

## Section 63 Assessments Energy Performance of Non-domestic Buildings (Scotland) Regulations 2016

### Overview

#### What Is Section 63

From 1st September 2016, it is mandatory for owners of non-domestic buildings over 1,000 m<sup>2</sup> to undertake Section 63 assessment of their property, as a legal pre-condition of lease or sale. The Section 63 assessment is based on the building's EPC model and is likely to require an Action Plan with energy saving and carbon reduction targets.

#### Who Is Affected

The onus for meeting the obligations is on building owners, prior to leasing or selling property. Other parties with possible interests include tenants, property managers, lenders, developers and investors.

#### High-Level Planning

Building owners are advised to prepare a risk assessment followed by a practical plan for achieving compliance.

### Full Briefing

#### Policy Background

First drafted in 2013, the legislation was passed in 2016 and is based on Section 63 of the 2009 Climate Change (Scotland) Act.

The Scottish Government now recognises energy efficiency as a national infrastructure priority. Plans to improve energy performance of non-domestic buildings are part of Scotland's Energy Efficiency Programme (SEEP) over the next 15 - 20 years.

#### Summary of Obligations

The regulations are triggered by the proposed lease or sale of a qualifying building or building unit. In addition to an EPC (Energy Performance Certificate), the owner must have the building assessed by an accredited Section 63 Advisor to identify energy and emissions savings targets and how the targets will be met by building improvements.

This forms the Action Plan which, as with EPCs, must be made available to all prospective buyers or tenants. The owner must then choose to either (1) implement the improvements or (2) defer the improvements.

If the first option is taken, a period of 42 months is permitted to complete the improvements. The deferring option obliges the owner to annually report operational energy use through the production of a Display Energy Certificate (DEC).

The selected option is recorded on the Action Plan which is then formally lodged. At this point, the owner can market the property for sale or rental.

If improvements are not completed before the building is sold, the new owner of the building inherits the legal obligation.

All Action Plans and DEC documents are made publicly available from the Scottish EPC Register.

## Scope

The requirement to assess and improve does not apply to :-

- Buildings with floor area less than 1,000 m<sup>2</sup>
- Certain buildings that are EPC exempt
- Buildings complying with 2002 building standards or later
- Green Deal improved properties

In addition, lease transactions that do not trigger the requirement to assess and improve include :-

- Short term leases less than 16 weeks within a 12 month period
- Renewal of existing lease

## Compliance Authority

The regulations are enforced by Local Authorities and a penalty of £1,000 is applicable for each failure.

## Preparation

In addition to identifying the potential opportunities, landlords and property owners will clearly wish to avoid unnecessary costs and protect asset value.

Assessing risk, evaluating options and deciding on a compliance plan requires understanding of the regulations in the context of the portfolio. Before committing to a programme of surveys, it is often practical to conduct a desktop assessment to ascertain where valid EPCs are required and how properties might be considered as zero, low, medium or high risk.

It may be prudent to arrange indicative, sample EPC surveys in order to analyse options for optimising final ratings.

Any proposed building efficiency measures can of course be co-ordinated to take advantage of lease renewals, void periods, planned maintenance and refits.

## Further Information

In July 2016, the Scottish Government published several [guidance documents](#) to help property owners and stakeholders understand the legislation. GEP Environmental offers a free consultation to summarise the relevant obligations, answer questions and propose practical actions to get started.

Our qualified Section 63 Advisors help clients prepare risk management strategies and implement practical compliance routes.

Contact Cameron Oliphant at [camerono@gepenv.co.uk](mailto:camerono@gepenv.co.uk) for further information.