



The Scottish
Government

Building Standards Division

Improving Energy Performance and Emissions in existing Non-Domestic Buildings

A guide for Building Owners

The Assessment of Energy Performance of Non-domestic Buildings (Scotland) Regulations 2016

S63-001

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This document is also available on our website at www.gov.scot/section63. If you have enquiries regarding this document, these should be directed to Building Standards Division at the above address.

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Title: S63-001 Improving Energy Performance and Emissions in existing Non-Domestic Buildings - A guide for Building Owners

Purpose: To provide an introduction to the roles, responsibilities and actions arising from the introduction of The Assessment of Energy Performance of Non-domestic Buildings (Scotland) Regulations 2016 from 1 September 2016.

Version	Date	Notes
1.0	May 2016	Initial issue in support of The Assessment of Energy Performance of Non-domestic Buildings (Scotland) Regulations 2016.
1.1	July 2016	Additional text added to clarify application of regulations to the sale or rental of building units – see below for details.

List of changes within v1.1

- Clarification in paragraphs 21 & 24 that application of floor area trigger in regulations relates to the floor area of the property being offered for sale or rental. Accordingly, where this is a building unit within a larger building, it is the area of the building unit offered, not the entire building, that is relevant.
- Clarification in paragraph 21 that calculation of floor area is to assess Gross Internal Area (GIA).
- Clarification in paragraphs 20 & 25 that owners of buildings placed on the market prior to 1 September 2016 do not require to obtain an Action Plan unless the building is withdrawn and remarketed on or after 1 September 2016.
- Text in paragraph 25 and flowchart to reinforce that the underpinning EPC for a building must match the property being offered for sale or rental.
- For Operational Ratings route, confirmation in paragraph 51 that DEC required within 28 (not 14) days of Action Plan lodgement to avoid Action Plan becoming invalid.

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1. Policy Background and Intent

Background

1. 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 application of improved standards for new buildings will take a considerable time.
2. 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 and were reviewed and improved in 2007, 2010 and most recently in October 2015.
3. However there was previously no purpose-made legislation to require emission reductions and improvement of the energy performance of existing buildings.
4. The Sullivan Report, 'A Low Carbon Buildings Standards Strategy for Scotland'¹, published in December 2007, included recommendations for improving the energy performance and reducing CO₂ emissions from existing non-domestic buildings.
5. In September 2008, the Scottish Government published a consultation document "Proposals for improving the energy performance of existing non-domestic buildings" which set out proposals for measures for possible inclusion in the Scottish Climate Change Bill to improve the energy performance of existing non-domestic buildings and reduce carbon dioxide emissions.
6. That consultation was completed and published on the Scottish Government website. The strong view of the respondents was that significant carbon emission reductions could not be achieved through measures and support available at that time. This indicated that a regulatory approach would be required if significant improvement were to be delivered.
7. While this guidance aims to explain how the requirements will work in practice, any interpretation of the Regulations is offered only as a guide, as Scottish Ministers cannot provide legal advice and only the courts can provide an authoritative interpretation of the law. Therefore, it is important to read and understand the Regulations as well. In cases of doubt, independent legal advice should be sought.

¹ <http://www.gov.scot/Topics/Built-Environment/Building/Building-standards/sullivanreport>

The Climate Change (Scotland) Act 2009

8. In the development of the Climate Change (Scotland) Bill, there was recognition of the need to act to address the level of greenhouse gas emissions associated with the occupation and use of our existing building stock.
9. Initial work in this area resulted in the inclusion of provisions for the assessment and improvement of existing non-domestic buildings, initially under section 50 of the Climate Change (Scotland) Bill laid in December 2008. Final provisions for non-domestic buildings were introduced as part of the Climate Change (Scotland) Act 2009².
10. Section 63(1) of that Act³ requires that Scottish Ministers must, by regulations, provide for the assessment of the energy performance of non-domestic buildings and of the emission of greenhouse gases produced by or otherwise associated with such buildings or with activities carried out in such buildings.
11. It also requires owners of such buildings to take steps, identified by such assessments, to improve the energy performance of such buildings and reduce such emissions.
12. Following two consultations⁴ on proposals in 2011 and on the form of regulations in 2013, The Assessment of Energy Performance of Non-domestic Buildings (Scotland) Regulations 2016⁵ introduce requirements on building owners for both the assessment, and the improvement, of the emissions and energy performance of non-domestic buildings.

Key Elements of the Regulations:

- The regulations apply to the owners of buildings – where a building or building unit over 1,000 m² in area is offered for sale or for rental to a new tenant – and set relatively modest energy performance and emissions improvement targets.
- Their application is triggered by the act of making a building available for sale or rental to a new tenant. This builds upon already-established processes for the delivery of energy performance certificates (EPCs) required under EU legislation⁶.

² <http://www.legislation.gov.uk/asp/2009/12/contents>

³ <http://www.legislation.gov.uk/asp/2009/12/section/63>

⁴ <http://www.gov.scot/Topics/Built-Environment/Building/Building-standards/BSD/CurrentConsultation>

⁵ <http://www.legislation.gov.uk/ssi/2016/146/contents/made>

⁶ <http://www.gov.scot/Topics/Built-Environment/Building/Building-standards/enerperfor>

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- They offer building owners the option of improving their building within a reasonable timescale or deferring improvement by formally reporting annual energy use.
- They provide a practical first step in regulating for the improvement of our non-domestic building stock.
- Limiting both the scope and ambition of initial regulations will establish a wider understanding of the benefits of undertaking simple, cost effective energy improvements.
- This will create a strong platform from which further regulatory provisions can be introduced in the future.
- Further development of the regulations will be required if Scotland is to continue to address the energy and emissions performance of our existing building stock.

