

POLICY NOTE

THE LOCAL HEAT AND ENERGY EFFICIENCY STRATEGIES (SCOTLAND) ORDER 2022

SSI 2022/XXX

The above instrument was made in exercise of the powers conferred by sections 44(3) and 96(2) of the Climate Change (Scotland) Act 2009. The instrument is subject to the affirmative procedure.

Summary Box

<p>The purpose of the instrument is to place a duty on local authorities to produce Local Heat and Energy Efficiency Strategies and Delivery Plans by 31 December 2023, and subsequently on a 5 yearly cycle, in line with guidance to be provided by Scottish Ministers.</p>

Policy Objectives

As set out in the Scottish Government's Heat in Buildings Strategy, Local Heat and Energy Efficiency Strategies (LHEES) are at the heart of a place based, locally-led and tailored approach to the transition to net zero buildings. These local Strategies will provide an area-based 'blueprint' for decarbonised heat and energy efficiency planning and delivery.

LHEES are primarily driven by Scotland's statutory targets for greenhouse gas emissions reduction and can support achievement of statutory fuel poverty targets:

- a. Net zero emissions by 2045 and 75% reduction by 2030
- b. In 2040, as far as reasonably possible, no household in Scotland is in fuel poverty

LHEES are structured into two parts:

- a. A Local Heat and Energy Efficiency Strategy is a long-term strategic framework for: the improvement of the energy efficiency of buildings in the local authority's area, and the reduction of greenhouse gas emissions resulting from the heating of such buildings.
- b. A Local Heat and Energy Efficiency Delivery Plan is a document setting out how a local authority proposes to support implementation of its Local Heat and Energy Efficiency Strategy.

The Scottish Government's Heat in Buildings Strategy commits to having Strategies and accompanying Delivery Plans in place for all local authority areas by the end of 2023. It also set out Ministers' intention to put LHEES on a statutory footing, with a duty placed on local authorities to develop Strategies and Delivery Plans. A statutory basis will ensure consistency and comprehensive coverage across Scotland against a common minimum standard, and raise the profile of local Strategies with industry and investors.

Consultation

Two public consultations were held on LHEES in 2017 and responses to both indicated clear support for LHEES being placed on a statutory footing. In addition, the consultation on the draft Heat in Buildings Strategy in early 2021 included questions on the LHEES approach,

which included placing a statutory duty on local authorities. Again, there was clear support from consultees for the statutory approach.

To comply with the requirements of section 44(7) of the Climate Change (Scotland) Act 2009, a further consultation was held with relevant local government representatives in January 2022 on the draft LHEES Order.

As part of this, a consultation paper on the draft LHEES Order was issued jointly by the Scottish Government and COSLA to key stakeholders on 6 January 2022. Stakeholders included local government representative groups (including Heads of Planning Scotland, Society of Local Authority Chief Executives, Association of Local Authority Chief Housing Officers, Directors of Finance), local authority officers developing LHEES, and contacts involved in the independent evaluations of the LHEES pilot programme.

A virtual consultation workshop was also held on 27 January 2021, attended by 33 people, with 17 local authorities represented. At this workshop, there was general agreement with the Order itself, although concerns were raised around resourcing and timescales.

The consultation closed on 2 February 2022. 14 written responses were received: 12 from local authorities, and one each from Heads of Planning Scotland (HoPS), and the University of Edinburgh, who evaluated the LHEES pilot programme.

The consultation findings were:

- 12 respondents (86%) agreed that a duty should be placed on local authorities to produce Strategies and Delivery Plans.
- 13 respondents (93%) agreed with the timescales set out to publish a first Strategy and Delivery Plan by 31 December 2023, and subsequently on a 5 year basis.
- 12 respondents (86%) agreed that Strategies and Delivery Plans should be produced in line with guidance provided by Scottish Ministers, to be consulted on with local authorities.

Based on the consultation response no changes were made to the draft LHEES Order. After the consultation, the LHEES Order was presented to the COSLA Environment and Economy policy board agreement on 11 February 2022, which was achieved following a minor amendment to the Order text. The amended Order was then presented to COSLA Leaders and was agreed by them on 25 February 2022.

Impact Assessments

A Business and Regulatory Impact Assessment (BRIA) has been completed on the draft Local Heat and Energy Efficiency Strategies (Scotland) Order 2022 and is attached. A summary is presented in the next section.

The following impact assessments were considered and were deemed not to be required for the draft Local Heat and Energy Efficiency Strategies (Scotland) Order 2022. The outcome of these screening exercises is attached and a justification of the decision provided below.

- A Child Rights and Wellbeing Impact Assessment (CRWIA);
- A Data Protection Impact Assessment (DPIA);
- An Equality Impact Assessment (EQIA);
- Fairer Scotland Duty (FSD);

- An Island Communities Impact Assessment (ICIA) and;
- A Strategic Environmental Assessment (SEA).

