



# Climate Change (Scotland) Act 2009

## 2009 asp 12

### PART 5

#### OTHER CLIMATE CHANGE PROVISIONS

### CHAPTER 3

#### ENERGY EFFICIENCY

##### *Promotion of energy efficiency and renewable heat*

#### **60 Duty of Scottish Ministers to promote energy efficiency**

- (1) The Scottish Ministers must prepare and publish a plan for—
  - (a) promoting energy efficiency; and
  - (b) improving the energy efficiency of living accommodation, in Scotland.
- (2) The plan must set annual energy efficiency targets and describe how those targets are to be reported on.
- (3) 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.
- (4) The plan prepared under subsection (1) must be published no later than 12 months after the day on which this section comes into force.
- (5) The Scottish Ministers—
  - (a) may, from time to time; and
  - (b) must, before the end of the period mentioned in subsection (6), review the plan prepared and published under this section.

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- (6) The period referred to in subsection (5)(b) is the period of 3 years beginning with the day on which—
- (a) the plan is first published; or
  - (b) the plan was last reviewed under subsection (5).
- (7) Where, following a review under subsection (5), the Scottish Ministers vary the plan, they must, as soon as reasonably practicable after so doing, publish the plan as so varied.
- (8) In preparing or varying the plan, the Scottish Ministers must have regard to the contributions which improvements to buildings and changes in building standards can make to the delivery of energy efficiency and to the reduction of greenhouse gas emissions.
- (9) In this section—
- “energy efficiency” 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” means—
- (a) coal;
  - (b) lignite;
  - (c) peat;
  - (d) natural gas (within the meaning of the Energy Act 1976 (c. 76));
  - (e) crude liquid petroleum;
  - (f) petroleum products (within the meaning of that Act);
  - (g) any substance produced directly or indirectly from a substance mentioned in paragraphs (a) to (f);
- “renewable sources” means sources other than fossil fuel and nuclear fuel.

## **61 Duty of Scottish Ministers to promote renewable heat**

- (1) The Scottish Ministers must prepare and publish a plan for the promotion of the use of heat produced from renewable sources.
- (2) The plan must, in particular—
- (a) set—
    - (i) targets for the percentage of heat to be produced from renewable sources; and
    - (ii) in relation to each target, the date by which it should be met; and
  - (b) describe how those targets are to be reported on.
- (3) The plan prepared under subsection (1) must be published no later than 12 months after the day on which this section comes into force.
- (4) The Scottish Ministers—
- (a) may, from time to time; and

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- (b) must, before the end of the period mentioned in subsection (5), review the plan prepared and published under this section.
- (5) The period referred to in subsection (4)(b) is the period of 2 years beginning with the day on which—
  - (a) the plan is first published; or
  - (b) the plan was last reviewed under subsection (4).
- (6) Where, following a review under subsection (4), the Scottish Ministers vary the plan, they must, as soon as reasonably practicable after so doing, publish the plan as so varied.
- (7) In this section, “renewable sources” has the same meaning as in section 60(9).

## **62 Laying of plans and reports**

- (1) The Scottish Ministers must, as soon as reasonably practicable after publishing a plan under section 60(1) or (7) or section 61(1) or (6), lay it before the Scottish Parliament.
- (2) The Scottish Ministers must, before the end of the period mentioned in subsection (3), lay before the Parliament a report on what steps have been taken in implement of the plan.
- (3) The period referred to in subsection (2) is the period of 12 months beginning with the day on which—
  - (a) the plan is first published; or
  - (b) a report was last laid under subsection (2).
- (4) Where the Scottish Ministers lay a plan mentioned in subsection (1) or a report mentioned in subsection (2) before the Parliament, they must, as soon as reasonably practicable after doing so, and in so far as reasonably practicable, make a statement to the Parliament relating to the plan or, as the case may be, report.

### *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;

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- (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.

*Energy performance of living accommodation*

**64 Living accommodation: assessment of energy performance and emissions**

- (1) The Scottish Ministers must, by regulations—
  - (a) provide for the assessment of—
    - (i) the energy performance of living accommodation;
    - (ii) the emission of greenhouse gases produced by or otherwise associated with such accommodation;
  - (b) require owners of such accommodation to take steps, identified by such assessments, to—
    - (i) improve the energy performance of such accommodation;
    - (ii) reduce such emissions.
- (2) The regulations may in particular include provision about—
  - (a) the circumstances in which the regulations apply;
  - (b) the living accommodation 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 living accommodation;
  - (f) the procedure and methodology for assessing the greenhouse gas emissions produced by or otherwise associated with living accommodation;
  - (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, and the reduction of emissions produced by or otherwise associated with, living accommodation;
  - (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.