Scotland's Energy Efficiency Programme (SEEP)

13. These regulations are amongst a range of measures - regulatory, supportive and advisory - that are being brought together under Scotland's Energy Efficiency Programme (SEEP), following announcement in June 2015 that improving the energy efficiency of Scotland's homes and non-domestic building stock is designated a National Infrastructure Priority.
14. Energy efficiency is fundamental to Scotland meeting its climate change targets. SEEP will be at the heart of activities led by the Scottish Government and its partners to improve the energy efficiency of all buildings (domestic and non-domestic) in Scotland over the next 15 – 20 years.
15. SEEP has been organised into two phases of delivery:
 - Phase 1 from 2016-18 which concentrates on the piloting of new approaches and programme scoping, and Phase 2 which will commence in 2018 after new Energy Company Obligation powers are implemented, as currently provided for in the Scotland Bill.
 - Phase 2 will mark the initial phase of the integrated programme of support for domestic and non-domestic sectors.
16. As part of the development of the programme, consideration is being given to the role that regulation and standards could play in improving energy efficiency beyond existing requirements. Regulation under section 63 of the Climate Change Act will contribute to that action and will also be supported by broader work arising from the Programme.

17. Up to date information on work being undertaken as part of SEEP can be found at www.gov.scot/Topics/Business-Industry/Energy/Action/lowcarbon/LCITP/SEEP.

2. The Assessment of Energy Performance of Non-Domestic Buildings (Scotland) Regulations 2016.

18. These regulations require the owners of large non-domestic buildings to assess and set out action to improve the emissions and energy performance of their buildings where offered for sale or for rental to a new tenant. The owner must then either improve the building within a specified period or report annually on its actual energy use, until such time as he/she has completed improvements.

Summary of provisions in brief:

19. What is the intent of these regulations?

- These regulations set out requirements on building owners for the assessment and improvement of the carbon and energy performance of their existing non-domestic buildings.
- The intended outcome is that the performance of existing non-domestic buildings is improved, reducing energy use, emissions and running costs.

20. When do they come into force?

- Regulations apply from 1 September 2016 and affect any qualifying building that is made available for sale or rental to a new tenant on or after that date.

21. Who is affected?

- Regulations apply to building owners where a building (or building unit) over 1,000 m² Gross Internal Area (GIA) is to be sold or will be leased to a new tenant. A flow chart noting the application of the regulations is provided on the [next page](#).
- Reference to a 'building unit' means part of a non-domestic building that is designed or altered to be used separately.
- These requirements for assessment and improvement are additional to the need to have a valid Energy Performance Certificate (EPC) for the building (a requirement for such transactions since 9 January 2008).
- Assessments described within regulations are delivered by individuals registered through Scottish Approved Organisations as Section 63 Advisors (for the Action Plan) and DEC Assessors (for the Display Energy Certificate and/or Advisory report)⁷. A summary of the new assessments, alongside current requirements for Energy Performance Certificates, and the individuals who can undertake them is provided in [Appendix A](#).

⁷ For further information on these new roles or to find an advisor/assessor, see www.gov.scot/section63.

- Enforcement of the regulations is the responsibility of the local authority for the area in which the building is situated. This is the same as for current enforcement of Energy Performance Certificates.

Application of the Regulations – flowchart

DO THE NEW REGULATIONS APPLY TO MY BUILDING?

Is the building to be sold or to be rented to a new tenant?

Yes No → Regulations do not apply



Does the building (or building unit) for sale or rental have a floor area of more than 1,000 m²?

Yes No → Regulations do not apply



Is the building 'EPC exempt' under regulation 4a⁸ of the Energy Performance of Buildings (Scotland) Regulations 2008?

No Yes → Regulations do not apply



Was the building constructed in accordance with a building warrant applied for on or after 4 March 2002?

No Yes → Building is exempt from regulations (The owner will have a record of this information)



Does the building otherwise meet or exceed the energy standards applicable on 4 March 2002?

No Yes → Building is exempt from regulations (This is noted on any EPC produced after March 2016)



Has the building been improved through measures funded by a Green Deal repayment plan?

No Yes → Building is exempt from regulations (The owner will have a record of this information)



Where the building is offered for lease, is the type of lease an exempt transaction?

No Yes → Transaction does not trigger regulations



Building/building unit for sale or rental is subject to assessment under the regulations - Action Plan required.

⁸ An EPC is not required for workshops and non-residential agricultural buildings with low energy demand. Such buildings do not require an Action Plan.

22. What action must owners of qualifying buildings take?

- For the property being offered for sale or rental, the building owner needs to produce an **Action Plan** which identifies emissions and energy improvement targets and how that will be met by building improvement work. The Action Plan process is illustrated on the [next page](#) and described in more detail in [Section 3](#) of this document.
- In doing this, owners must then decide whether to **carry out improvements** within three and a half years or, as an alternative, defer improvement by reporting annual operational energy use through production of a Display Energy Certificate (DEC).
- The level of improvement sought under these regulations is relatively modest and should encourage building owners to elect to improve their building and benefit from lower energy costs, rather than to report annual energy use.
- The Action Plan must, like the EPC, be made available to prospective buyers or tenants when marketing a property and a copy provided to the owner or tenant on conclusion of the transaction.
- All of this information will be recorded and the Action Plan and DEC documents will be publically available from the Scottish EPC Register.

Guidance on key aspects of the regulations

23. The following section provides guidance which expands upon the summary provided in the policy note to the regulations. All the regulations noted in the text and the accompanying policy note can be found at:

<http://www.legislation.gov.uk/ssi/2016/146/contents/made>.

