



Briefing 17-47

December 2017

## **SEEP - Second Consultation on Local Heat & Energy Efficiency Strategies, and Regulation of District and Communal Heating**

To:

### **Key Points**

- Statutory Duty placed on Local Authorities to develop a Local Heat & Energy Efficiency Strategy (LHEES)
- District Heating will require consent and a licence, and will need to be considered during the preparation of LHEES.
- A system of mediation will be introduced to support discussion between non-domestic sectors with surplus heat and third parties seeking to expand district heating
- Deadline for Responding is 20<sup>th</sup> February 2018.

**Link to Consultation** - <https://consult.gov.scot/energy-and-climate-change-directorate/lhees-and-dhr2/>

**Link to Consultation Paper** - <http://www.gov.scot/Resource/0052/00527606.pdf>

### **Background**

Following a consultation in January 2017 on Scotland's Energy Efficiency Programme, the Scottish Government are conducting a second consultation that focuses on specific policy proposals that follow on from the response to the earlier consultation.

The two main areas that this consultation seeks responses on is around the Local Heat & Energy Efficiency Strategies (LHEES) that local authorities will be expected to produce, and for legislation and guidance for District Heating Projects that LAs may pursue. The full list of questions is available in the appendix to this document.

### **Local Heat & Energy Efficiency Strategies**

The Scottish Government is proposing that Local Authorities be given a statutory duty to produce a Local Heat & Energy Efficiency Strategy. This followed the earlier consultation, responses to which broadly supported this duty, including the responses from local authorities. These strategies are intended to cover a period of 15-20 years, and the

consultation lists the following stages that should be considered as part of the creation of a LHEES.

1. Assess existing strategies and data
2. Assess existing stock
3. Set targets, both short and long term
4. Socio-economic assessment
5. Designate zones to be prioritised
6. Costing and phasing.

These plans would then be submitted to the Scottish Ministers (or a designated national delivery mechanism should one be implemented) The consultation asks for feedback on the overall approach that has been proposed.

Feedback is sought on proposals to place statutory duties to tackle fuel poverty and climate change into LHEES, rather than as part of the Local Housing Strategy.

### **District Heating Zones**

The previous consultation found support for areas to be designated as targets for energy efficiency and heat decarbonisation, though consensus on the means of achieving this was limited. Building on this, the Scottish Government are now proposing that these zones be included in upcoming legislation. They would be indicative, therefore not prevent other types of heating being pursued within them, allowing for investors to know where SEEP programmes will take place and where district heating would be most appropriate. This is also beneficial to the supply-chain overall, as preparations can be made for multi-year energy efficiency delivery programmes.

Elements that zoning would need to take into account would be:

- Socio-economic assessment
- Current and expected future heat demand and local conditions
- Local and national energy efficiency, heat decarbonisation and fuel poverty objectives
- Local development planning

### **Concessions and District Heating Consents**

The earlier consultation received feedback on the creation of a system of concessions to regulate district heating. This was generally supportive of the move, with a number of respondents citing that it reduced risk to developers and local authorities, and encouraged supply investment and certainty, as well as providing long term network development opportunities.

Most respondents felt that local authorities should have a lead role in enforcement, as they already have the local knowledge to assist with this. Most felt that concessions should be long term, between 10 and 40 years, to allow for the recovery of capital. There were a number of concerns raised as well, such as consumer protection issues and the

need for a consistent approach across Scotland, with the possibility of a central body needing to be used to monitor the process. Many also emphasised the need for there to be a large degree of flexibility, to allow for unforeseen challenges and to allow for changes in technologies.

The proposals set out in this consultation would see local authorities given a new statutory power to award district heating consents, which would be subject to applicants meeting requirements set by Scottish Ministers. The system is described as being similar to the regime used for energy utilities under the Electricity Act 1989. Consent would be required regardless of whether they were zoned by a Local Authority or speculatively proposed by a developer. Some of the possible requirements are outlined in the document, summarised below.

- Licence must be obtained, having met licencing conditions, before work takes place
- Consideration of various national programmes (energy efficiency, fuel poverty etc.)
- Strategic considerations within LHEES
- Other local targets, plans etc.
- Socio-economic assessment
- Specified duration for construction to take place
- Other conditions set by Scottish Ministers or that Local Authority may wish to include.

The Scottish Government would also develop national guidance for applicants.

Feedback is sought for what should happen in the event that consent has been awarded but the developer subsequently cannot meet the conditions, such as how appropriate options for a developer of last resort would be.

