

CLIMATE CHANGE (SCOTLAND) ACT 2009

EXPLANATORY NOTES

THE ACT

Part 5 – Other Climate Change Provisions

Chapter 3 – Energy efficiency

Duty of Scottish Ministers to promote energy efficiency

112. **Section 60** requires the Scottish Ministers, within 12 months of the section coming into force, to publish a plan for promoting energy efficiency and improving the energy efficiency of living accommodation in Scotland. Under subsections (5) and (6), Ministers are required to review the plan at least every 3 years. The plan must set annual energy efficiency targets and describe how those targets are to be reported on. The plan must also include details of how the Scottish Ministers intend to update planning and building regulations to ensure that all new buildings avoid a specified and rising proportion of the projected greenhouse gas emissions from their use, calculated on the basis of the approved design and plans for the specific building, through the installation and operation of low and zero-carbon generating technologies.
113. Following a review, the Scottish Ministers must in accordance with subsection (7) publish the plan if the review results in changes to the plan.
114. When preparing a plan and when varying it after a review, subsection (8) requires the Scottish Ministers to have regard to the contribution that improvements to buildings and changes in building standards can make to improving overall energy efficiency and lowering carbon emissions in Scotland.
115. “Energy efficiency” is defined in subsection (9) and includes the use of (a) technologies (other than those used for the production of heat) reliant on renewable sources of energy, (b) materials and equipment the manufacture or use of which produces or involves lower emissions of greenhouse gases than other materials and equipment, and (c) surplus heat from electricity generation or other industrial processes for district heating or other purposes. “Fossil fuel” and “renewable sources” are also defined in subsection (9).

Duty of Scottish Ministers to promote renewable heat

116. **Section 61** requires the Scottish Ministers to prepare and publish a plan for the promotion of the use of heat produced from renewable sources. Subsection (2) provides that the plan must set targets, the dates by which the targets are to be met and describe how those targets are to be reported on. This subsection also requires that the Scottish Ministers describe how the targets will be reported on.
117. Subsection (3) requires the Scottish Ministers to publish, within 12 months of the section coming into force, the plan prepared under subsection (1). Under subsections (4) and (5), Ministers are required to review the plan at least every 2 years. If, following a review, the plan is varied, Ministers must publish the revised plan.

Laying of plans and reports

118. Section 62(1) requires the Scottish Ministers to lay the initial energy efficiency and renewable heat plans and any subsequent revised versions of those plans before the Scottish Parliament as soon as reasonably practicable after they are published. Subsections (2) and (3) require Ministers to lay reports before the Scottish Parliament on what steps have been taken to implement the plans. These reports must be laid within 12 months of the plans first being published and at least annually thereafter. Under subsection (4), the Scottish Ministers are required to make a statement to Parliament as soon as reasonably practicable after the plans are laid.

Non-domestic buildings: assessment of energy performance and emissions

119. [Section 63](#) requires the Scottish Ministers to make regulations providing for the assessment of (a) the energy performance of non-domestic buildings, and (b) emissions of greenhouse gases produced by or associated with such buildings or with activities carried out in such buildings, and to make regulations requiring owners of such buildings to take steps to improve the energy performance of buildings and to reduce emissions.
120. Subsection (2) sets out (without prejudice to the generality of the power in subsection (1)) some of the detail which may be included in the regulations, including: the kinds of non-domestic buildings covered; persons who are required to obtain assessments; time periods for carrying out assessments; procedures and methodologies for assessing energy performance and emissions; persons who can carry out such assessments; the issuing of certificates following assessment; the form of any recommendations as to the improvement of the energy performance and reduction of emissions; the manner and periods within which steps must be taken with regard to such recommendations; the registration of certificates; the disclosure of information entered in the register; enforcement authorities; the keeping of records; enforcement of the regulations; and offences.
121. Subsection (3) makes provision about the enforcement authority provided for in the regulations and subsection (4) allows the regulations to provide for the functions of the enforcement authority to be exercised by two or more such authorities and also allows provision to be made about the functions of each of those authorities.
122. Subsection (5) allows the enforcement authority to levy charges to recover reasonable costs incurred by exercising the functions under the regulations and subsection (6) requires the Scottish Ministers to publish a report, within 12 months of section 63 coming into force. This will set out the measures they intend to take to reduce emissions from non-domestic buildings, and when they intend to make regulations to set out the form of recommendations and the manner and periods within which steps are to be taken to comply with the recommendations.
123. Subsection (7) defines “non-domestic building” as all buildings, other than buildings which are dwellings. Yards, gardens, outbuildings and other land or buildings associated with dwellings, and any common areas so associated, are also excluded from the meaning of “non-domestic building”.