24. Q. Which existing buildings are subject to the regulations?

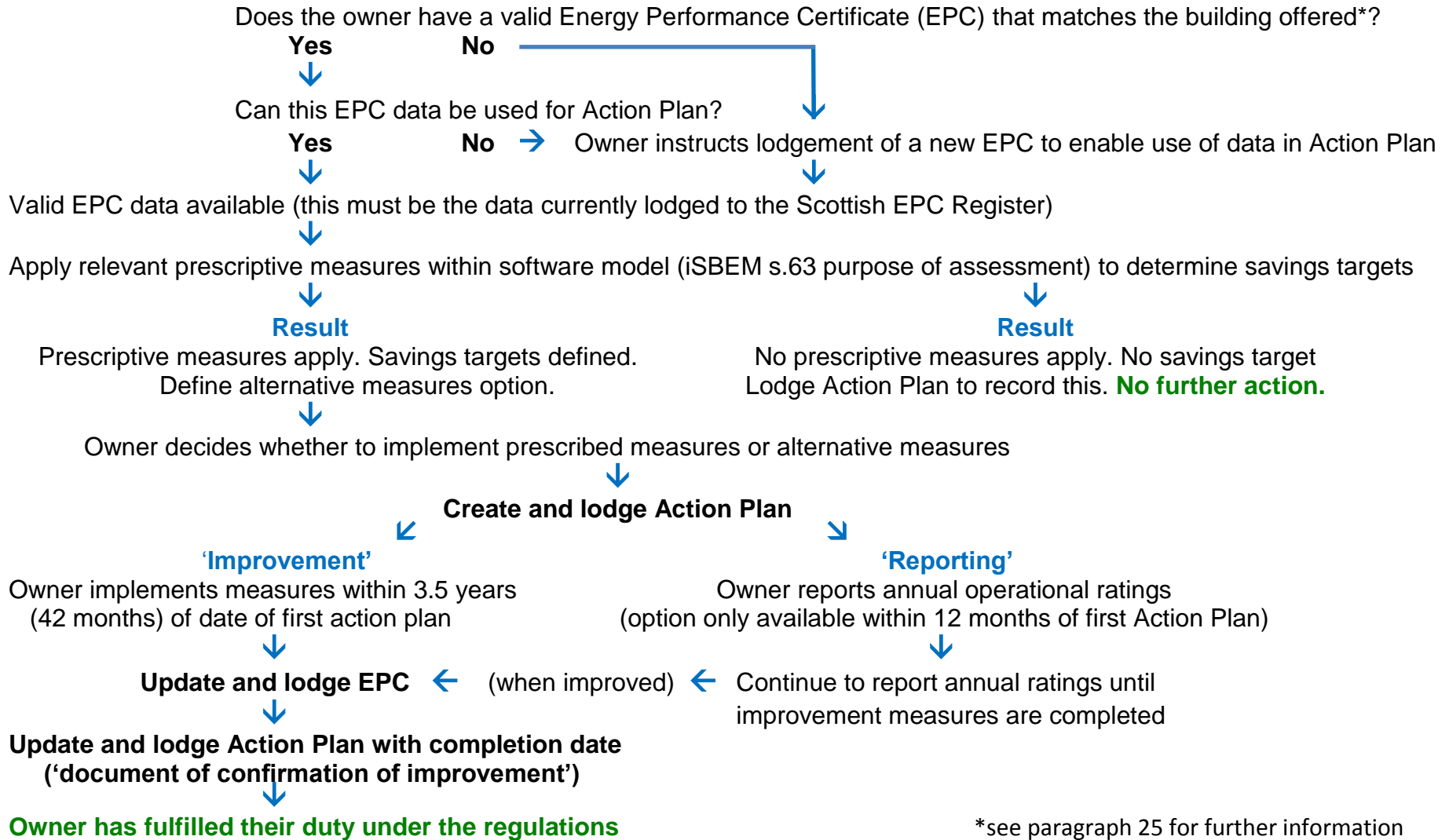
Regulation 2 sets out which buildings are subject to the regulations. The requirement to assess and improve applies only where a building or building unit with a floor area over 1,000 m² is made available for sale or for rental to a new tenant. It is the property for sale or rental that is subject to assessment. Where the property is a building unit, it is the area of the building unit, not the whole building, that is relevant.

Further exclusions from the regulations are clearly specified and include lease renewals, short term letting and those buildings which already meet a specified energy performance standard.

Guidance in support of this aspect of the regulations - to assist building owners in determining if the requirement to assess and improve applies to their building - is also published within a separate 'frequently asked questions' document available at www.gov.scot/section63.

The Assessment and Improvement Process – flowchart

WHERE A BUILDING IS SUBJECT TO THE NEW REGULATIONS



*see paragraph 25 for further information

○ **Why limit initial application of these regulations?**

The scope of the initial regulations is limited to enable a staged introduction of the requirement to assess and improve, building both awareness of the new regulations and the capacity to deliver assessment and improvements.

○ **What are the exemptions?**

See flowchart on [page 5](#). The requirement to assess and improve does not apply to:

- The building or building unit to be sold or rented is 1,000 m² or less in area;
- certain buildings which do not require an energy performance certificate⁹;
- buildings which meet the energy standard set by the 2002 or later building regulations (this standard is reported in all non-domestic EPCs produced since 20 March 2016);
- buildings which have been improved by a UK Government Green Deal¹⁰.

Where a building is not exempt due to any of the above and is offered for lease, there are also certain lease transactions that do not trigger the need to assess and improve:

- renewal of an existing lease;
- a single short-term lease of less than 16 weeks within a 12 month period.

Note that there is no specific exemption for ‘temporary buildings’ or ‘limited life buildings’ (buildings with an intended life of not more than five years in use) as any existing building within that category would already be exempted by meeting the energy standards set by the 2002 or later building regulations.

25. Q. What do the regulations require from building owners?

Regulation 5 sets out when there is a requirement for the owner of the building to assess the building and to produce an Action Plan which identifies energy performance and emissions targets and how these will be met.

This action is triggered where a building is made available for sale or for rental to a new tenant on or after 1 September 2016, the date on which the regulations come into force.

