

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

BUSINESS AND REGULATORY IMPACT ASSESSMENT

1. Title of Proposal

The Local Heat and Energy Efficiency Strategies (Scotland) Order 2022

2. Purpose and intended effect

2.1. Background

Local Heat and Energy Efficiency Strategies and Delivery Plans have not previously been mandatory and there is no existing policy framework to address local planning, coordination and delivery of the heat transition in Scotland. Work to develop LHEES has progressed since 2017, undertaken through a series of pilot projects and the establishment, by local and national government working in partnership, of a common methodological framework. The Local Heat and Energy Efficiency Strategies (Scotland) Order 2022 places LHEES on a statutory footing, in order to ensure that Strategies and Delivery Plans are developed for all Scottish local authority areas, using a consistent approach.

2.2. Objective

Objective of the draft Order

The Local Heat and Energy Efficiency Strategies (Scotland) Order 2022 was developed in partnership with COSLA, and will 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.

Fit with Scottish, UK and EU policy

Driven by Scotland's statutory targets for greenhouse gas emissions reduction and fuel poverty (net zero emissions by 2045 and 75% reduction by 2030; in 2040, as far as reasonably possible, no household in Scotland is in fuel poverty), the Scottish Government has set the following objectives for decarbonising homes and non-domestic buildings:

- By 2045 our homes and buildings no longer contribute to climate change, as part of the wider just transition to net zero.
- By 2033 all homes have reached the equivalent of EPC C, with the large majority of homes achieving a good standard of energy efficiency by 2030.
- By 2030 emissions from buildings are 68% lower than 2020 levels, which requires zero emissions heating in:
 - The vast majority of 170,000 off-gas fossil fuel heated homes
 - At least 1 million on-gas homes
 - The equivalent of 50,000 non-domestic buildings

Achieving these objectives will require a concerted effort across national and local government, as well as the wider public and private sectors, to transform Scotland's building stock for net zero. Local planning has a key role to play in setting out the pathway to decarbonised heat in buildings, translating national and local priorities into a strategic approach for heat decarbonisation and energy efficiency deployment across a local area.

LHEES is part of delivering the Heat in Buildings Strategy and will support local planning, coordination and delivery of the heat transition in Scotland. LHEES are structured into two parts:

- 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.
- 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 UK Government is at an early stage in developing its policy on Local Area Energy Planning (LAEP) and defining the role local planning will play in enabling the transition to a net zero energy system, including as part of business and investment planning by the regulated energy network companies. LHEES will provide the underpinning for local authorities and wider stakeholders in Scotland to engage with LAEP in relation to energy for heat in buildings. The local LHEES process will also feed into wider energy system planning exercises, such as those undertaken by the regulated energy utilities, by showing where and how the demand for, and supply of heat, in homes and non-domestic buildings in a local area need to change for the transition to net zero. Local area energy planning for heat decarbonisation in Scotland will be driven by LHEES. The Scottish Government has engaged, and will continue to engage, with colleagues in BEIS and Ofgem in relation to UK-wide initiatives in this space to allow relevant Scottish Government policies, such as LHEES, to be taken into consideration.

2.3. Rationale for Government intervention

The Scottish Government's Heat in Buildings Strategy commits to having Local Heat and Energy efficiency 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. Agreement was reached with the COSLA Environment and Economy policy board in October 2021 to develop a statutory framework for LHEES.

The policy contributes to the following National Outcomes of the National Performance Framework:

1. Economy – we have a globally competitive, entrepreneurial, inclusive and sustainable economy

The LHEES Strategies and Delivery Plans will help target public and private funding and finance into local heat decarbonisation and energy efficiency projects.

2. Communities – we live in communities that are inclusive, empowered, resilient and safe

LHEES will provide a platform for local community engagement in the heat transition, creating opportunities for communities to help shape the net zero heat transition in their locality.