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- (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 living accommodation; and
  - (b) when they intend to make provision as mentioned in paragraphs (i) and (j) of subsection (2).
- (7) In this section, “living accommodation”—
- (a) means a dwelling; and
  - (b) includes—
    - (i) any building having a total useful floor area of 50m<sup>2</sup> or more; and
    - (ii) any common areas, associated with such a dwelling.

#### *Energy efficiency discount schemes*

### **65 Duty of local authorities to establish energy efficiency discount schemes**

- (1) The Local Government Finance Act 1992 (c. 14) is amended as follows.
- (2) After section 80 (reduced amounts payable in respect of council tax), insert—

#### **“80A Local authority’s power to reduce amount of tax payable**

- (1) A local authority must establish a scheme 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.
- (2) A scheme established under subsection (1) is an “energy efficiency discount scheme”.
- (3) An energy efficiency discount scheme may make such provision as the local authority considers appropriate, including, in particular, provision about—
  - (a) the energy efficiency improvements to which the scheme applies;
  - (b) the chargeable dwellings to which the scheme applies;
  - (c) the reduction, which may be made under the scheme, in the amount which persons are liable to pay in respect of council tax;
  - (d) applications under the scheme.
- (4) But, under an energy efficiency discount scheme, the amount which a person is liable to pay in respect of council tax may be reduced only where each of the conditions mentioned in subsection (5) is met (whatever other conditions may require to be met under the scheme).
- (5) Those conditions are—
  - (a) the person is liable to pay council tax in respect of a chargeable dwelling and any day;
  - (b) improvements are made to the energy efficiency of that dwelling (whether by the person liable to pay or not);

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- (c) those improvements are made during the same financial year to which the reduction of the amount which the person is liable to pay in respect of council tax relates;
  - (d) the amount which the person is liable to pay in respect of that year has not already been reduced under the scheme in respect of those improvements;
  - (e) the amount which any other person is liable to pay in respect of council tax in respect of that dwelling and that year has not been reduced under the scheme in respect of those improvements.
- (6) In ascertaining whether the condition in subsection (5)(e) is met, no account is to be taken of any person who is jointly and severally liable, with the person mentioned in subsection (5)(a), to pay council tax in respect of the dwelling.
- (7) The minimum reduction which may be provided for under an energy efficiency discount scheme must be—
- (a) where the amount which the person is liable to pay in respect of council tax is £50 or more, no less than £50;
  - (b) where the amount which the person is liable to pay in respect of council tax is less than £50, an amount equal to that person’s liability.
- (8) The local authority may, under an energy efficiency discount scheme, reduce the amount which a person is liable to pay in respect of a dwelling to nil.
- (9) In this section—
- “energy efficiency” includes the use of—
- (a) technologies reliant on sources of energy other than fossil fuel and nuclear fuel;
  - (b) materials the manufacture or use of which produces or involves lower emissions of greenhouse gases than other materials; and
  - (c) surplus heat from electricity generation or other industrial sources for district heating or other purposes;
- “fossil fuel” means—
- (a) coal;
  - (b) lignite;
  - (c) peat;
  - (d) natural gas (within the meaning of the Energy Act 1976 (c. 76));
  - (e) crude liquid petroleum;
  - (f) petroleum products (within the meaning of that Act);
  - (g) any substance produced directly or indirectly from a substance mentioned in paragraphs (a) to (f);
- “greenhouse gas” has the meaning given by section 10(1) of the Climate Change (Scotland) Act 2009 (asp 12).”.
- (3) In schedule 2, after paragraph 21 (effect of reduction of liability to pay council tax under section 13A), insert—
- “22 (1) This paragraph applies where a local authority establishes an energy efficiency discount scheme under section 80A.
- (2) Where, under an energy efficiency discount scheme, the amount which a person is liable to pay in respect of council tax is reduced, any amount

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in relation to which the reduction applies is to be treated for the purposes of this schedule as subject to a discount equal to the amount of the reduction.”.

**66 Review of energy efficiency discount schemes**

- (1) The Scottish Ministers must, as soon as practicable after 31 March 2012 and annually thereafter, lay before the Scottish Parliament a report on the operation of energy efficiency discount schemes established under section 80A of the Local Government Finance Act 1992 (c. 14), which must include an assessment of whether the reductions thereby provided for have contributed effectively to promoting energy efficiency.
- (2) The Scottish Ministers may, if they consider it appropriate, by order amend section 80A of the Local Government Finance Act 1992 for the purpose of improving the contribution of energy efficiency discount schemes to promoting energy efficiency.

**67 Non-domestic rates: discounts for energy efficiency etc.**

In section 153 (power to prescribe amount of non-domestic rate) of the Local Government etc. (Scotland) Act 1994 (c. 39), in subsection (3)—

- (a) the words “whose rateable value exceeds, and those whose rateable value does not exceed, a prescribed figure” become paragraph (a); and
- (b) at the end insert—
  - “(b) whose energy efficiency and greenhouse gas emissions fall into different categories prescribed for the purpose of this paragraph in rules under subsection (1).