Living accommodation: assessment of energy performance and emissions

124. [Section 64](#) requires the Scottish Ministers to make regulations providing for the assessment of (a) the energy performance of living accommodation, and (b) emissions of greenhouse gases produced by living accommodation. Ministers must also, by regulations, require owners of such accommodation to take steps, identified by the assessments, to (a) improve the energy performance of such accommodation, and (b) reduce such emissions.

125. Subsection (2) sets out (without prejudice to the generality of the power in subsection (1)) some of the detail which may be included in the regulations, including: the kinds of living accommodation covered; persons who are required to obtain assessments; time periods for carrying out assessments; procedures and methodologies for assessing energy performance and emissions; persons who can carry out such assessments; the issuing of certificates following assessment; the form of any recommendations as to the improvement of the energy performance and reduction of emissions; the manner and periods within which steps must be taken with regard to such recommendations; the registration of certificates; the disclosure of information entered in the register; enforcement authorities; the keeping of records; enforcement of the regulations; and offences.
126. Subsection (3) makes provision about the enforcement authority provided for in the regulations and subsection (4) allows the regulations to provide for the functions of the enforcement authority to be exercised by two or more such authorities and also allows provision to be made about the functions of each of those authorities.
127. Subsection (5) allows the enforcement authority to levy charges to recover reasonable costs incurred in exercising the functions under the regulations. Subsection (6) requires the Scottish Ministers to publish a report, within 12 months of section 64 coming into force. This will set out the measures they intend to take to reduce emissions from living accommodation, and when they intend to make regulations to set out the form of recommendations and the manner and periods within which steps are to be taken to comply with the recommendations.
128. Subsection (7) defines “living accommodation” as a dwelling, and includes any building having a total useful floor area of 50m² or more and any common areas associated with such a dwelling.

Duty of local authorities to establish energy efficiency discount schemes

129. [Section 65](#) amends the Local Government Finance Act 1992 by inserting new section 80A – Local authority’s power to reduce amount of tax payable. Subsection (1) of section 80A requires local authorities to establish schemes for reducing the amounts which persons are liable to pay in respect of council tax where improvements are made to the energy efficiency of chargeable dwellings. Subsection (2) defines such a scheme as an “energy efficiency discount scheme”.
130. Subsection (3) gives local authorities the discretion to design schemes as they see fit and lists provision which it may in particular include. Subsection (4) states that certain conditions must be met before the amount which a person is liable to pay in respect of council tax may be reduced. Subsections (5) and (6) set out these conditions.
131. Subsection (7) details the minimum reduction which may be provided under an energy efficiency discount scheme. Where that person’s council tax liability is £50 or more, the discount must be no less than £50. Where that person’s council tax liability is less than £50, the discount must be equal to that liability. Subsection (8) allows a local authority, under an energy efficiency discount scheme, to reduce a person’s liability to zero.
132. Subsection (9) contains definitions of expressions, such as “energy efficiency”, used in section 80A.
133. Subsection (3) of section 65 inserts a new paragraph 22 into schedule 2 to the Local Government Finance Act 1992, which provides that a council tax reduction under an energy efficiency discount scheme is to be treated, for the purposes of that schedule, as a discount equal to the amount of the reduction.

