

## Section 63 Action Plans

## SNAPSHOT

### Improving energy efficiency in large buildings in Scotland

**Summary** In addition to the current EPC regulations, as of 1<sup>st</sup> September 2016 new energy regulations require further action to assess and improve energy efficiency and reduce the associated greenhouse gases for larger buildings in excess of 1,000 sq m. The target to reduce emissions will be met through identifying and carrying out improvement works agreed in an Action Plan. The Action Plan is in addition to the EPC and there is a legal requirement to carry out the specified improvement measures or report on actual energy use through a Display Energy Certificate (DEC). These new regulations will have implications when selling and letting property.

#### Why force further action for energy efficiency in existing large buildings?

Research in 2014 conducted by Consumer Focus shows that only 17% of those who have received an EPC have acted on the recommendations. EPCs were introduced to reduce energy use and CO2 emissions and partly a lack of action by building owners has required mandatory improvements to be made.

#### The relevant Section 63 legislation

Relevant legislation: Climate Change Act Scotland 2009 (section 63) and The Assessment of Energy Performance of Non-domestic Buildings (Scotland) Regulations 2016.

Under Section 63, 'Energy Performance of Non-Domestic Buildings' of the Climate Change (Scotland) Act 2009, "owners" of qualifying buildings are required to improve the energy performance of and reduce emissions. The new regulations are generally known as the 'Section 63 regulations'.

#### Effective

1st September 2016

#### Buildings exempt from 'Section 63 regulation'

- Buildings with a floor area of less than 1,000 sq m.
- Properties that have met or exceed the equivalent energy standards of the 2002 Scottish building regulations. This may exempt older buildings that have had comprehensive upgrades to their HVAC and lighting.
- Temporary buildings – Intended life of 2 years or less.
- Workshops and agricultural buildings meeting the "low energy demand" rule.
- Buildings participating in the Green Deal scheme.
- Prisons and young offender institutions.

#### Trigger point

The trigger point for the section 63 part of the new legislation would be a sale or new lease. A sub-let or assignation is not considered a new lease. Section 63 exempt transactions for Action Plans means the lease of a building on a short term lease (12 weeks or less), the sale or lease of a building or building unit at any time before the construction of that building or

building unit has been completed or the renewal of an existing lease with the same tenant.

#### What do the regulations require?

Where the regulations apply, the owner of the building must undertake further assessment to produce an 'Action Plan'. This document identifies targets to reduce the carbon consumption and energy performance of the building and how these targets would be met through physical improvements to the property.

#### Types of Action Plan

The two types of action plan are a Prescriptive and Alternative Action plan. Prescriptive Action Plan measures are:

1. Adding central time heating controls to the HVAC system.
2. Upgrading lighting controls to manual and photoelectric switching.
3. Draught-stripping windows and doors.
4. Adding insulation to the hot water storage cylinder.
5. Replacing incandescent lamps with compact fluorescent lamps.
6. Replacing the boiler if older than 15 years.
7. Insulating accessible roof space.

An alternative Action Plan can be tailored to meet the target rating by choosing different improvement works.

The owner has the choice of carrying out the improvement measures within 42 months to create a building that would be deemed compliant with Section 63 requirements.



### Deferring the required Action Plan measures

Where the responsible party does not want to implement the action plan measures they are able to defer them by carrying out a Display Energy Certificate (DEC) on an annual basis. A DEC is an operational energy rating and considers the actual energy use.

All Action Plans and DEC's are lodged to the Scottish EPC Register. As is the case with an EPC, the Action Plan must be made available to prospective buyers or tenants and provided to the new owner or tenant.

An Action Plan will be produced by a registered 'Section 63 Advisor'.

### The EPC Action Plan and Improvement Measures

Where a relevant non-domestic building or building unit is to be sold or let the owner must make a copy of the Action Plan. An Action Plan must include the energy performance target and the emissions target for the building or building unit, specify any identified improvement works for the building or building unit and specify the timescale for implementation.

### The time allowed for implementing Action Plan Improvement Measures

The maximum permitted timescale for the improvement works is to be 42 weeks from date of the action plan being issued.

The energy performance data relating to the action plan must be lodged with the register before the action plan is made available to a prospective buyer or a prospective tenant.

### Differences between English and Scottish minimum regulations

It is important to note that these Scottish requirements are different from the regulations to be introduced in England and Wales. After autumn 2018 buildings in England or Wales being marketed for sale or to let will be required to meet a minimum EPC rating of an English E before they can be legally marketed for sale or let. It should be remembered that an English E is often easier to achieve than a Scottish E as the rating system is different.

### Reference to owner

The regulations require 'owners' of such buildings to take steps identified by such assessments. Interpretation of this will evolve and it may be that where a lease refers to the tenant being responsible for statutory regulations then they may be liable for dealing with the result of an Action Plan through improvements or carrying out an annual Display Energy Certificate (DEC).

### Enforcement

Every local authority is an enforcement authority for the purposes of these Regulations and it is the duty of each enforcement authority to enforce these Regulations in its area. EPCs, Section 63 Action Plans and Display Energy Certificates are lodged on a central database and progress can be tracked by the Scottish Government.

A penalty charge notice applies for non-compliance.

### Background to energy efficiency in buildings in the UK

Energy Efficiency regulations of buildings in the UK came into force on 4 January 2003. The objective is to promote improvement of the energy performance of buildings and to reduce the amount of carbon produced as a result of their energy use.

Buildings account for 37% of the total greenhouse gases in the UK. Reducing energy consumption and using energy from renewable sources are of paramount importance in reducing UK energy dependency and greenhouse gas emissions.

### CONTACT

Metro Commercial specialise in producing Energy Performance Certificates (EPCs), Section 63 Action Plans and Display Energy Certificates (DECs) for non-domestic buildings.

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