

FINAL BUSINESS AND REGULATORY IMPACT ASSESSMENT

SECTION 63 CLIMATE CHANGE (SCOTLAND) 2009

**REGULATIONS FOR NON-DOMESTIC BUILDINGS: ASSESSMENT AND
IMPROVEMENT OF ENERGY PERFORMANCE AND GREENHOUSE GAS
EMISSIONS**

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BUSINESS AND REGULATORY IMPACT ASSESSMENT

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1. TITLE OF PROPOSAL

Section 63 of the Climate Change (Scotland) 2009 - Regulations for Non-Domestic Buildings: Assessment and Improvement of Energy Performance and Greenhouse Gas Emissions.

2. PURPOSE AND INTENDED EFFECT

2.1 Background

Buildings account for over 40% of the carbon emissions in the UK but, less than 1% of the existing building stock is replaced by new buildings each year. Therefore achieving significant improvement of the overall stock solely through regulations for new buildings will take a considerable time.

Requirements to reduce carbon dioxide (CO₂) emissions and optimise the energy performance of new buildings and new building work are included in Scottish building regulations. However there is currently no legislation to require emission reductions and improvement of the energy performance of existing buildings in circumstances where no building work is proposed.

The Sullivan Report, 'A Low Carbon Buildings Standards Strategy for Scotland', published in December 2007, made recommendations for improving the energy performance and reducing CO₂ emissions from existing non-domestic buildings

Under Section 63, '*Non-domestic buildings: assessment of energy performance and emissions*' of the Climate Change (Scotland) Act 2009, Scottish Ministers must, by regulations:

- provide for the assessment of the energy performance of non-domestic buildings and the emission of greenhouse gases produced by such buildings; and
- require owners of such buildings to take steps, identified by such assessments, to improve the energy performance of such buildings and reduce such emissions.

Options for regulation to require assessment and improvement of existing non-domestic buildings were investigated and developed.

2.2 Objective

The objective of this review is to implement Section 63 of the Climate (Scotland) Act 2009 which requires regulations to be made for:

- the assessment of the energy performance of existing non-domestic buildings and greenhouse gas emissions from such buildings; and
- for building owners to make improvements to their buildings.

2.3 Rationale for Government intervention

As part of its contribution to the international effort required on climate change, the Scottish Government is committed to achieving an 80% reduction in Scotland's emissions by 2050 and a 42% reduction by 2020 (compared to emissions in 1990) through the Climate Change (Scotland) Act 2009 which received Royal Assent on 4 August 2009. Section 63 of the Act requires regulations to be made for:

- the assessment of the energy performance of existing non-domestic buildings and greenhouse gas emissions from such buildings; and
- for building owners to make improvements to their buildings.

In essence, this 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.

Regulations made under section 63 of the Act will support the Scottish Government's 'Greener' Strategic Objective, improving Scotland's natural and built environment and the sustainable use and enjoyment of it. Action will support the National Outcome: "We value and enjoy our built and natural environment and protect it and enhance it for future generations", our Purpose Target: Sustainability – Reduce Greenhouse Gas and Emissions.

In developing proposals, alignment of provisions to consider existing regulatory requirements, incentives and processes took place. This includes:

- Directive 2010/31/EU on the Energy Performance of Buildings (EPBD) came into force on 9 January 2013, building on the similar previous Directive 2002/91/EC. The objective of both the original and recast Directive is to promote improvement of the energy performance of buildings and to reduce the amount of carbon they produce. A key component of this is the use of a UK calculation methodology in assessing building performance and the reporting of that performance and advice on possible improvement through Energy Performance Certificates, albeit there is no requirement to act on the information provided.
- Introduced through powers within the Energy Act 2011, The Green Deal is a UK Government initiative to support the voluntary implementation of energy efficiency measures to households and businesses without the need for building owners to pay the capital cost of improvement upfront. Whilst the future of this initiative is uncertain, it has resulted in the development of resources that will support the assessment and provision of advice on the improvement of existing non-domestic buildings.
- Scottish building regulations apply where a building owner elects to undertake building work to an existing building. Provisions within section 6 (energy) of the Non-domestic Technical Handbook set out the minimum level of performance expected from affected building elements where this occurs.

