POLICY NOTE

THE ASSESSMENT OF ENERGY PERFORMANCE OF NON-DOMESTIC BUILDINGS (SCOTLAND) REGULATIONS 2016

SSI 2016/xxx

1. The above instrument is made in exercise of the powers conferred by section 63 of the Climate Change (Scotland) Act 2009. The instrument is subject to affirmative procedure.

Policy Objectives

2. The Climate Change (Scotland) Act 2009[1] ('The Act') established a framework to drive greater efforts at reducing greenhouse gas emissions in Scotland. The provisions in the Act set a long-term target to reduce Scotland's greenhouse gas emissions by at least 80% by the year 2050. This long-term target is supported by a 2020 interim target and a framework of annual targets intended to drive the policies necessary for achieving the long-term target. A range of climate change mitigation and adaptation policies have been identified which do require legislation and the Act contains provisions in Part 5 to allow these to be taken forward.

3. Within Part 5 of the Act, Section 63 "*Non-domestic buildings: assessment of energy performance and emissions*" places a duty on Scottish Ministers, through regulation, to require owners of buildings to take action to assess and to improve the performance of the existing non domestic building stock, to reduce energy use and greenhouse gas emissions.

4. The principle aim of the instrument, in response to the provisions within section 63, is to reduce emissions and energy use in existing non-domestic buildings. This contributes to the Scottish Government's Greener Strategic Objective. In particular, it will impact on the National Outcome "We reduce the local and global environmental impact of our consumption and production".

5. The instrument introduces a requirement for owners of specified existing non-domestic buildings (those over 1,000 m² in area) to undertake an assessment of the greenhouse gas emissions and energy performance of their building. Assessment is based upon that undertaken for Energy Performance Certificates which is already required for such buildings under the Energy Performance of Buildings (Scotland) Regulations 2008, as amended.

6. Assessment will identify both greenhouse gas emission and energy improvement targets for the building. The building owner must then record the improvement measures that will be implemented to improve the performance of the building to meet those targets. Improvement must be completed within 42 months of the assessment. Alternatively, the building owner may defer improvement by reporting annual operational ratings (actual emissions and energy use) for the building.

7. Action sought under the instrument is summarised as follows:

- Regulations shall apply only to buildings with a floor area over 1,000 m². Further exclusions from the regulations are clearly specified and include lease renewals, short term letting and building which already meet a specified standard (regulation 2).

[1] http://www.legislation.gov.uk/asp/2009/12/contents

- A requirement for the owner to assess the building is triggered by the act of sale or rental to a new tenant, where an energy performance certificate is also required (regulation 5).
- As part of the sale or rental of a property, to allow the transaction to progress, the only duty on the owner is to produce the Action Plan (regulation 5).
- Targets and proposed improvements will be recorded on an Action Plan (regulation 6).
- Under assessment, emissions and energy improvement targets will be defined by applying a set of seven prescriptive improvements to the building (regulation 7). Improvements applied are intended to payback initial cost within five to seven years (schedule to the regulations).
- Improvement may be undertaken subsequently, the owner has 42 months to complete improvement works. (regulation 8).
- Completion of improvement works will be recorded on a document of confirmation of improvement and the performance of the improved building recorded on a new energy performance certificate (regulation 9).
- Completion of improvement works can be deferred where the owner commences the reporting of annual operational ratings within 12 months of the first Action Plan (regulation 10). Reporting is achieved by the production of an annual Display Energy Certificate (DEC) (regulation 11). Further advice to building owners may also be provided in the form of an Advisory Report (regulation 12).
- Responsibility noted above for improvement or reporting always rests with the current building owner and transfers with the interest in the property.
- The building owner will receive advice from a registered energy advisor on how best to improve the building to meet these targets (regulation 13).
- All key documents produced during this process will be lodged to a central electronic register (regulation 14).
- Central lodgement of assessments will support effective enforcement, monitoring and reporting. Information will also be publicly available (regulations 15 to 19).
- Failure to provide an Action Plan on sale or rental or failure to complete improvement works within the required timescale will result in issue of a penalty charge notice to the owner of the building (regulations 22 & 24). Building owners may offer defence, seek review or appeal such notices (regulations 23, 25 & 26).

