

### **Heat in Buildings Consultation Response**

#### **Summary and Recommendations**

This report presents COSLA's response to the Scottish Government consultation on Heat in Buildings for discussion and approval. The consultation was launched in November 2023 and seeks views on proposals for a potential Heat in Buildings Bill. The Board discussed the content of the consultation at the previous meeting of the Board.

The response builds on points raised by Members at that previous meeting, as well as engagement with Local Government officers and wider stakeholders through workshop events. Specifically, concerns were raised about the suggestion council tax and non-domestic rates could be utilised as part of an enforcement regime. The deadline is Friday 8<sup>th</sup> March and, subject to Members approval, our response will be submitted following the conclusion of this meeting.

The Board is invited to:

- i. Agree COSLA's response at Appendix A subject to any comments made during the meeting.

#### **References**

Previous relevant reports:

- Leaders – February 2022 - Local Heat and Energy Efficiency Strategies
- Environment and Economy Board - April 2022 - National Public Energy Agency
- Environment and Economy Board – October 2022 – Heat Decarbonisation
- Environment and Economy Board – March 2023 – Heat in Buildings Bill & Heat Networks Regulation
- Environment and Economy Board – June 2023 – LHEES update
- Environment and Economy Board – November 2023 – Heat in Buildings update
- Environment and Economy Board – December 2023 – Heat in Buildings Bill Consultation

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## **Heat in Buildings Consultation Response**

### **Purpose**

1. To provide seek approval of COSLA's response Scottish Government's consultation on a Heat in Buildings Bill.

### **Current COSLA Position**

2. COSLA recognises that heat decarbonisation is essential to achieving a just transition to a net zero economy and that Local Government has a vital part to play in the heat transition. To advance this goal, the Scottish Government's Programme for Government 2022-23 committed to publishing a consultation on proposals for a new Heat in Buildings Bill, which will form the main legislative foundation for the heat transition.
3. The consultation on a Heat in Buildings Bill was published on the 28<sup>th</sup> November 2023. As Members will recall, a report was taken to the last meeting of the Board seeking Members initial views and comments on the consultation. Scottish Government officials also attended and answered questions from members regarding aspects of the consultation document. The comments and issues raised by Members at that meeting form the basis of the response in Annex A.

### **What is changing?**

4. Since the previous meeting of the Board, COSLA has engaged with Local Government officers and professional associations through established channels to identify further aspects of the consultation for comment. Scottish Government have held a series of workshop events with a breadth of stakeholders, and COSLA have attended these and provided early input of the Board's initial comments.
5. This engagement has allowed us to refine our position on key aspects of the consultation document and has fed into the draft response in Annex A.

### **Proposed COSLA Position**

6. The proposed draft COSLA response is outlined in Annex A for Members consideration and agreement.
7. While we welcome all comments from the Board on the content of the response. One specific aspect we wish to address is the option to use council tax or non-domestic rates as part of an enforcement regime. We should be clear that the consultation document does not present this as a preferred option, however it is established COSLA policy that it is inappropriate for Scottish Government to consider Local Government's funding mechanisms in this manner. Any change in this position requires prior engagement with between Local Government and Scottish Government, and the approval of Leaders. As the consultation notes there will be further engagement to design a monitoring and enforcement regime, which will involve collaboration with Local Government, and a firmer position can be established through the appropriate governance structures in due course.

**Next Steps**

8. The consultation is complex and covers a significant breadth of what will be required to be successful in achieving our decarbonisation targets and will therefore require significant work to establish our position beyond principled support for the heat transition. Ongoing engagement with Scottish Government is planned throughout the heat transition, with the most immediate step following the consultation being a draft Heat in Buildings Bill, anticipated for later this year. Members will be kept fully updated of developments in this priority area and further reports brought to the Board in due course.