3. CONSULTATION

3.1 Within Government

Building Standards Division had direct contact and discussion with the following divisions and agencies during the development phase.

- SG Built Environment – Planning;
- SG Housing Sustainability and Innovative Funding Division;
- SG Directorate for Energy and Climate Change;
- Historic Scotland;
- UK Sustainable Buildings Division – Communities and Local Government;
- UK Energy and Climate Change;
- Building Regulations Unit – Department of Finance and Personnel, Northern Ireland; and
- The Convention of Scottish Local Authorities (COSLA)

Discussions were held with the above divisions and agencies before and during the Section 63 Departmental Working Group which informed the development of the proposal.

3.2 Public Consultation

In September 2008, the Scottish Government published a consultation document "Proposals for improving the energy performance of existing non-domestic buildings" which set out the proposals for measures for possible inclusion in the Scottish Climate Change Bill. Subsequently, to address the specific provision of section 63 of the Climate Change (Scotland) Act 2009, two further consultations were undertaken in support of proposals.

The first of the subsequent consultations, 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 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. The Consultation report and Scottish Government Response are published online¹.

¹ <http://www.gov.scot/Resource/0040/00402393.pdf>

There were 43 responses from the following groups:

Group	No.	Percentage
Local Authority	17	40%
Business Groups	1	2%
Professional Body	8	19%
National Agencies	1	2%
Further Education	2	5%
Specialist Interest Groups	1	2%
Heritage/Historic Groups	0	0%
Utilities Companies	1	2%
Energy Advice / consultants	1	2%
Health Sector	0	0%
Commercial Companies	5	12%
Other	5	12%
Individual	1	2%
Grand Total	43	100%

The second subsequent consultation, which was 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. The Consultation report and Scottish Government Response are published online².

It should be noted that the proposal, within the consultation, that regulation under section 63 be incorporated within the Energy Performance of Buildings (Scotland) Regulations has not been progressed. Instead, it was determined that new regulations made under the Climate Change (Scotland) Act 2009 should be progressed as a separate statutory instrument. Whilst industry favours a combined set of regulations, this approach will enable provisions that implement domestic and EU policy to be managed more effectively.

The full consultation package for each consultation, together with links to related documents and research, remain available on the Scottish Government website.³

² <http://www.gov.scot/Resource/0044/00448418.pdf>

³ <http://www.gov.scot/Topics/Built-Environment/Building/Building-standards/BS/CurrentConsultation>

Consultation proposals now being taken forward into regulation can be summarised as follows:

- Regulations shall apply only to buildings with a floor area over 1,000 m².
- A requirement for the owner to assess and improve the building is triggered by the act of sale or rental to a new tenant and applies only where a valid energy performance certificate is also required.
- Further exclusions from the regulations are clearly specified and include lease renewals, short term letting and building which already meet a specified standard.
- Under assessment, an improvement target is defined by applying a set of seven prescriptive improvements to the building. Improvements applied are intended to payback initial cost within five to seven years through reduced energy bills.
- The building owner will receive advice from a registered advisor on how best to improve the building to meet these targets.
- Targets and proposed improvements will be recorded on an Action Plan.
- Before the sale or rental of a property, to allow the transaction to progress, the only duty on the owner is to produce and make the Action Plan available.
- Improvement work may be undertaken subsequently. The owner has 42 months to complete improvement works.
- 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.
- Responsibility for improvement or reporting always rests with the current building owner and transfers with the interest in the property.
- Completion of improvement works will be recorded on a new action plan and the status of the improved building recorded on a new energy performance certificate.
- 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.
- All key documents produced during this process will be lodged to a central electronic register and be publically available. Central lodgement of assessment will support effective enforcement, monitoring and reporting.