3. Health – we are healthy and active

LHEES will have a particular focus on understanding where poor energy efficiency is a driver of fuel poverty within a local authority area. By supporting planning for net zero in the context of alleviation of fuel poverty and facilitating planning for investment in more energy efficient homes, LHEES will contribute to warmer, healthier environments for people to live in.

4. Poverty – we tackle poverty by sharing opportunities, wealth and power more equally

A key driver for LHEES is our statutory target for fuel poverty, that in 2040, as far as reasonably possible, no household in Scotland is in fuel poverty. LHEES will have a particular focus on understanding where poor energy efficiency is a driver of fuel poverty, facilitating the targeting of support to help alleviate fuel poverty.

5. Environment – we value, enjoy, protect and enhance the environment

A key driver for LHEES is our statutory greenhouse gas emissions reduction target, net zero emissions by 2045 and 75% reduction by 2030. By supporting the decarbonisation of heat in buildings, LHEES will play a role in achieving net zero, mitigating climate change, and protecting the environment.

3. Consultation

3.1. Within Government

The following Government directorates and agencies were engaged in the development of LHEES policy and the preparation of the Order:

- Directorate for Energy and Climate Change
Core input to LHEES policy, ensured it was aligned with wider climate change, heat in buildings, energy networks, and community energy policy. Including regulations, delivery programmes and related strategies.
- Directorate for Housing and Social Justice
Primary input was from fuel poverty policy, establishing a role for LHEES in identifying where poor energy efficiency is a driver of fuel poverty.
- Directorate for Local Government and Communities
Local Government policy supported the partnership with local government in developing LHEES policy. Planning were engaged to ensure LHEES aligned

with planning policy, including the fourth National Planning Framework (NPF4).

- Directorate for Chief Economist
The Office of the Chief Economic Adviser (OCEA) provided input to the technical analysis underpinning LHEES policy, including the Scotland Heat Map.
- Scottish Government delivery partners:
 - Zero Waste Scotland
Supported development of the technical methodology and engagement with local authorities that informed LHEES policy.
 - Energy Saving Trust
Provided support on national building stock data that informed technical analysis underpinning LHEES policy
 - Local Energy Scotland
Input was provided in relation to community engagement and its role in LHEES policy.

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

Following agreement at the COSLA Environment and Economy policy board in October 2021 to develop a statutory framework for LHEES, 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 held on 27 January 2021, attended by 33 people, with 17 local authorities represented. 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 on 25 February 2022.

3.3. Business

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. It is the publication of a Local Heat and Energy Efficiency Strategy and implementation of a Delivery Plan by the local authority that may have an impact on businesses. Given the tight and well defined focus of the Local Heat and Energy Efficiency Strategies (Scotland) Order 2022, no consultation with business has been completed as part of the Business and Regulatory Impact Assessment. However, as set out above, there was extensive consultation and evaluation in relation to Local Heat and Energy Efficiency Strategies more generally and with local authorities specifically. 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.

4. Options

Three options were considered as part of this Business and Regulatory Impact Assessment:

1. Do Nothing – Local Heat and Energy Efficiency Strategy policy is not taken forward.
2. Voluntary LHEES – Local Heat and Energy Efficiency Strategy policy is taken forward on a voluntary basis.
3. Statutory LHEES – a duty is placed on local authorities to prepare and publish Local Heat and Energy Efficiency Strategies and Delivery Plans.

4.1. Sectors and groups affected

Local authorities are the only sector or group to be affected directly by the options.

1. Do Nothing – in this scenario, the Heat in Buildings transition is driven by national delivery programmes and regulation, with minimal planning at a local level. Any local planning around heat decarbonisation and energy efficiency deployment is piecemeal, with those local authorities who have the capacity and willingness to

engage benefiting from a disproportionate amount of funding, and other local authority areas falling behind, putting statutory targets for greenhouse gas emissions reductions and fuel poverty at risk.