## Annex A



### **COSLA Response to the Scottish Government Consultation on Proposals for a Heat in Buildings Bill**

1. As the representative voice of Local Government in Scotland, COSLA is committed to the strategic goal of a just transition to a net zero economy by no later than 2045. The decarbonisation of heat in buildings must form a key part of this transition, and we welcome the opportunity to comment on this consultation on proposals for a Heat in Buildings Bill.
2. At a high level, COSLA is supportive of the proposals in the consultation. Bold steps must be taken to change how we heat our buildings if we are to find a pathway to our broader decarbonisation targets. The measures required to make these steps will not always be the same and while, at times, incentivisation will be appropriate, we also agree that there will be a requirement for regulations and deliverable deadlines and targets. Many local authorities have themselves set targets for decarbonisation which are far more ambitious than the national targets, evidencing the willingness of Local Government to work with Scottish Government to achieve the ambitions of the heat transition.
3. This response has been developed based on our established support for a just transition to a net zero carbon economy by no later than 2045 and feedback and engagement with our members and colleagues across Local Government. It therefore may not fit with the designed format of the consultation, but as a membership organisation we feel our input is more valuable if we are able to accurately reflect the views of local authorities and the issues most important to them, as they will be directly affected by the resulting legislation. As such we would encourage close consideration of responses from individual local authorities who will have responsibility for many of the proposals and can offer an enormous wealth of experience of the journey so far and more detailed responses to the technical aspects of the consultation. Our response will instead focus on the broader and more strategic elements and offer insight into areas of practical concern which will require further work if we are to be successful in achieving the ambitions of any future legislation.
4. We agree that there is no pathway to 2045 without ending our reliance on polluting heating systems, and with the interim 2030 target looking increasingly unlikely, there is a need for targets and deadlines which ensure progress is made timeously. Given the scale of change necessary, the breadth of differing types of building and the variety of pressures faced, there is value in staggering these deadlines, but these deadlines must be realistically deliverable to avoid unintended consequences. We also agree that fuel efficiency must be central to the heat transition. Just transition principles state that the journey to a net zero economy must deliver fairness and tackle inequality and injustice and

remove poor energy efficiency as a driver of fuel poverty. To achieve this, we support the principle of a heat in buildings standard, although this response will expand on some of the practical considerations we feel are necessary to make this standard achievable across sectors and deliver its intended outcome.

5. To date, work on heat decarbonisation, as well as many other aspects of the journey to net zero, has been characterised by close partnership working between Local Government and Scottish Government, as exemplified by the Local Heat and Energy Efficiency Strategies (LHEES). The work to establish these has not always been easy, but it shows that working together with a shared will for a common goal can help us to navigate through difficult challenges. Ongoing partnership working will be essential to the success of the heat in buildings programme and the bigger challenges which lie ahead. Local Government is committed to decarbonising heat and there is a great deal of political will to achieve what is set out in the consultation and principled support for the approach outlined, however we have identified areas of practical concern which may obstruct the pathway to our ambitions, to end heat in building's contribution to climate change. Examples of these have emerged under the broader thematic headings of resources, supply chain and deadline impacts.

## RESOURCES

6. The scale of the challenge that decarbonising how we heat our buildings is no starker than when we consider the resources required to deliver the change required. It is hard to estimate how much this will cost, with the figure of £33 billion often cited, but it is essential that cost itself cannot be a veto to decarbonisation. Every effort must be made to ensure that these costs are shared equitably, in line with just transition principles, ensuring the burden does not fall on those least able to pay. This aspect is particularly important when we consider the fuel poverty lens and we welcome the consultations consideration of this issue and efforts made through protections to ensure the decarbonisation of heat in buildings reduces rates of fuel poverty. This must be central to the journey through a various targets in the years and decades which lie ahead.
7. Just as it is hard to estimate the full cost of decarbonising heat in buildings, so too is it impossible to provide absolute clarity on the funding landscape available throughout the journey and to request this level of detail in the face of such uncertainty would be unrealistic. We are aware of growing concerns about affordability of the programme, and while this is an issue which must be taken seriously, what we require most at this stage of the journey is greater clarity of where the resource burdens are likely to affect Local Government, which can give us the certainty to address our own properties and greater confidence to support our communities through the heat transition and plan appropriately. The political will exists within Local Government to decarbonise heat in buildings, but deliverability risks being hampered by a lack of clarity over resources.
8. LHEES provide a good current example of what can be delivered by Local Government within tight deadlines when we have clarity over the funding required for delivery. The consultation contains more challenging deadlines ahead, not least the target to decarbonise all publicly owned buildings by 2038. While the cost of this will be on a very different scale to LHEES, the principle still applies that the more clarity which can be provided over resources, and the levers which Local Government will require to achieve the deadlines, the more likelihood we have of achieving them successfully.
9. Another example where more clarity is required, which has been repeatedly cited during our engagement with Members, is monitoring and enforcement. We fully agree with the statement that, "for any law that places requirements on us to be credible there must be a way to check that we are meeting the requirements when supposed to as well as a reason

for us to meet the requirements,” however the delivery of monitoring and enforcement can represent a serious resource burden on already stretched Local Government capacity.

