

Final Business and Regulatory Impact Assessment

Title of Proposal

Prescribe district heating Services in regulations under section 19 of the Tenements (Scotland) Act 2004 (“the 2004 Act”).

The Regulations under section 19 would cover district and communal heating services. However, the intention is that an Order under section 104 of the Scotland Act 1998 will make similar provision in relation to gas pipes. Therefore, this BRIA covers gas pipes as well as district and communal heating services. References below to the Regulations should be read as including the Order on gas pipes as well.

Purpose and intended effect

- **Background**

Section 19 of the 2004 Act makes provision on the installation of service pipes etc. It entitles owners of a flat to lead pipes, cables or other equipment through any part of the tenement (apart from parts wholly within another owner’s flat) for the provision to that owner’s flat of such services as the Scottish Ministers may prescribe. No regulations have been made to date under section 19.

Currently if an installing owner wants to install such a service they need to obtain consent from all homeowners and try to resolve any objections through on-going discussions. If no agreement is reached then it may not be possible to install the service.

- **Objective**

The Regulations under section 19 are for owners seeking to install heating services in tenements. These Regulations set out the procedure for exercising these installation rights. They give other owners a chance to object and contains provision for any unresolved disputes to be taken to the sheriff. The aim is to provide clarity for all parties concerned. The Regulations will apply where there is nothing laid down in title conditions on how pipes of this nature may be installed in the common parts of tenements.

- **Rationale for Government intervention**

The Scottish Government was approached for secondary legislation to be made to assist the installation of district heating and gas pipes in tenement blocks.

In many cases, the proposed installations are being carried out as part of work to alleviate fuel poverty and or to provide more efficient heating services. This has beneficial effects for bill-payers and for the environment. Tackling fuel poverty feeds into the Scottish Government’s national outcome to live in well-designed, sustainable places where we are able to access the amenities and services we need:

<http://www.gov.scot/About/Performance/scotPerforms/outcome>

There have already been some significant heat network developments in Scotland. The Scottish Government's draft Heat Generation Policy Statement of March 2014 <http://www.gov.scot/Publications/2014/03/2778/7> proposes a target of 40,000 homes to be supplied with affordable low carbon heat through heat networks and communal heating by 2020.

These Regulations will provide some assistance to achieve the above mentioned target.

Consultation

- **Within Government**

We have worked with colleagues who have responsibility for energy services.

- **Public Consultation**

A full 12 week public consultation on the draft Regulations was held (21 January to 14 April 2016). <http://www.gov.scot/Publications/2016/01/3668/1> The consultation asked for views on whether the Regulations should be made and for comments on the proposed procedures for installing owners to follow. Twelve responses were received. https://consult.gov.scot/family-and-property-law/tenements-scotland-act-2004-regulations/consultation/published_select_respondent

Responses to the consultation were supportive of the Regulations being made. They saw this as a positive step by laying down a clear procedure to be followed in obtaining consent to proceed with the installation of heating services. There was a call for clarity on the practical implications of considering the use of Alternative Dispute Resolution (ADR). The reference to ADR in the draft Regulations attached to the public consultation followed a suggestion by one of the BRIA interviewee before the public consultation took place.

Under the proposed procedures, the installing owner would have to notify all other owners in the block. If there is an objection by one or more of the other owners, the draft regulations attached to the public consultation provided that if the installing owner wished to proceed, he or she "must try to reach agreement with an owner who objects or make representations" and "must propose an alternative dispute resolution process, unless doing so would not be suitable". If agreement could not be reached, the installing owner could apply to the sheriff and the Regulations provided that the sheriff "must have regard to (a) whether an alternative dispute resolution process was proposed, used or considered not suitable and (b) the cost of such a process".

We noted that there were a number of policy options to consider:

- Leave the Regulations as drafted, with perhaps having more guidance material when making the Regulations. However, any such guidance would not be binding.
- Lay down much more detail in the Regulations on how the ADR process

should work in practice.

- Drop the specific reference to ADR in the Regulations

We decided to remove the reference to ADR. This was based on:

- The requirement for the installing owner to try and reach agreement with any objecting owner would still remain. This could include the use of ADR and so there was no real need for a specific reference to ADR in the legislation.
- It would be unhelpful to lay down detail in the legislation on what any ADR would consist of. Any ADR might be very informal (eg. the parties setting up a discussion session with somebody else in the block who they both trusted) or very formal (eg the parties going to arbitration with the decision being binding) or something in between. It would not seem appropriate to try and lay down in the legislation exactly what form ADR could take.
- We could make clear in guidance material (eg the Policy Note for the regulations and a Departmental Circular on the Regulations) that ADR can still be considered in appropriate cases, giving more details on types of ADR that could be used.