⁹ From [regulation 4a](#) of The Energy Performance of Buildings (Scotland) Regulations 2008 – “temporary buildings with a planned time of use of two years or less, workshops and non-residential agricultural buildings with low energy demand”.

¹⁰ <https://www.gov.uk/green-deal-energy-saving-measures/overview>

To enable production of an Action Plan, data from, a valid energy performance certificate (EPC) is required. Production of EPCs is governed by the Energy Performance of Buildings (Scotland) Regulations 2008.

Under those regulations, a non-domestic building may have a valid EPC for the entire building or, if subdivided, for individual building units within the building. However, to produce an Action Plan, the EPC data used must be from an EPC that matches the area and extents of the building offered for sale or rental.

- ***What must be done by the owner when selling or leasing the building?***

The action needed in support of a transaction is the production of the Action Plan. Similar to the process applied where a valid energy performance certificate is required, an owner must commission, agree and lodge an Action Plan prior to marketing the property. It is not a requirement to improve the performance of the building before it can be sold or let to a new tenant, though owners may wish to take the opportunity to do so as part of preparation for marketing.

- ***Who is responsible for action?***

The owner of the building is responsible for securing production of the Action Plan and any subsequent improvement or reporting. Where a building is sold to a new owner, the ongoing responsibility under regulations to improve or report passes on to the new owner.

- ***Why were these triggers chosen?***

Offering a building for sale and rental/lease to a new tenant are the optimum points at which there is the opportunity to consider and carry out improvement works. These trigger events are also familiar to building owners as they are currently used under other legislation for the production of energy performance certificates for buildings. These trigger events will also generally involve legal professionals, which further assists in making owners aware of their duty under the regulations.

- ***A duty to improve is therefore created on the sale or rental of these properties?***

Yes, but it is a proportionate one and, importantly, regulations do not prevent the sale or rental transactions taking place. Instead, they introduce a document which sets out improvement targets and action needed at the point people are considering the purchase or lease of a property. Those with a potential interest in the property are made aware of the action required. This can only increase the relevance of a property's emissions and energy performance within that decision-making process.

26. Q. What is in the 'Action Plan'?

Regulation 6 sets out what information is needed to produce an Action Plan.

In addition to identifying the building being assessed, the Action Plan will identify energy and emission improvement targets, the improvement measures that the owner wishes to implement to meet the targets, the timescale for completion of improvements and whether the owner intends to improve the building or defer this work by annual reporting of energy use.

The owner will be supported by a section 63 Advisor who produces the Action Plan (see paragraph 28). An example of a draft action plan is shown in [section 3](#) of this document.

- ***How are improvement targets set?***

Regulation 7, together with the schedule to the regulations, sets out how improvement targets are calculated, by applying whichever measures from a set of seven prescriptive improvements are relevant to the existing building. A short summary of these prescriptive measures and how they are applied is set out in [Appendix B](#). The improvement is therefore relative to the current form and performance of the building.

- ***How challenging are these targets.***

The improvement sought under these initial regulations is relatively modest. The measures applied are those which can pay back initial costs of works within seven years through savings in energy bills. It is possible that, for the majority of buildings, alternative improvements proposed by your section 63 advisor will identify action with an even shorter payback period.

One of the key elements within policy development since 2008 is that initial requirements should be set at a level where building owners will understand and appreciate the benefit of taking simple and direct action to improve the performance of their building.

It ought to be recognised that these regulations are only the first step the Scottish Government is taking in regulating for improvement of our non-domestic building stock.

- ***Where can information on potential future review be found?***

Any announcements and planned further review will be published online at www.gov.scot/section63.

27. Q. What must an owner do following production of the Action Plan?

Regulations 8 to 10 set the timescale for completion of improvement work and reporting of this action.

The owner has 42 months (three and a half years) from the date of issue of the first Action Plan produced for a building to complete improvement works.

Alternatively, they can defer completion of improvement works by reporting annual energy use via the production and lodgement of a Display Energy Certificate (DEC) – see [section 3](#) of this document.

- ***Why allow this long for improvement to be completed?***

The period of three and a half years is considered appropriate and is based upon six months to obtain statutory permissions and three years to complete works, which also ties in with the duration of a building warrant. As a building will often be occupied, this gives time to programme improvement works into ongoing maintenance regimes.

Regulation 9 identifies that completion of improvement works will be recorded on a ‘document of confirmation of improvement’ – this will be a new Action Plan which also includes the completion date of improvement works and references a new energy performance certificate which records the performance of the improved building. See [section 3](#) of this document

- ***Why are these documents needed?***

A building owner needs confirmation that they have discharged their duty under the regulations. Combining the ‘confirmation’ action plan with a new, post-improvement EPC, also enables the direct benefit from improvement to be recorded and reported upon, both to government and to future buyers/tenants. This is also of assistance to local authorities in their enforcement role.

Regulation 10 permits a building owner to defer completion of improvement works if the reporting of annual operational ratings is commenced within 12 months of the date of issue of first Action Plan for the building. This option recognises that there will be situations where improvement works are perhaps not practical in the short term.

Reporting is achieved by the production of an annual Display Energy Certificate or ‘DEC’. The format of this document and of additional advice which can be provided within a companion Advisory Report are set out in regulations 11 and 12. The DEC assessment process and documentation follow the methodology and format already established elsewhere in the UK¹¹.

It is important to remember that responsibility for implementing improvements or reporting operational energy use always rests with the current building owner and transfers with the interest in the property. The action required is always set out in the current Action Plan for the property.

- ***Why allow the option to report rather than improve?***

¹¹ Further information on the DEC assessment procedure is available at www.gov.scot/section63

This policy was developed with significant input from industry partners. In discussions, the property industry made a strong case for a mechanism that enables building owners to show that energy and emissions reductions can be delivered through behavioural change as well as by building improvements. The reporting of annual operational ratings provides a means of demonstrating the effectiveness of such alternative action.