2. Voluntary LHEES – engaged local authorities follow the LHEES approach leading to improved consistency of local planning over the ‘Do Nothing’ option. However, there is a risk that the voluntary nature will deprioritise LHEES and some local authorities will not produce Strategies and Delivery Plans, leading to patchwork coverage across the country, reducing the effectiveness of LHEES as a means to target delivery programmes and funding and as a means to support engagement by local authorities and wider stakeholders in UK Government driven processes of local area energy mapping and planning.

3. Statutory LHEES – a statutory basis will ensure consistency and comprehensive coverage of LHEES across Scotland against a common minimum standard, with all local authorities required to produce Strategies and Delivery Plans using standard guidance and with the Scottish Government required to provide appropriate resource.

4.2. Benefits

The following sets out the qualitative benefits associated with each option.

1. Do Nothing – the benefit of this approach, for the local authorities, is that they would not be required to produce Strategies and Delivery Plans. This would mean no increased need for resource or additional skills within local authorities (and thus no, or at best ad hoc, capacity building).

2. Voluntary LHEES – benefits include flexibility for local authorities to take up production of Strategies and Delivery Plans if they wish to. An additional benefit is that without statutory guidance local authorities would have flexibility to take their own approach in developing and delivering a local net zero buildings plan, however it should be noted that this could lead to inconsistency across different LHEES.

3. Statutory LHEES – as stated above, a statutory basis will ensure consistency and comprehensive coverage of LHEES across Scotland against a common minimum standard, with all local authorities required to produce Strategies and Delivery Plans using standard guidance. This will enable a place based, locally-led and -tailored approach to the heat transition. These local Strategies will provide an area-based ‘blueprint’ for decarbonised heat and energy efficiency planning and delivery, giving consistent signals to industry and investors, and providing opportunities to for local authorities to develop a comprehensive set of project propositions, including in combination and across several local authority areas.

It is difficult to provide quantitative benefits for the options above. The [Business and Regulatory Impact Assessment of the Heat in Buildings Strategy](#) sets out quantitative benefits for the wider heat transition, which LHEES will support. LHEES will lead to more effective and locally appropriate delivery of actions in the Heat in Buildings Strategy, however, it is not possible to directly ascribe quantitative benefits to LHEES.

4.3. Costs

1. Do Nothing – this option would require no direct additional costs. Indirect non-monetary costs of this option include the risk of minimal planning at a local level leading to piecemeal deployment of heat decarbonisation and energy efficiency, with those local authorities who have the capacity and willingness to engage potentially benefiting from a disproportionate amount of funding, and other local authority areas falling behind and suffering from lack of capacity.

Estimated cost of producing Local Heat and Energy Efficiency Strategies and Delivery Plans

An independent peer review carried out on the LHEES methodology in early 2021 distinguished between two core roles required to effectively produce a Strategy and Delivery Plan: coordination (project management, stakeholder engagement and knowledge of national and local policies and objectives); and technical (data handling, GIS and analytical skills). The peer review recommended one full time equivalent person in the coordination role, ideally an officer based at a local authority. This roughly equates to £50,000 annually per local authority. It did not specify the cost of the technical role, but noted that it could vary significantly depending on how much of that role was carried out centrally, and how much was delivered by individual local authorities.

An initial Business and Regulatory Impact Assessment (BRIA) was carried out for both the Heat Networks (Scotland) Bill and LHEES in 2019. Drawing mainly from the experience of the LHEES pilot programme, it estimated that the cost of producing an LHEES would range from £113,000 - £191,000 per local authority. It should be noted this is a total, one-off cost for producing an LHEES, not an annual figure.

Evaluations of early phases of the LHEES pilot programme (2017 - 2019) suggested 1-2 full time equivalent staff for each local authority to go through the full LHEES process, including any technical support. LHEES was in early development at this stage, so there was limited understanding around exactly what it would entail and what resource would be required.