The consultation outlines two pathways to consent that would be expected. Firstly, one that is 'strategy driven', where Local authorities invite third parties to apply to develop and operate within district heating zones created in the LHEES. The second, 'Speculative', where third parties approach the local authority with an application, which can be either within or outwith an identified zone. In the latter case, there may be more burden on the developer to show evidence of the need for the project.

The consultation also seeks responses on ensuring the rights of district heating operators are similar to other statutory undertakes for permitted development and wayleaves. A Diagram of the process is provided on page 19 of the consultation.

### **Socio-Economic Assessment**

Responses to the earlier consultation supported Socio-economic Assessment being implemented within LHEES. The Scottish Government, following this, has outlined plans for there to be Socio-Economic assessment at three different levels. The Strategy Level, which would be contained in the LHEES, provides evidence that zones are appropriately

designated, allow for developers to inform their plans, and assist the approvals body in making their decision on the LHEES.

An assessment would also be expected at the project and building levels. In the former case, this would help local authorities make a decision to grant district heating consent, and in the latter, allows for decisions to be made about which buildings to connect to the scheme. In both cases, it will also provide evidence should any disputes arise.

### **Data for Local Heat & Energy Efficiency Strategies.**

The previous consultation received a number of concerns about data collection from stakeholders. Local Authorities would need more data than is available, particularly on electricity and gas consumption. It was also noted that existing data needs to be more robust and 'real-time'.

On Surplus heat, local authority stakeholders were keen for this data to be mandatory, however those in industry expressed concerns about commercial confidentiality and the resources that would be required to provide the data.

The Scottish Government proposals in this area are still somewhat low in detail, calling for local authorities to, where possible, provide better data on heat demand, largely through voluntary agreements. It also calls for further evidence surrounding surplus heat and how data from industrial stakeholders.

### **Licensing for district and communal heating**

Of the 56 responses to this question on the earlier consultation, 47 believed that district heating would need to be a licenced activity, and would require a national framework for the sake of consistency. A small amount of people argued that if standards were strict enough, then licencing would be unnecessary, and potentially onerous and overly bureaucratic. A small number of respondents gave more details as to how a licencing system should be set up, which have been carried forward and considered for the Scottish Government proposals.

These include that the licencing system would be as light touch as possible, codify existing UK consumer protection frameworks and ensure that licence-holders meet appropriate fit-and-proper-person tests. Developers also would not need to have a licensee when they applied for consent, as long as a licence was obtained before development and operation commenced.

Licences would be issued and monitored by a national body, either one that already exists or is set up specifically, and options for this body are still being explored. If there were breaches in the licence conditions, this body would ultimately have the power to revoke the licence. The Scottish Government also propose that licence conditions be consistent with the EU Energy Efficiency Directive's Article 14, which includes a cost-benefit analysis of use of waste heat from nearby industrial plants.

### **Consumer Protection**

Many responses to the earlier heat trust felt that the Heat Trust would offer sufficient consumer protection. This is voluntary, and others felt that mandatory consumer protection measures should be explored. It was noted that the Scottish Government does not have the power to enact legislation on consumer protection, and some stakeholders suggested that either the Scottish Government work with the UK government to create a UK-wide solution to district heating consumer protection, or to achieve executive devolution.

The Scottish Government intends to continue pressing for devolution of consumer protection, and also try to implement protections in licences where possible. Any projects of a certain scale that receive Scottish Government support must be heat trust members, and the consideration is that this be adjusted to include smaller scale projects as well. The Scottish Government will publish a separate consultation on their new consumer advocacy powers.

The possibility of a new ombudsman to handle disputes is being explored, as well as methods to share advice to users on how to use systems effectively.

### **Enabling Connections**

Whilst responses to the earlier consultation supported the necessity of significant heat loads to district heating to make it viable, there was differing opinions on whether local authorities should have the ability to compel connection of heat users. Even amongst those that supported it, it was seen as an option of last resort with demonstrable positive socio-economic implications. Others felt the scheme should remain voluntary and efforts should be focused on persuasion.

The Scottish Government Proposals are now that local authorities would be required to assess the potential of connecting its own buildings to district heating as part of the LHEES. Scottish Ministers would also encourage other public-sector bodies to be connected where it makes sense to do so.

For new buildings, proposals are that local authorities would encourage both public and non-public sector new builds to connect to heat networks through the proposed consent process. There should also be an element of future planning, where it may be possible for carbon-based fuel sites to be converted. Local development plans should safeguard pipework and include considerations to possible energy centres in new developments.

### **Surplus Heat Suppliers**

Responses to the earlier consultation on Surplus Heat were mixed with regard to compelling supply to the network. It was generally agreed that an enabling approach should be adopted, with compulsory mediation where needed and compelling only being used as a last resort. Respondents identified a number of challenges that need to be addressed, such as supply reliability, quality and the price of heat.