8. As the instrument includes the option for building owners to either improve or report performance, annual reporting on the overall effect of regulation in reducing energy use and greenhouse gas emissions will be undertaken over the first three years of implementation. This will assist Ministers in determining what further review of regulations may be appropriate and to what timescale.

Consultation

9. A consultation setting out proposals for regulations requiring the assessment and improvement of existing non-domestic buildings was issued on 7 October 2011. Views and opinions on the proposals were sought from over 600 key stakeholders and users of the building standards system in Scotland. Public, private and third sector organisations, Non Departmental Public Bodies (NDPBs) and individuals were advised of the consultation by letter and that the documents were accessible on the Building Standards Division (BSD) website. E-mail notification of the consultation was also made to around 2,000 organisations and individuals who have registered to receive the BSD newsletter. All were invited to submit comments by 20 January 2012. 43 responses were received from a wide range of affected stakeholders. The

Consultation Report and Scottish Government Response is published online at: http://www.gov.scot/Resource/0040/00402393.pdf

10. A subsequent consultation sought views on the form that regulations might take, in the context of existing related regulatory requirements, took place between 28 March 2013 and 23 May 2013. 24 responses were received. That Consultation report and Scottish Government Response are published online at: http://www.gov.scot/Resource/0044/00448418.pdf. The consultation included the proposal that regulation made under section 63 of the Act be combined with the Energy Performance of Buildings (Scotland) Regulations 2008. Despite industry support, it was determined that new regulations should be progressed as a separate statutory instrument to enable implementation of domestic and EU policy on emissions and energy reduction to be managed more effectively.

11. The full document package for each consultation, together with links to related documents and research, remain available on the Scottish Government website at http://www.gov.scot/Topics/Built-Environment/Building/Building-standards/BSD/CurrentConsultation.

Impact Assessments

12. An Equality Impact Assessment was undertaken and identified that there were no equality impact issues arising from the subject of the instrument. The assessment is published online at: http://www.gov.scot/Topics/People/Equality/18507/EQIASearch/S63ClimateChange.

13. A pre-screening exercise, ref PRE-00379, was carried out to determine if proposals for the assessment and improvement of existing non-domestic buildings would require a Strategic Environmental Assessment. This determined that proposals will result in 'no or minimum environmental effects' and that under section 7 of the Environmental Assessment (Scotland) Act 2005, further assessment was not required. A copy of the pre-screening report is published at: http://www.gov.scot/seag/seagDocs/PRE-00379/11313.pdf

14. A Privacy Impact Assessment (PIA) was not undertaken as the regulations and the processes they introduce do not involve the creation or use of personal data, or any other activity which could have an impact on the privacy of individuals. As policy development preceded the introduction of the Child Rights and Wellbeing Impact Assessment (CRWIA), no formal assessment of impact in that respect was undertaken.

Financial Effects

15. The subject of this instrument has a material financial impact on the owners of existing non-domestic buildings, where qualifying buildings are offered for sale or lease to a new tenant. Costs will be incurred by the requirement to assess the building and produce an Action Plan. Further costs will be incurred either in undertaking building improvement measures or in annual reporting of operational ratings.

16. Where a building owner undertakes building improvement measures to meet the improvement targets identified in the Action Plan, this will result in reduced energy costs for the building. The level of improvement sought in generating the improvement targets is based upon measures that, if implemented will pay back the cost of works in reduced energy bills within a period of five to seven years.

17. An assessment of the overall costs and benefits associated with implementation of this instrument ('Option 3 - Require both assessment and either building improvements or reporting of operational ratings') is provided within the final Business and Regulatory Impact Assessment, published at: http://www.gov.scot/Resource/0049/00492329.pdf. This identifies that the benefit from undertaking improvement work following an assessment exceeds the cost of implementation, globally and at an individual building level.

Scottish Government
Directorate for Local Government and Communities
18 January 2016