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Dear Patrick,

The Climate Change (Scotland) Act 2009 requires reports to be submitted by Scottish Ministers on Section 63 of the Act and Section 3F of the Town and Country Planning (Scotland) Act 1997 (which was inserted by Section 72 of the Climate Change (Scotland) Act 2009).

Section 63 energy performance of non domestic buildings requires regulations to be made for the assessment of the energy performance of existing non-domestic buildings and greenhouse gas emissions from such buildings; and for building owners to make improvements to their buildings.

Scottish Ministers are required under Section 63(6) of the Climate Change (Scotland) Act 2009 to publish a report no later than 1 year after section 63 came into force, setting out:

- (a) what measures they intend to take to reduce emissions from non-domestic buildings; and
- (b) when they intend to make provision as mentioned in paragraphs (i) and (j) of subsection (2).

The report on Section 63 is enclosed in Annex A, and will be published on the Building Standards Division area of the Scottish Government website, lodged with SPICE and sent to the Committee Chairs of EET, TICC and LGCC and relevant stakeholder groups to inform them that the report is now published.

Scottish Ministers are required, by Section 73(1) of the Climate Change (Scotland) Act 2009, to lay before the Scottish Parliament a report on the operation of Section 3F of the Town and Country Planning (Scotland) Act, by 1 April 2011. Such reports are to be made annually for a minimum of four years (as per Section 73(2) of the Climate Change (Scotland) Act 2009). The first annual report will be laid before the Scottish Parliament prior to dissolution.

Kind regards



KEITH BROWN

ANNEX A

BUILDINGS STANDARDS DIVISION CLIMATE CHANGE (SCOTLAND) ACT 2009 REPORT ON SCOTTISH GOVERNMENT APPROACH TO IMPLEMENTING SECTION 63 ENERGY PERFORMANCE OF NON-DOMESTIC BUILDINGS

Introduction

1. The Climate Change (Scotland) Act 2009 received Royal Assent on 4 August 2009 and section 63 '*Energy Performance of Non-Domestic Buildings*' came into force on 1 April 2010.

2. This report sets out the progress that has been made in preparing regulations to implement section 63 of the Climate Change (Scotland) Act 2009 (CCSA) (Refer to Appendix A). We have also set out the next steps and how we intend to fulfil the legislative requirements of the Act.

Background

3. Buildings account for over 40% of carbon emissions in the UK. However only 1% of the existing building stock is replaced by new build each year. Therefore it can be seen that achieving significant improvement of the overall stock solely through new building regulations would take a considerable time.

4. The Sullivan Report¹, published in December 2007, made several recommendations for improving energy performance and reducing emissions from existing non-domestic buildings.

5. Section 63 of the CCSA implements the Sullivan Report recommendations for existing non-domestic buildings. This requires regulations to be made for:

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

7. It is intended that an Assessment of Carbon and Energy Performance (ACEP) would be carried out on existing non-domestic buildings. Current thinking is that this would consist of an Energy Performance Certificate (EPC) and an Action Plan. The action plan would contain the measures which are intended to improve the energy performance of the building and reduce emissions.

Progress to date

8. Building Standards Division (BSD) is leading on the development of secondary legislation. To assist this process a departmental Working Group made up of representatives from across industry has been formed. Members include Local Authority Verifiers, COSLA, NHS Scotland, Chartered Institution of Building Services Engineers, Scottish Property Federation, BRE, Carbon Trust, Law Society of Scotland and BSD officials.

¹ Sullivan Report, 'A Low Carbon Buildings Standards Strategy for Scotland'

9. The following topics have been discussed at the Working Group meetings:
- a. The relationship of section 63 with other legislation and schemes aimed at reducing carbon dioxide (CO₂) and improving energy efficiency.
 - b. The broad principles of how the assessment should be carried out and the methodology to be adopted.
 - c. The impact of landlord, tenant and occupier issues on the regulations.
 - d. The relationship of section 63 to the proposed Green Deal (GD). The GD is intended to support the implementation of energy efficiency measures to households and businesses. This is part of the UK Energy Bill and is a UK Government initiative.
 - e. The relationship of section 63 to the EU Energy Performance of Buildings Directive (EPBD). There is also a recast of EPBD which could have an impact on the methodology to be adopted under the section 63 regulations.
 - f. What the regulations may make provision for, including the following:
 - The non-domestic building types and sizes subject to the regulations.
 - The triggers which would require an assessment to be carried out.
 - The buildings which should be exempted.
 - How the process of the assessment of buildings and implementing improvement measures may be introduced under the section 63 regulations.