10. What is being monitored, and when are clearly set out, as are options for how they would be monitored, but there is no consideration to who would be responsible for the monitoring and with what.
11. Similarly, we feel there is a concerning lack of clarity over how enforcement is administered beyond the measures described for the private rented sector. Of particular concern is the suggestion that council tax and non-domestic rates be used to enforce the Heat in Buildings Standard without any prior discussion with Local Government. While we appreciate that other alternatives are offered, it is not appropriate to use Local Government’s funding mechanisms in this punitive manner, nor to suggest how funds raised through this mechanism could be spend as this would be a matter for individual local authorities.
12. It is COSLA’s view that it would be better to consider more widely who will act as a monitoring body in parallel with the design of the scheme as the two will be intrinsically linked. There is concern within Local Government that there is no question seeking views on who the monitoring body should be and that, while the terms of the Verity House Agreement are acknowledged, there could be an assumption that local authorities will fulfil this roll without due consideration of the capacity implications this would cause. This is not to say we are opposed to Local Government having a role in monitoring and enforcement. We recognise that the design of this is in its earliest infancy and that the lack of detail at this stage does not represent a gap, but an area for future development. The above comments are intended as an early indication of what we need to engage on going forward and we are eager to work closely with Scottish Government on the future design of monitoring and enforcement.
13. The overall issue of resourcing goes beyond the remit of this consultation and is tied to a wider conversation about the financial mechanisms to incentivise and deliver decarbonisation strategically across sectors. This way we maximise the potential of the resources available through targeted interventions and avoid missing opportunities or duplicating efforts on the pathway to 2045.

## SUPPLY CHAIN

14. While certainty over resources can help Local Government to plan and deliver measures which work towards successfully achieving the heat transition on time, this is utterly dependant of the capacity of the supply chain to deliver the necessary change. There is concern within Local Government that the consultation does not go far enough to detail what measures will be taken to increase the supply chain going forward. There is a sense throughout the consultation that the supply chain will grow to meet demand naturally over time but with little evidence to support this assumption. We must be more proactive and strategic to build the supply chain both nationally and at a local level to actively meet demand across Scotland at the scale required to make clean heat more attractive to consumers and suppliers.
15. Through engagement with our Members, we have identified two risks associated with the current lack of detail around supply chain. Firstly, if capacity is insufficient then supply chain issues will present a pinch point, slowing progress of the heat transition and ultimately our wider decarbonisation targets. This is unlikely to occur in a uniform way, but instead runs the risk of creating gaps, both geographically and in scale.

16. As the proposed approach sets out different deadlines, it is likely that demands on the supply chain will differ at points in the future. For example, the most pressing proposed deadline on the private rented sector in 2028 will place very different demands on the supply chain than that of the public sector buildings deadline in 2038 (this response will focus more closely on the proposed deadlines below). Greater planning to encourage the supply chain to meet these demands at the different pressure points on the transition can increase the likelihood of success and maximise the economic benefits at a national and local level.
17. The challenge of decarbonising heat in buildings will differ significantly across Scotland with local variations inevitable. The supply chain must also be supported to deliver the local solutions which will be required to account for these variations. Rural and island communities already suffer from some of the highest rates of fuel poverty and regularly suffer from increased supply chain costs due to their less accessible location and more complex logistics. Similarly, there are large portions of urban building stock which present significant challenges such as tenement flats. Community wealth building is a model supported by COSLA as a practical tool for delivering place based solutions to local economic development and there may be value in exploring how this can help to meet the supply chain demands of the heat transition locally, delivering both wellbeing economy outcomes and helping to proactively address local supply chain issues. This said, community wealth building requires a significant amount of resource to deliver its intended benefits and is another example of where greater clarity and strategic approaches to resources can deliver better outcomes.
18. Secondly, any incentives to increase the supply chain, at both national and local levels, must put consumer protection at the forefront. Initiatives in the past such as the “Green Deal” as well as the increased evidence of rogue traders currently offering misleading information about availability of grants and funding for energy efficiency measures serve as a stark reminder of the damage that unintended consequences can cause. Whether financially for the individual consumers who fall victim to poorly designed schemes, or the reputational damage that this can cause to the wider heat transition, which will rely heavily on maintaining public support, every effort must be made to reduce these risks when designing incentives. Our colleagues at Trading Standards Scotland can offer extensive expertise in this area and we would endorse their response to this consultation.
19. With risks also come opportunities. Getting the supply chain issues right can have great economic benefits and will be a cornerstone of the just transition to a net zero economy. To maximise these benefits, we will need to be strategic and consider supply chain issues across the sectors key to achieving net zero, ensuring that efforts to decarbonise heat complement, rather than compete with other key sectors such as transport. This will require coordination both nationally and locally and it is essential that Local Government are involved in development of this work. Many local authorities have examples of successful initiatives or interventions at the local level, such as community wealth building, which will prove helpful to maximise the opportunities of a well developed supply chain, and we would urge close consideration to responses from individual local authorities which highlight these examples. Opportunities already exist more strategically through the National Strategy for Economy Transition and the New Deal for Business Group, but more specific work to coordinate wider economic transformation and developing a supply chain to deliver the heat transition is required to maximise the opportunities available and minimise the risks outlined above.

