8) In this section “subordinate legislation” has the meaning given in section 21(1) of the Interpretation Act 1978, except that it includes any instrument made under an Act of the Scottish Parliament.

*Scottish non-domestic energy efficiency regulations*

**61 Scottish non-domestic energy efficiency regulations**

- (1) The Scottish Ministers may make regulations for the purpose of securing that a landlord of a Scottish non-domestic PR property—
- (a) which is of such description of Scottish non-domestic PR property as is provided for by the regulations,
  - (b) in relation to which there is an energy performance certificate, and
  - (c) which falls below such level of energy efficiency (as demonstrated by the energy performance certificate) as is provided for by the regulations,

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may not let the property until the landlord has complied with the obligation mentioned in subsection (2).

- (2) The obligation is to make to the property such relevant energy efficiency improvements as are provided for by the regulations.
- (3) Regulations under this section are referred to in this Chapter as “Scottish non-domestic energy efficiency regulations”.
- (4) For the purposes of Scottish non-domestic energy efficiency regulations—
  - “energy performance certificate” has the meaning given by the Energy Performance (Scotland) Regulations;
  - “landlord” and “let the property” have the meaning given by the regulations (and “let the property” may be defined to include “continue to let the property”);
  - “relevant energy efficiency improvements” means improvements which—
    - (a) are of such description as the regulations provide, and
    - (b) can be—
      - (i) wholly paid for pursuant to a green deal plan as provided for by Chapter 1 of this Part, or
      - (ii) financed by such other description of financial arrangement as the regulations provide.
- (5) The Scottish Ministers may by order amend the definition of “energy performance certificate” in subsection (4).
- (6) Scottish non-domestic energy efficiency regulations may come into force no earlier than 1 April 2015.

## **62 Further provision about Scottish non-domestic energy efficiency regulations**

- (1) Scottish non-domestic energy efficiency regulations may, in particular, include provision about—
  - (a) the period within which improvements required by the regulations must be started or completed;
  - (b) exemptions from any requirement imposed by or under the regulations;
  - (c) evidence relating to any requirement imposed by or under the regulations.
- (2) Provision falling within subsection (1)(b) includes, in particular, provision about exemptions—
  - (a) relating to any necessary permissions or consents;
  - (b) relating to the likely negative impact on the value of a property of complying with a requirement imposed by or under the regulations.
- (3) Provision falling within subsection (1)(c) includes, in particular, provision about evidence for the purpose of demonstrating—
  - (a) an exemption from a requirement imposed by or under the regulations;
  - (b) that a property is not one in relation to which the regulations have effect;
  - (c) that the improvements required by or under the regulations are not relevant energy efficiency improvements within the meaning given by the regulations.



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### **63 Sanctions for the purposes of Scottish non-domestic energy efficiency regulations**

- (1) Scottish non-domestic energy efficiency regulations may include provision for the purpose of securing compliance with requirements imposed on landlords by or under the regulations.
- (2) Provision falling within subsection (1) includes, in particular, provision—
  - (a) for a local authority constituted under section 2(1) of the Local Government etc. (Scotland) Act 1994 to enforce any requirement imposed by or under the regulations;
  - (b) about the sanctions for non-compliance with a requirement imposed by or under the regulations;
  - (c) about the sanctions for the provision of false information in connection with such a requirement;
 including, in cases falling within paragraph (b) or (c), the imposition of a civil penalty by such a local authority.
- (3) Where Scottish non-domestic energy efficiency regulations make provision for a civil penalty, the regulations must also include provision for a right of appeal to a court or tribunal against the imposition of the penalty.
- (4) Provision falling within subsection (3) includes, in particular, provision—
  - (a) as to the jurisdiction of the court or tribunal to which an appeal may be made;
  - (b) as to the grounds on which an appeal may be made;
  - (c) as to the procedure for making an appeal (including any fee which may be payable);
  - (d) suspending the imposition of the penalty, pending determination of the appeal;
  - (e) as to the powers of the court or tribunal to which an appeal is made;
  - (f) as to how any sum payable in pursuance of a decision of the court or tribunal is to be recoverable.
- (5) The provision referred to in subsection (4)(e) includes provision conferring on the court or tribunal to which an appeal is made power—
  - (a) to confirm the penalty;
  - (b) to withdraw the penalty;
  - (c) to vary the amount of the penalty;
  - (d) to award expenses.
- (6) If the Scottish Ministers consider it appropriate for the purpose of, or in consequence of, any provision falling within subsection (4)(a), (c), (e) or (f), Scottish non-domestic energy efficiency regulations may revoke or amend any subordinate legislation if the provision making the revocation or amendment would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament.
- (7) In this section “subordinate legislation” has the meaning given in section 21(1) of the Interpretation Act 1978, except that it includes any instrument made under an Act of the Scottish Parliament.



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### *General*

#### **64 Regulations and orders: Chapter 3**

- (1) Regulations and orders under this Chapter may make different provision for different cases or circumstances or for different purposes.
- (2) Orders under this Chapter are subject to the negative procedure.
- (3) Regulations under this Chapter are subject to the affirmative procedure.

#### **65 Crown application: Chapter 3**

This Chapter binds the Crown.

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