The introduction of the 'Display Energy Certificate' (DEC) also offers a tool for building owners to use outwith these regulations. For example, the DEC may be used by larger organisations demonstrating they have met their duties under the UK Energy Saving Opportunity Scheme (ESOS)¹² which requires energy audits and reporting on the performance by most large (non-SME) companies.

- ***Why is this option only available for 12 months after the first Action Plan for a building?***

Allowing owners a year to decide to carry out improvement or to report operational ratings provides initial flexibility which will be important in situations where the ownership of a building changes or where access to improve may have to be negotiated with a tenant.

Restricting this period to a year also acts to prevent owners from doing nothing within the three and a half year improvement period and then switching to report operational ratings. This supports the purpose of the regulations, which is to encourage and deliver improvement.

28. Q. Who supports the building owner through this process?

Regulation 13 identifies who can produce the documents required under these regulations. The building owner will employ a registered 'section 63 advisor' to undertake the Action Plan assessment, identify improvement targets and recommend how best to improve the building to meet these targets. The Section 63 Advisor must also be registered as a non-domestic EPC assessor.

A separate DEC assessor role is also created to enable production of annual operational ratings assessments, where an owner chooses this route or seeks such certification for other purposes.

Whilst it is not a requirement that a Section 63 Advisor must also be a DEC Assessor, it is likely that a single individual may often offer all three services – EPC Assessor, Section 63 Advisor and DEC Assessor – to building owners. Building owners can find an Advisor/Assessor via the 'search for an assessor' function on the Scottish EPC register at www.scottishepcregister.org.uk.

29. Q. How is the output from assessments recorded?

¹² See <https://www.gov.uk/guidance/energy-savings-opportunity-scheme-esos>

Regulation 14 requires that all essential data needed to produce the documents associated with this process be lodged by the advisor/assessor to a central electronic register. This is the same register that stores energy performance data and from which energy performance certificates are produced.

Means of access to this information¹³ are set out under **regulations 15 to 19**. This includes a public search facility for current records for any building as well as enhanced search facilities for parties who qualify as 'authorised recipients'.

Central lodgement of assessments and underlying energy data supports effective enforcement, monitoring and reporting.

o ***Who will have access to this information?***

There are three routes to access information – any member of the public may search for and recover an Action Plan or Display Energy Certificate for any property by address/postcode or Report Reference Number.

Parties with direct access to the EPC register systems ('Authorised Recipients') will have access to all the data lodged in support of the regulations. This will enabling earlier data from assessments to be reused wherever possible, reducing the cost of assessments.

It is also intended that the environmental data from both these assessments will be published at regular intervals.

o ***How will this be used in reporting on the effectiveness of the regulations?***

The Scottish Government will undertake statistical analysis of all lodgements to determine the overall benefit accruing from action following assessment and also to identify trends such as the proportion of properties improving or reporting operational ratings. This will allow annual updates on the impact of the policy to be provided to Scottish Ministers.

30. Q. What are the penalties applied under the regulations?

Regulation 20 identifies Local Authorities as responsible for enforcing these regulations. This matches the approach taken on the production of energy performance certificates (EPCs) under the Energy Performance of Buildings (Scotland) Regulations 2008.

Regulations 22 and 24 set out the penalties for failure to provide an Action Plan on sale or rental or failure to complete improvement works within the required timescale. This will result in issue of a penalty charge notice to the owner of the building.

¹³ Records will be available online from www.scottishepcregister.org.uk

The level of charge for each failure is £1,000 - the same as for failure to provide a valid EPC where one is required for a non-domestic building.

As is the case with the current Energy Performance of Buildings (Scotland) Regulations, building owners may offer defence, seek review or appeal such notices as set out in **regulations 23, 25 and 26**.

- ***How will local authorities be supported in this role?***

Enforcement will be simplified through the provision of reporting facilities accessed via the Scottish EPC register. This includes matching records for EPCs for qualifying buildings with lodgement of Action Plans and DECAs. Officials will review and develop these facilities in partnership with the enforcing authorities.

All income received from penalty charges levied for non-compliance remains with the enforcing authority. This is intended to offset the cost of maintaining a proactive approach to enforcement.

3. The Three Elements of the Assessment and Improvement Process

31. This section of the document discusses the action needed at the three key points in the processes covered by the regulations –
- Providing an Action Plan where a property is made available for sale or rental;
 - on completion of work to improve a building to meet energy performance and emissions targets; and
 - where an Action Plan requires reporting of operational energy use.

Initial assessment - the Action Plan

32. The purpose of Action Plan is to record relevant information about the building being assessed. This includes information that identifies the building and the person undertaking the assessment, records the calculated energy and emissions savings targets that improvement to the building must achieve, the improvement measures that will be implemented to meet the targets and whether the owner will seek to carry out or defer improvement.
33. **Action by the owner.** Where assessment is required, the owner must arrange for an Action Plan to be produced and available for inspection prior to marketing the property. The flowchart on [page 5](#) illustrates the questions that determine if the regulations apply to a building.
34. As is already the case with energy performance certificates, a copy of the Action Plan should be made available to any prospective buyer or tenant and, on sale or rental, be provided to the new owner or tenant. This enables any party with a potential interest in the building, as a future owner or tenant, to be made aware of the level of improvement which is sought and how it might be achieved.
35. There is no requirement for the owner to complete the identified improvement measures prior to marketing the property. All that is required at that stage is production of the Action Plan to ensure that the information it contains is available to prospective buyers or tenants.
36. **Evidence Gathering.** In preparing the Action Plan, a section 63 Advisor will require to visit and inspect the building to record information essential to the Action Plan assessment. They will also require information from the building owner to enable certain fields on the document to be completed. The process of producing an Action Plan is summarised in the flowchart on [page 7](#).
37. **Delegated Protocol.** An owner may choose to delegate responsibility for the production of the Action Plan, and any subsequent action to undertake

improvement or report operational ratings, to a third party. Whilst such delegation does not affect the responsibility of the building owner under the regulations, the Action Plan can identify where such a 'delegated protocol' is put in place, to assist in the recording of such matters between the owner and the delegated party.

