



The Scottish  
Government

**BUILDING STANDARDS DIVISION**

**CONSULTATION ON FORM OF  
REGULATIONS FOR NON-DOMESTIC  
BUILDINGS - CLIMATE CHANGE  
(SCOTLAND) ACT 2009: SECTION 63**

**SCOTTISH GOVERNMENT RESPONSE**

**APRIL 2014**



**Consultation on Climate Change (Scotland) Act 2009:  
Section 63  
Form of Regulations for non-domestic buildings  
Scottish Government Response**

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## **Glossary**

<b>AO</b>	<b>Approved Organisation</b>
<b>ACoD</b>	<b>Approved Certifier of Design (Section 6 – Energy)</b>
<b>ACEP</b>	<b>Action on Carbon and Energy Performance</b>
<b>BIM</b>	<b>Building Information Modelling</b>
<b>BSD</b>	<b>Building Standards Division</b>
<b>CCSA</b>	<b>Climate Change (Scotland) Act 2009</b>
<b>CO<sub>2</sub></b>	<b>Carbon Dioxide</b>
<b>DEC</b>	<b>Display Energy Certificate</b>
<b>EED</b>	<b>Energy Efficiency Directive</b>
<b>EPB(S) R</b>	<b>Energy Performance of Building (Scotland) Regulations</b>
<b>EPBD</b>	<b>Energy Performance of Buildings Directive</b>
<b>EPC</b>	<b>Energy Performance Certificate</b>
<b>GD</b>	<b>Green Deal</b>
<b>GHG</b>	<b>Greenhouse Gases</b>
<b>OR</b>	<b>Operational Rating</b>
<b>PCN</b>	<b>Penalty Charge Notice</b>
<b>RIAS</b>	<b>The Royal Incorporation of Architects in Scotland</b>
<b>S63 CCSA R</b>	<b>Section 63 Climate Change (Scotland) Act 2009 Regulations</b>
<b>SBEM</b>	<b>Simplified Building Energy Model</b>
<b>SG</b>	<b>Scottish Government</b>

## **Executive Summary**

Under Section 63, 'Energy Performance of Non-Domestic Buildings' 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 emissions of greenhouse gases produced; and require owners of such buildings to improve the energy performance of such buildings and reduce such emissions.

A public consultation, Form of Regulations for non-domestic buildings was issued 28 March 2013 and closed on 23 May 2013. The Consultation Report was published on 1 August 2013 on the Building Standards Division pages of the Scottish Government website summarising the general trends and main issues raised by respondents.

This Report is the Scottish Government Response to the consultation.

We welcome the unanimous support for the principle of consolidating the original Energy Performance of Buildings (Scotland) Regulations and amendments and amalgamating the regulations for Section 63, Climate Change (Scotland) Act. Similarly that all respondents were in favour of there being separate parts to the regulations to ease identification of the areas which apply to the Energy Performance of Buildings Directive and to the S63 CCSA regulations.

We intend to finalise the draft regulations as set out above taking into account the consultation responses including:

- Exempting lease renewals at this time and considering if other exempt transactions are required, having regard to consistency with current EPC arrangements
- Permitting owners to use Display Energy Certificates as a part of Section 63 requirements as requested by industry
- Permitting owners to take up alternative measures, provided such measures at least achieve the energy performance and emissions targets
- Developing guidance for publication on the Building Standards website
- Working with approved organisations so that their assessors are competent to deal with the new requirements within the EPB(S) R for section 63 CCSA.
- Working with local authorities to develop enforcement

It is intended that the section 63 regulations would be brought into force in autumn 2015 giving business and industry seven months' notice from the publication of the SSI and guidance.

Further information on publication and implementation will be made available on the Building Standards Division web pages and the Twitter page which can be accessed at <https://twitter.com/ScotGovBldgStds> . Information will also be disseminated through the BSD enewsletter. To receive Building Standards news direct to your inbox, please register at <http://register.scotland.gov.uk/Subscribe/Step1>.

## 1. Introduction

Under Section 63, 'Energy Performance of Non-Domestic Buildings' of the Climate Change (Scotland) Act 2009 (CCSA), Scottish Ministers must by regulations provide for:

- the assessment of the energy performance of non-domestic buildings and the emissions of greenhouse gases produced; and
- require owners of such buildings to improve the energy performance of such buildings and reduce such emissions.

A public consultation, 'Form of Regulations for non-domestic buildings' was issued 28 March 2013 and closed on 23 May 2013. Over 600 key stakeholders and users of the building standards system in Scotland. Public, private and third sector organisations, Non Departmental Public Bodies (NDPB's) and individuals were advised of the consultation by letter and the documents were made accessible on the Building Standards website. E-mail notification of the consultation was also made to around 2000 organisations and individuals who have registered to receive the BSD newsletter.

This consultation sought views on the format that the S63 CCSA regulations should take, as many of the procedures that apply to the assessment process and enforcement process align with the Energy Performance of Buildings (Scotland) Regulations (EPB(S) R). It is proposed that the original EPB(S) R and amendments should be consolidated and the S63 CCSA regulations should be amalgamated into a new EPB(S) R.

The Consultation Report was published on 1 August 2013 on the Building Standards Division pages of the Scottish Government website summarising the general trends and main issues raised by respondents.

The Consultation Report which set out the statistical analysis and the comments received on the consultation was prepared by Building Standards Division of Scottish government and placed on the Scottish Government website at <http://www.scotland.gov.uk/Publications/2013/08/6376>

This report is the Scottish Government response to the consultation responses received to each of the 11 questions posed and it sets out the next steps.

## 2.0 Comments made on proposals for the Form of Regulations for non-domestic buildings

The following sets out the Scottish Government (SG) reply to each comment/quote, summarises the comments and gives Scottish Government's response to each question.

The response statistics to each question have been taken from the Consultation Report. This gives the total number of respondents in favour or against the proposal and the number in favour. Comments were made to all of the questions by respondents who were in favour or against the proposal and also from respondents who neither answered yes or no.

### 2.1 Q1 Do consultees have any comments on the principle of consolidating the Energy Performance of Buildings (Scotland) Regulations and amendments and amalgamating the S63 CCSA regulations within those regulations?

