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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2016 No.**

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

PART 6

Enforcement

**Defence where action plan unobtainable**

**23.**—(1) A person is not liable to a penalty charge for a breach of the duty imposed by regulation 5(1)(a) if it can be demonstrated that—

- (a) a request for an action plan was made at least 14 days before the relevant time, and despite all reasonable efforts and enquiries by that person, that person did not have possession or control of an action plan at the relevant time; or
- (b) in the case of a failure to make available an action plan to a prospective tenant—
  - (i) the prospective tenant was seeking to lease the building or building unit due to an emergency which required the tenant’s urgent relocation;
  - (ii) at the relevant time that person did not have possession or control of an action plan;
  - (iii) there was insufficient time in which that person could reasonably have been expected to obtain an action plan before letting the building or building unit to the prospective tenant; and
  - (iv) an action plan was provided to the tenant as soon as reasonably practicable after letting the building or building unit.

(2) In paragraph (1)(a) the reference to a request is to a request properly addressed to a person who usually provides or is likely to provide an action plan for the category of building or building unit in question and which includes such payment or an undertaking to make such payment as is usually necessary to obtain an action plan.

(3) In this regulation “relevant time” means the point in time at which one of the events specified in paragraphs (a) to (c) of regulation 4 first occurs.