Aberdeen City Council, a respondent to the consultation, raised a number of points. This has resulted in more information being provided in the installation notice issued to the homeowners in the tenement about the work such as: providing information of the on-going maintenance and repairing of the equipment once it is installed. Concerns were also raised in the event if the contractor carrying out the installation should cease trading. Installing owners must provide the arrangements that will be put into place to ensure the work is completed.

- **Business**

The Scottish Government carried out two face to face interviews and three telephone conferences to help prepare this BRIA.

- Aberdeen City Council Senior Domestic Energy Officer
- Renfrewshire Council
- Wheatley Group, Energy & Sustainability Manager
- Scottish and Southern Energy (SSE) Business Development manager of Heat Networks; and
- Scotland Gas Networks (SGN)

Options

There are two options.

Option 1 is to do nothing

Option 2 is to proceed with making the regulations.

Sectors and groups affected (for both options)

Homeowners

Homeowners seeking to install a service pipe for heating services (district or communal heating) or gas pipes in tenements are affected.

Homeowners could be an individual or a Registered Social Landlord (“RSL”).

In some cases, the RSL may be the installing owner but some flats in the tenement may be in private hands (e.g. following right to buy). In these cases, the RSL needs to reach agreement with the private owners when pipes are installed in communal areas.

Other flat owners who wish to object to installations are affected.

Bodies such as local authorities and energy companies

Projects by local authorities and energy companies in tenements can be part of work to alleviate fuel poverty and / or to provide more efficient heating and energy services.

Benefits

Option 1 (do nothing)

Under this option, individuals and businesses would continue to follow the procedures they currently use. Following the BRIA interviews it is clear that installers do follow processes in order to seek agreement for installation of pipes in common areas. These processes appear to work to a certain degree.

Option 2 (make regulations)

Under this option, there would be a clear set of procedures to follow, laid down in regulations.

This option provides a written procedure which allows owners who object to an installation to outline their objections. It provides for the installing owner to consider any objections and to try to reach an agreement.

Where no agreement can be reached with the objecting owner(s), then the installing owner can consider applying to the Sheriff to obtain an order to proceed with the work to install the pipes.

In many cases, the proposed installations are being carried out as part of work to alleviate fuel poverty and/or to provide more efficient energy and heating services. This has beneficial effects for bill-payers and for the environment. Procedures laid down in regulations may assist some projects which otherwise would not go forward.

Costs

Option 1

There are no new costs arising from this option. Procedures would continue as they are now.

Option 2

Clearer procedures might reduce costs for installing owners. However, in discussion with interviewees for this BRIA, it became clear that it is not possible to quantify any savings. In any event, any savings would be marginal as the regulations lay down procedures to follow, to protect the rights of other owners in the tenement.

An application to the Sheriff will incur costs. However, we expect applications to the sheriff will be rare: this was also the expectation of those we interviewed for this BRIA.

Scottish Firms Impact Test

The questions which were put to Aberdeen City Council, Renfrewshire Council, Wheatley Group, Scottish and Southern Energy and Scotland Gas Networks were:

- their main business
- the number of households they supply with heat
- whether they require to install pipework in communal areas
- how often they receive objections to the planned installation
- what procedures they have in place to handle objections
- whether they agree with the proposed procedures in the draft regulations
- whether the draft regulations are helpful.
- quantifying in cash terms the financial benefit of the regulations
- how many cases they expected to go to the sheriff.

Depending on some of the answers given supplementary questions were raised.

All with the exception of Scotland Gas Networks (SGN) are involved in projects to provide district heating to homeowners (in low rise flats as well as high rise flats).

SGN's work is a combination of:

- requests from individual home owners seeking a new connection to gas;
- work on upgrading gas pipes; and
- connecting homeowners to gas as part of work to combat fuel poverty.

Interviewees noted that in projects there can be objections. Objections are mainly only from a small number of residents and they may arise from the individuals not fully understanding the process for installing and operating the service. Concerns raised can be possible leaks from pipes and the safety of gas and potential damage

to properties during the installation process.