3.3 Business and Industry involvement

To assist the development of the regulations, a Departmental Working Group made up of representatives from across industry (Local authority verifiers, Scottish Energy Officers Network, NHS Scotland, legal profession, property sector, designers, research body, and the Carbon Trust) was established. A total of seven meetings were held to develop and agree consultation proposals and to assess and make recommendation on proposals to be taken forward, post-consultation. The key messages from the Working Group were:

- Any assessment process should connect to that already used for Energy Performance Certificates (EPCs), thereby minimising the need for additional assessments.
- That assessment should go further than EPCs and mandatory steps to make improvement should be considered from the start.
- The triggers for assessment should include point of sale and rental, where there is the opportunity for carrying out improvement measures.
- The regulations should be phased in gradually, and recognise improvement funding streams that may exist.

Stakeholder meetings were held during the public consultation period to explain the proposals in more detail and to gauge the views of such groups. These meetings included large and small businesses, energy and resource groups from local authorities, health education and builders and construction professionals. The views emerging from the consultations and stakeholder meetings mentioned above were fed into the review of the public consultation response.

It is intended that dialogue with business and industry will continue with the development and publication of guidance on roles, responsibilities and processes set out under regulation, to assist in clear and effective implementation.

4. OPTIONS

- **Option 1 – Do nothing.**
- **Option 2 – Require assessment but only ask for voluntary implementation of building improvements or reporting of operational ratings**
- **Option 3 – Require both assessment and either building improvements or reporting of operational ratings**

Building on the existing EPC assessment, Options 2 and 3 are based around an initial assessment of a building's carbon and energy performance, the setting of an improvement target and specific advice on how a building would be improved to meet that target. The output of this assessment would be

recorded in an 'Action Plan' which contain details of the building measures to be carried out to improve the building, together with the implementation timescale. The Action Plan will also record whether a protocol to report year on year operational energy and emissions is enacted. The options set out in this section relate to how the Action Plan would be implemented.

4.1 Sectors and groups affected

Sectors and groups affected can be categorised as:

- a. Owners of existing non domestic buildings which are offered for sale or rental, who will bear any additional costs associated with the preparation of an Action Plan and, where retaining ownership of the building, will bear the cost of implement building improvement measures or operational ratings.
- b. Parties who buy or lease a non-domestic building who may, directly (as owner) or indirectly (as tenant), be subject to additional costs arising from a need to implement building improvement measures or operational ratings.
- c. Those involved with the assessment of existing non domestic buildings and of the operational ratings of such buildings and the design and construction of improvements to buildings. If wishing to produce Action Plans, they would have to familiarise themselves with any new regulations and methodologies.
- d. Local authorities or other enforcement bodies who may need to arrange training of staff on enforcement procedures and undertake enforcement in response to new regulations.

With regard to (a) and (b) above, as initial regulation will not cover all buildings, only a proportion of building owners will be affected. The following situations will not attract a need to assess and improve/report:

- buildings which already meet the 2002 Building (Scotland) Regulations or later (a 'proxy' for buildings which are already of a reasonable standard);
- buildings with a floor area of not more than 1000 m² (a 'proxy' for premises owned and occupied by many small and micro businesses);
- buildings with a Green Deal (This may be attractive due to the funding arrangements);
- buildings with a limited life less than 5 years (a subset of those which meet the 2002 standard);
- buildings which are not heated or cooled (This eliminates buildings that generally do not use much energy); and
- buildings under a short term lease (to recognise periodic or seasonal occupation).

4.2 Benefits

Action under section 63 of the CCSA provides the opportunity to make significant reductions in the energy use and carbon emissions associated with our existing non domestic building stock and hence contribute to the overall reduction in greenhouse gases in Scotland.

