

Guidance for Social Landlords on Temporary Exemptions in connection with the Energy Efficiency Standard for Social Housing (ESSH)

GUIDANCE FOR SOCIAL LANDLORDS ON TEMPORARY EXEMPTIONS IN CONNECTION WITH THE ENERGY EFFICIENCY STANDARD FOR SOCIAL HOUSING (ESSH)

Background

1. This guidance note for social landlords has been prepared by the Scottish Government. The Scottish Housing Regulator (SHR) has also been consulted. This guidance should be read in conjunction with the Scottish Government's general ESSH guidance found [here](#).

Basic principle

2. The Scottish Government's starting principle is the approximately 600,000 social rented properties in Scotland should be able to benefit from being fully ESSH compliant by **31st December 2020**. Furthermore, social landlords, and tenants are part of the process that allows the investment to be carried out, and are expected to make every reasonable effort to allow the necessary work to take place. This is essential to ensure that the Scottish Government's and social landlords' longstanding commitment to tackling fuel poverty and mitigating climate change emissions is achieved.

Classifying whether individual properties pass, fail or are temporarily exempt from the ESSH

3. There are three different classifications that are possible under the ESSH. Landlords must consider which classification applies to each property:
 - **Pass** – this arises when the property achieves the minimum required Energy Efficiency (EE) rating.
 - **Fail** – this arises when the property does not achieve the minimum required Energy Efficiency (EE) rating.
 - **Temporarily Exempt** – this can arise when the landlord believes it is either not possible for a property to comply with the ESSH by the target date or the landlord is unable to achieve the minimum EE rating for a property for reasons beyond its control. There are six possible categories of exemption:
 1. Technical
 2. Legal
 3. Excessive cost
 4. Social
 5. Disposal
 6. Unable to secure funding (from 2017)

When temporary exemptions may be appropriate

4. There are circumstances beyond landlords' control that sometimes prevent them from completing planned works to their properties. Thus, it seems reasonable to allow a temporary exemption from the EESSH, to delay achieving the standard, when certain factors prevent the completion of work taking place.
5. Temporary exemptions from the EESSH should be fairly exceptional rather than common events. In the case of an exemption, the property does not 'pass' the EESSH but neither does it 'fail' the EESSH. Exemptions are not permanent and refer instead to a temporary delay beyond the 2020 target date, in anticipation of the potential to achieve the standard when the circumstances that have led to the exemption have changed.
6. Landlords should always be considering alternative (and creative) ways to achieve the EESSH even if a temporary exemption appears to be the most obvious option. In the area of home energy efficiency, the technical and policy landscape is changing rapidly. Technologies can and will advance and new financial programmes, whether from government, energy providers or other sources may come on stream and reduce the costs to the landlord of energy efficiency work which was previously considered disproportionate. Building and other regulations can and do change over time. Tenants and owners also change and this may present new opportunities.
7. It is important to note that even where landlords decide that an exemption is required, **they should still aim to install measures which improve energy efficiency for tenants to the best possible energy efficiency rating in the circumstances, even if these measures will not result in the property achieving the EESSH minimum rating.**

Categories of exemption from the EESSH

Technical

8. Some properties may have specific construction or design features for which existing energy efficiency measures are unsuitable and this may therefore prevent achievement of the EESSH within the target date. The incidence of this exemption is expected to be very rare as the EESSH provides flexibility for landlords on measures.

Legal

9. There may be legal problems to overcome when embarking on a programme of energy efficiency works. If the necessary work required to achieve the EESSH cannot be carried out legally, then there may be grounds for an exemption. An example of legal issues would be where properties are listed buildings or located in historically significant areas which place restrictions on the installation of specific energy efficiency measures, for example solar PV.

Excessive cost

10. Where it is only possible to achieve the EESSH by installing measures where the cost far exceeds any possible benefit to tenants, then an exemption may be reasonable. However, in general, the incidence of this should be very rare as the EESSH measures are not in themselves of disproportionate cost when one considers the longer term benefits in reduced energy use, reduced carbon emissions and increased comfort for tenants.

Social reasons

11. In circumstances where tenants and/or owner occupiers refuse to participate in the installation of energy efficiency measures necessary to achieve the EESSH by the target date, then an exemption may be appropriate. In such instances the landlord must have made every reasonable effort to inform and explain to the tenant and/or owner occupier why the work is necessary, when it is being done and why their participation and co-operation is so important.
12. Scottish Government does not wish to prescribe to landlords what to do in the individual circumstances where a tenancy ends but such an event could provide perhaps the only chance to meet the EESSH in the property by 2020 so it is important that any opportunity is taken. The landlord, it is presumed, will either carry out the necessary work before the new tenant moves in or after the tenant moves in (or a combination of before and after). Without being prescriptive, and unless there are good reasons to the contrary, landlords should always act to maximise EESSH compliance when situations like this arise.
13. The same principles apply in mixed tenure properties, where owner occupiers are objecting to works necessary to achieve the EESSH. To be considered a legitimate exemption the landlord must have made every reasonable effort to explain to owner-occupiers why the work is necessary and to convince them (through their factoring organisations or individually) to pay for their fair share. This may ultimately depend on the individual title conditions of the properties concerned, however, so it may be prudent for landlords to seek advice from their legal advisers before they embark on any such exercise.