It was also noted that any obligation to supply surplus heat consistently is at odds with PPC regulations, which push plants to continually improve their energy efficiency. There was also some contention on the role of a mediator, with some remarking that local authorities should not intervene in contractual negotiations outside of their own assets.

There was limited support for new industrial plants to be district heating ready, though only when there is demand and where situated in a zone identified by the LHEES.

The new proposals outline a three-phase approach to connect new and existing plant to provide heat to a network.

1. Voluntary approach, left to market forces
2. Enabling approach, either party can seek mediation where socio-economic assessment shows viability and an agreement has been reached.
3. Compulsory Mediation, where there have been no discussions on connecting to the heat network, but the socio-economic assessment shows viability to zone for district heating.

The consultation stresses that mediation would never end in compulsory connection, but that it may be considered in future licencing and consenting processes. The consultation seeks feedback on this phased approach, and also issues a call for evidence on how further assessments should work, such as the criteria and processes that are used.

### **Enabling Activity and Additional Areas**

The consultation outlines suggestions that were received in the previous consultation as to the role of a new national body. These included the provision of guidance and oversight, as well as providing standards and overseeing consumer protection and awareness. Respondents thought it could issue and enforce concessions and ensure consistency for these concessions. It could also provide and analyse data that would be used in the development of LHEES. One other point raised is that the announced national energy company could take over any failed or expired concessions.

The Scottish Government seeks further comment on the establishment of a national delivery mechanism, based on these suggestions and with particular attention to LHEES and SEEP.

The Scottish government are also proposing that there will be capacity-building support for LHEES given to local authorities, starting with 11 as a pilot but expected to be provided for all if there was an introduction of a statutory duty to prepare LHEES.

The consultation asks for feedback on possible incentives that could be offered to those delivering district heating, that can support some of the projects that the Scottish Government has underway already, such as the Low Carbon Infrastructure Transition Programme.

### **UK Heat Market Reform**

The Scottish Government outline its proposals for reform of the wider UK Heat Market. This includes urging the UK Government to make decisions as soon as possible on the gas network, particularly heat decarbonisation in reserved areas. Support will continue for low carbon heat supply and heat demand reduction, through both existing schemes and new ones developed under SEEP.

They will discuss ending the current Renewable Heat Incentive commitment as well as push for further devolution of powers on consumer protection. The Scottish Government will continue to be observers in the Association of Decentralised Energy's Taskforce, and work with the UK Government when responding to ADE taskforce recommendations. The consultation asks for views on this approach, particularly on decarbonisation and issues which fall under the remit of ADE.

### **Assessing Impact**

There are a number of questions in the consultation on what impact proposals will have on Equality, Business and Regulation, Privacy, and Strategic Environmental Assessment.

### **APSE Comment**

APSE would encourage local authorities to respond to this consultation, as they will have such an important role in the development of district heating networks, and as such they should play a key role in developing the legislation that will affect them. The full list of questions is available below in the appendix.

It is important, if Local Authorities will be given a statutory duty to prepare a LHEES, that councils receive adequate support from the Scottish Government. Local Authorities may also play a role in mediation with District Heat Networks. This will increase the strain on councils that are already struggling with limited resources. APSE welcomes proposals in this consultation that Local Authorities will be given assistance in building capacity, but this support must be long term to ensure that other areas of the council do not suffer budget cuts to accommodate the new duty.

There are two advisory groups offered by APSE in Scotland that would be useful to our members when dealing with SEEP and District Heating. Both our [Building and Housing](#) Advisory Group and [Renewables and Energy Efficiency](#) Advisory Group regularly has discussions and presentations on the various ways Councils are making the homes they build more energy efficient, as well as information on projects, such as district heating, that have had a positive impact on resident's fuel bills. The dates of the next meetings can be found [here](#).

APSE has resources available to its members to help in meeting any current and future obligations. In particular, there is research into the economic change that will occur as a result of greener policies. APSE Energy is another service that will allow local authorities to meet their energy demands in an effective and environmentally friendly fashion and APSE will continue to provide briefings on any policy change that will have an impact on local authorities meeting these targets.

## **Response Details**

If you wish your comments to be included in an APSE response to this consultation paper, please send them to Garry Lee at [glee@apse.org.uk](mailto:glee@apse.org.uk) by Tuesday 13<sup>th</sup> of January 2018. Alternatively, you can submit your response online directly by clicking [here](#). The closing date for responses to this consultation is Tuesday 20<sup>th</sup> of February 2018.