Reducing Greenhouse Gas Emissions and energy use

A reduction in energy use and emissions from existing buildings:

- supports the Government's agenda to tackle Climate Change and reduces the adverse effect of greenhouse gas emissions on the environment;
- as a sector where improvements are relatively straightforward to implement and to measure, provides a significant and positive contribution to Government targets set for the reduction in CO₂ emissions;
- contributes to the reduction in use of finite natural resources and may also promote development and adoption of systems that incorporate renewable energy sources;
- reduces energy costs arising from the operation of buildings;
- improves the viability and longevity of our existing building stock; and
- encourages the development of skills and resources needed to support a low carbon economy.

It is recognised that there is greater potential for gains from reduced heating costs and attendant potential welfare savings within the existing building stock, compared to that remaining from further improvement in new building standards.

Reducing CO₂ emissions and energy demand in buildings are only two measures amongst many that can be considered to contribute to the delivery of more sustainable communities. Gains are possible in many building types, dependent upon energy load profile, where good practice is adopted. Whilst the scope of application and level of ambition proposed for initial regulations is modest, it represents a sound basis for future investigation and review.

4.2.1 Option 1 - Do nothing

The Scottish Government is committed to the objective of a Greener Scotland and Ministers have a duty to implement Section 63 of the Climate Change (Scotland) Act 2009. Doing nothing would not fulfil these objectives nor lead to any additional reductions in the carbon emissions from the existing non domestic building stock. Scottish Ministers would also not fulfil their duty under Section 63. Therefore no benefits are identified as the option to 'do nothing' is not viable.

4.2.2 Option 2 - Require assessment but only ask for voluntary implementation of building improvements or reporting of operational ratings

For this option, building owners would be required to produce an Action Plan for their property. However they would only be encouraged to either implement building work improvements or to set up a protocol to record operational ratings. Guidance would be provided to assist owners in this.

Based upon implementation during 2016, the assessed carbon and energy savings from Option 2 are approximately as follows:

CO ₂ saved by 2022	0.13 MT.CO ₂ pa
Lifetime CO ₂ saved	1.6 MT.CO ₂
Average annual energy savings	£ 9.7 M

The Scottish Government is committed to the objective of a Greener Scotland and to implementing Section 63 of the CCSA. Whilst the process of producing an Action Plan will spur some owners to carry out physical building improvement measures or report operational ratings, others would do nothing.

It is considered that voluntary implementation is likely to provide a limited additional reduction in emissions from buildings and may only partially fulfil these objectives. Evidence from previous studies on the effectiveness of energy performance certificates in stimulating voluntary improvement indicate that only a small proportion of building owners (18%) act on the information they receive⁴.

The benefits from this option would be limited to:

- Lowering regulatory burden on business;
- Testing the effectiveness of a wholly voluntary implementation of building improvements;
- Allowing business time to prepare for mandatory building improvement measures; and
- Allowing industry longer to gear up to carry out physical building improvement measures

4.2.3 Option 3 – Require both assessment and either building improvements or reporting of operational ratings

For this option, building owners would be required to produce an Action Plan for their property and to undertake the work set out within the Action Plan which would comprise:

⁴ 'Room for improvement: The impact of EPCs on consumer decision-making' – Consumer Focus, 2011

- building improvement measures outlined in the Action Plan, by the prescribed date; or
- commence a protocol to report annually on operational energy and CO₂ emissions.

The option of annual reporting defers but does not remove the requirement to undertake building improvement measures. Guidance would be provided to assist owners in implementing both the improvement option and the reporting option.

Based upon implementation during 2016, the assessed carbon and energy savings from Option 3 are approximately as follows:

CO ₂ saved by 2022	0.20 MT.CO ₂ pa
Lifetime CO ₂ saved	2.45 MT.CO ₂
Average annual energy savings	£ 15.0 M

During development of proposals and in response to consultation, the property industry has consistently expressed the view that the option of an operational ratings system should be present. This offers the potential to demonstrate that behavioural change in how we use our buildings can deliver significant improvements to the energy performance of existing non-domestic buildings and reductions of carbon dioxide and other greenhouse gas emissions without the need to implement building improvement measures. Furthermore such improvements would be achieved at little or no cost to business.