Impact Assessment	Justification
CRWIA	<p>Excluded: The draft Order will affect local authorities directly, as it places a duty on them to prepare a Local Heat and Energy Efficiency Strategy and Delivery Plan, but the Order itself is not anticipated to impact children or young people up to the age of 18. A CRWIA may be required for any guidance related to the Order, and the Strategies and Delivery Plans that the local authorities are to prepare and publish.</p>
DPIA	<p>Excluded: As the draft Order does not relate to personal data, a data protection impact assessment has not been completed. A DPIA may be required for any guidance related to the Order, and the Strategies and Delivery Plans that the local authorities are to prepare and publish.</p>
EQIA	<p>Excluded: The draft Order will affect local authorities directly, as it places a duty on them to prepare a Local Heat and Energy Efficiency Strategy and Delivery Plan. However, the Order itself is not anticipated to impact people directly. It is the preparation and publication of a Local Heat and Energy Efficiency Strategy and Delivery Plan by the local authority that will have an impact on people and/or communities.</p> <p>The Scottish Government expects listed public authorities in Scotland to assess the impact of their policies or practices against the requirements of the Equality Act 2010, and to publish the results of those assessments. This includes consideration of the extent and depth of Equality Impact Assessment required for any guidance related to the Order, and the Strategies and Delivery Plans that the local authorities are to prepare and publish.</p>
FSD	<p>Excluded: The relevance of the draft Order itself to socio-economic inequalities is indirect, and a full consideration of the interaction between LHEES and inequalities of outcomes caused by socio-economic disadvantage is not possible until the production of the guidance, Strategies and Delivery Plans.</p> <p>The Scottish Government anticipates undertaking an assessment of potential socio-economic impacts – and opportunities to take mitigating actions and improve outcomes – as part of the production of the Scottish Ministers’ Guidance related to the Order.</p> <p>Furthermore, local authorities will be required under existing legislation to undertake the FSD for their LHEES, allowing the socio-economic considerations that the Scottish Government will take into account at the Guidance stage to also be assessed at a local level for every part of Scotland.</p>
ICIA	<p>Excluded: The duty contained within the draft Order is placed upon local authorities. The Order contains a provision for Ministers to produce guidance on how to produce a Strategy and Delivery Plan; Ministers are required to consult with local authorities to do so. Local authorities must lead in the production of their Strategy and Delivery Plan in their respective areas to deliver upon the statutory duty set down in the Order. Therefore, while the Heat and Buildings Strategy ICIA identifies potential differences for island communities, we cannot determine any significant differences in relation to LHEES at this stage. In accordance with the Islands (Scotland) Act 2018,</p>

	local authorities with island communities within their area, should prepare an Island Communities Impact Assessment when it is likely that it will have an effect on an island community which is significantly different from its effect on other communities (including other island communities) in the area in which the authority exercises its functions. This will ensure that the LHEES are developed to ensure a comprehensive assessment of any potential impact on island communities, at which point suitable improvements or mitigations can be developed as appropriate.
SEA	Excluded: The draft Order, in its own right, would have no or minimal impacts on the environment. The Scottish Government expects listed public authorities in Scotland to assess the impact of their policies or practices against the requirements of the Environmental Assessment (Scotland) Act 2005, and to publish the results of those assessments as they are proceeding with the development and submission of their Local Heat and Energy Efficiency Strategies and Delivery Plans. Additionally, as the Guidance relating to the production and content of a Local Heat and Energy Efficiency Strategy and Delivery Plan is prepared and further developed, the Scottish Government will keep this assessment under review.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached.

The Local Heat and Energy Efficiency Strategies (Scotland) Order will affect local authorities directly, as it places a duty on them to prepare a Local Heat and Energy Efficiency Strategy and Delivery Plan. However, the Order itself is not anticipated to impact businesses directly. The Scottish Government anticipates further Business and Regulatory Impact Assessments may be required for any guidance related to the Local Heat and Energy Efficiency Strategies (Scotland) Order 2022, and the Strategies and Delivery Plans that the local authorities are to prepare and publish.

This BRIA lays out the rationale behind the Local Heat and Energy Efficiency Strategies (Scotland) Order and in reviewing the costs and benefits, it is the Scottish Government's view that the cost to local authorities of producing Local Heat and Energy Efficiency Strategies and Delivery Plans are justified by the benefits of the statutory approach for LHEES established by the Local Heat and Energy Efficiency Strategies (Scotland) Order, providing consistency and comprehensive coverage of LHEES across Scotland against a common minimum standard, and enabling a place based, locally-led and tailored approach to the heat transition.

Scottish Government
Energy and Climate Change Directorate

March 2022