Properties scheduled for disposal

14. In the circumstances that a social landlord plans to dispose of a property shortly after the 2020 target date, either through demolition or sale on the open market, and this has been formally agreed through the landlord's relevant governance arrangements, then the property will be exempt from the requirement to achieve the EESSH. If for any reason the landlord does not dispose of the property then it will require to meet the EESSH.

Where landlord is unable to secure funding

15. **From 2017**, if social landlords can show that funding for a necessary EESSH measure is not available, despite having made all reasonable efforts, for example through Home Energy Efficiency Programmes for Scotland (HEEPS) and funding for renewables, then the affected home would have a temporary

exemption from meeting the standard, until such time as external funding was available.

16. Landlords will still be expected to install EESSH measures that can attract funding even if these do not result in the property achieving the minimum EESSH ratings. EESSH measures includes any **additional** works required over and above SHQS requirements and “business as usual” (BAU) cyclical replacement of elements such as boilers, windows and doors. It is anticipated that when funding becomes available for the measure that is necessary for the property to achieve the EESSH that the social landlord will then install it. Further information is available in the EESSH background paper.

Review of the EESSH in 2017

17. There will be a review of the EESSH in 2017. A significant element of the review will be a thorough examination of actual costs incurred in meeting the EESSH and the levels of funding secured by social landlords. Further details on the review of the EESSH are available [here](#).

Links with exemptions and abeyances from the Scottish Housing Quality Standard (SHQS)

18. Where landlords have already self assessed an exemption from the SHQS element 35, and where this has been reported to the Scottish Housing Regulator, then this will continue to apply to the EESSH. However, the Scottish Government expects landlords to keep these under review and consider whether new technologies, changes of ownership, new funding streams and other changes mean that the exemption is no longer necessary.

Roles and responsibilities of the Scottish Government and the Scottish Housing Regulator

19. It is for landlords to decide how they can meet the requirements of the EESSH. If they decide to make use of the provision for exemptions they need to ensure they keep good records of the reasons behind the decisions and be prepared to explain, if required by the Scottish Housing Regulator (SHR), why a property or group of properties cannot be brought up to the EESSH by 31 December 2020. The SHR will monitor compliance with the EESSH using an annual data return.
20. To assist landlords in deciding who to approach if the need arises, the respective roles of Scottish Government and the SHR regarding the EESSH are set out below.
21. Scottish Government’s role is to:
 - a) Make a clear national policy framework for improving energy efficiency in social housing in Scotland.
 - b) If the mechanism is a minimum standard (which it currently is), then specify in guidance the minimum standard to be met, the timescale for achievement,

the scope of the properties that are expected to meet the minimum standard and relevance of all aspects of that standard to social housing.

- c) Subject to resources, answer any novel or contentious technical queries the public may have regarding the EESSH that guidance cannot answer.

22. The SHR's role regarding EESSH is to:

- a) Take account of Scottish Government guidance in its approach to regulating the EESSH.
- b) Monitor and regularly report progress on EESSH compliance and non-compliance.
- c) Seek further information and explanation on aspects of reported compliance, including on exemptions, if necessary.
- d) Ensure that results of EESSH monitoring are taken into account in its regulatory assessment of landlords. Any subsequent regulatory engagement with landlords around the EESSH will be governed through this process.
- e) Ensure that the provision of EESSH data used for monitoring follows the published process and that landlords are aware that they must satisfy themselves that the data provided is correct.
- f) As individual issues arise, consult with Scottish Government policy colleagues regarding aspects of the EESSH policy that are novel or contentious.

23. The Scottish Social Housing Charter came into force in April 2012, and it sets the outcomes and standards that social landlords should be aiming to achieve for their tenants. It is anticipated that the EESSH target, subject to consultation responses, will be incorporated into the Charter when it is reviewed in 2017.

Landlords' responsibilities to their tenants

24. Scottish Government would like to stress that the temporary exemption process does not in any way absolve landlords from their responsibilities to their tenants regarding the EESSH. If a robust EESSH recording system is in place, it should be a very straightforward process for landlords to inform individual tenants by 31 December 2020 that their property is likely to be a) passing EESSH; b) failing EESSH in which case remedial action would be expected; or c) temporarily exempt from meeting the EESSH (but may be required to pass EESSH in the future subject to changes in the underlying circumstances that have led to the use of the temporary exemption).

Updated/augmented/superseding Guidance

25. In common with other Scottish Government guidance, this EESSH temporary exemptions guidance may be updated, augmented or superseded at a later date if it is deemed necessary.

Scottish Government

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