Certain energy groups have considered that Scotland should have introduced operational ratings or 'Display Energy Certificates' (DECs) as a part of the Energy Performance of Buildings Directive. These groups advocate that when DECs are adopted and displayed in buildings, savings in energy are usually achieved. The anecdotal percentage figure of saving is around 2.5%.

The Scottish Government is committed to the objective of a Greener Scotland and to implementing Section 63 of the CCSA. It is considered that implementing building improvements but, within initial regulations at least, enabling the alternative of reporting operational ratings will provide an additional reduction in emissions from buildings and fulfil these objectives. Accordingly, the level of benefit derived by behavioural change in buildings reporting operational ratings will be monitored.

The benefits to implementing Section 63 by means of this option are:

- emissions reductions and energy performance improvement should be greater than those arising from options 1 and 2;

- owners are allowed the flexibility of carrying out building improvement measures or setting up a protocol to report annually on operational energy and CO₂ emissions;
- a higher implementation rate with all relevant buildings either carrying out building improvements or following an operational ratings system (Option 2, above does not create a level playing field);
- reduced financial burden on business by allowing flexibility in implementation;
- business can demonstrate the effectiveness of improving performance via how buildings are used via the operational ratings system; and
- allows business time to build capacity for the potential of only mandatory physical building improvement measures at a future date.

4.3 Costs

4.3.1 Option 1 - Do nothing

This option would have no implementation costs

4.3.2 Option 2 - Require assessment but only ask for voluntary implementation of building improvements or reporting of operational ratings

Building owners would incur the costs of obtaining an Action Plan but only a limited proportion of them would implement building improvement measures or a protocol to report annually on operational energy and CO₂ emissions.

Using the trigger of sale or rental to a new tenant will minimise additional cost in terms of survey/assessment work as EPBD currently uses these same trigger events for the requirement to produce an Energy Performance Certificate. Whilst lease renewal is no longer a trigger point, it is not proposed to vary assessment of costs as it is also recognised that a proportion of building owners may have current valid EPCs produced before January 2013 and therefore not held as data. In such circumstances, a reassessment to produce a lodged EPC will be needed to enable production of the Action Plan.

Action Plan required on sale or lease to a new tenant for all larger buildings with guidance to promote either an uptake of building improvement measures or to set up a protocol to record operational ratings.

Sector	Assessed Annual Costs (£M)
Scottish Government buildings	0.5
Local Authority buildings	3.4 - 4.5
Other buildings	6.7 - 7.8
Total LA and Other Buildings	10.1 - 12.3
Total annual Costs	10.6 - 12.8
Average Annual Cost	11.8

4.3.3 Option 3 - Require both assessment and either building improvements or reporting of operational ratings

Building owners would incur the costs of obtaining an Action Plan and the cost of implementing either building improvements or a protocol to report annually on operational energy and CO₂ emissions.

Using the trigger of sale or rental to a new tenant will minimise additional cost in terms of survey/assessment work as EPBD currently uses these same trigger events for the requirement to produce an Energy Performance Certificate (EPC). Whilst lease renewal is no longer a trigger point, it is not proposed to vary assessment of costs as it is also recognised that a proportion of building owners may have current valid EPCs produced before January 2013 and therefore not held as data. In such circumstances, a reassessment to produce a lodged EPC will be needed to enable production of the Action Plan.

SG Research carried out on the cost of providing a DEC is £100 to £200 per year. This is consistent with an average figure of £135, established by the Department for Communities and Local Government.

Action Plan required on sale or lease to a new tenant for all larger buildings with further action mandated, either building improvement measures or a protocol to record operational ratings implemented by building owner.

