



Response to the Scottish Government Consultation on Local Heat and Energy Strategies 20 February 2018

Introduction

As the representative body for Scotland's Local Authority Chief Housing Officers ALACHO welcomes the opportunity to respond to the Scottish Government's second consultation on local heat & energy efficiency strategies, and regulation of district and communal heating.

Scotland's councils have a significant interest in this issue arising from:

- our role as strategic housing authorities with an interest in the functioning of the local housing market, housing conditions and their impact on housing needs and demands within the context of the Local Housing Strategies;
- our regulatory role and our interest in standards, affordability and quality across housing related services;
- Local Government's wider role in reducing fuel poverty and reducing greenhouse gas emissions; and
- The range of specific proposals set out in the consultation document that will impact directly on councils and the work they do to improve the lives and opportunities of local residents.

The consultation document addresses issues of both a strategic/long term nature and some more detailed operational issues. Individual local authorities and organisations directly involved in service delivery will be better placed to respond to the more detailed questions, in preparing this response we have tried to focus on the strategic issues.

Our response

Q1. Do you agree with our proposed overall approach to LHEES? Y/N -Please explain your answer in the text box provided, including any available evidence or examples

ALACHO supports the Scottish Government's ambitions to reduce and eventually eliminate fuel poverty, reduce carbon emissions and move towards a sustainable future for Scotland's economy.

We also agree that there is significant value in strengthening the planning and regulatory framework for developing strategic approaches to energy efficiency and the regulation of district and communal heating schemes.

We are, however concerned that the scope of the proposed Local Heat and Energy Efficiency strategies will present significant technical problems in both gathering the data required and in creating deliverable plans with the necessary degree of buy in from private sector residential and commercial property owners and developers.

We are also unconvinced that the significant focus on district and communal heating systems is wholly appropriate in the Scottish context where district heating forms only a very small part of the overall picture of heat and energy supplies. Our view is that this situation has arisen in part because of the relatively weak common ownership and management traditions in Scottish housing. The task of persuading owners in a single building to take an interest in the maintenance of the fabric of the building has become difficult enough even where the shared interest is real and immediate (acting to stop roof leaks for example).

Persuading owners across a number of locations to commit to and invest in a communal or area wide heating system will be counter cultural and require a significant shift in mindset, skillset and culture on the part of owners, construction professionals and developers. More generally the funding of capital works needs to be demonstrably fair. It may be easier to avoid asking owners to contribute but to look for a capital contribution from tenants through their landlord. In such circumstances pricing should reflect the investment tenants have made. Our view is not that district heating can't practically be developed but that it shouldn't be the only option available within the broader LHEES planning framework. In particular we would argue that local power generation and distribution systems based on PV, wind and other locally produced renewable power sources could work better in more dispersed settlements, fit better with the cultural expectations of owners, tenants and developers and be more likely to meet the needs of increasingly energy efficient new homes where "heat" requirements are significantly lower than in the past but "power" needs may be higher and patterns of consumption through the day more flexible as the way many people live and work changes.

The strategic framework needs to be flexible enough to allow local communities to make choices about best way to meet the need to decarbonise the energy sector and reduce energy use overall. We also share the concern expressed by COSLA and some councils that imposing a statutory duty may be too inflexible to adapt to local needs and conditions.

As has been widely acknowledged, one size will not fit all. The focus when designing the strategic planning and regulatory framework should be ensuring that all approaches that deliver on reducing fuel poverty, reducing energy consumption and decarbonising our power supply system are supported and local choice and control is maximised.

The proposed pilot programme to build capacity prior to introducing any new duty is a welcome one. These should be linked with the necessary work nationally to develop the national data sets and standards that will be required to inform LHEES properly and the skills required to interpret this data in the local context. And whilst funding is almost certain to be an issue we would point out that for many smaller authorities, particularly those working in rural areas funding may not be the whole of

the answer, action to ensure that the necessary expertise is available to all authorities, possibly through some pooling of resources at regional or national level may also be necessary.

Q2. What are your views on asking local authorities to report on tackling fuel poverty and climate change in the LHEES rather than the LHS?

We do not think that an extended debate around reporting frameworks will be helpful or productive at this stage. For this reason, we are inclined to take the view that so long as the actions to reduce fuel poverty and combat climate change are effective and reporting is timely and accurate we do not think that where that reporting takes place is critical.

However, we are of the view that whilst climate change and carbon reductions metrics will fit well within the LHEES framework, fuel poverty is a quite different measure, the result of the complex interaction between fuel costs, income, energy efficiency, behaviour in the use of energy.

The LHS system is now relatively mature, appropriately resourced locally and in generally terms well developed and understood. Fuel poverty strategies generally fit well within the LHS and the strategic housing planning system is well integrated into the wider service and land use planning and delivery framework.

On balance our view is that it should be left to local councils working with community planning partners to decide where they set out and report on their fuel poverty and climate change strategies.