Source	Cost per local authority
LHEES peer review (2021)	£50k per year + additional technical costs
LHEES HNB BRIA (2019)	£113 - 191k per LHEES (total, not annual)
LHEES initial pilot programme (2017-19)	£50 - 100k per year

2. Voluntary LHEES – based on the estimated cost of producing Local Heat and Energy Efficiency Strategies and Delivery Plans set out above, the cost of this option to local authorities would be approximately £50,000 per year plus any additional

technical costs for each local authority that opted to produce an LHEES. Indirect non-monetary costs include the risk that the voluntary nature of the LHEES work will result in its de-prioritisation with some local authorities not producing Strategies and Delivery Plans. This would lead to patchwork coverage across the country, reducing the effectiveness of LHEES as a means to target delivery programmes and funding.

3. Statutory LHEES – based on the estimated cost of producing Local Heat and Energy Efficiency Strategies and Delivery Plans set out above, the cost of this option to local authorities would be approximately £50,000 per year plus any additional technical costs for all 32 Scottish local authorities. Direct costs to local authorities would be mitigated in this Option as the Scottish Government is required to provide appropriate resource to enable local authorities to discharge any new duty placed on them. The Scottish Government is committed to appropriately resourcing LHEES across local authorities, including through provision of technical support, and also to providing ongoing central support for local authorities to engage with and learn from one another, and to draw on wider best practice in local area heat and energy efficiency planning.

5. Scottish Firms Impact Test

As set out above, 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. It is the publication of a Local Heat and Energy Efficiency Strategy and implementation of a Delivery Plan by the local authority that may have an impact on businesses. Given the tight and well defined focus of the Local Heat and Energy Efficiency Strategies (Scotland) Order 2022, no consultation with business has been completed as part of the Business and Regulatory Impact Assessment and the Scottish Firms Impact Test was not deemed appropriate.

6. Competition Assessment

An initial assessment of competition was carried out using the four Competition and Markets Authority (CMA) competition assessment questions:

- Will the measure directly or indirectly limit the number or range of suppliers?
The Local Heat and Energy Efficiency Strategies (Scotland) Order will neither directly nor indirectly limit the number or range of suppliers.
- Will the measure limit the ability of suppliers to compete?
The Local Heat and Energy Efficiency Strategies (Scotland) Order will not limit the ability of suppliers to compete.
- Will the measure limit suppliers' incentives to compete vigorously?
The Local Heat and Energy Efficiency Strategies (Scotland) Order will not limit suppliers' incentives to compete vigorously.

- Will the measure limit the choices and information available to consumers?
The Local Heat and Energy Efficiency Strategies (Scotland) Order will not limit the choices and information available to consumers.

On the basis of the above, a competition concern has not been identified and a wider Competition Assessment has not been carried out.

7. Consumer Assessment

The following questions were used to consider the impact of the Local Heat and Energy Efficiency Strategies (Scotland) Order on consumers:

- Does the policy affect the quality, availability or price of any goods or services in a market?

The Local Heat and Energy Efficiency Strategies (Scotland) Order does not affect the quality, availability or price of any goods or services in a market.

- Does the policy affect the essential services market, such as energy or water?

The Local Heat and Energy Efficiency Strategies (Scotland) Order does not affect the essential services market, such as energy or water.

- Does the policy involve storage or increased use of consumer data?

The Local Heat and Energy Efficiency Strategies (Scotland) Order does not involve storage or increased use of consumer data.

- Does the policy increase opportunities for unscrupulous suppliers to target consumers?

The Local Heat and Energy Efficiency Strategies (Scotland) Order does not increase opportunities for unscrupulous suppliers to target consumers.

- Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?

The Local Heat and Energy Efficiency Strategies (Scotland) Order does not impact the information available to consumers on either goods or services, or their rights in relation to these.

- Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues?

The Local Heat and Energy Efficiency Strategies (Scotland) Order does not affect routes for consumers to seek advice or raise complaints on consumer issues.

On the basis of the above a more in-depth consumer assessment has not been carried out.