Sector	Assessed Annual Costs (£M)
Scottish Government buildings	0.5
Local Authority buildings	3.6 - 4.8
Other buildings	7.2 – 8.4
Total LA and Other Buildings	10.8 – 13.2
Total annual Costs	11.3 – 13.7
Average Annual Cost	12.5

5. SCOTTISH FIRMS IMPACT TEST

5.1 Background

Stakeholder meetings held during the public consultation period explain the proposals in more detail and gauged the views of such groups. These meetings included large and small businesses, energy and resource groups (from local authorities, health education and builders and construction professionals). The views emerging from the stakeholder meetings were fed into the consultation response.

The principle areas of concern flagged by the property industry relate to clarity of responsibility under regulation, ensuring the initial implementation of regulations is manageable, avoiding barriers to the marketing of properties and offering building owners as much flexibility as practical where regulations are applied to buildings they own.

The proposals within the final regulations incorporate provisions noted during consultation, such as application of initial regulations to larger buildings only and the option to defer improvement by reporting operational ratings. Further amendment post-consultation has addressed a number of issues raised in discussions such as excluding short term lets as a trigger for assessment and providing clarity on the processes to be implemented.

However, it is recognised that development of published guidance in support of regulations will require further input from the property industry to assist in making advice on roles and responsibilities and the processes applied as clear and simple as practicable. Similarly, working with industry organisations to disseminate advice on the regulations will be essential.

5.2 Competition Assessment

Assessment is based on Option 3, the most onerous provision for building owners.

As stated in 'Sectors and groups affected', buildings which have a floor area of not more than 1000 m² will be exempted from the regulations. This will mean it will be highly unlikely that there would be actions which incur costs for small firms, including micro-businesses (those which employ less than 10 full-time employees) as owner/occupiers. However, small firms that own and let property will be affected where properties within portfolio are of a size that attracts the provisions of the regulations.

The regulations will be applied equally across Scotland so for those buildings that are eligible there will be no issues of competition, restriction or imbalance within Scotland. There is currently no direct equivalent legislation elsewhere in the UK. Analogous provisions are proposed for the private rented sector in England⁵ and also from 2018 but the detail on these other regulations is yet to be published.

⁵ <https://www.gov.uk/government/consultations/private-rented-sector-energy-efficiency-regulations-non-domestic>

The requirement to assess and improve qualifying buildings is based around an improvement target that will pay back the cost of investment in improvement in five to seven years and offering building owners flexibility in the measures they choose to implement will enable solutions to be tailored to best suit how buildings are operated to maximise benefit and minimise the payback period. Additionally, the option to report operational ratings, at relatively low cost, enables building owners to defer improvement to a point which may be economically more viable. It is therefore considered that there will be no significant impact on the competitiveness of Scottish companies within the UK.

Only those firms that choose to carry out building improvements to their buildings would incur costs which would vary depending on the scope of the work the owner wishes to carry out voluntarily. Guidance is being developed that is simple to follow for the improvement of buildings following an Action Plan, with improvement works require to comply with the existing building standards system, keeping training needs to a minimal level.

The proposals in options 2 and 3 will present additional opportunities for all non-domestic approved organisations members who are currently in the EPC market.

In terms of manufacturing, for Options 2 and 3, guidance within building regulations would continue to prescribe performance standards which are not dependent upon use of particular products or materials. This offers the designer the flexibility and freedom to select those products and materials which best suit the design of the building, provided that the specified performance is achieved. Building performance levels identified within Options 2 and 3 can be achieved using products and materials that are already obtainable and widely understood.

It is anticipated that manufacturers that contribute to this agenda will continue to develop and review the types of product and material offered as a response to the existing non domestic building market. Similarly, work to improve the energy performance of existing non domestic buildings and reducing emissions from such buildings will assist in stimulating the wider development, availability and application of newer, more innovative solutions.