38. Buying a building with an existing Action Plan. Where a building is offered for sale with an Action Plan, the responsibility to improve the building passes to the new owner. In such situations, the new owner may wish to review the current action plan and change some of the provisions relating to the improvement measures proposed or the improvement type. In such cases, it is important to note two issues:

- Any Action Plan produced after the first Action Plan for a building must retain the 'planned completion date' recorded on the first Action Plan for the building;
- Where an owner wishes to defer improvement by choosing to report operational ratings, this is only an option that can be recorded on a new Action Plan within 12 months from the date of issue of the first Action Plan for the building.

39. Information on an Action Plan. An example of a draft action plan, together with commentary explaining the information it contains, is provided on the next page. The Action Plan comprises of seven sections, each giving information on the building and the assessment undertaken.

Action Plan Section 1 – identifying information

- **Date of Sale/lease** – date on which the building is offered for sale or lease (confirmed by owner), for the first action plan prepared in support of a transaction, this should be no earlier than the 'date of plan'.
- **Date of assessment** – date on which the section 63 advisor visited the building and undertook the assessment.
- **Action Plan RRN** (Report Reference Number) – the unique identifying number assigned by software to this particular assessment.
- **Address** – the full postal address of the building. This should be as it appears for the property in the One Scotland Gazetteer (OSG).
- **UPRN** – the Unique Property Reference Number used by the Scottish EPC Register to identify the building. This 10-digit UPRN differs from the 9-12 digit UPRN recorded on the One Scotland Gazetteer. It is created to enable lodgment of data as an OSG UPRN is not always available.
- **EPC RRN** – the unique identifying number assigned to the energy performance data used as the basis of the Action Plan. Where improvement works are

complete and the 'Actual completion date' is recorded, this RRN must be that of the post-improvement EPC for the building.

- **Date of Plan** – the date Action Plan data was lodged to the Scottish EPC register.

Example of Draft Action Plan Format

Section 63 Action Plan				Scotland	
Date of sale/lease	11 May 2016	UPRN	1234567890		
Date of assessment	22 Apr 2016	Date of plan	06 May 2016		
Action Plan RRN	0240-1945-9936-8270-6020	EPC RRN	1234-1234-1234-1234-1234		
Address	Example Building, Address line 2, Address Line 3, City, EH54 6GA				
Parties Involved in Production of Action Plan					
Owner	N	Tenant/Delegated person	Y		
Assessor ID	EES/100000	Delegated protocol set up	Y	Date	02 May 2016
Improvement Type					
Building improvements	N	Operational rating	Y		
Prescriptive Improvement Measures					
Description					Valid
Central time heating control					N
Lighting controls					Y
Draught-stripping windows and doors					Y
Hot water storage insulation					N
Lamp replacement					N
Boiler replacement					N
Roof insulation					N
Target emission savings [kgCO ₂ /m ² .year]	19.69				
Target energy savings [kWh/m ² .year]	32.99				
Accept prescriptive improvements					N
If No, go to alternative improvements					
Alternative Improvement Measures					
Description					
Prescribed: Lighting controls					
Replace gas boiler with Sedbuk 89%					
Install weather compensation control to new boiler					
Total emission savings [kgCO ₂ /m ² .year]	19.71				
Total energy savings [kWh/m ² .year]	33.07				
Operational Rating System					
Display Energy Certificate and Advisory Report lodged in register and displayed in building					Y
Refer to Display Energy Certificate to view operational rating and CO ₂ emissions over previous 3 years.					
Completion Of Improvements (Prescriptive or Alternative)					
Planned completion date	06 Nov 2019	Actual completion date	-		
This page is the Action Plan which must be lodged in the national electronic register and must be updated when the improvements have been completed.					

Action Plan Section 2 – Parties involved in Production of Action Plan

- **Owner** – If ‘Y’, identifies that the Owner of the building instructed the Action Plan.
- **Tenant/Delegated person** – If ‘Y’, identifies that the Tenant/Delegated party instructed the Action Plan.
- **Delegated protocol set up** – Y/N – records whether the owner has entered into a delegated protocol with a third party (e.g. the tenant). Blank if the owner instructed the Action Plan
- **Date** – the date on which a delegated protocol was set up. Blank if the owner instructed the Action Plan or no protocol set up.
- **Assessor ID** – the registration number for the section 63 Advisor who produced the Action Plan.

Action Plan Section 3 – Improvement type.

- This section records whether the person instructing the Action Plan will undertake improvement measures or defer improvement by reporting annual operational ratings. If the latter, further information is noted in Section 6.

Action Plan Section 4 – Prescriptive Improvement Measures.

- This section lists the seven improvement measures that can be applied to set improvement targets, identifies which of them apply (in the example only two apply) and were used to set targets and records the emissions and energy savings required for the building.

It also records whether the owner will implement the prescribed improvements or an alternative set of measures.

Action Plan Section 5 – Alternative Improvement Measures.

- This section will be present on the final Action Plan where the owner/delegated person have accepted a package of measures other than the prescribed measures in the previous section. It records the alternative package of measures and also identifies the savings that will be achieved by implementing these measures, showing this in green text when the targets recorded in Section 4 are met or improved upon.

Note: As alternative measures will often be more cost effective than the prescriptive route, where targets are identified within Section 4, the first draft Action Plan offered to a building owner/delegated person will include this section to illustrate an alternative option to simply adopting the prescriptive measures.