There were 24 responses to this question. All of the respondents supported the proposal in principle. 17 of the respondents offered comments. Comments and quotes include:

<b>Consultation comments/ quotes</b>	<b>Scottish Government comments</b>
a. It makes sense for all the regulations relating to the energy performance of existing buildings to be enshrined in the same set of regulations thus making the legislation easier to reference and avoid the need for separate assessments.	<i>Noted.</i>
b. The S63 CCSA regulations should be mindful that any regulations could be required to be replaced, altered or modified subject to new EU Directives on the Energy Performance of Buildings. As long as ministers and the sector are aware of this likelihood to avoid disappointment!	<i>Noted.</i>
c. It will make it much easier for property owners, vendors and purchasers, as well as their professional advisers, to understand their responsibilities, obligations and liabilities regarding the energy performance of their properties. This includes making the connection between trigger event (sale or lease) and the EPC recommendations that will form the action plan for carbon and energy performance.	<i>Noted.</i>

d. There is a need for guidance to accompany these regulations.	<i>It is the intention to prepare guidance to accompany these regulations.</i>
e. Further clarity is required to understand how these regulations, and public buildings, will be impacted by the forthcoming Green Deal.	<i>If a Green Deal Plan is implemented for a non-domestic property then the property will be exempt from the section 63 element of the regulations. This will be covered in the guidance which will accompany these regulations. The requirements for EPCs are mandated by an EU Directive and are unaffected by Green Deal status.</i>
f. A manufacturer broadly accepts the principle of consolidating the Energy Performance of Buildings (Scotland) Regulations and amendments and amalgamating the S63 CCSA regulations within those regulations.	<i>Noted.</i>
g. The proposals are to be broadly welcomed. They indicate that the Scottish Government is moving forward with the demands placed upon commercial premises within Scotland as a result of the Climate Change (Scotland) Act 2009.	<i>Noted.</i>
h. Any attempt to streamline and consolidate the regulatory framework for both owners and enforcers is welcomed.	<i>Noted.</i>

**Summary of Scottish Government comments and additional observations**

*If a Green Deal Plan is implemented for a non-domestic property then the property will be exempt from these regulations. This will be covered in the guidance which will accompany these regulations. However it is not possible to exempt green deal properties from the EPC aspects as they are an EPBD requirement.*

**Scottish Government Response**

***We will consolidate the Energy Performance of Buildings (Scotland) Regulations and amendments and amalgamate the S63 CCSA regulations within those regulations and prepare supporting guidance.***



**2.2 Q2 Do consultees agree with having separate parts within the regulations to identify which areas apply to the Energy Performance of Buildings (Scotland) Regulations and amendments, to the S63 CCSA regulations and which apply to both?**

There were 22 responses to this question. All of the respondents supported the proposal in principle. 15 of the respondents offered comments. Comments and quotes include:

<b>Consultation comments/ quotes</b>	<b>Scottish Government comments</b>
a. The regulations need to be set out as clearly as possible and having separate parts aids comprehension.	<i>SG will set out as clearly as practicable.</i>
b. This proposed format of the regulations will make the requirements of the regulations easier to follow.	<i>SG agree.</i>
c. Gives flexibility to the regulations if there are minor amendments to the Directive or if the enactment of the Directive has, in the view of the EU, not been captured by this national legislation.	<i>This is one of the key reasons for drafting the regulations in this manner.</i>
d. Part 4 – Public buildings could be incorporated into Part 2 to provide a more integrated section on energy performance certificates.	<i>Noted.</i>

**Scottish Government Response**

***We will develop the regulations including the schedules in line with the draft regulations, with separate parts to identify which areas apply: to the Energy Performance of Buildings (Scotland) Regulations and amendments; to the S63 CCSA regulations; and which apply to both. Guidance will be developed to accompany the regulations.***

### 2.3 Q3 Do consultees have any comments on Part 1 Preliminary?

There were 22 responses to this question. The respondents supported the proposal in principle on the form of Part 1 Preliminary. 13 of the respondents offered comments. Comments and quotes include:

<b>Consultation comments/ quotes</b>	<b>Scottish Government comments</b>
<p>a. The draft regulations give a coming into force date of “2014”. As these regulations will impose an additional burden and expense on property owners as much advance notice as possible of when the regulations will come in to force will be welcome to enable property owners to manage their property interests and plan for the necessary improvement measures in a timely manner.</p>	<p><i>In addition to the making of regulations, supporting processes remain under development and an adequate lead-in time will be important, not only for those with a new duty under regulations, but also for those who will deliver assessments and undertake enforcement.</i></p> <p><i>The date when the section 63 regulations are to be brought into force will be announced when this is available giving as much notice as practicable.</i></p>
<p>b. The expression “greenhouse gases” is used in a few of the definitions eg definition of “action plan” but there is no definition of greenhouse gases in the regulations. Should there be a cross reference to Section 10(1) of the Climate Change (Scotland) Act 2009 which defines “greenhouse gas” to ensure consistency?</p>	<p><i>Noted.</i></p>
<p>c. The information on preliminaries in Part 1 appears to be clear and fit for purpose.</p>	<p><i>Noted.</i></p>

#### **Scottish Government Response**

***We will develop ‘Part 1 Preliminary’, in line with the draft Part 1. The date when the section 63 regulations are to be brought into force will be announced when this is available giving as much notice as practicable.***

**2.4 Q4 Do consultees have any comments on Part 2 Energy Performance Certificates?**

There were 22 responses to this question. The respondents supported the proposal in principle on the form of Part 2 Energy Performance Certificates. 13 of the respondents offered comments. Comments and quotes include:

Consultation comments/ quotes	Scottish Government comments
<p>a. If the works listed in Schedule 2 are expanded in the future, the impact of paragraphs 7 &amp; 8 is to require the provision of detailed design advice, which may require any or all of the following:</p> <ul style="list-style-type: none"> <li>• Planning Approval</li> <li>• Listed Building or Conservation Area Consent</li> <li>• Building Warrant</li> </ul>	<p><i>Noted</i> <i>Refer to Q5 r.</i></p>
<p>b. Conceivably a new boiler and flue arrangement could require all three consents. Even where such approvals are not required the recommendations may include works which are required to meet the Technical Standards to the Building Standards (Scotland) Regulations, new controls may require new wiring for example, even if a warrant is not required.</p>	
<p>c. Such assessors must be trained sufficiently to advise their clients as to which consents apply and the process / costs associated with obtaining such consents, where required.</p>	
<p>d. In addition by undertaking such assessments the Assessor is providing a design service and therefore creating a design liability for themselves. It is therefore critical to ensure that such services are provided by those who are adequately trained, protected by adequate Professional Indemnity Insurance and aware of their duties and responsibilities. For example a poorly insulated loft can lead to a build-up of interstitial condensation and eventual rot outbreak.</p>	

<p>e. In regulation 8, recommendation report, should there be some tie in with the provision of the action plan which is referred to in Part 3?</p>	<p><i>Under Part 3 of the draft, the action plan data will contain the Unique Property Reference Number (UPRN) of the building and the Report Reference Number (RRN) for the particular assessment. The UPRN and property address will be used within the register system to link all documents related to a particular assessment and will enable tracking of such assessments for a particular building.</i></p>
<p>f. The information for Energy Performance Certificates in Part 2 appears to be clear and fit for purpose.</p>	<p><i>Noted.</i></p>

**Summary of Scottish Government comments and additional observations.** *The UPRN and property address will be used within register systems to link all documents related to a particular assessment and will enable tracking of such assessments for a particular building.*

**Scottish Government Response**

***We will develop 'Part 2 Energy Performance Certificates' in line with draft Part 2.***

**2.5 Q5 Do consultees have any comments on Part 3 Improvement Measures?**

There were 22 responses to this question. The respondents supported the proposal in principle on the form of Part 3 Improvement Measures. 14 of the respondents offered comments. Comments and quotes include:

<b>Consultation comments/ quotes</b>	<b>Scottish Government comments</b>
<p>a. A commercial organisation welcomed the specific exclusion of lease renewals and uncompleted buildings. They would be interested to know how the Regulations will apply to variations of a lease, which may expand or merge/split the building unit in question?</p>	<p><i>We will consider this in detail in the light of responses to this consultation and that carried out in autumn 2012.</i></p>
<p>b. A clear statement in the regulations and/or guidance on whether sub-leases and assignments of leases/sub-leases are trigger events for any of the obligations under the consolidated regulations would be very useful.</p>	<p><i>We will consider providing further information within the accompanying guidance.</i></p>

<p>c. A commercial organisation welcomed the exemption of certain transactions from the scope of the regulations where for example there is a short-term letting. They had raised this in earlier consultations thinking particularly of short-term Christmas lets. In their experience Christmas lets often run from October to the end of January and so their preference would be that the definition of a short-term lease be one for a period of 16 weeks.</p>	<p><i>Refer to Q2.5 a.</i></p>
<p>d. A manufacturer strongly supports the proposal for the Regulations to be triggered after 12 weeks of occupancy.</p>	
<p>e. A manufacturer does not support the proposed exemption for the renewal of an existing lease with the same tenant and believes the development of the action plan can be used to improve the energy efficiency of buildings that fall within this category without causing undue disruption and loss of business continuity to the occupants.</p>	<p><i>As stated in the SG Response to the 'Consultation on Regulations and Guidance for Non-Domestic Buildings', "the trigger of point of lease renewal to an existing tenant of a building will be removed at this stage but subject to review in future"</i></p>
<p>f. The exemption proposed for renewal of an existing lease with the same tenant is not supported by a manufacturer. They recognise there are practical difficulties with carrying out improvement works with resident tenants however some energy efficiency measures can be installed with little to no disruption. In these situations the action plan should be produced with measures that do not require decanting occupants, such as external wall insulation, and so avoids the potential consequence of the application of these Regulations affecting business continuity. There is a growing market for short term office leasing and this sector should not be fully exempted from making energy efficiency improvements.</p>	
<p>g. In addition we think it would be appropriate to exempt non-arms' length transactions such as arrangements between group companies. It is sometimes necessary for companies to re-</p>	<p><i>Taking into account current EPC arrangements, we will consider if any further exempt transactions are required.</i></p>

<p>organise their property holding companies and whilst the name of the tenant may change the occupier is effectively the same so this should not trigger the production of an action plan.</p>	
<p>h. We remain unclear about the extent of liability in certain circumstances and we would welcome further clarification. For example if a lease is varied, perhaps merged or split or simply extended and continued? What if the lease is purchased by a third party (assigned) – is this a trigger event? Similarly on extent we are not clear whether a letting of a part of a building unit will suffice for these measures to come into force. It is quite possible that in this situation it may not be cost-effective to make certain building improvements because of wider disruption to other tenants, or of other policy constraints (eg if one area of more than 1,000 m<sup>2</sup> in a listed office building is let).</p>	<p><i>We will consider providing further information within the accompanying guidance, after taking into account current EPC arrangements.</i></p>
<p>i. Greater clarity should be introduced within the regulations on what constitutes an ‘energy performance target’. From the description this is very different to what an EPC constitutes and is more based on building energy bills, bills that capture a good deal more than what is accounted for within an EPC (i.e. extended hours of operation &amp; unregulated uses [lifts, external lighting, security, processes.]</p>	<p><i>The energy performance target is set out in draft Regulation 11(1) and is the calculated energy consumption for a building when the prescribed improvement measures (which are available for the building) and recorded in the action plan are run through the calculation engine (SBEM). This will be clarified in guidance.</i></p>
<p>j. The terminology could be clearer for the description of the ‘measures’ to be undertaken by building owners/operators. We have the improvement measures described within the Action Plan but also the measures within the implementation of the operational rating. Please make a clearer distinction between these two measures. In fact why not call it the EPC rather than the operational rating? And would it not be better to refer to the recommendations Report produced as part of the operational rating (i.e. EPC) rather than improved and rebranded as an Action Plan?</p>	<p><i>The improvement measures described with the action plan are physical (eg new boiler, controls for central heating) and will be assessed by means of an updated EPC once they are completed. Operational ratings are quite different as they are a measure of the actual energy consumption using meter readings on an annual basis. If owners opt for operational ratings then the physical improvement measures still remain within the action plan. These need to be carried out when the owner ceases operational ratings.</i></p>

<p>k. The use of display energy certificates as a means to improve the energy use of buildings in Scotland is to be welcomed – these will help to close the ‘performance gap’ and engage building users in the reduction of energy use within buildings.</p>	<p><i>We have included the option, following production of the EPC and Action Plan, of recording operational energy use through assessment and the production of such a certificate, as requested by industry.</i></p>
<p>i. Our members also welcome the operational ratings approach which has long been campaigned for by a trade association and colleagues south of the border. We understand that it will, however, require both landlords and tenants to agree to implement it as an approach for their property / building unit and this may not be straightforward as some tenants may be reluctant to engage with operational ratings even if their landlord is willing.</p>	<p><i>The responsibility falls on the owner to take steps to improve the energy performance of such buildings; reduce such emissions as set out in Section 63 (1) (b), CCSA. This covers both physical improvement measures or operational ratings.</i></p>
<p>m. A local authority umbrella body welcomes the flexibility outlined in the consultation to allow building owners to display an annual operational rating when it is not technically or financially feasible to carry out improvement measures. EPC recommendation reports and accompanying action plans and measures are often difficult to implement as there is limited detail on the cost and technical feasibility within the report.</p>	<p><i>Note that carrying out annual operational ratings only suspends the implementation of physical improvements which will still be required at some stage in the future. Should an owner cease to implement operational ratings measures, they will have to implement physical improvement measures in accordance with draft Regulation 13.</i></p>
<p>n. Further flexibility and longer timescales (beyond 3.5 years) will be necessary for many building improvements especially hard to treat and listed buildings - the stock that makes up many public sector non domestic buildings</p>	<p><i>3.5 years is considered to be a reasonable period to carry out improvements of the type in draft schedule 2. Consideration will be given to providing a mechanism for additional defences against enforcement action and a mechanism for applying for an extension of time.</i></p>
<p>o. The content of Regulation 9 (5) (d) has been left blank. Is this an exempt transaction omitted?</p>	<p><i>Taking into account current EPC arrangements, we will consider if any further exempt transactions are required</i></p>
<p>p. With regard to regulation 10(4) our preference would be for the action plan to be sent to the relevant register “before the action plan is</p>	<p><i>Draft regulation 10(4) will be revised to use the second option in 10(4) so that the action plan would be sent to</i></p>