Q3. Do you agree with our proposed overall approach to zoning? Y/N

We agree that zoning will be helpful in focusing work on areas with the greatest potential for heat decarbonisation and energy efficiency measures. They could also be useful in targeting areas, including more rural locations, where the technical challenges are greater and the need to address fuel poverty is most pressing.

We do not agree that district heating should be seen as the main focus or principle purpose of zoning. The zoning system should focus on creating a context to deliver reduced energy consumption, lower carbon emissions and reductions in fuel poverty. The particular measures used to achieve this should be locally determined.

We are also not certain that limiting “particular consideration” to public buildings alone is appropriate or will be sufficient to ensure progress. We would argue that all the significant properties (based on energy use, size, capacity to support renewable energy generation or generate excess heat or development potential) should be subject to “particular consideration” extending to a requirement that the owners of these buildings support the purpose of the zoning.

We appreciate that some private owners may see this as an imposition on their property rights. We would observe that working to tackle climate change cannot be left to the public sector any more than the costs can.

Q4. What are your views on the proposed district heating consent process?

We have already noted that district heating has only a limited cultural buy-in in Scotland. It is highly unlikely that any new systems will be delivered through consumer demand. Our view is that the zoning system should support a range of approaches to decarbonisation and energy efficiency including but not limited to, district heating.

Whatever system is adopted it is possible (and in the early stages likely) that they will be implemented in the face of at best consumer scepticism possibly including resistance to switching or remaining with to a new supplier where they have a choice.

In this context leaving the development of new district heating systems to be either administratively led (though LHEES) or speculatively driven for profit present significant risks including:

- Limited consumer buy-in;
- The tendency of commercial investors to invest in those areas likely to deliver the greatest return rather than those where consumers would benefit most;
- The concentration of ownership of district heating systems and concessions in the hands of a limited number of operators;
- That over time profits may come to be seen as excessive. This could be particularly damaging where fuel costs are seen to be unnecessarily high and the provider has been given a competitive advantage through the consent process; or
- Consumer confidence in the system or its operator may not be sustained in the longer term.

For this reason, it is our view that any proposal to develop a district heating scheme or other local power generation and distribution system should be subject to a significant degree of local control and influence through both the local authority and by individual residents collectively and in their own right. Not for profit models should be preferred where they are available.

We also note the reference at para 49 to the role of Social Housing in providing a “base load” for a district heating scheme. We are unclear what the implications of this may be but we would argue that social tenants should be treated in the same way as other residents so far as their ability to choose their utility companies is concerned. Any proposal to commit Social Housing assets should also be subject to consultation and the consent of tenants.

In particular, what are your views on: a) the appropriateness of any potential options for a relevant body to act as ‘the developer of last resort’, to ensure completion of development?

We agree that where there is a risk of projects failing and that impacting adversely on individual households there should be a mechanism to ensure that these risks are managed and any adverse impacts mitigated. But there is an important distinction to be made between a fall back that is intended to protect consumers and residents and one that underwrite delivery more generally.

We are aware that a number of councils have expressed concern about their capacity to act in this role. Our view is that some further thought and consultation as to how a “developer of last resort”

arrangement will work and who should benefit most directly when such an arrangement is called on will be necessary.

b) options for ensuring that district heating operators have similar or the same rights as other statutory undertakers for permitted development and wayleaves

Please provide any appropriate evidence to explain your answer.

Given the very significant legal questions involved we are not certain that we are in a position to comment in too much detail. We can see the merit in treating district heating and other local power networks in the same way as other utilities, to the extent that the work and its impact is equivalent.

However, moving heat through buildings and property is materially different from moving power or even water or waste. It is likely to involve a higher level of disruption to install and brings with it a risk of higher levels of maintenance in the future.

We would suggest that a specialist panel should be convened to consider this in more detail and make appropriate recommendations for further consultation.

Q5. What are your views on the proposals for socioeconomic assessment?

The overall approach seems reasonable however, we are uncertain about the use of mediation to resolve disputes in relation to the connection to a specific building. We are not certain that this sort of disagreement is best suited to mediation or that mediators with the necessary skills and knowledge are available. Whilst consensus and agreement may be the preferred way forward there also needs to be some certainty about dispute resolution. The Sheriff court or the First Tier Tribunal may be a more appropriate place to resolve such issues.

Q6. What are your views on the proposals for data for LHEES?

Our view is that the provision of the information necessary to properly plan heat decarbonisation and energy efficiency measures should be mandatory within designated zones. As well as ensuring that the necessary information is provided this approach makes it clear that public policy concerns will be the principle drivers of the process.

Q7. 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?

Q8. What data from industry would be most helpful in developing district heating projects?

Q9. What data could be provided without compromising competitiveness of these organisations.

Please explain your answers, including any available evidence or examples.

ALACHO members are not well placed to respond to these questions. As a result we have no comments to make on Q7-9.

Q10. What are your views on our proposed approach to district heating licensing?