- (3A) Regulations under this section may make provision in relation to how lands and heritages are to be determined to fall within a category prescribed for the purpose of subsection (3)(b) in rules under subsection (1).”.

*Climate change burdens*

**68 Climate change burdens**

After section 46 (health care burdens) of the Title Conditions (Scotland) Act 2003 (asp 9), insert—

*“Climate change burdens*

**46A Climate change burdens**

- (1) On and after the day on which this section comes into force, it shall be competent to create a real burden in favour of a public body or trust, or of the Scottish Ministers, for the purpose of reducing greenhouse gas emissions; and any such burden shall be known as a “climate change burden”.
- (2) A climate change burden may only consist of an obligation, in the event of the burdened property being developed, for the property to meet specified mitigation and adaptation standards.



- (3) For the purposes of this section, a “public body” means a body listed in Part I or II of the Schedule to the [Title Conditions \(Scotland\) Act 2003 \(Conservation Bodies\) Order 2003 \(SSI 2003/453\)](#).”.

#### *Tenement Management Scheme*

### **69 Tenement Management Scheme: definition of “maintenance”**

In schedule 1 (Tenement Management Scheme) to the Tenements (Scotland) Act 2004 ([asp 11](#)), in the definition of “maintenance” in rule 1.5, after “replacement,” insert “the installation of insulation,”.

#### *Permitted development rights*

### **70 Air source heat pumps and micro wind turbines in domestic properties**

- (1) The Scottish Ministers must exercise their functions under sections 30 and 31 of the Town and Country Planning (Scotland) Act 1997 ([c. 8](#)) so as to make provision specifying the circumstances in which development of the class mentioned in subsection (2) is granted planning permission by virtue of an order under section 30 of that Act.
- (2) That class is the installation, alteration or replacement, within the curtilage of a dwellinghouse or building containing one or more flats, of—
  - (a) air source heat pump microgeneration equipment; or
  - (b) wind turbine microgeneration equipment.
- (3) The Scottish Ministers must comply with subsection (1) no later than 6 months after the day on which this section comes into force.
- (4) Before complying with subsection (1), the Scottish Ministers must consult—
  - (a) such persons appearing to them to represent the producers and suppliers of the equipment mentioned in paragraphs (a) and (b) of subsection (2); and
  - (b) such other persons as the Scottish Ministers consider appropriate.
- (5) In this section, “microgeneration” has the meaning given in section 82(6) of the Energy Act 2004 ([c. 20](#)).

### **71 Microgeneration in non-domestic buildings**

- (1) The Scottish Ministers must exercise their functions under sections 30 and 31 of the Town and Country Planning (Scotland) Act 1997 ([c. 8](#)) so as to make provision specifying the circumstances in which development of the class mentioned in subsection (2) is granted planning permission by virtue of an order under section 30 of that Act.
- (2) That class is the installation, alteration or replacement, within the curtilage of a non-domestic building, of microgeneration equipment.
- (3) The Scottish Ministers must comply with subsection (1) no later than 12 months after the day on which this section comes into force.

- (4) Before complying with subsection (1), the Scottish Ministers must consult—
- (a) such persons appearing to them to represent the producers and suppliers of the equipment mentioned in subsection (2); and
  - (b) such other persons as the Scottish Ministers consider appropriate.
- (5) In this section—
- “microgeneration” has the same meaning as in section 70(5);
- “non-domestic building” has the same meaning as in section 63(7).

### *Development plans*

## **72 Development plans: inclusion of greenhouse gas emissions policies**

After section 3E of the Town and Country Planning (Scotland) Act 1997 (c. 8) insert—

### **“3F Greenhouse gas emissions policies**

A planning authority, in any local development plan prepared by them, must include policies requiring all developments in the local development plan area to be designed so as 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 development, through the installation and operation of low and zero-carbon generating technologies.”.

## **73 Annual report on operation of section 72**

- (1) The Scottish Ministers must—
- (a) no later than 1 year after the day on which section 72 comes into force; and
  - (b) annually thereafter,
- lay before the Scottish Parliament a report on the operation of the requirement on relevant planning authorities to include policies within development plans under that section, including an assessment of whether those requirements have contributed effectively to the reduction of greenhouse gas emissions from developments.
- (2) The fourth and subsequent reports under subsection (1) must include an assessment of the continuing need or otherwise for the requirement on relevant planning authorities to include policies within development plans; and if the requirement is considered by the Scottish Ministers to be no longer necessary, the Scottish Ministers may, by order, repeal section 3F of the Town and Country Planning (Scotland) Act 1997 and this section.

### *Promotion of water conservation and water-use efficiency*

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

In section 56(1) of the Water Industry (Scotland) Act 2002 (asp 3), after paragraph (a) insert—

“(aa) requiring it to promote water conservation and water-use efficiency,”.