

# **Consultation on the Tenements (Scotland) Act 2004 (Heating Services) Regulations**

**January 2016**

# **The Tenements (Scotland) Act 2004 (Heating Services) Regulations**

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This consultation consists of the following:

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The purpose of this consultation is to seek views on draft Regulations under section 19 of the Tenements (Scotland) Act 2004. These would prescribe district heating and communal heating as services for which an owner of a flat would be entitled to lead through, or fix to, common parts of a tenement pipes, cables or other equipment. The owner would need to follow the procedures laid down in the draft Regulations.

The proposed Regulations would not apply when there is provision in the title deeds enabling an owner of a flat to install pipes or other equipment for these services in the common parts of a tenement.

**Responses to this consultation are requested by 5:00 pm on 14 April 2016.** Details of how to respond are at section 4. Responses can either be sent through Citizen Space, the Scottish Government's on-line consultation platform, or hard copy through the post.

## **Section 1: Introduction**

### The Tenements (Scotland) Act 2004 (“the 2004 Act”)

1.01 The 2004 Act<sup>1</sup> was part of a programme of property law reform following a series of reports by the Scottish Law Commission<sup>2</sup>.

1.02 The 2004 Act deals with the law on tenements, with “tenement” defined in section 26. The term covers a wide range of property including traditional sandstone tenements, houses converted into flats, high rise blocks and “four-in-a-block”.

1.03 Section 19 of the 2004 Act makes provision in respect of the installation of service pipes etc. Section 19(1) entitles an owner 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 by way of regulations.

1.04 When making regulations, the Scottish Ministers may make provision on the procedures which installing owners must follow. Such procedures can cover, for example, notifying other owners and taking account of any objections they may have. The Scottish Ministers may make provision for different procedures to be followed in relation to different services.

1.05 No regulations have been made to date under section 19.

### The proposed Regulations

1.06 The Scottish Government has been approached for regulations to be made under section 19 of the 2004 Act in relation to the provision of district heating services in tenement blocks. District heating is provided by pipes carrying hot water or steam in communal areas. Further information on district heating and communal heating (which is also covered by the proposed Regulations) is at Annex A.

1.07 We have also been approached for regulations under section 19 to be made in relation to the installation of gas pipes. Please see paragraph 3.01 for further information on gas pipes.

1.08 This consultation seeks views on draft Regulations under section 19 of the 2004 Act in relation to district heating and communal heating.

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<sup>1</sup> <http://www.legislation.gov.uk/asp/2004/11/contents>

<sup>2</sup> The Scottish Law Commission report on the Law of the Tenement which led to the 2004 Act is at [http://www.scotlawcom.gov.uk/download\\_file/view/421/](http://www.scotlawcom.gov.uk/download_file/view/421/)

## **Section 2: The draft regulations on heating services**

### **General**

2.01 The draft Regulations are at Annex B to this consultation.

2.02 In preparing these draft Regulations, the Government has taken into account the following:

- In many cases, 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.
- The draft Regulations only apply when nothing is laid down in the title deeds enabling pipes of this nature to be installed in common parts of tenements (regulation 3(2) refers).
- The aim of these draft Regulations is to provide a simple process for the installing owner to follow and to ensure that any owners who object are given a chance to outline their objections.
- The draft Regulations provide the option of a case being taken to court if agreement cannot be reached. The Government envisages that this option would be taken up in relatively few cases. The interviews carried out as part of the Business and Regulatory Impact Assessment (BRIA) also suggested that court action in this area would be infrequent.

2.03 The draft Regulations introduce a default scheme: regulation 3(2) refers. This means that homeowners with an existing title condition allowing pipes to be installed in common areas would continue to rely on the title condition rather than this default scheme. The draft Regulations define “title condition” by reference to section 122 of the Title Conditions (Scotland) Act 2003 and this definition includes both real burdens and servitudes. Our reasons for creating a default scheme are:

- There may be good reasons for the existence of the title condition in the deeds (e.g. the particular lay-out of the tenement).
- We do not wish to remove existing rights.
- This is generally in line with the 2004 Act. The Tenement Management Scheme (TMS) is a default scheme.

