

## EXPLANATORY MEMORANDUM TO

### THE TENEMENTS (SCOTLAND) ACT 2004 (GAS SERVICES) ORDER 2018

2018 No. 658

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

#### 2. Purpose of the instrument

- 2.1 The purpose of the Order is to lay down procedures for the installation in common parts of tenements in Scotland of gas supply pipes and equipment.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

##### *Other matters of interest to the House of Commons*

- 3.2 The territorial application of this instrument includes Scotland.
- 3.3 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

#### 4. Legislative Context

- 4.1 This Order relates to section 19 of the Tenements (Scotland) Act 2004 (“2004 Act”). Section 19 of the 2004 Act permits an owner of a flat in a tenement building to:
- (a) lead through any part of the tenement such pipe, cable or other equipment; and
  - (b) fix to any part of the tenement, and keep there, such equipment,
- as is necessary for the provision to that owner’s flat of such service or services as the Scottish Ministers may by regulations prescribe.
- 4.2 This right is exercisable only in accordance with procedures laid down by regulations made by the Scottish Ministers.
- 4.3 However, the supply of gas through pipes is a reserved matter and therefore outside of the competence of the Scottish Parliament. As such there is a requirement for an Order under section 104 of the Scotland Act 1998 which allows the UK Government to make legislative changes which are necessary or expedient in consequence of an Act of the Scottish Parliament, in this case the 2004 Act. The intention is that this Order, in relation to the procedures for the installation in common parts of tenements of gas pipes, will be along similar lines to Regulations being made by the Scottish Ministers under section 19 on the procedures for the installation of district heating in common parts of tenements.
- 4.4 The Order provides that a supply of gas is to be treated as a service which is prescribed for the purposes of section 19(1) of the 2004 Act. The Order also makes

specific provision setting out the procedure which must be followed in order to install the gas supply service pipes and related equipment.

## **5. Extent and Territorial Application**

- 5.1 This instrument extends to Scotland only.
- 5.2 The territorial application of this instrument is Scotland only.

## **6. European Convention on Human Rights**

- 6.1 The Secretary of State for Scotland, the Rt. Hon David Mundell MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Tenements (Scotland) Act 2004 (Gas Services) Order 2018 are compatible with the Convention rights.”

## **7. Policy Background**

### *What is being done and why*

- 7.1 This Order will facilitate the installation of gas pipes in tenement blocks in line with section 19 of the 2004 Act.
- 7.2 Currently if an installing owner wishes to install a gas supply service, unless they have provision allowing for this in the title deeds of all relevant properties, they need to obtain consent from all homeowners and try to resolve any objections through on-going discussions. If agreement is not reached it may not be possible to install the service. This Order will allow the installation of a gas supply service, provided the procedure set out in the Order is followed. The Order will give other owners a chance to object and contain provision for any unresolved disputes to be taken to the sheriff.
- 7.3 The aim is to provide clarity for all parties concerned. The Order will apply where there is nothing laid down in title conditions which could provide for how pipes of this nature may be installed in the common parts of tenements.
- 7.4 This Order follows on from a Scottish Government consultation in 2016 on the installation of heating services. The timing of the Order is also linked to the Scottish Government’s intention to make section 19 regulations on district heating. It is intended that those Regulations and this Order come into force at a similar time.

### *Consolidation*

- 7.5 This Order stands alone.

## **8. Consultation outcome**

- 8.1 Between 21 January and 14 April 2016, the Scottish Government carried out a formal consultation on the Tenements (Scotland) Act 2004 (Heating Services) Regulations (which are due to be laid in the Scottish Parliament on a similar timescale to this Order). This consultation included consideration of a proposal to make specific provision, in a separate Order, in relation to the installation of gas pipes in common parts of tenements. It was also proposed that such an Order should adopt similar procedures as were proposed in the Regulations relating to heating services.

- 8.2 Twelve responses were received, with the majority from local authorities. Consumer and advisory bodies, The Energy Savings Trust, and Citizen Advice Scotland also responded, along with one academic.
- 8.3 There was overriding support and agreement for the proposal the Order is supporting.

## **9. Guidance**

- 9.1 The Scottish Government intends to provide some short guidance on its website on the operation of the regulations under section 19 on district heating. This guidance will also cover the operation of this Order.

## **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 Neither a Child Rights and Wellbeing Impact Assessment (CRWIA), nor a Privacy Impact Assessment (PIA) have been prepared as the Order has no specific impact in these areas.
- 10.4 The Scottish Government has undertaken an environmental report generally on district heating. As this Order and the Tenements (Scotland) Act 2004 (Heating Services) Regulations 2018 would make similar provision in relation to gas services and heating services respectively, that environmental report is also relevant to this Order.
- 10.5 The Scottish Government has also undertaken an Equality Impact Assessment (EQIA) with regard to the installation of heating in tenements generally as a consequence of section 19 of the 2004 Act. During the framing exercise it was considered whether homeowners who are given notice of the proposed installation might be unable to read the notice due to a disability or because a lack of knowledge of the English language. This point was raised with one of the Business and Regulatory Impact Assessment (BRIA) interviewees. They confirmed that this was not an issue that they had come across. It was concluded that it would not be proportionate to make specific provision in the regulations to address this point, as the degree of impact on the protected characteristics was limited. However, the Scottish Government would expect installing owners, who will generally be working with larger organisations, to work with neighbours who may have difficulty in reading English.
- 10.6 A BRIA was undertaken for gas pipes as well as district and communal heating services. During the BRIA process none of the interviewees could quantify in cash terms the financial benefit of the regulations. It was noted that the regulations provide a simple process to follow and, therefore, could save the installing owner time and money. In addition, having a clear process to follow may prevent installation projects overrunning which may have some financial benefit to the overall budget assigned to such projects.
- 10.7 Fees will be incurred if the installing owner, after failing to reach agreement with any objecting owners in the tenement, decides to make an application to the sheriff to grant an order allowing an installation to be carried out. The fee will be consistent with those charged for similar type of summary applications to the Sheriff Court. In addition there may be associated legal fees incurred through legal representation. However, interviewees suggested that court action in this area would be infrequent.

10.8 The Scottish Government does not consider it is possible to quantify the potential financial benefits of the Order.

## **11. Regulating small business**

11.1 Small businesses have been considered, and although the potential impact of the Order have not been quantified, the Order provides a simple process to follow and is expected to reduce, rather than increase, the regulatory burden placed on small businesses. As such, a review of this Order is not considered to be appropriate or necessary under sections 28 - 32 of the Small Business, Enterprise and Employment Act 2015.

## **12. Monitoring & review**

12.1 This Order is not thought to be contentious. It is laying down procedures for the installation of gas pipes in much the same way as the equivalent Regulations made by the Scottish Ministers are laying down procedures for the installation of district heating. Additionally, as the 2004 Act was intended to rationalise the system and make it more efficient, no review of the effects of the Order are deemed to be required.

## **13. Contact**

13.1 Olivia Dalseme-Stubbs at the Scotland Office (telephone: 0207 270 6811 or email: [olivia.dalseme-stubbs@scotlandoffice.gsi.gov.uk](mailto:olivia.dalseme-stubbs@scotlandoffice.gsi.gov.uk) ) can answer any queries regarding the instrument.