Key messages from the Working Group

10. To date the Working Group has made the following key points:
- a. The process should connect to that used for Energy Performance Certificates (EPCs), thereby avoiding two separate assessments.
 - b. The ACEP should not just mirror EPCs. Therefore, mandatory implementation of improvements should be introduced from the start.
 - c. The triggers for requiring an assessment include point of sale and rental, where there is the opportunity for carrying out upgrading work.
 - d. The regulations should be brought in gradually, having regard to the funding streams that will exist.

Research

11. The following research projects have either been carried out or are in progress to support
- a. 2009-10 Research
 - Energy load profiles for non-domestic buildings
 - Improvements to the energy performance of existing buildings
 - Scoping the non-domestic built environment in Scotland.
 - Establish categories of non-domestic buildings for emissions reductions.
 - Options for managing the energy performance of existing non-domestic buildings- 'operational ratings'.
 - b. 2010-11 Research
 - Assessment of carbon and energy performance against other carbon reduction and energy efficiency legislation and schemes.
 - Mapping the non-domestic building stock in Scotland.

- Development of a points system for alternative improvements to existing non-domestic buildings.
- Development of a methodology for the management of the energy performance of existing buildings – Part 2 Scoping study.
- Review of priorities for improvements to non-domestic buildings.

The links to research projects which have been published are shown above. All other projects are currently being used to inform policy development.

Reporting in accordance with section 63 (6) of CCSA

12. Section 63 (6) requires that Scottish Ministers must publish a report no later than 12 months after the day on which this section comes into force, setting out:
- (a) what measures they intend to take to reduce emissions from non-domestic buildings; and
 - (b) when they intend to make provision as mentioned in paragraphs (i) and (j) of subsection (2).

Measures intended to be taken to reduce emissions from existing non-domestic buildings

13. The Scottish Government published 'Conserve and Save' its Energy Efficiency Action Plan in October 2010 which sets out the framework for a comprehensive approach to energy efficiency and microgeneration. It sets out a wide ranging programme of activity on behaviour change, household, business and public sector energy efficiency.

14. Specifically, the Scottish Government supports business, industry and the public sector to improve energy efficiency through:
- The provision of energy efficiency advice, including energy audits, through continued funding of the Carbon Trust and the Energy Saving Trust.
 - Engaging on a sectorial basis through the Carbon Trust's Industrial Energy Efficiency Accelerator.
 - Provision of interest free loans funds to support energy efficiency measures:
 - the SME Loans Fund for small and medium sized enterprises;
 - Central Energy Efficiency Fund for Scottish Local Authorities, NHS and Scottish Water;
 - The Salix Loans Fund for Scottish Universities and Colleges.

15. The Scottish Government is currently working with Carbon Trust, Energy Saving Trust, Zerowaste Scotland, Scottish Enterprise, Highlands and Islands Enterprise, SEPA and COSLA business Gateway to establish a single energy and resource efficiency advice, guidance and support service for Scottish Businesses.

16. The 2010 building regulations introduce a requirement to review and, where practical, carry out limited improvement to the carbon and energy performance of fixed building services in existing building. This is triggered when work to alter or extend an existing non-domestic building includes a building services component. Applicants are expected to assess the potential for such improvement and assign a

proportion of the cost of proposed works to make cost-effective improvements to systems elsewhere in the building. These provisions are set out within the 2010 Non-domestic Technical Handbook that supports Scottish building regulations.

17. Work is ongoing to preparing regulations to implement section 63 of the CCSA). In terms of implementation, it is intended that, subject to public consultation, an Assessment of Carbon and Energy Performance (ACEP) would be carried out on non-domestic buildings and an action plan would be prepared. This would contain measures which can improve the energy performance of the building and reduce emissions. In the first instance, the measures would be cost effective improvements to the building fabric and services of the building. Typical example measures would be upgrading to heating and lighting controls, low energy lighting, draught stripping, and replacement of elderly boilers or air conditioning chiller units.

18. Where it is not practical to implement such improvements a strategy for reporting operational carbon and energy performance of the building would be considered. This is likely to include year on year measurement of actual or metered fuel energy use. Details of any protocols will need to be in place with the building occupier for implementing the strategy.

19. We are working with UK Government to influence the development of the Green Deal and are aware of the potential influence of GD on the section 63 regulations. Current thinking is that non-domestic buildings participating in the GD would have fulfilled the section 63 regulations. This will depend on the outcome of the GD within the UK Energy Bill.