In summary:

- No significant areas where issues of competition, restriction or imbalance will arise have been identified.
- Development of guidance on the implementation of the regulations is to be progressed with input from the property sector, to enable advice on the responsibility of building owners to be as clear and helpful as possible.
- The exemption of buildings less than 1000 m² means that small firms, including micro-businesses, who are owner occupiers, would be unlikely to be affected.

- Businesses working in the building improvement sector in Scotland will all have additional opportunities within the existing non domestic marketplace.
- Issues of competition, restriction or imbalance within Scotland or across the UK are unlikely to occur.

5.3 Test run of business forms

There is certification output associated with Options 2 and 3. This output is produced via approved software tools by registered individuals employed by businesses subject to a duty under either of these two options.

Whilst there are therefore no new business forms, the process used to generate certification was developed and tested in Summer 2014 as part of the development of the systems which will record and provide access to certificates once produced – all documents will be lodged as data to the Scottish EPC Register and available online. Comprehensive guidance on the assessment process used to produce both Action Plan and operational ratings will be published well in advance of implementation.

6. LEGAL AID IMPACT TEST

Regulations do introduce a new process (requiring both assessment and improvement or reporting on a building) with attendant review and right of appeal. However, this is similar in nature to provisions under other current regulations (the Energy Performance of Buildings (Scotland) Regulations 2008) which, since implementation have not resulted in any significant action in appealing against enforcement of regulatory provisions.

Accordingly, it is not anticipated that there will be any greater demands placed on the legal system by the proposed regulations. It is considered that there will not be any effect on individuals' right of access to justice through availability of legal aid or on possible expenditure from the legal aid fund.

7. ENFORCEMENT, SANCTIONS AND MONITORING

7.1 Background

Options 2 & 3 will require new regulations and all matters relating to enforcement, sanctions and monitoring will be carried out under the proposed Section 63 regulations. For the purpose of assessment, provisions under Option 3 are identified as they present the most onerous case.

The enforcement authorities for The Energy Performance of Buildings (Scotland) Regulations 2008 for Energy Performance Certificates (EPCs) are the local authorities. As the production and subsequent action following an Action Plan build on the current system of EPCs, it is the local authorities who will also be the enforcement authorities for The Assessment of Energy Performance of Non-domestic Buildings (Scotland) Regulations 2016.

Where building work to improve a building as a result of an Action Plan is carried out, it will be subject to enforcement, sanctions and monitoring under the existing processes which form the building standards system in Scotland, as set out under the Building (Scotland) Act 2003. Parties responsible for operation of this system are currently the 32 Scottish local authorities, appointed as verifiers under the Act.

7.2 Enforcement and sanctions

The Section 63 regulations will set out the responsibilities for enforcement of the duties imposed by the regulations and to act in relation to failure to provide an Action Plan as part of the sale or rental of a qualifying building and also where an owner fails to implement improvement measures when required to do so under the regulations. The functions of the enforcement authority may include the power to levy and recover a penalty charge imposed on the building owner for failure to meet either of these duties.

There will therefore be enforcement of:

- Failure to make available a valid Action Plan to a prospective buyer or new tenant or to provide an action plan to the actual buyer or new tenant.
- Failure to complete building improvement measures by the required date where completion is not otherwise deferred by the reporting of annual operational ratings.

There is no requirement to enforce failure to produce and report annual operational ratings as the sanction arising from such failure is loss of the option to defer completion of building improvement measures. This is addressed above.

Enforcement activity will be supported by access to data lodged on the Scottish Energy Performance Certificate Register. Enforcing authorities will be provided access to reports to support simple checking of lodgement of the required documents against wider lodgement of energy performance certificates for non-domestic buildings.

Sanctions for either of the two instances identified above will be the application of a penalty charge notice in the sum of £1,000. This is the same level of sanction applicable for failure to produce a non-domestic Energy Performance Certificate under the Energy Performance of Buildings (Scotland) regulations 2008 and is set at this level for that reason.

A building owner subject to notification of a breach of either duty may offer reasonable excuse, may request the enforcing authority review the notice and may also appeal to the courts.