All interviewees currently tackle such issues by providing as much information as possible about the heating service or gas installation. The bodies may set up public meetings and/or visit individuals to discuss the concerns raised. The majority of objections are resolved through these types of discussions. However, there are occasions where these concerns can't be satisfactorily resolved. The consequence can be that projects do not go ahead. In low rise blocks there can at times be workarounds by pipes being re-routed but this is not always an option with high rise flats.

All interviewees saw the regulations as a positive step, to clarify and codify procedures in this area.

The interviewees expected very few cases would go to the Sheriff.

One interviewee suggested that perhaps the regulations could add in a step before court action, given that going to court is a big step. The additional procedure could be a mediation session to see if parties could resolve the issues without the need to go to court. The Government had taken this point on board in the draft regulations for consultation. In light of the issues raised during the public consultation a decision was taken to remove the reference to ADR in the regulations. However, the requirement for the installing owner to try to reach an agreement with any objecting owner would remain. This could include ADR if that was agreed by both parties.

Nobody could quantify in cash terms the financial benefit of the draft regulations.

It was noted that the draft regulations provide a simple process to follow and, therefore, could save the installing owner time and money. In addition, clearer processes may lead to projects not over-running.

Competition Assessment

These regulations have no impact on competition. They make provision on the installation of pipes in communal areas for installing owners to follow. An installing owner may be any person who owns a flat in a tenement.

Will the proposal directly limit the number or range of suppliers? - No

Will the proposal indirectly limit the number or range of suppliers? - No

Will the proposal limit the ability of suppliers to compete? - No

Will the proposal reduce suppliers' incentives to compete vigorously? - No

Test run of business forms

The proposed regulations introduce a notice which is to be sent by the installing owner to the other owners in the tenement. There has been no test run of the form but it was in the draft regulations attached to the consultation paper.

Legal Aid Impact Test

The Regulations lay down a procedure to follow in order to obtain installation rights for pipes to be installed in a tenement. Where objections and/or representations are made to the installing owner then, after further attempts to reach agreement, the owner wishing to install the service may apply to the sheriff for an order to proceed to install the service

During discussions with our interviewees we asked them how many applications they expected would be made to the Sheriff. All of them felt that very few cases would be taken to the Sheriff. Therefore, minimal impact is expected on the legal aid budget.

Enforcement, sanctions and monitoring

If a person installed pipes without proper authority, that person could be subject to court action seeking the removal of the pipes. That is the case now and will remain the case once the regulations are in force.

The Scottish Government will monitor the effectiveness of the Regulations and consider any representations made on their operation in practice.

Implementation and delivery plan

The Scottish Government intend to make the Regulations in relation to district heating services.

The Scottish Government is working with the UK Government to make an Order under the Scotland Act 1998 in relation to gas pipes. The intention is that the regulations and the Order will come into force at the same time.

- **Post-implementation review**

The Scottish Government will monitor the effectiveness of the Regulations and consider any representations made on their operation in practice.

Summary and recommendation

Option 2 to introduce the Regulations is recommended

The views of those interviewed for this BRIA demonstrate support for the proposed regulations. The Regulations would clarify procedures in this area.

The Regulations would not stop businesses engaging with customers in providing information about the service being installed and answering any questions customers may have. The good practices which are currently taking place just now in engaging with customers will continue and help to reduce any concerns.

- **Summary costs and benefits table**

As previously stated, the Government does not consider it possible to quantify the potential financial benefits of the proposed SSI.

Body	Costs/savings
Installing owner (which could be an individual or an RSL).	<p>Negligible savings through clearer procedures.</p> <p>May be some costs in relation to some steps which may be used to try to reach agreement with an objecting owner, and going to court. These should be low as few applications to court are expected. The Regulations facilitate the installation of heating services which may ultimately produce savings for owners.</p>
Objecting owner	No costs or savings. Procedures are clearer.
Scottish Courts and Tribunals Service	Negligible costs as few extra cases are expected.
Scottish Legal Aid Board.	Negligible costs as few extra cases are expected to go to court.

The regulations would benefit bodies such as Registered Social landlords and Scotland Gas Networks who run projects on the installation of heating and energy services

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date: May 2018

Annabelle Ewing, Minister for Community Safety and Legal Affairs

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