### **The details of the draft Regulations**

2.04 Regulation 2 provides a number of definitions for the purposes of these draft Regulations. Other terms which are used in the draft Regulations, such as “tenement”<sup>3</sup> and “notice”<sup>4</sup>, are defined in the 2004 Act.

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<sup>3</sup> Section 26 of the 2004 Act; see para 1.02 above

<sup>4</sup> Section 30 of the 2004 Act

2.05 Regulation 3(1) provides that the prescribed services are heating services supplied by a district heat network and communal heating (both of which are defined in regulation 2). Regulation 3(2) provides that the proposed Regulations only apply where there are no title conditions in the title deeds allowing the owner to carry out equivalent works. Therefore, as indicated above, the proposed Regulations provide for a default scheme, only applicable where the title deeds do not make equivalent provision.

2.06 Regulation 4 requires notice of an installation to be provided in the form specified in Schedule 1 to the draft Regulations. This notice is to be provided by the owner wishing to install the equipment to each owner of the other (common) parts of the tenement through or to which equipment would be led or fixed. The term “the other part of the tenement” is defined in regulation 2.

2.07 The notice has to cover the nature and extent of the work; the safety standards to be followed; the timetable, including when the proposed work will commence and be completed; the expected disruption (if any); and an address to which any objection or other representation relating to the notice is to be sent. The notice must meet the requirements of section 30 of the 2004 Act, which makes provision for determining the date of giving notice and the ways in which notice may be given to an owner (namely by post, by hand-delivery or by electronic means (email)).

2.08 Regulation 5 makes provision for objections and representations in relation to the notice of a proposed installation. Notice of any objections or representations may be given by any owner of the parts of the tenement through or to which equipment would be led or fixed no later than 28 clear days after the initial notice of the proposals is given.

2.09 It is the responsibility of the owner who is giving notice of a proposed installation to try to reach agreement with any owner who objects or makes representations. The use of an alternative dispute resolution (ADR) process must be proposed where suitable as an option to reach agreement. Instances of where it will not be a viable option include where one of the parties is unwilling to participate or it is not cost effective. If after receipt of an objection or representation, the installing owner does not reach such agreement, the installing owner may issue a revised notice in the form specified in Schedule 2 to the draft Regulations (regulation 5(2) and (5)). Again, this revised notice must be given to each owner of the other part of the tenement and objections or representations may be made within 28 clear days (regulation 5(4)).

2.10 Regulation 6 sets out when the work on the installation of a service pipe etc. may begin. Under regulation 6(1), work may begin:

- when there are no objections and the period of time for notifying such objections have elapsed; or
- when agreement has been reached, either following the issue of the original notice or following the issue of a revised notice.

2.11 Section 6(1)(b) of the 2004 Act provides that an owner may (by summary application) apply to the sheriff court for an order concerning any matter relating to the operation of any provision of the 2004 Act as it applies in relation to the tenement. This is subject to regulation 6(2) of the draft Regulations, which provides that an application to the sheriff for permission to install service pipes or other equipment in accordance with section 19 of the 2004 Act and these draft Regulations may only be made after 28 clear days have elapsed from the date of the original notice and, if any objections or representations were made during those 28 days, after the owner has tried to reach agreement in accordance with regulation 5(2). Further, if the owner issues a revised notice, the application to the sheriff cannot be made until after the owner has complied with the requirements under regulation 5(4).

2.12 The sheriff would have to consider any representations received; have regard to matters including whether ADR process was proposed, used or considered not suitable; and either grant or refuse the application. If granting the application, the sheriff could, at his or her discretion, impose conditions (e.g. the hours of day when work should be carried out or exactly where the equipment should be installed).

2.13 These proposed Regulations may lead to a requirement for Rules of Court. Rules of Court are made by the Lord President of the Court of Session. If the proposed Regulations proceed, the Scottish Government will discuss with the Lord President's office what Rules of Court, if any, may be required.

2.14 Regulation 7 provides that these draft Regulations do not create any liabilities for costs on an owner who is given notice of an installation proposal. The cost of installing the equipment would usually fall on the installing owner or on the service provider or both, depending on any private contractual arrangements that may be in place.