7.3 Monitoring

The objective of the regulations and guidance is to implement Section 63 of the Climate (Scotland) Act 2009 for the assessment of the energy performance of

existing non-domestic buildings and greenhouse gas emissions from such buildings and for building owners to make improvements to their buildings.

All buildings subject to assessment will have assessment data lodged to the Scottish EPC register. This will enable monitoring and analysis of both the overall benefit in carbon and energy reduction arising from improvement work undertaken and also the improvement in performance arising where operational ratings are reported annually. This will enable comparison of actual calculated benefit with that assessed within this document.

Ministers have noted that the option to report operational ratings as a means of deferring the completion of building improvement works will be reviewed if it becomes apparent that the benefit accruing from this action is not considered significant enough.

8. IMPLEMENTATION AND DELIVERY PLAN

8.1 Implementation and timescale

Regulations will be laid in January 2016, to come into force in September 2016. As part of consultation, Ministers gave a commitment to provide a six month lead-in period from publication of regulations and guidance to implementation. Guidance will be published in February 2016 and the facility to lodge the new Action Plan and Operational Ratings assessments to the central register will be enabled in March 2016, in parallel with the training of assessors/advisors. A series of seminars will be held to publicise the regulations. The target audience will include businesses, local authorities, lawyers and the construction industry.

8.2 Post-implementation review

Data on the level of assessment activity and the level of improvement being identified in qualifying buildings and the actions being taken by building owners will be reported annually. This information will be used to assist Ministers in determining the need for further regulation under section 63 of the Act. The implementation of the initial Section 63 regulations will be subject to review within a 10 year period.

9. SUMMARY AND RECOMMENDATION

9.1 Recommended option

Proposals under **Option 3 - Require both assessment and either building improvements or reporting of operational ratings** are recommended.

Whilst provisions are now refined, they remain based closely upon consultation proposals. It is considered that the costs and benefits identified may reasonably remain principally unchanged from the intermediate BRIA as there is the potential for significant variation in both cost and benefit, dependent upon both the level of transactions occurring which will trigger assessment and the action (improve or report) building owners choose following assessment.

However, it can be stated that building owners who implement improvement measures following assessment will find that the cost of such action is recouped over a relatively short period. The level at which improvement targets are set under the initial regulations represents simple, sensible improvement to buildings which can pay back assessment and installation costs within five to seven years.

As initial assessment is necessarily broad, detailed annual reporting will be undertaken on the first three years of implementation to confirm the overall effect of regulation and assist Ministers in determining what further review of regulations may be appropriate and to what timescale.

9.2 Summary costs and benefits table

Option	Total benefit per annum - economic, environmental, social	Total cost per annum - economic, environmental, social; policy & administrative
Option 1 - Do nothing	<ul style="list-style-type: none"> No benefits 	<ul style="list-style-type: none"> No costs, however, Scottish Ministers will not meet the duty imposed by section 63 of the Act.
Option 2 - Require assessment but only ask for voluntary implementation of building improvements or reporting of operational ratings	<ul style="list-style-type: none"> CO₂ saved by 2022 - 0.13 MT.CO₂ pa Lifetime CO₂ saved - 1.6 MT.CO₂ Average annual energy savings - £ 9.7 M 	<ul style="list-style-type: none"> Total annual costs - £10.6 - 12.8 M.
Option 3 - Require both assessment and either building improvements or reporting of operational ratings	<ul style="list-style-type: none"> CO₂ saved by 2022 - 0.20 MT.CO₂ pa Lifetime CO₂ saved - 2.45 MT.CO₂ Average annual energy savings - £ 15.0 M 	<ul style="list-style-type: none"> Total annual costs - £ 11.3 – 13.7 M

10. DECLARATION AND PUBLICATION

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: 

Date: 13 January 2016

Marco Biagi,
Minister for Local Government and Community Empowerment

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