Broadly speaking we agree with the approach to licencing set out in the consultation document. However, we are concerned at the use of the term “light touch” in para 103.

Our view is that the licensing regime should be designed to delivery specific outcomes. The weight of “touch” should not be predetermined or guided by the use of terms like this. Our experience is that “light touch” regulatory regimes seldom achieve the level of direction, consumer protection or service quality that is required.

We would add that the process of approving a licence should be linked to the local strategic framework and subject to an appropriate degree of local scrutiny and where appropriate a third-party appeal. This will be particularly important where a community or the local council feels that a licensing decision is not in the best interests of the community it covers.

Service continuity arrangements in the event of the failure of a licenced provider should be robust and quickly accessible to ensure that the lack of availability of an alternative operator doesn’t become a factor in deterring a decision to terminate a licence where that is the most appropriate course of action.

Q11. 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

We note the reference to consumer protection as a reserved matter but we are unclear from the consultation document what areas of the current consumer protection regime the Scottish Government feel are not fit for purpose. The weight of EU provision in particular, on which much of UK consumer protection law rests seems to us to be robust and in general terms effective.

To the extent that additional protection is necessary this should be available through the licensing and associated regulatory regime. This should include an appropriate extension of equalities and human rights legislation into the licencing conditions and an appeals and disputes resolution process back by access to the courts.

b) how do you think could we provide a robust complaint resolution process in relation to District Heating in Scotland?

As indicated above, further consideration should b given to the role of the courts or First Tier Tribunal to ensure that complaints and disputes are taken seriously and resolved effectively. In any event consumer confidence should be the primary driver in the design of any such system.

Q12. What are your views on how consumer advice should be provided for district heating customers in Scotland – what form should this take? Who should it be aimed at? What should be provided?

Access to good advice and accurate information will be as important as effective redress in the event of a dispute. In this context we already have a well-developed advice framework though generalist advice providers like local CABs and more specialist organisation including the Energy Savings Trust and WWF.

Trading standards offices employed by local councils could also have a role.

The Scottish Government as a good track record of working with third party advice and advocacy organisations to ensure that new policy initiatives are properly understood and that clients have access to the advice and information they need.

The bigger issue is not what mechanisms are available to provide advice but what level of support from the Scottish Government will be necessary to ensure that these information services are fully effective.

Q13. What are your views on the proposed approach to connecting heat users?

As a general rule we are of the view that increasing levels of insulation and airtightness in all new buildings will be a better route to reducing carbon emissions than district heating is likely to provide. To that extent our view is that a further increase in standards in both the residential and commercial sectors will provide better value for money in the long term.

With that in mind we have no specific comments on the approach to connection heat users set out.

Q14. What are your views on the proposed phased approach to non-domestic sectors with potentially usable surplus heat?

Whilst we can see the merit in the staircase approach suggested our view is that it would be more effective if compulsion was clearly seen as a possibility from the outset. As we have previously noted combating climate change and reducing fuel poverty are significant public policy objectives that will deliver long term benefits. We need to be clear about the point at which engagement in such schemes and support for public policy objectives stops being voluntary.

Q15. 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.

Q16. How should energy efficiency (including heat) be assessed across the regulated non-domestic sectors – including consideration for energy efficiency beyond the site boundary?

Q17. 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?

Q18. Which benchmarks or criteria should be used / considered in assessing energy efficiency?

Q19. What range of industrial processes should be covered, including size and sector, and why?

Questions 15 to 19 are significantly beyond our area of expertise and as a result we have no view on these matters at this time.

Q20. 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? What form should it take? What functions should it have?

Please explain your answer, including any available evidence or examples.

We agree that a national delivery mechanism is required and that should include significant support for local authorities including the data gathering and analysis, training and skills development and support during the drafting of LHEES including the use of “gateway reviews” in addition to the support listed in para 158.

Q21. 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.

We do not have a view on this.

Q22. We would welcome stakeholders’ views on our suggested approach to wider UK heat market reform, 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

We do not have a view on this.

Q23. 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.

Any programme of this scale comes with the risk of discrimination (direct and indirect) in planning, delivery and outcomes. We are not convinced that these will be adequately addressed through this consultation nor are we certain that an Equalities Impact Assessment completed at the start of the process will offer sufficient certainty that equalities concerns are being fully addressed.

Our view is that the governance arrangements for SEEP including the LHEES programme should include specific ongoing assurance arrangements on equalities and human rights issues designed and operated in collaboration with the EHRC in Scotland and representatives from equalities groups.

Q24. 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?

See our response to question 23.

Q25. 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.

The scale and complexity of the proposed approach is such that we are of the view that a specific work stream should be established to consider issues of costs and regulatory burdens. This work stream should be led by COSLA.

Q26. Please tell us about any impact on individual privacy/ data that may result from our proposals. If there is an impact on individual privacy, are there any special provision/ measures we should consider/ make/ include that would better assist in ensuring that this privacy impact is lessened/ negated?

We have no view on this question at this time.

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20 February 2018