2.15 Regulation 8 requires the owner exercising installation rights under these draft Regulations to reinstate the part of the tenement to or through which equipment is led or fixed as far as reasonably possible to the condition it was in immediately before the work being undertaken, and to reimburse the cost of repairing any damage done. If the owner fails to do so, the owner of the other part of the tenement or any other owner who contributes to the upkeep of the common parts of the tenement may instruct work to reinstate the part to the condition it was in prior to the work, and may recover the expense from the installing owner.

2.16 Where section 17 (access for maintenance and other purposes) of the 2004 Act does not apply, regulation 9 provides, for the avoidance of doubt, for access to be provided to common parts of the tenement for the purpose of installing service pipes under these draft Regulations. Such access is to be provided in accordance with the requirements of section 17 of the 2004 Act.

## **Questions**

**Question 1: Should the proposed Regulations be made? Yes/No. Please give reasons for your answer.**

**Question 2: Do you have any comments on the draft Regulations, including on the proposed procedure for the installing owner to follow? Yes/No. Please outline any comments you may have.**

**Question 3: Do you have any comments on the proposal that if objections are received, the installing owner must propose an alternative dispute resolution process unless this is not suitable? Yes/No. Please give reasons for your answer.**

**Question 4: The draft Regulations provide a default scheme in order to protect existing title conditions which may be contained within individual homeowners' title deeds. Is this the correct approach? Yes/No. Please give reasons for your answer.**

## Section 3: Gas and other services

### Gas pipes

3.01 We have also received a request to make similar regulations in relation to the installation of gas pipes in common parts of tenements.

3.02 The Scottish Government has considered with the UK Government how to take forward any equivalent provisions on gas pipes given that gas is generally a reserved matter under the Scotland Act 1998. The UK and Scottish Governments have agreed that provision for the installation of gas pipes in common parts of tenements would be made by an order under section 104 of the Scotland Act 1998.

3.03 The Scottish Government's view is that the process and procedures to follow for gas pipes under any section 104 order should be along the same lines as those proposed in the draft Regulations for district heating and communal heating pipes.

**Question 5: If a section 104 Order under the Scotland Act 1998 is made in relation to the installation of gas pipes in common parts of tenements, should the same procedures as outlined in the draft Regulations for heating services apply? Yes/No. Please give reasons for your answer.**

### Other services

3.04 We are not proposing to prescribe any other services under section 19 of the 2004 Act.

3.05 Other services were discussed in paragraph 10.6 of the Scottish Law Commission report on the Law of the Tenement. As the Commission outlined:

- Water and sewerage is covered by section 88 of the Civic Government (Scotland) Act 1982.
- Electricity is covered by the South of Scotland Electricity Order Confirmation Act 1956 section 33 (as amended by The Electricity Act 1989 (Modification of Local Enactments) (Scotland) Order 1990, SI 1990/393, Schedule, Part I, paragraphs 3 and 11) and the North of Scotland Electricity Order Confirmation Act 1958 section 26 (as amended by the 1990 Order, Schedule, Part II, paragraphs 6 and 12).
- Telecommunications are covered by the Electronic Communications Code<sup>5</sup>.

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<sup>5</sup> The UK Government has indicated its intention to reform the Code <https://www.gov.uk/government/consultations/consultation-on-reforming-the-electronic-communications-code> This follows a report by the Law Commission for England and Wales <http://www.lawcom.gov.uk/project/electronic-communications-code/>

3.06 There has been no recent demand to make provision in respect of TV aerials and the Scottish Government does not plan to make any provision in this area.

## **Section 4: Conclusion, responding to this consultation and next steps**

### Impact Assessments

4.01 In line with usual practice, partial Impact Assessments have been prepared. A partial Business and Regulatory Impact Assessment or BRIA is attached at Annex E and a partial Equality Impact Assessment or EQIA is attached at Annex F.

4.02 The Government does not consider that the following Impact Assessments are required:

- Child Rights and Wellbeing Impact Assessment (CRWIA)
- Strategic Environmental Assessment (SEA)
- Privacy Impact Assessment (PIA)

### Other comments

4.03 Consultees may have other comments.

**Question 6: Do you have any other comments you would wish to make?**

### Closing date for responses.

4.04 The Government welcomes responses to this consultation document **by 5:00 pm on 14 April 2016**. No late responses will be accepted.