<p>made available to the prospective buyer or a prospective tenant in accordance with regulation 9(1)”. The trigger for registration should be a proposed transaction. A proactive property owner may get action plans prepared for their properties to see what improvements would be recommended but they may not have any intention of selling or letting at that time. They should not have to register the action plan at that time (which would make information about the property available through the register which the owner may prefer to keep confidential).</p>	<p><i>the relevant register before it is made available to prospective buyers or tenants (i.e. in line with EPC process where the document is produced from data lodged to the register).</i></p>
<p>q. We fully appreciate the need for the Regulations to be written in a legal manner however it is extremely wordy and consideration should be given to simplifying the presentation of Part 3.</p>	<p><i>We will re-visit the drafting to see if it can be made more accessible. Guidance will be prepared to sit alongside the regulations.</i></p>
<p>r. A Professional Body welcomes the intent of the legislation to require poorly performing buildings to be upgraded. In the absence of further information they have concerns about the scope and depth of the proposed Action Plans meeting the issues raised in their answer to Q4 (ie design advice, obtaining statutory approvals, assessors training and professional indemnity insurance) .</p>	<p><i>Noted.</i>  <i>If a building owner requires to make improvements under section 63, it remains their responsibility to seek further advice or obtain any statutory approvals.</i></p> <p><i>Accordingly, after discussion with Approved Organisations, in respect of Part 3 of the draft regulations, the responsibility and the role of section 63 assessors in this respect will be set out in supporting guidance.</i></p>
<p>s. It is not clear if the action plan timescales start again if the building is sold before the plan is implemented.</p>	<p><i>See response to Q5 n. above.</i></p>
<p>t. I find Regulation 14’ Implementation of operational rating measures’ almost indecipherable and suggest it be revisited to make it clearer or some additional guidance is offered in plain English.</p>	<p><i>See response to Q5 q. above.</i></p>
<p>u. The information of Improvement Measures in Part 3 appears to be clear and fit for purpose.</p>	<p><i>Noted.</i></p>



<p>v. Details on the measures which will qualify as “alternative measures” under the s 63 regulations. There needs to be clear guidance on how alternative improvement measures can be applied.</p>	<p><i>Alternative measures would be measures which are available from the National Calculation Methodology (SBEM). There is a ‘working list of EPC recommendations’ which is included in the SBEM Technical Manual and that can be downloaded from the NCM website: <a href="http://www.ncm.bre.co.uk/download.jsp">http://www.ncm.bre.co.uk/download.jsp</a></i></p>
<p>w. Information should be cascaded relevant to additional permissions that maybe required e.g. building warrant/planning etc.</p>	<p><i>Noted. Refer to Q5 r.</i></p>
<p>x. The requirement to produce recommendations on cost effective and technically feasible should not be from a standard option list as this leaves choices limited for action. There needs to be a clear commitment to training and competency of the EPC providers.</p>	<p><i>Noted. Refer to Q6 c.</i></p>

**Summary of Scottish Government comments and additional observations**

*Guidance will be developed which will include clarification of energy performance target, description of prescribed and alternative measures. Taking into account current EPC arrangements, we will consider providing further information within the accompanying guidance on exemptions (eg sub-leases, assignments of leases/sub-leases, short term letting and non-arms’ length transactions )*

*Carrying out annual operational ratings only suspends the implementation of physical improvements which will still be required at some stage in the future.*

*3.5 years is considered to be a reasonable period to carry out improvements of the type in schedule 2. Consideration will be given to a mechanism for additional defences against enforcement action and a mechanism for applying for an extension of time. We will re-visit the drafting of Part 3 to see if it can be made more accessible.*

*The responsibility falls on the owner to take steps to improve the energy performance of such buildings; reduce such emissions as set out in Section 63 (1) (b), CCSA. This covers both physical improvement measures or operational ratings.*

*If a building owner requires to make improvements under section 63, it remains their responsibility to seek further advice or obtain any statutory approvals. After discussion with Approved Organisations, the responsibility and the role of section 63 assessors in this respect would be set out in supporting guidance.*

Alternative measures would be measures which are available from the National Calculation Methodology (SBEM). There is a 'working list of EPC recommendations' which is included in the SBEM Technical Manual and that can be downloaded from the NCM website: <http://www.ncm.bre.co.uk/download.jsp>

**Scottish Government Response**

**We will develop 'Part 3 Improvement Measures' in line with the draft Part 3 and will consider this in detail in the light of responses to this consultation and also that carried out in autumn 2012. The trigger of point of lease renewal for an existing tenant of a building will be removed at this stage but subject to review in future" as set out in the SG Response to the 'Consultation on Regulations and Guidance for Non-Domestic Buildings'.**

**We will consider if any further exempt transactions are required.**

**Primary legislation defines the building owner as the person responsible for taking steps, identified by the assessment of their building, to improve the energy performance of such buildings reduce emissions.**

**The option to produce Display Energy Certificates will be included as requested by industry. The action plan should be sent to the relevant register before it is made available to prospective buyers or tenants.**

**2.6 Q6 Do consultees have any comments on Part 5 Approved Methodology and Approved Organisations?**

There were 22 responses to this question. The respondents supported the proposal in principle on the form of Part 5 Approved Methodology and Approved Organisations. 14 of the respondents offered comments.

Comments and quotes include:

<b>Consultation comments/ quotes</b>	<b>Scottish Government comments</b>
a. The information on methodology and approved organisations in Part 5 appears to be clear and fit for purpose.	<i>Noted.</i>
b. Please can Scottish Ministers/the Building Standards Division publish a timetable for candidate approved organisations to apply to Scottish Ministers, for their candidate members to register/train prior and meet the required standards prior to the implementation of the regulations?	<i>We will develop a programme for candidate approved organisations to apply for 'section 63 approved status'.</i>

<p>c. It is of fundamental importance that a robust and rigorous qualification and approval process for energy assessors is introduced. This will ensure that recommendations are appropriate for the building in question and will deliver real energy savings when installed. One accepted route to demonstrate competence could be to adopt the non-domestic Green Deal Assessor qualification.</p>	<p><i>Noted.</i>  <i>We will work with those who will be involved in delivering S63 assessments so that they have the relevant skills and training.</i></p> <p><i>We are about to commence auditing of AOs for EPCs and intend to build upon this for section 63 subject to discussions with the AOs that wish to apply for 's63 approved status'.</i></p>
<p>d. Regulation 18 (2) (b) suggests that approved members may be permitted to issue only part of the documents listed under (4), would this not create issues. We would expect that for any organisation to be approved that it should be capable of producing all the document categories.</p>	
<p>e. The oversight arrangements for registered Green Deal Assessors are in place should this be adopted as a route to demonstrate assessor competence.</p>	<p><i>Noted.</i>  <i>The requirements placed upon s.63 assessors will follow the framework developed for EPC assessors in Scotland.</i></p> <p><i>Consideration will be given to recognition of practice applicable in similar registration schemes such as those put in place for the GB Green Deal. However there are currently only 5 non-domestic GD assessors who can operate in Scotland.</i></p>
<p>f. A professional body believe that the accuracy and professionalism required of Energy Assessors can only be achieved if they are training to the same standards as Approved Certifiers of Design (Section 6 – Energy).</p>	<p><i>Only members of Approved organisations may produce and lodge EPCs for new construction. Approved Certifiers of Design (Section 6 – Energy) (ACoDs) are accredited in relation to the design aspects of the building.</i></p>
<p>g. A local authority umbrella body welcome the use of a standard methodology (EPC) to determine the energy rating of a building - to introduce a new assessment procedure would only further confuse. However, they would like to note that further improvements to the methodology behind the EPC are required as it does not take into account the distinct climate and geographic conditions in</p>	<p><i>The non-domestic National Calculation Methodology used for building regulations and EPBD is based upon a single climate data set applicable across Scotland which enables direct comparison of calculated building performance. For the purpose of the section 63 assessment, there are no proposals</i></p>

