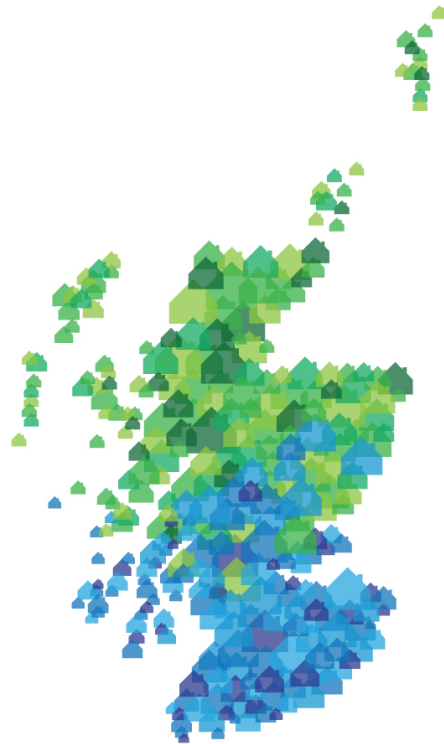


Energy Performance Certificates: Background Briefing



ASSC

Supporting self-catering in Scotland

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The Association of Scotland's Self-Caterers

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BACKGROUND

- i. Energy Performance Certificates (EPCs) provide information on how energy efficient a building is, how it could be improved, and an indication of the cost for each improvement. Buildings are rated on a scale from A-G, with 'A' being the most efficient and 'G' being the most polluting. An EPC lasts for 10 years.
- ii. Scotland, as part of the UK along with other EU Member States, is required to promote energy efficiency performance improvements for new and existing buildings under the Energy Performance of Buildings Directive 2010/31/EU (EPBD).
- iii. The EU adopted the EPBD, a 'recast' (or revision) to the original Directive, in 2010. This has then been transposed in Scotland through Building Standards legislation and The Energy Performance of Buildings (Scotland) Regulations, 2008, as amended. Enforcement of EPCs in Scotland is undertaken by local authorities.
- iv. There has been some confusion regarding whether short-term lets in Scotland require EPCs. At the moment, an EPC is not required where only a room within a building (such as a hotel room) is being let. Other examples where an EPC is not required include: caravan holiday homes; bed and breakfast/guest house accommodation; and certain holiday parks.¹
- v. Individual holiday homes, which are rented out in their entirety as specific properties to groups of people now require an EPC in Scotland, despite advice until January 2017 being that holiday homes may not require EPCs.

SCOTTISH GOVERNMENT POSITION

- vi. In correspondence with the Association of Scotland's Self-Caterers, the Scottish Government stated that the exemptions available to Member States, under Article 4 of the Directive 2010/31/EU on the energy performance of buildings (recast) Directive, were not adopted in Scotland. This was based on responses to their public consultations on Directive transposition.
- vii. As part of their *Energy efficiency and condition standards in private rented housing* consultation, the Scottish Government is now seeking views on widening the scope of the repairing standard to include some holiday lets.² If that occurs as a result of the consultation, then the energy efficiency standard – based on the energy efficiency rating on the EPC – would also apply to those properties. This will be an EPC band 'E' and will be raised to a band 'D' from 2020.

¹ The Scottish Government states that certain holiday parks are exempt as: "where a holiday purchased this way does not allow the buyer to select the specific accommodation at the time of booking, there is no requirement for an EPC".
² Scottish Government *Energy efficiency and condition standards in private rented housing*. A Scotland's Energy Efficiency Programme Consultation (2017). See: <http://www.gov.scot/Resource/0051/00516474.pdf>

- viii. The Scottish Government also makes the following points in the 2017 consultation:

191. The repairing standard applies to any tenancy except prescribed types of tenancies (such as secure tenancies for social tenants and agricultural tenancies). The legislation says that the definition of a tenancy “does not otherwise include any occupation under an occupancy arrangement,” and defines an occupancy arrangement as “an arrangement other than a lease under which a person is entitled, by way of contract or otherwise, to occupy any land or premises.” A typical sort of occupancy arrangement would be an agreement to take in a lodger.