Iain Scherr

Research and Coordination Officer



## **Appendix**

Below is the full list of questions asked in this consultation. For each question, the consultation asks for the answer to be explained, including any available evidence or examples.

### **Local Heat & Energy Efficiency Strategies**

1. Do you agree with our proposed overall approach to LHEES?
2. What are your views on asking local authorities to report on tackling fuel poverty and climate change in the LHEES rather than the LHS?

### **District Heating Zones, Concessions and Consents**

3. Do you agree with our proposed overall approach to zoning?
4. What are your views on the proposed district heating consent process?
  - a. In particular, what are your views on the appropriateness of any potential options for a relevant body to act as 'the developer of last resort', to ensure completion of development?
  - b. In particular, what are your views on options for ensuring that district heating operators have similar or the same rights as other statutory undertakers for permitted development and wayleaves?

### **Socio-Economic Assessment**

5. What are your views on the proposals for socioeconomic assessment?
6. What are your views on the proposals for data for LHEES?
7. What types of data information would industry be willing to provide a local authority or national delivery mechanism to develop LHEES, so that they can identify opportunities (potentially in aggregate) for heat demand reduction and heat recovery, both on and off site?
8. What data from industry would be most helpful in developing district heating projects?
9. What data could be provided without compromising competitiveness of these organisations?

## **Licensing for District and Communal Heating**

10. What are your views on our proposed approach to district heating licensing?

## **Consumer Protection**

11. Taking into account the limitations of the Scottish Government's legislative competence in relation to consumer protection:

- a. what are your views on our proposals around consumer protection?
- b. how do you think could we provide a robust complaint resolution process in relation to District Heating in Scotland?

12. What are your views on how consumer advice should be provided for district heating customers in Scotland?

- a. What form should this take?
- b. Who should it be aimed at?
- c. What should be provided?

## **Enabling Connection**

13. What are your views on the proposed approach to connecting heat users?

14. What are your views on the proposed phased approach to non-domestic sectors with potentially usable surplus heat?

15. Requiring all regulated non-domestic sectors (see Box 1) with potentially usable surplus heat to carry out energy efficiency assessments, including heat (and its recovery, and onsite and offsite use), and implement recommendations where feasible.

16. How should energy efficiency (including heat) be assessed across the regulated non-domestic sectors – including consideration for energy efficiency beyond the site boundary?

17. Could a more consistent approach be achieved within the PPC regime, with the existing energy efficiency requirements for Part A sites being applied to Part B sites?

18. Which benchmarks or criteria should be used / considered in assessing energy efficiency?

19. What range of industrial processes should be covered, including size and sector, and why?

## **Enabling Activity and Additional Areas for Consideration to Support our Regulatory Approach**

20. What are your views on the establishment of a national delivery mechanism to support local authorities in delivering their proposed functions for LHEES and district heating, and which could support delivery and governance of SEEP more widely?
  - a. What form should it take?
  - b. What functions should it have?
21. Please let us know any views you have on the most cost-effective way of supporting schemes that are socio-economically appropriate and in line with the local authority LHEES.
22. We would welcome stakeholders' views on our suggested approach to wider UK heat market reform, above, and in particular:
  - a. any additional evidence that can be offered around the approach that should be taken to decisions on decarbonisation of the gas supply
  - b. any views on the issues being considered within the remit of the ADE taskforce

## **Assessing Impact**

23. Please tell us about any potential impacts, either positive or negative, you feel our proposed approach may have on particular groups of people, with reference to the "protected characteristics" listed above.
24. Are there any special provisions/ measures we should consider/ make/ include:
  - a. to ensure protected characteristics are taken account of in the LHEES? In your opinion, should the LHEES process specifically include/ address the protected characteristics?
  - b. to ensure protected characteristics are taken account of in the socio-economic assessment? In your opinion, should that process specifically include/ address the protected characteristics?
  - c. in terms of the installation of networks in order to minimise disruption to people with mobility problems or any other protected characteristic?
  - d. in terms of consumer protection, that would better assist in ensuring that people with protected characteristics will be safeguarded (taking account of our limited legislative competence in this area)?
  - e. in terms of communications, that would better assist in ensuring that people with protected characteristics will be kept informed and can fully participate?

25. Please tell us about any potential costs or savings that may occur as a result of our proposed approach, and any increase or reduction in the burden of regulation for any sector. Please be as specific as possible.
26. Please tell us about any impact on individual privacy/ data that may result from our proposals. If there is an impact on individual privacy, please are there any special provision/ measures we should consider/ make/ include that would better assist in ensuring that this privacy impact is lessened/ negated?