Action Plan Section 6 – Operational Ratings System.

- This section is blank unless ‘Operational Ratings’ selected in Section 2. If ‘Operational Ratings’ selected, this confirms whether owner/delegated person has arranged for lodgement of required Display Energy Certificate.

Action Plan Section 7 – Completion of Improvements.

- The **Planned completion date** is a date which is 42 months after the date of lodgement of the first Action Plan produced for the building. It is important to note that any subsequent Action Plan produced for the same building must report this same date as the target date for completion of improvement works.
- Except as noted in paragraph 48 (below), the **Actual completion date** is only recorded once improvement works are complete, when a final Action Plan is produced to record that the building owner has discharged their duty to improve the building.

Improvement and the completion and recording of improvement works

40. **Duty to Improve.** The duty of a building owner under the regulations is to improve their building to meet or exceed the energy and emissions savings targets set out in the Action Plan. This duty exists regardless of which of the two 'Improvement Types' are recorded on an Action Plan.
41. An Action Plan that reports 'Operational Rating' acts only to defer the need to complete improvement works. Where this option is recorded, the reporting of annual operational ratings via a DEC must continue annually until improvement works are completed and recorded as set out below.
42. **Completing Improvements.** The duty to improve is only discharged once the improvement works described in the Action Plan are undertaken and complete and the improved performance of the building is recorded. This is achieved in two steps.
43. First, a new energy performance certificate is produced to calculate and report the performance of the building as improved. This new assessment is lodged to the Scottish EPC Register.
44. Second, a new Action Plan is produced which is identical to the Action Plan used as the basis for the improvement work with two exceptions:
 - The EPC Report Reference Number recorded must be that of the post-improvement EPC; and
 - The Action Plan must record the date of completion of the improvement works in section 7 of the document in the 'Actual completion date' field.
45. Where these two documents are registered on the Scottish EPC register, they constitute the 'document of confirmation of improvement' required by the regulations and any report on the building will record that the duty to improve is discharged.
46. Where an Action Plan reports that 'Building Improvements', it is important for building owners to complete intended improvement measures by the 'planned

completion date'. Where this does not occur and the evidence noted in paragraph 43-45 is not provided, enforcement action is triggered and a penalty charge notice may be applied

47. Similarly, where an Action Plan reports that 'Operational Rating' will be undertaken, failure to produce the annual Display Energy Certificate will trigger a report to guide enforcement action (paragraph 55 below).
48. **No Improvement Targets.** There are circumstances where the initial Action Plan for a building may identify no energy and emissions savings targets, due to none of the identified improvement measures being applicable. Where this occurs, the Section 63 Advisor will record this and produce an Action Plan which uses the same date for the 'Date of plan' and the 'Actual Completion date'. This Action Plan will have the same effect as described in paragraph 45.

Option to report - the Display Energy Certificate

49. Where a building owner has chosen to defer improvement work, they are required to report annual operational energy use through the production and lodgement of a Display Energy Certificate or 'DEC'.
50. **DEC assessment process.** The process of producing a DEC is standardised throughout the UK. The application of the methodology in Scotland is set out, with additional information on use of the DEC under these regulations in the publication '*Methodology for the production of Operational Ratings, Display Energy Certificates and Advisory Reports in Scotland*', available at www.gov.scot/section63.
51. Where this option is reported on the Action Plan, the building owner should take action to ensure that a valid DEC is available not more than 28 days after the date of issue of the Action Plan. To enable the Section 63 Advisor to record the 'Operational rating' route on the Action Plan they will require either a copy of the DEC or confirmation from the owner/delegated person that the DEC will be produced within that period. Owners should be made aware that failure to lodge a DEC within this timescale will result in the relevant Action Plan being marked 'not for issue' and a need to produce of a new Action Plan which does not record the operational ratings route.
52. **Initial asset-only DEC.** The production of a full DEC requires comprehensive information on metered/billed energy use within the preceding year. In recognition that this may not always be available, particularly where a building has recently changes ownership or tenancy, this option enables production of a DEC that reports only the EPC asset rating. Only the first DEC produced for a building in response to these regulations may be an 'asset-only' DEC.

- 53. Advisory Reports.** The DEC Assessment process offers building owners both a record of operational energy use and advice on how this might be improved. Advice is provided primarily through the companion Advisory Report (AR). Whilst the production of an Advisory Report is not mandatory in relation to these regulations, building owners are strongly advised to obtain this report as part of their first full DEC assessment to ensure they have as much information as possible to support action to reduce their energy use and emissions.
- 54.** Owners should also be aware that the Advisory Report is essential where the DEC assessment is utilised for other purposes such as where the DEC/AR are used as part of evidence under the UK government Energy Saving Opportunity Scheme (ESOS)¹⁴.
- 55. Failure to meet reporting requirements.** Building owners should be aware that failure to meet reporting requirements where the 'Operational Rating' route is chosen will result in a need for further or alternative action. Following production of the initial DEC, failure to lodge a DEC within the required annual reporting period:
- within 42 months of the date of the first Action Plan for the building will mean that the option to report operational ratings is no longer available to the building owner and improvement work must be completed within that 42 month period to avoid enforcement action.
 - more than 42 months after the date of the first Action Plan for the building will attract enforcement action unless improvement works are also completed and recorded as noted in paragraph 45.
- 56.** Further information on the form and content of the Display Energy Certificate and the accompanying Advisory Report, including examples of the documents, can be found in the publication 'A Guide to Display Energy Certificates and Advisory Reports for Buildings', available at www.gov.scot/section63.