Scotland. To ensure that the EPC method works for Scotland, they would recommend that EPC assessors are provided further training and guidance.	<i>to amend this methodology.</i>
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**Summary of Scottish Government comments and additional observations**

*Only members of Approved Organisations may produce and lodge EPCs for new construction. Approved Certifiers of Design (Section 6 – Energy) are accredited in relation to the design aspects of the building.*

*We are about to commence auditing of AOs for EPCs and intend to build upon this for section 63 subject to discussions with the AOs that wish to apply for ‘s63 approved status’.*

*The requirements placed upon s63 assessors will follow the framework developed for EPC assessors in Scotland.*

*Consideration will be given to recognition of practice applicable in similar registration schemes such as that put in place for the GB Green Deal. However there are currently only 5 GD non-domestic assessors who can operate in Scotland.*

*The non-domestic National Calculation Methodology used for building regulations and EPBD is based upon a single climate data set applicable across Scotland which enables direct comparison of calculated building performance.*

**Scottish Government Response**

***We will develop ‘Part 5 Approved Methodology and Approved Organisations’ in line with the draft Part 5.***

***We will work with potential section 63 approved organisations to develop the way forward so that their assessors are trained to deal with the new requirements within the s63 regulations.***

**2.7 Q7 Do consultees have any comments on Part 6 Register of energy performance data?**

There were 22 responses to this question. The respondents supported the proposal in principle on the form of Part 6, Register of energy performance data. 13 of the respondents offered comments. Comments and quotes include:

<b>Consultation comments/ quotes</b>	<b>Scottish Government comments</b>
a. The introduction of a central register of energy performance data is strongly supported with access allowed for appropriate organisations such as the Government and Green Deal Providers.	<i>Noted. Refer to Q6 e.</i>

Connecting data disclosure to the Green Deal further strengthens the link to using the Green Deal Assessor qualification framework as a means to demonstrate competence.	
b. A government organisation would be opposed to the recording of EPC data for their non-domestic buildings onto a database as this could bring buildings with a use of a sensitive nature into the public domain with the potential for a negative impact upon national security.	<i>The definition of “excluded building” in Interpretation, draft regulation 3, is already in statute, (The Energy Performance of Buildings (Scotland) Amendment (No. 3) Regulations 2012) together with draft regulation 23 (2)(e and 24(2)((c)(i) will prevent the disclosure of data and the location of excluded buildings.</i>
c. Fees should be a set amount for entering data to the register.	<i>Agreed, this is the intention although the fee levels have still to be set.</i>
d. Is the action plan to be made available for copy/ view?	<i>The keeper of the register may disclose the action plan and other documents within the register, subject to conditions. These conditions vary depending on whether the request is related to a particular building or bulk access data.</i>
e. The information on the register in Part 6 appears to be clear and fit for purpose.	<i>Noted.</i>

**Summary of Scottish Government comments and additional observations**

*The keeper of the register may disclose the action plan and other documents within the register subject to conditions. These conditions vary depending on whether the request is related to a particular building or bulk access data.*

**Scottish Government Response**

**We will develop ‘Part 6 Register of energy performance data’ in line with the draft Part 6.**

***The definition of ‘excluded building’ in Interpretation, draft regulation 3, is already in statute, (The Energy Performance of Buildings (Scotland) Amendment (No. 3) Regulations 2012)) together with regulation 23 (2)(e) and 24(2)(c)(i) will prevent the disclosure of data and the location of excluded buildings.***

**2.8 Q8 Do consultees have any comments on Part 7 Enforcement?**

There were 22 responses to this question. The respondents supported the proposal in principle on the form of Part 7, Enforcement. 14 of the respondents offered comments. Comments and quotes include:

<b>Consultation comments/ quotes</b>	<b>Scottish Government comments</b>
<p>a. Why is the enforcement on the Approved organisations and their members not covered here?</p>	<p><i>The process for delivery and the responsibilities for those involved in the process, are still to be agreed and will be set out in an operating framework.</i></p>
<p>b. When the Sheriff quashes a notice the enforcing authority should automatically be liable to pay all costs incurred by the appellant. This, in our opinion, would ensure that the enforcing authority did not issue notices without thorough investigation of the circumstances.</p>	<p><i>The question of expenses is a matter for the courts.</i></p>
<p>c. Our understanding is that enforcement action may occur after the 42 month period specified under Part 3 of the Regulations. The text suggests that there is a six month period after the 42 months in which the building improvements may still be completed but we would welcome confirmation of this view.</p>	<p><i>Draft regulation 10(2) provides that the timescale for implementation of the building improvement measures must be no greater than 42 months after the date on which the action plan is issued. Draft regulation 13 requires the owner of a building to complete the building improvement measures in accordance with that timescale.</i></p> <p><i>The 6 month period in regulation 28(1) only relates to breaches of draft regulation 5.</i></p> <p><i>Enforcement provisions for completion of building improvement measures will be inserted.</i></p>
<p>d. It is also important that we establish how differences of opinion over cost-effectiveness are reconciled. Building improvements will only become mandatory if improvement measures are seen to be cost-effective but this may not be as clear the drafters of the regulations appear to believe.</p>	<p><i>It would be expected that those delivering S63 assessments should be able to provide the building owner with advice on these issues.</i></p>

<p>e. A manufacturer supports the introduction of a proactive compliance and enforcement mechanism. Trading Standards or other suitable bodies can ensure that sales and leasing agencies and their clients are complying with their obligations under this regulation. Building control should follow up on a statistically significant number of lodged action plans to check that these have been implemented within the required timescale. It is recognised that improving the energy efficiency of non-domestic buildings has an important part to play in achieving Scotland's energy efficiency and climate change mitigation goals. The introduction of these regulations can act as a significant driver to improving the energy performance of non-domestic buildings therefore high levels of compliance are essential and a rigorous enforcement mechanism can help achieve this. Compliance checking should also extend to the assessments carried out and the documents produced with a statistically significant number being audited for quality and accuracy.</p>	<p><i>Noted.</i>  <i>The local authorities are to be the enforcement authorities and will determine when enforcement action is necessary.</i></p>
<p>f. The enforcement information contained in Part 8 is clear and concise and the substantial penalty levels are welcomed as a deterrent to avoiding compliance.</p>	<p><i>Noted.</i></p>
<p>g. There will be a clear need for expert resources for local authorities.</p>	<p><i>Noted.</i></p>
<p>h. Having enforcement powers under the same regulations is the most practical solution as this should allow LA's who already have the necessary technical knowledge and expertise to assist in the determination of the mandatory improvements to the building fabric and services to be imposed under section 63. However, adopting a more proactive approach to enforcing mandatory improvements would undoubtedly prove to be a challenge to most LA's. Enforcement</p>	<p><i>A national electronic register has been introduced to support enforcement of the EPC regulations. This is being further developed for S63.</i></p> <p><i>The draft regulations in relation to S63 enforcement will be further developed to cover action plans, implementation of building improvement, operational rating measures and display energy</i></p>