Review of energy efficiency discount schemes

134. [Section 66](#) requires the Scottish Ministers to produce a report as soon as practicable after 31 March 2012, and annually thereafter, on the operation of energy efficiency discount

schemes established under section 80A of the Local Government Finance Act 1992. The report must include an assessment of the effectiveness of council tax reductions in promoting energy efficiency.

135. Subsection (2) allows the Scottish Ministers to amend section 80A of the 1992 Act to improve the contribution of energy efficiency discount schemes to promoting energy efficiency.

Non-domestic rates: discounts for energy efficiency etc.

136. [Section 67](#) amends section 153 of the Local Government etc. (Scotland) Act 1994 by amending the power of the Scottish Ministers to make regulations prescribing the amount of non-domestic rates so that the amount payable for properties which fall into specific categories determined by energy efficiency and greenhouse gas emissions may be lower than the amount payable for other properties.

Climate change burdens

137. [Section 68](#) inserts a new section 46A into the Title Conditions (Scotland) Act 2003 to create a new kind of real burden – a “climate change burden”- that can be added to a property’s title deeds to specify the mitigation or adaptation standards that must be met when the burdened property is developed. Subsection (3) identifies those public bodies in whose favour a climate change burden can be created, as those bodies listed in Part I or Part II of the schedule to the [Title Conditions \(Scotland\) Act 2003 \(Conservation Bodies\) Order 2003 \(SSI 2003/453\)](#).

Tenement Management Scheme: definition of “maintenance”

138. [Section 69](#) amends the definition of “maintenance” in schedule 1 to the Tenements (Scotland) Act 2004 to include the installation of insulation. The 2004 Act deals with the management and maintenance of tenements, providing a default management scheme which applies when the title deeds do not set out how a tenement should be managed. Amending the definition of maintenance brings the installation of insulation within those matters governed by the scheme, including the scheme rules on how decisions should be made and how the costs should be shared between the individual owners.

Permitted development rights

139. [Sections 70](#) and [71](#) place duties on the Scottish Ministers to bring forward subordinate legislation under the Town and Country Planning (Scotland) Act 1997 to provide for permitted development rights in specified circumstances for the installation of air source heat pump and wind turbine microgeneration equipment in domestic buildings and for the installation of microgeneration equipment in non-domestic buildings.
140. The provisions in these sections of the Act indicate the scope of the consultation that will require to be undertaken with representative persons concerning the extension of permitted development rights. When implemented, the provisions should simplify the planning process and provide a cost saving to applicants.

Development plans: inclusion of greenhouse gas emissions policies

141. [Section 72](#) inserts a new section 3F into the Town and Country Planning (Scotland) Act 1997, placing a requirement upon planning authorities that local development plans must contain greenhouse gas emissions policies. These policies are to ensure that all new buildings are designed to contribute to energy efficiency by the installation and operation of low and zero-carbon generating technologies.

Annual report on operation of section 72

142. Subsection (1) of section 73 requires the Scottish Ministers to report to the Scottish Parliament annually on the operation of section 72. The report must include an assessment of whether the requirements placed upon planning authorities have contributed effectively to the reduction of greenhouse gas emissions from developments.
143. Subsection (2) requires that the fourth and subsequent reports to the Parliament must include an assessment of the continuing need or otherwise for the requirement placed upon planning authorities to include greenhouse gas emissions policies in local development plans. It makes provision for repeal by the Scottish Ministers of section 3F of the Town and Country Planning (Scotland) Act 1997 and section 73 if, after the fourth and subsequent reports, the Scottish Ministers consider that the requirement is no longer necessary.

Duty of Scottish Water to promote water conservation and water-use efficiency

144. Section 56(1) of the Water Industry (Scotland) Act 2002 puts a duty on the Scottish Ministers to give Scottish Water directions on certain matters. These directions are binding on Scottish Water and can be enforced by Ministers. Section 74 amends section 56(1) of the 2002 Act so that the Scottish Ministers must in future also give specific directions to Scottish Water to promote water conservation and water-use efficiency.