## DEADLINES

20. The areas of practical concern above are brought into sharp focus when we consider some of the deadlines proposed in the consultation, most notably the requirement for

private rented sector landlords to meet a minimum energy efficiency standard by 2028 and for all buildings owned by a Scottish Public Authority to be using clean heating systems by the end of 2038. We strongly support the ambitions behind both of these deadlines. The evidence presented regarding the need to accelerate energy efficiency in the private rented sector is compelling, and we agree that the public sector should demonstrate leadership in the heat transition, but as currently proposed we have identified concerns that these deadlines may serve as a blunt tool which, in the worst case scenario, could be unintentionally counterintuitive and exacerbate existing issues.

21. The private rented sector faces a number of challenges, with many of our members declaring a housing emergency in the face of the reduction of availability and increase in demand which is fuelling a rise in homelessness and unaffordability. With availability in the private rented sector already at crisis point, we must be cautious that any measures aimed at improving energy efficiency do not further reduce the capacity. If the deadline of 2028 is not realistically achievable due to lack of capacity in the supply chain, limited resources or other factors, then landlords may withdraw properties from the private rented sector to avoid civil penalties. This may be a speculative concern but the risk associated are significant, especially to those areas which have already declared a housing emergency. We would welcome exploration of more nuanced approaches which ensure that both energy efficiency and availability of the private rented sector improve as part of the heat transition.
22. It is right that the public sector provides leadership across our whole transition to Net Zero, and heat in buildings is no exception. However, as we have stated previously in this response, for any deadline to achieve its ambitions, it must be deliverable. Without greater clarity of resourcing or an evidence base and justification for the 2038 deadline, it is very difficult for local authorities to accurately assess if the deadline is deliverable, and therefore it is not possible to support at this time. An alignment with the private sector deadline of 2045 would seem the most appropriate course of action without a clearer pathway. This universal approach to introducing clean heating systems would add simplicity, but we would welcome further discussions to explore and help build an evidence base for how public bodies can take a more ambitious approach. Additionally, there are concerns that if capacity in the supply chain for the scale of heating systems required for buildings owned by public bodies is not sufficient, both rural and island authorities and smaller authorities who lack the financial resources to compete with larger neighbouring authorities could be unfairly disadvantaged or penalised if they are unable to procure the works required.
23. We also note the inclusion of suggested duties on public authorities to deliver the 2038 deadline. COSLA has a long standing position of opposing new duties which are not adequately resourced or negatively impact on local democratic accountability. Positive examples exist in the heat in buildings sector of working collaboratively to introduce new duties, most notably the creation of LHEES and their delivery plans, but this was developed through collaboration and joint support for the approach from their earliest inception. With this in mind, and the previously evidenced support from Local Government to deliver the heat transition as part of our strategic net zero targets, our current preference is option 4, "placing no further statutory requirements on public sector organisations (instead relying on their ability to plan alongside our delivery and funding programmes to meet 2038)." If any of the other options are pursued then we would urge Scottish Government to include Local Government in the design of a duty, as was the case with LHEES, to ensure that duties are deliverable, appropriately designed and steer us towards achieving agreed targets successfully. Lighter touch approaches, such as those proposed around progress reporting could be beneficial in helping to share best practice



and we would welcome the opportunity to be involved in the design of this approach if it is taken forward.

## CONCLUSION

24. As previously stated in this response, Local Government is fully committed to the decarbonisation of heat in buildings as part of the just transition to a net zero carbon economy by no later than 2045. The points made in this response are intended as constructive criticism of areas of practical concern. We wish to work collaboratively with Scottish Government and other stakeholders to find solutions to these potential barriers early, so that they do not become future obstacles to our shared ambition of ending heat in buildings contribution to climate change. To date we have good examples of partnership working on this issue and we hope that we continue to move forward in this way to achieve our shared ambitions for the heat transition.