<p>and penalty charges are not clear in relation to Improvement Works. In relation to the enforcement of these regulations there needs to be greater clarity with regards to the level and method of enforcement. There clearly will be issues with proportionality and public interest and resource.</p>	<p><i>certificates.</i></p>
<p>i. There is no reference to enforcement relative to the implementation of improvement measures under Regulation 13 or the alternative of implementation of operational rating measures with the display of Display Energy Certificates under Regulation 14.</p>	
<p>j. Current enforcement protocol is undertaken by building standards departments. The wider remit, outlined in the consultation could place additional demands on Councils. A local authority umbrella organisation stress that the financial and staff costs needed to enforce and comply with this regulation need to be fully assessed. Any additional financial burden and staffing requirements on Local Authority buildings will need to be prioritised against existing and planned budget commitments. The umbrella organisation would welcome detailed clarification of the no additional cost analysis proposed by Scottish Government.</p>	
<p>k. It is essential that a consistent model for enforcement and reporting is developed. It maybe that a collaborative approach is required between services such as Trading Standards.</p>	<p><i>A liaison group will be established with local authorities to discuss enforcement.</i></p>
<p>l. In encouraging a more pro-active role to enforcement in this area Government must be aware of current local authority resources as highlighted previously by the umbrella organisation.</p>	<p><i>One of the main reasons for setting up a national electronic register is to support the enforcement role. Local authorities have access to this data to support enforcement activities.</i></p>
<p>m. Whilst Crown authorities are mandated to comply with the requirements of the Energy Performance of Building Regulations and has published internal guidance on its</p>	<p><i>Draft regulation 23(2) (e) on disclosure by the Keeper excludes 'particular buildings or building units which are excluded buildings. It is up</i></p>



<p>application, it is unclear how a Local Authority would be able to check or enforce the regulations on the Crown estate discussed in the proposals.</p>	<p><i>to a local authority to determine how they enforce the legislation.</i></p>
<p>n. It would be extremely beneficial for all local authorities if the Scottish Government could draft a template penalty charge notice (PCN) that contains all the prescribed requirements and identifies all potential breaches. This would allow for a consistent format of PCN across Scotland. A similar template was produced by the Scottish Government when the new tobacco enforcement legislation came into force and was contained as an annex to the guidance documents provided to enforcement bodies. Promoting the format of regulations and raising awareness should encourage building owners to adopt a more pragmatic approach to the process.</p>	<p><i>Refer to Q8 k.</i></p>
<p>o. A "front end" approach by owners - developing good lines of communication with LA's should also be encouraged as this will reduce the resource implications of enforcement action and assist owners to identify any need for a Building Warrant submission at an early stage.</p>	<p><i>Noted.</i></p>

**Summary of Scottish Government comments and additional observations**

*Local Authorities currently carry out enforcement for EPCs and the enforcement of this policy would be likely to have minimal additional burden on them, particularly as a national electronic register will be introduced to support the enforcement role. Draft regulation 10 gives 42 months to implement the physical measures within the action plan but not a further 6 month period. The 6 month period in draft regulation 28(1) only relates to breaches of draft regulation 5. Enforcement provisions for completion of building improvement measures have not been inserted yet. The definition of "excluded building" in Interpretation, draft regulation 3 will prevent information on sensitive buildings and their location from coming into the public domain. However this would not exclude the building from the regulations nor from enforcement action.*

**Scottish Government Response**

***We will develop 'Part 7 Enforcement' in line with the draft Part 7. A liaison group will be established with local authorities to discuss enforcement.***

**2.9 Q9 Do consultees have any comments on Schedule 1 Disclosure of data?**

There were 22 responses to this question. The respondents supported the proposal in principle on the form of Schedule 1 Disclosure of data. 19 of the respondents offered comments. Comments and quotes include:

Consultation comments/ quotes	Scottish Government comments
<p>a. Schedule 1 "Disclosure of data" will generate a good deal of interest from suppliers of products and services into the commercial property sector in Scotland as suppliers will be given a database of contacts who may be interested in their products/services. Having a thriving market for energy efficiency is lacking in Scotland and the proposals should be applauded for their ambition to create such an environment. Of course there may be a downside to this marketplace whereby speculative approaches are made to hawk inappropriate products and services but caveat emptor.</p>	<p><i>Noted.</i></p>
<p>b. A trade association consider it is important that the data contained in the register of energy performance data is used appropriately and their members agree with the majority of the purposes set out in Part 2 of Schedule 1. However, they have questioned whether paragraph 5 is appropriate to allow the data to be used for marketing energy efficiency improvements for green deal plans. Despite the conditions in Part 3 of the Schedule this could lead to a lot of unsolicited contact. The data should not be used for commercial benefit for example collecting intelligence about a competitor's property.</p>	
<p>c. A manufacturer agrees with the proposals for disclosure of data and the persons and organisations granted access. This will play an important role in securing compliance via enforcement as detailed under Q8 and for stimulating the awareness and uptake of the non-domestic Green Deal as discussed under Q5 and Q6.</p>	

d. Schedule 1 is clear and appears to be fit for purpose	<i>Noted.</i>
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**Scottish Government Response**

**We will develop 'Schedule 1, Disclosure of data' in line with the draft schedule 1.**

**2.10 Q10 Do consultees have any comments on Schedule 2 Improvement Works?**

There were 22 responses to this question. The respondents supported the proposal in principle on the form of Schedule 2 Improvement Works. 11 of the respondents offered comments. Comments and quotes include:

<b>Consultation comments/ quotes</b>	<b>Scottish Government comments</b>
a. The application of this Schedule should be made clearer. The text indicates that it only applies to Section 63 buildings yet the definition in regulation 3(1) Interpretation 'would appear to indicate in the definition of "identified improvement works" that it relates both to work which has been included in a recommendations report 'which is part of an energy performance certificate and work which has been included in regulation 10 as part of an 'action plan'.	<i>Noted for review.</i>
b. Simplify item to state that the measures must achieve a 5-year payback at the feasibility stage.	<i>The payback period will be adjusted to 7 years to cover both short and medium paybacks.</i>
c. The associated costs of any required building warrant application and/or system design costs will need to be considered in the calculation of the payback period.	<i>Noted.</i>
d. The improvement work descriptions provided appear more appropriate to domestic buildings- need more options for non-domestic improvement works require to be more specific for clarity.	<i>Work descriptions were derived from those in improvements within table 38 of the Working List of EPC recommendations in ISBEM version 4.1c – UK Volume. Research carried out determined that the items listed were those which would be appropriate for non-domestic buildings.</i>