8. Test run of business forms

No new forms for business to complete will be introduced as a result of The Local Heat and Energy Efficiency Strategies (Scotland) Order.

9. Digital Impact Test

No digital impact is identified for the Local Heat and Energy Efficiency Strategies (Scotland) Order.

10. Legal Aid Impact Test

No impact identified. The Local Heat and Energy Efficiency Strategies (Scotland) Order will not create a new procedure or right of appeal to a court or tribunal, any change in such a procedure or right of appeal, or any change of policy or practice which may lead people to consult a solicitor.

11. Enforcement, sanctions and monitoring

The Local Heat and Energy Efficiency Strategies (Scotland) Order does not include any enforcement or sanctions for non-compliance. Monitoring may be undertaken of local authorities' LHEES by the Scottish Government, however this is not required by the legislation. The Local Heat and Energy Efficiency Strategies (Scotland) Order states that a local authority must, if requested to do so by the Scottish Ministers in order to inform the formulation or implementation of national policy, provide the Scottish Ministers with information in relation to the implementation by a local authority of its Local Heat and Energy Efficiency Strategy or its Local Heat and Energy Efficiency Delivery Plan.

12. Implementation and Delivery Plan

The Local Heat and Energy Efficiency Strategies (Scotland) Order requires local authorities to publish a Local Heat and Energy Efficiency Strategy and Delivery Plan by the 31 December 2023 and to publish updated versions at intervals of no more than 5 years after the date of publication of the previous LHEES.

12.1. Post-implementation review

The Local Heat and Energy Efficiency Strategies (Scotland) Order relates to statutory targets for greenhouse gas emissions reductions out to 2045. Statutory Guidance relating to the Order is expected to be updated with the 5 yearly cycle of LHEES updates, and a review of whether the legislation is still fit for purpose is expected to occur alongside. As the first iteration of LHEES will be published by the end of 2023, a review is expected to take place before the end of 2028.

13. Summary and recommendation

This BRIA lays out the rationale behind the Local Heat and Energy Efficiency Strategies (Scotland) Order and recommends Option 3. Statutory LHEES.

In reviewing the costs and benefits set out in Section 4 and summarised below, 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.

13.1. Summary costs and benefits table

Option	Benefits	Costs
1. Do Nothing	<i>Local authorities not required to produce Strategies and Delivery Plans. No increased need for resource or additional skills within local authorities.</i>	<i>No direct additional costs. Indirect non-monetary costs include risk of minimal planning at a local level, piecemeal deployment, with local authorities who have the capacity and willingness to engage benefiting from a disproportionate amount of funding, and other local authority areas falling behind, putting statutory targets for greenhouse gas emissions reductions and fuel poverty at risk.</i>
2. Voluntary LHEES	<i>Flexibility for local authorities to take up production of Strategies and Delivery Plans if they wish to. Without statutory guidance local authorities have flexibility to take their own approach in developing LHEES, however this could lead to inconsistency.</i>	<i>Cost to local authorities approximately £50k p/a plus any additional technical costs for each local authority that opted to produce an LHEES. Indirect non-monetary costs include the risk that the voluntary nature will deprioritise LHEES leading to patchwork coverage across the country, reducing the effectiveness of LHEES as a means to target delivery programmes and funding.</i>
3. Statutory LHEES	<i>Consistency and comprehensive coverage of LHEES across Scotland against a common minimum standard, with all local authorities required to produce Strategies and Delivery Plans using standard guidance. Enabling a place based, locally-led and tailored approach to the heat transition.</i>	<i>Based on the estimated cost of producing Local Heat and Energy Efficiency Strategies and Delivery Plans, the cost of this option to local authorities would be approximately £50k p/a plus any additional technical costs for all 32 Scottish local authorities. Direct costs to local authorities would be mitigated as the Scottish Government is required to provide appropriate resource to enable local authorities to discharge any new duty placed on them.</i>

14. Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Patrick Harvie

Date: 9 March 2022

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