¹⁴ See <https://www.gov.uk/guidance/energy-savings-opportunity-scheme-esos>

Appendix A – New documents and roles supporting action under the regulations

57. Delivery of regulations is supported by the production of three specific documents and two new roles:

Document	Process	Assessor/Advisor Role
<p>Energy Performance Certificate (current)</p>	<p>A valid EPC is required for the sale and rental of most buildings.</p> <p>The section 63 assessment begins by accessing the data from a current valid EPC for a property.</p> <p>Where data is not available or suitable for reuse, a new EPC assessment will be required.</p>	<p>The EPC assessor role is unchanged, as defined for EPBD purposes.</p> <p>This role is defined in the suite of National Occupation Standards (NOS) for non-domestic energy assessors (ASTNDEA) cited within the Scottish Operating Framework.</p>
<p>Action Plan (new)</p>	<p>This is a new document produced specifically for the delivery of this policy (see Section 3). This document is created after production of the EPC using data from the EPC within an additional assessment module built into the ND assessment tool (iSBEM).</p> <p>The action plan process requires the advisor to:</p> <ul style="list-style-type: none"> • Gather additional data to enable application of a list of identified improvement measures to the building to create energy and emissions improvement targets • provide advice to the building owner on suitable and appropriate measures which, if undertaken, would meet this target; 	<p>New section 63 advisor role. This function combines assessor and advisor roles.</p> <p>These advisors are persons who have demonstrated competence and understanding in identifying practical energy improvement measures for existing buildings.</p> <p>They will be non-domestic EPC assessors who are either construction professionals who are members of a professional body or institution or have demonstrated competence by other means.</p> <p>The key skills for this role are drawn from elements already defined in relation to the non-domestic Green Deal Advisor role (ASTGDA and ASTSOTV)</p> <p>This addresses topics on the provision of advice on:</p>

Document	Process	Assessor/Advisor Role
	<ul style="list-style-type: none"> • record the agreed improvement measures on the action plan; • record whether the owner wishes to improve or to defer improvement by reporting annual operational ratings; and • lodge this data to register to enable production of an Action Plan for the building. 	<ul style="list-style-type: none"> • appropriate technical recommendations for the building; • the broad financial implications (cost and benefit) related to the measures recommended; and • advice on initiatives/support available to building owners. <p>The NOS component is supported by further guidance on the advisor role, action plan process and software tool produced by the Scottish Government.</p>
<p>Display Energy Certificate (DEC) (new, optional)</p>	<p>The owner of a qualifying building may elect to defer improvement work by reporting annual operational ratings by production of an annual DEC. When the owner subsequently decides to improve, an annual DEC would continue to be produced until improvement measures are complete.</p> <p>A building owner may also choose to commission a DEC for purposes other than section 63 compliance (e.g. an ESOS Audit).</p>	<p>The DEC assessor role is already defined for other parts of the UK.</p> <p>The NOS for the production of Operational Ratings (ASTOR) be adopted with additional information to reflect the Scottish legislative context.</p> <p>These would be detailed within a separate guidance document produced by Scottish Government.</p>

Note: Whilst it is not a requirement that a Section 63 Advisor must also be a DEC Assessor, it is likely that a single individual may often offer all three services – EPC Assessor, Section 63 Advisor and DEC Assessor – to building owners.

Appendix B – Improvement measures applied to calculate energy efficiency and emissions targets

58. In calculating the energy performance and emissions target for a building subject to these regulations, an updated version of the non-domestic National Calculation Methodology (SBEM, or the Simplified Building Energy Model) is used. This calculates the net benefit from the application a set of pre-defined improvement measures to the building under assessment. The tool only assigns those measures that are relevant to the building, resulting in an improvement target that is relative to the circumstances of the existing building.
59. For users of software, this process is described in more detail within the section 63 tool user guide, published in the ‘Scotland’ section of the downloads page on the NCM website - <http://www.uk-ncm.org.uk/>.
60. The measures identified for a building by this assessment are those which it would be practicable to carry out in respect of the building. All but the last measure (boiler replacement) are measures that are assessed as having a payback period of not more than seven years, e.g. short or medium payback measures that might be found on an energy performance certificate. The measures are listed within the schedule to the regulations¹⁵ and are reproduced below with additional commentary.
61. Improvement measures listed in the schedule to the regulations:
- **installing draught stripping to doors and windows.** If the current building is reported as having an air infiltration rate greater than 14 m³/h/m², a reduction in heat loss from infiltration will be assigned by reducing the current stated infiltration rate by 10%¹⁶.
 - **upgrading lighting controls.** If there are no additional lighting controls present in the building, improvement by installation of a ‘lighting controls’ measure using occupancy sensors and photoelectric switching
 - **upgrading heating controls.** If there is an incomplete set of heating controls present in the building, improvement by ‘central time heating controls’ measure resulting in a 1% improvement in current heating efficiency.
 - **installing an insulation jacket to a hot water tank.** If a hot water tank is present without insulation, improvement is based upon installation of an 80 mm insulation jacket to reduce standing heat loss.

¹⁵ <http://www.legislation.gov.uk/ssi/2016/146/schedule/made>

¹⁶ Note that where this measure is adopted as an actual measure in an Action Plan, to enable calculation of actual benefit, the reduction in heat loss will usually be delivered by action other than draft stripping.

- **upgrading low energy lighting.** If incandescent lamps are in use within the building, improvement by a 'lamp replacement' measure based upon installation of compact fluorescent lamps in all such zones of the building.
- **installation of insulation in an accessible roof space.** If any area of roof is poorly insulated, with a 'U-value' of 1.0 W/m²K or higher and the roof space is accessible, improvement by installation of additional insulation to improve the U-value of any such areas to 0.15 W/m²K
- **Replacement of a boiler.** Conditional on the boiler to be replaced being more than 15 years old. Improvement by boiler replacement will be modelled, based upon a boiler using the same fuel but with an efficiency equal to the minimum value set out in current building regulations¹⁷.

¹⁷ See section 2 of the [2015 Non-domestic Building Services Compliance Guide](#).