<p>e. While a professional body supports the intention of the legislation, the provision of a prescriptive list of potential upgrades highlights the contradiction with what is in fact a design evaluation. For example insulating the roof of a modern air conditioned office may in fact increase energy use as it increases the cooling load. Equally at the opposite end of the scale installing draft stripping to the door of a corner shop, which is predominately open during trading hours, is unlikely to result in the energy saving predicted by SBEM.</p>	<p><i>Noted, section 63 assessors will need to be aware of these matters and may require further training to cover these and other issues.</i></p>
<p>f. The issue of cost-effectiveness of building improvements over a five year period may not be as clear as the drafters believe in some circumstances. Not all Units will clearly know their energy consumption because this may be paid via service charges and apportioned on an area occupied basis.</p>	<p><i>Refer to Q8 d.</i></p>
<p>g. The improvement measures referenced in Part 3 and listed in Schedule 2 are not sufficient. Specifically, solid wall, standard cavity wall insulation and hard-to-treat cavity wall insulation should be included as recommended measures. If we are to encourage the take-up of energy efficiency measures through the implementation of this Regulation, information on available finance mechanisms must be communicated to building owners as part of the assessment process.</p>	<p><i><u>Research</u> determined that the items listed in Schedule 2 would tend to be most appropriate for non-domestic buildings, generally cause least disruption and payback in a short period. However this will not prevent owners, supported by their assessor's advice, from taking up alternative measures, provided such measures at least achieve the energy performance and emissions targets.</i></p>
<p>h. The improvement measures listed in Schedule 2 may offer some 'quick wins' in terms of the energy efficiency of certain non-domestic buildings but do not account for the very broad range of non-domestic buildings which covers a large spectrum of building types and occupancy patterns and may benefit from other measures such as solid wall insulation. Furthermore there are building owners who may wish to go beyond regulatory minimum requirements as part of planned renovations but will be unsure</p>	

<p>which measures may be suitable for their buildings. Therefore information on the measures which are technically suitable for a building should be included on the recommendations report and be included on the action plan even if building owners are not mandated to take up improvements beyond the current specified improvement measures.</p>	
<p>i. A manufacturer does not believe that the payback period of five years included in Schedule 2 is sufficiently long. A minimum payback period of ten years, or longer for specific types of non-domestic building, should be applied.</p>	<p><i>Refer to Q10 b. However that would not prevent owners from carrying out alternative improvements with longer payback periods provided such measures at least achieve the energy performance and emissions targets.</i></p>
<p>j. Establishing an appropriate payback period will ensure coherent, well-planned and ambitious minimum refurbishment standards to avoid the undesirable effects of sub-optimal refurbishments, such as the lock-in effect where future energy performance improvements are made more difficult or more expensive following partial refurbishment.</p>	
<p>k. A further consideration is the interaction of measures. Each improvement measure is currently considered in isolation. Incorporating a measure with a rapid payback period with another measure with a longer payback period will deliver far greater carbon emissions and reductions in energy consumption with an acceptable average payback period.</p>	<p><i>The software assesses the combined effect of measures rather than the sum of the impacts of the individual measures.</i></p>
<p>l. Schedule 2 is clear and appears to be fit for purpose</p>	<p><i>Noted.</i></p>

**Summary of Scottish Government comments and additional observations**

*The definition of 'identified improvement works' will be reviewed but is intended to relate only to works which have been identified in the Action Plan*

*[Research](#) determined that the items listed in Schedule 2 would tend to be most appropriate for non-domestic buildings, generally cause least disruption and payback in a short period. However this will not prevent owners, supported by their*

*assessor's advice, from taking up alternative measures, provided such measures at least achieve the energy performance and emissions targets.*

*The software assesses the combined effect of measures rather than the sum of the impacts of the individual measures.*

**Scottish Government Response**

***We will develop 'Schedule 2 Improvement Works' in line with the draft schedule 2 and the payback period will be revised to 7 years.***

**2.11 Q11 Do consultees have any other comments on the proposals?**

**Introduction**

In addition to the 10 specific questions posed, general comments on proposals were welcomed. 19 consultees out of a total of the 25 responding to the consultation submitted other comments on the proposals.

This public consultation was restricted purely to the form of the regulations for Section 63 of the Climate Change (Scotland) Act as the policy direction has already been set. All consultation responses are on the BSD website at <http://www.scotland.gov.uk/Publications/2013/06/1794>. Responses on technical or policy matters have been moved to this section of the Consultation Report and will be passed to relevant Scottish Government colleagues for awareness. Relevant comments and quotes include:

<b>Consultation comments/ quotes</b>	<b>Scottish Government comments</b>
<p><b>Energy Performance of Buildings Directive</b> Several queries were received on the current Energy Performance of Building (Scotland) Regulations (EPB(S) R) which are out with the scope of this consultation.</p>	<p><i>Specific comments or questions on the current EPB(S) R are not part of this consultation.</i></p>
<p><b>National Energy Performance Register</b> a. One respondent asked whether the documents are to be produced through an online portal or merely accessed and reviewed from a document depository.</p>	<p><i>The EPC and Recommendations Report are currently produced from data held on the register. We intend the s63 documentation would be produced in the same way.</i></p>
<p>b. One respondent understood that the central register for new domestic and all non-domestic properties is modelled on that used in England &amp; Wales and was concerned that such an approach would not be fit for purpose.</p>	<p><i>While the Scottish Register is derived on similar principles to that used in England &amp; Wales, it is specific to Scotland.</i></p>
<p>c. One respondent proposed that the register should be extended to include building information models (BIM) and set out the</p>	<p><i>BIM is at an early stage of adoption in Scotland. The use of BIM and its application was considered as part of</i></p>

benefits they considered recoding such information would bring.	<i>the Scottish Public Sector Construction Procurement Review which was published in October 2013. This was an independent report, Ministers are now considering the recommendations carefully, and will respond formally after the Easter recess.</i>
<b>National Calculation Methodology</b> Consultation proposals do not include revision of the UK National Calculation Methodologies (NCM) used in the production of EPCs.	<i>Specific comments or questions on the UK National Calculation Methodologies (NCM) are not part of this consultation.</i>
<b>Financial</b> Consultation proposals do not include financial mechanisms for energy efficiency works.	<i>Specific financial comments relevant to these draft regulations are not part of this consultation.</i>
a. A respondent said that approved organisation members should communicate the availability of current finance schemes to building owners as part of the assessment process and sources of finances and subsidies should be included in the training and continuing professional development approved organisation members.	<i>This is out with the requirements of section 63 of the Act but approved organisations may wish to cover this aspect in their training plans for delivering the section 63 regulations.</i>
b. The recent regional consultations confirmed that whilst some measures led to higher capital costs these resulted in reduced long term costs and improved performance, which surely has to be the aim of any amendments in helping to meet carbon emission reduction targets?	<i>Noted.</i>
c. A respondent has strong concerns that there is little evidence thus far of energy efficiency improvements achieving improvements in value.	<i>Noted.</i>
d. There is a need for very particular guidance on the application of these rules and regulations. A balance needs to be struck between sustainable economic growth and carbon commitment targets.	<i>Noted.</i>

