

SNAPSHOT: Section 63 Action Plans

Reducing Energy and CO2 emissions from large buildings in Scotland

Summary *In addition to the current EPC regulations, as of September 2016, new energy regulations will require further action to assess and improve energy efficiency and reduce the associated greenhouse gasses for large buildings over 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 will be in addition to the EPC, and the improvement work measures must be legally met. These new regulations will have implications when selling and letting property.*



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

Research carried out 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 a lack of action by building owners has led to further requirements.

The relevant Section 63 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 requiring an Action Plan

- Buildings with a floor area less than 1,000 sq m.
- Properties have met or exceeded 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 section 63 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 building's carbon consumption and energy performance and how these targets would be met through physical improvements to the property.

Types of Action Plans

The two types of action plan are a Prescriptive and Alternative Action plan. Prescriptive Action Plan measures include central time heating controls to the HVAC system, upgrading lighting controls, improving the building envelope, upgrading DHW provision lighting, replacing the boiler if older than 15 years, and insulating the accessible roof space.

An alternative Action Plan can be tailored to meet the target rating by choosing different improvement works. Once an Action Plan is in draft, the owner can choose to improve the building by implementing the improvement measures to create a 'Section 63 compliant building' or defer the improvements by reporting operational energy ratings. The action plan is then lodged.



Deferring Action Plan Targets

An operational rating is the actual measured energy use via a Display Energy Certificate or 'DEC' annually. All Action Plans and DEC's are lodged in the Scottish EPC Register. As with an EPC, the Action Plan must be made available to prospective buyers or tenants and provided to the new owner or tenant.

A registered 'Section 63 Advisor' will produce an Action Plan.

Buildings target and emissions target

The energy performance target for a building or building unit is the amount of energy, which is the estimated energy consumption of the building or building unit if the identified improvement works were to be carried out. The emissions target for a building or building unit is the estimated level of greenhouse gas emissions from the building or building unit if the identified improvement works were to be carried out.

The EPC & Action Plan

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 EPC and emissions targets for the building or building unit, specify any identified improvement works for the building or building unit and specify the timescale for implementation.

Implementing the Improvement Measures

The maximum permitted timescale for the improvement works is 42 weeks from the lodged action plan.

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 tenant.

Differences between English MEES and Scottish minimum energy certification regulations

Scottish minimum energy certification requirements differ from the MEES regulations that buildings in England and Wales are subject to.

Buildings in England or Wales being marketed for sale or to let will be required to meet a minimum

EPC rating before they can be legally marketed for sale or let.

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, they may be liable for dealing with the result of an Action Plan through improvements or carrying out an annual Display Energy Certificate (DEC). Advice should be obtained from your solicitor.

Enforcement

Every local authority is an enforcement authority for these Regulations, and each enforcement authority must enforce them in its area. EPCs, Section 63 Action Plans and Display Energy Certificates are lodged on a central database, and the Scottish Government can track progress. A penalty charge notice applies for non-compliance.

Background to energy efficiency in buildings

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

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

Future Regulation

Scottish Government consultations will form future regulations for minimum energy efficiency regulations. Domestic property transactions are subject to absolute minimum EPC requirements.

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