When it is intended to make provision as mentioned in paragraphs (i) and (j) of subsection (2)

20. It is intended that the public consultation, including the Business and Regulatory Impact Assessment, would be issued before the end of 2011 setting out the proposals. This will include the provisions within the regulations under section 63 (2) and the regulations likely to be made during 2012. This will be taken forward taking into account progress on the EPBD (recast) and the Green Deal.

Next Steps

21. The next steps in the development of the regulations are set out below.
- a. Continuing the Working Group meetings to discuss the following topics:
 - The building measures which should be considered to improve the energy performance and reduce emissions from non-domestic buildings.
 - Further develop the triggers for requiring assessment.
 - The persons who should carry out assessments, their training and quality.
 - The manner and periods which should be set to implement improvements.
 - Establishing a database for registering assessments of non-domestic buildings.

- Determining who will be the enforcement body.
 - Developing the enforcement measures which could apply on 'failure to obtain an assessment' and 'failure to implement improvement measures'.
 - Determining the levels of potential costs to property owners.
- b. Completing research to support the development of the regulations including updating software and manuals.
 - c. Preparing legislation and supporting guidance.
 - d. Carrying out public and EU consultation including preparing a Business and Regulatory Impact, Strategic Environment and Equality Impact Assessments.
 - e. Finalising the legislation and guidance and seeking Ministerial and Parliamentary approval.
 - f. Publishing legislation and guidance.
 - g. Delivering seminars to stakeholders to explain the regulations and supporting guidance.
 - h. Bringing the energy performance of non-domestic buildings regulations into force.

APPENDIX A
Climate Change (Scotland) Act 2009
Section 63

Energy performance of non-domestic buildings

- 63 Non-domestic buildings: assessment of energy performance and emissions**
- (1) The Scottish Ministers must, by regulations
- (a) provide for the assessment of—
 - (i) the energy performance of non-domestic buildings;
 - (ii) the emission of greenhouse gases produced by or otherwise associated with such buildings or with activities carried out in such buildings;
 - (b) require owners of such buildings to take steps, identified by such assessments, to
 - (i) improve the energy performance of such buildings;
 - (ii) reduce such emissions.
- (2) The regulations may in particular include provision about
- (a) the circumstances in which the regulations apply;
 - (b) the non-domestic buildings to which the regulations apply;
 - (c) the persons who may be required to have assessments carried out;
 - (d) the periods within which such assessments must be carried out;
 - (e) the procedure and methodology for assessing the energy performance of buildings;
 - (f) the procedure and methodology for assessing the greenhouse gas emissions produced by or otherwise associated with buildings or activities carried out in buildings;
 - (g) the persons who may carry out such assessments;
 - (h) the issuing of certificates following such assessments, including the form, manner and content of such certificates;
 - (i) the form of any recommendations, contained in such certificates, as to the improvement of the energy performance of buildings and the reduction of emissions produced by or otherwise associated with buildings or activities carried out in buildings;
 - (j) the manner in which and periods within which persons must take steps to comply with any recommendations contained in such certificates;
 - (k) the registration of such certificates;
 - (l) the disclosure of information which is entered in the register;
 - (m) subject to subsection (3), the enforcement authority in relation to the regulations;
 - (n) subject to subsection (5), the functions of that authority;

- (o) the keeping of information and its production to the enforcement authority;
 - (p) the enforcement of the duties imposed by the regulations;
 - (q) offences in relation to failures to comply with requirements of the regulations.
- (3) The enforcement authority provided for in the regulations is to be such person or body as the Scottish Ministers consider appropriate.
- (4) The regulations may provide for the functions of the enforcement authority to be exercised by two or more such authorities and about the functions of each such authority.
- (5) The functions of the enforcement authority may include power to levy charges to recover the reasonable costs incurred by it in exercising its functions under the regulations.
- (6) The Scottish Ministers must, no later than 12 months after the day on which this section comes into force, publish a report setting out—
- (a) what measures they intend to take to reduce emissions from non-domestic buildings; and
 - (b) when they intend to make provision as mentioned in paragraphs (i) and (j) of subsection (2).
- (7) In this section, “non-domestic building” —
- (a) means a building other than a dwelling;
 - (b) does not include
 - (i) any yard, garden, outbuilding or other land or buildings;
 - (ii) any common areas,
associated with such a dwelling.