<p><b>Dissemination</b>  Consultation proposals do not include dissemination events for the introduction of the regulations.</p>	<p><i>Noted.</i></p>
<p><b>Technical Aspects</b>  Consultation proposals do not include technical aspects for the introduction of the regulations.</p>	<p><i>Specific comments or questions on technical aspects are not part of this consultation.</i></p>
<p><b>Exemptions</b>  One respondent considered that buildings used for religious activities should be exempt from both EPBD and section 63 regulations.</p>	<p><i>Article 4 of Directive 2010/31/EU states that Member States <b>may</b> decide not to set or apply the requirements referred to in paragraph 1 to the following categories of buildings:</i></p> <p><i>(a) .....</i></p> <p><i>(b) buildings used as places of worship and for religious activities;</i></p> <p><i>We have not exempted buildings used as places of worship and for religious activities from the section 63 regulations to be consistent with the Building (Scotland) Regulations 2004, the Energy Performance of Buildings (Scotland) Regulations 2008 and amendments.</i></p> <p><i>However places of worship and for religious activities would be exempt from the section 63 regulations provided they are not subject to sale or rental or are under the threshold size of 1000 m<sup>2</sup>.</i></p>
<p><b>Historic and Listed Buildings</b>  At least 40-50% of the existing building stock pre-dates 1940 and we are concerned that building owners who operate historic buildings (with limited scope for improvement) efficiently may be penalised relative to owners who operate more modern (and presumably well insulated) buildings inefficiently. This could fundamentally distort the market in older properties, which across a range of criteria, would be considered to be more financially, socially and environmentally sustainable than the alternative of replacement.</p> <p>Following discussions with the Church of England, English Heritage, the National Trust and others, the Department of Energy and Climate Change accepted that many buildings will find it difficult to meet the requirements for EPCs. It was also accepted that to include such properties was to “gold-plate” the re-cast EU directive which exempted them.</p> <p>From 9th January 2013, buildings in England and Wales used as places of worship and for religious activities and those Listed buildings, so far as compliance with certain energy efficiency requirements would unacceptably alter their character or appearance, will not require an EPC. The Scottish Churches Committee urges Scottish Government to re-consider its policy direction in regard to both places of worship and Listed Buildings.</p>	



## General

A number of general comments were made on the section 63 policy but the majority were not on the specific topic of the form of the regulations except as follows. Accordingly, specific comments or question these topics are not presented as part of this exercise

a. While it was appreciated that the document is a draft a number of frequent cross referencing errors were noted within the document that need to be corrected.	<i>These will be picked up in updating the draft regulations to the final version.</i>
b. A timetable for the implementation of the regulations is recommended to allow the property community to manage the introduction of the proposals.	<i>Refer to Q3 a.</i>

### **Summary of Scottish Government comments and additional observations**

*Specific comments or questions on the current EPB(S) R, the UK National Calculation Methodologies (NCM), financial aspects, the use of BIM, etc. are not part of this consultation.*

*We intend the s63 documentation would be produced in the same way as for EPCs.*

*The Scottish EPC Register is specific to Scotland.*

#### **Scottish Government Response**

***Responses on technical or policy matters will be passed to relevant Scottish Government colleagues for awareness.***

***We have not exempted buildings used as places of worship and for religious activities from the section 63 regulations to be consistent with the Building (Scotland) Regulations 2004, the Energy Performance of Buildings (Scotland) Regulations 2008 and amendments.***

### **3.0 Summary**

This section collates the Scottish Government Responses.

#### **3.1 The form of the regulations**

We will consolidate the Energy Performance of Buildings (Scotland) Regulations and amendments and amalgamate the S63 CCSA regulations within those regulations and prepare supporting guidance.

#### **3.2 Separate parts within the regulations**

We will develop the regulations, including the schedules, in line with the draft regulations. Separate parts 1 to 7 will identify which areas apply to the Energy Performance of Buildings (Scotland) Regulations and amendments, to the S63 CCSA regulations and which apply to both. Guidance will be developed to accompany the regulations.

#### **3.3 Part 1 Preliminary**

We will develop 'Part 1 Preliminary', in line with the draft Part 1. The date when the section 63 regulations are to be brought into force will be announced when this is available giving as much notice as practicable.

#### **3.4 Part 2 Energy Performance Certificates**

We will develop 'Part 2 Energy Performance Certificates' in line with the draft Part 2.

#### **3.5 Part 3 Improvement Measures**

We will develop 'Part 3 Improvement Measures' in line with the draft Part 3 and will consider this in detail in the light of responses to this consultation and also that carried out in autumn 2012. The trigger of point of lease renewal for an existing tenant of a building will be removed at this stage but subject to review in future" as set out in the SG Response to the 'Consultation on Regulations and Guidance for Non-Domestic Buildings'.

We will consider if any further exempt transactions are required.

Primary legislation defines the building owner as the person responsible for taking steps, identified by the assessment of their building, to improve the energy performance of such buildings reduce emissions.

The option to produce Display Energy Certificates will be included as requested by industry. The action plan should be sent to the relevant register before it is made available to prospective buyers or tenants.

#### **3.6 Part 5 Approved Methodology and Approved Organisations**

We will develop 'Part 5 Approved Methodology and Approved Organisations' in line with the draft Part 5.

We will work with potential section 63 approved organisations to develop the way forward so that their assessors are trained to deal with the new requirements within the s63 regulations.

### **3.7 Part 6 Register of energy performance**

We will develop 'Part 6 Register of energy performance data' in line with draft Part 6.

The definition of 'excluded building' in Interpretation, draft regulation 3, is already in statute, (The Energy Performance of Buildings (Scotland) Amendment (No. 3) Regulations 2012) together with regulation 23 (2)(e) and 24(2)((c)(i) will prevent the disclosure of data and the location of excluded buildings.

### **3.8 Part 7 Enforcement**

We will develop 'Part 7 Enforcement' in line with the draft Part 7. A liaison group will be established with local authorities to discuss enforcement.

### **3.9 Schedule 1 Disclosure'**

We will develop 'Schedule 1, Disclosure of data' in line with the draft schedule 1.

### **3.10 Schedule 2 improvement Works**

We will develop 'Schedule 2, Improvement Works' in line with the draft schedule 2 and the payback period will be revised to 7 years.

### **3.11 Any other comments on the proposals**

Responses on technical or policy matters will be passed to relevant Scottish Government colleagues for awareness.

We have not exempted buildings used as places of worship and for religious activities from the section 63 regulations to be consistent with the Building (Scotland) Regulations 2004, the Energy Performance of Buildings (Scotland) Regulations 2008 and amendments.

#### 4. **Next Steps**

Scottish Government welcomes the unanimous support for the principle of consolidating the original Energy Performance of Buildings (Scotland) Regulations and amendments and amalgamating the regulations for Section 63, Climate Change (Scotland) Act within the new regulations.

Scottish Government intends to finalise the section 63 regulations and develop guidance on the basis of the draft regulations with separate parts to identify the areas which apply to the Energy Performance of Buildings (Scotland) Regulations and amendments, to the S63 CCSA regulations and which apply to both.

The current timeline for developing the policy through to bringing the regulations into force is as follows:

- |                                                                                     |                    |
|-------------------------------------------------------------------------------------|--------------------|
| • Liaison with COSLA, local authorities software providers & approved organisations | Summer 2014        |
| • Complete section 63 part of Register                                              | Autumn 2014        |
| • SSI through parliamentary process                                                 | Winter 2014/2015   |
| • Dissemination events                                                              | Spring/Summer 2015 |
| • SSI brought into force                                                            | Autumn 2015        |

Further information on publication and implementation will be made available on the Building Standards Division web pages on the Scottish Government website.

#### 5. **Contact**

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