POLICY NOTE

THE HOUSING (SCOTLAND) ACT 2006 (MODIFICATION OF THE REPAIRING STANDARD) REGULATIONS 2019

SSI 2019/

The above instrument was made in exercise of the powers conferred by section 20A of the Housing (Scotland) Act 2006 ("the 2006 Act") and all other powers enabling them to do so. The instrument is subject to affirmative parliamentary procedure.

Background

The Housing (Scotland) Act 2014 ("the 2014 Act) received Royal Assent on 1 August 2014. Section 24(1) of the 2014 inserted a new section 20A in the 2006 Act from 20 November 2014 (SSI 2014/264). Section 24(2) of the 2014 Act amended section 191(5) of the 2006 Act to provide that regulations made under section 20A are not to be made unless a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, the Scottish Parliament.

Policy Objectives

The policy intention is that people should live in good quality homes. The Programme for Government includes a specific commitment to introduce changes to improve the condition of properties in the private rented sector. The policy objective of these regulations is to make amendments to the repairing standard, which is the statutory minimum standard for houses that are let under private tenancies, to improve the condition of those houses.

The regulations will amend the provisions relating the repairing standard in section 13 of the 2006 Act, by:

- Specifying that electrical installations must include residual current devices;
- Extending the scope of the requirement for safe fuels to include fuels other than gas and electricity;
- Specifying that space heating must be by means of a fixed heating system;
- Specifying that any common parts pertaining to the house can be safely accessed and used;
- Specifying that the house must have satisfactory provision for safely accessible food storage and food preparation;
- Specifying that common doors are secure and fitted with satisfactory emergency exit lock.

The regulations consolidate and expand the power of Scottish Ministers to issue guidance on elements of the repairing standard, to which landlords must have regard. This will allow guidance to be provided on new elements that are added to the repairing standard by these regulations.

The regulations extend the repairing standard to require that a house must meet the tolerable standard in order to meet the repairing standard and they also contain provisions removing the duty on private landlords in relation to providing fire and smoke alarms and carbon monoxide alarms, as that duty will form part of the tolerable standard under the Housing (Scotland) Act 1987 (Tolerable Standard) (Variation Of Criteria) Order 2019 (SSI 2019/xxx).

The regulations amend section 12 of the 2006 Act, which sets out tenancies to which the repairing standard does not apply, by:

- Adding an exclusion for short-term holiday lets. Currently these would usually be considered occupancy arrangements rather than tenancies and therefore excluded under section 194 of the 2006 Act, but it is unclear in some cases whether a let of this short would be considered a tenancy or an occupancy arrangement.
- Removing the existing exclusion for tenancies of houses on land leased under types of tenancy defined by the Agricultural Holdings (Scotland) Act 2003, on crofts, or on a holding outwith the crofting counties to which any provision of the Small Landholders (Scotland) Acts 1886 to 1931 applies ("agricultural tenancies").

Another change to the repairing standard is being made by the Housing (Scotland) Act 2006 (Supplemental Provision) Order 2019 (SSI 2019/xxx), which was made at the same time as these regulations.

Appointed Day

These Regulations come into force on 1 March 2019. Different provisions within the regulations will come into force on different dates, as follows:

- Measures which introduce additional requirements for the standard that private rented housing must meet will come into effect on 1 March 2024. That is five years from the date that the regulations come into force.
- Measures which remove the exclusion for agricultural tenancies will come into effect on 28 March 2027.
- Measures to amend the duty in relation to fire and smoke alarms and carbon monoxide alarms will come into effect on 1 February 2021.
- All other measures will come into force on 1 March 2019.

Consultation

The Scottish Government carried out a consultation on changes to the repairing standard, and a copy of the consultation report is published online at https://www.gov.scot/publications/energy-efficiency-condition-standards-private-rented-housing-analysis-responses-public/pages/16/.

Impact Assessments

An Equality Impact Assessment (EQIA) was prepared to accompany consultation on changes to the repairing standard. A copy of this is published online at https://www.gov.scot/publications/energy-efficiency-condition-standards-private-rented-housing-consultation-part-2/.

Financial Effects

A Partial Business and Regulatory Impact Assessment (BRIA) was prepared to accompany consultation on changes to the repairing standard. A copy of this is published online at https://www.gov.scot/publications/condition-private-rented-housing-scotland-business-regulatory-impact-assessment-partial/.

Scottish Government
Housing and Social Justice Directorate

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