192. There is, however, a question on whether or not a holiday let is a tenancy or an occupancy arrangement. A holiday let cannot be an assured tenancy (the type of tenancy used for private rented housing) or the new private residential tenancies, but in both cases it is listed as a type of tenancy. The Courts in England have considered cases of contrived holiday lets to try to get round rent controls, especially in London, where a particular issue seems to have been with people having lets for “working holidays”. We understand that in some cases the Private Rented Housing Panel (now the First-tier Tribunal for Scotland (Housing and Property Chamber)) has held that a property let as holiday accommodation is subject to the repairing standard.

193. The present situation is unsatisfactory because we cannot give a definitive statement as to whether or not a holiday let is subject to the repairing standard. We would like to make this clearer.

- ix. The consultation document therefore asks: “Do you think that we need to clarify whether holiday lets (or certain types of holiday lets) should be subject to the repairing standard? Yes/no/don’t know.”

KEY POINTS TO EMPHASISE FROM THE ASSOCIATION OF SCOTLAND’S SELF-CATERERS:

- x. We consider Holiday and short term letting are commercial transactions and should not be automatically subject to the same regulation as short assured tenancies in the private domestic sector.
- xi. Several European countries have introduced exemptions for holiday let properties to be required to have EPCs, including Italy, Denmark, Germany and Sweden. These exemptions have been sanctioned by the European Commission. We believe it is only reasonable that the Scottish Government takes the same supportive approach in this country, especially given the considerable economic benefit the sector brings to the tourism economy.³

³ Frontline Consultants., *Economic Impact Assessment of Short Term Lettings on the Scottish Economy* (2017). See:

http://www.assc.co.uk/download/ASSC_Economic_Impact_Assessment_of_Short_Term_Lettings_on_the_Scottish_Economy_-_Final_Report_v1.3.pdf

- xii. We consider requiring EPCs for self-catering properties to be yet another regulatory burden on a sector which faces significant costs pressures (one example is the vexed issue of rising business rates⁴).
- xiii. We consider that the introduction of EPCs to self-catering appears to run contrary to the principles of the Scottish Government's Better Regulation agenda, particularly in relation to proportionality and targeting.⁵
- xiv. We consider that the Scottish Government should take cognisance of the measures already introduced by the industry. For example:
- The VisitScotland Quality Assurance Scheme which requires members to meet a list of twelve environmental standards; and
 - Membership of the Green Tourism Business Scheme which obliges businesses to possess advanced levels of energy efficiency as a requirement of obtaining an award.
- xv. EPCs are designed to help and protect consumers. Most self-catering is now sold, like hotel rooms and bed and breakfast establishments, as inclusive of electricity and heat. While measures to reduce carbon emissions and promote energy efficiency should be broadly welcomed, we consider that the use of EPCs in self-catering properties is unlikely to show any real material benefit to holidaymakers or owners.
- xvi. We consider that it is unfair to penalise businesses operating in old heritage properties, which may be constrained by planning regulations from attracting a sufficiently high EPC rating.
- xvii. Overall, we consider the notion of EPCs on short-term holiday lets is unnecessary, impractical and potentially damaging to tourism businesses. We urge the Scottish Government to introduce exemptions in line to provide a level playing field with our European neighbours.

⁴ ASSC., '2017 Rates Revaluation', 20/02/17. See: <http://www.assc.co.uk/2017/02/press-release-2017-rates-revaluation/>; and ASSC., '12.5% Rate Cap Applies to Self-Catering', 15/03/17. See: <http://www.assc.co.uk/2017/03/breaking-news-12-5-rate-cap-applies-self-catering/>

⁵ Scottish Government., '5 principles of Better Regulation'. See: <http://www.gov.scot/Topics/Business-Industry/support/better-regulation/5principlesofBetterRegulation>