### How to respond

4.05 Responses can either be sent through the Scottish Government's Citizen Space consultation platform or can be sent hard copy (by sending a paper copy through the post). More details on replying through Citizen Space are outlined below.

4.06 All responses must either be through Citizen Space or by hard copy. We will not accept responses by email.

### Replying through Citizen Space

4.07 You can respond to this consultation on-line through Citizen Space. Details are available in the Consultation Hub on the consultation section of the Scottish Government's website: <https://consult.scotland.gov.uk/>

4.08 Citizen Space contains some mandatory fields asking for details of the person or body responding to the consultation and whether the person or body is happy for their response to be published.

### Replying by hard copy

4.09 Hard copy responses must include the Government's Respondent Information Form at Annex D. This asks for details of the person or body responding to the consultation and whether the person or body is happy for their response to be published. Please send hard copy responses to:

Catherine Devlin  
Civil Law and Legal System Division  
Scottish Government  
St Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG

### No obligation to respond to all questions

4.10 We welcome responses to some or all of the questions.

### Scottish Government consultations

4.11 This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <https://consult.scotland.gov.uk/>

4.12 The Scottish Government has an email alert system for consultations called SEconsult: <http://www.gov.scot/Consultations/seConsult>. This system allows individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). SEconsult is designed to allow stakeholders to keep up to date with all Scottish Government consultation activity, and therefore be alerted at the earliest opportunity to those of most interest.

### Handling your response

4.13 Where you give permission for your response to be made public, we may publish it. We will not publish any potentially defamatory or offensive material.

4.14 The Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### Next steps

4.15 The Government will publish an analysis of the consultation responses.

4.16 The Government will consider the responses made to this consultation and decide whether or not the proposed regulations should be made.

Comments, queries and complaints

4.17 If you have any comments, queries or complaints about how this consultation exercise has been conducted, please send them to:

Catherine Devlin  
Civil Law and Legal System Division  
Scottish Government  
St Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG

Or e-mail: [PropertyLaw@gov.scot](mailto:PropertyLaw@gov.scot) Telephone: 0131 244 4213

## **ANNEX A: Heating services - district heating and communal heating**

1. A district heating network is a network of insulated pipes used to deliver heat, in the form of hot water or steam, from the point of generation to an end user.

2. District heating networks can currently be built up to around 30km from the generating plant. Heat networks can be supplied with heat from a diverse range of sources. These include:

- power stations
- energy from waste (EfW) facilities
- industrial processes
- biomass and biogas fuelled boilers and Combined Heat and Power (CHP) plants
- gas-fired CHP units
- fuel cells
- heat pumps
- geothermal sources
- electric boilers and solar thermal arrays

3. Communal heating is similar to district heating but is from a central source within the tenement.

4. Communal heating and district heat network are defined in regulation 2 of the draft Regulations as follows:-

**“communal heating”** means the distribution of thermal energy in the form of steam, hot water, or chilled liquids from a central source in a building which is occupied by more than one final customer, for the use of space or process heating, cooling or hot water.

**“district heat network”** means the distribution of thermal energy in the form of steam, hot water or chilled liquids from a central source of production through a network to multiple buildings or sites for the use of space or process heating, cooling or hot water.

## ANNEX B: Draft Regulations

*Illustrative draft published for the purposes of consultation.*

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### SCOTTISH STATUTORY INSTRUMENTS

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**2016 No.**

## TENEMENTS

### The Tenements (Scotland) Act 2004 (Heating Services) Regulations 2016

*Made* - - - -

*Laid before the Scottish Parliament*

*Coming into force* - -

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 19 of the Tenements (Scotland) Act 2004(a) and all other powers enabling them to do so.

#### **Citation and commencement**

1.—(1) These Regulations may be cited as the Tenements (Scotland) Act 2004 (Heating Services) Regulations 2016.

(2) They come into force on [ ] 2016.

#### **Interpretation**

2. In these Regulations—

“the 2004 Act” means the Tenements (Scotland) Act 2004;

“alternative dispute resolution process” means methods of resolving a dispute, including mediation, other than normal court processes;

“communal heating” means the distribution of thermal energy in the form of steam, hot water, or chilled liquids from a central source in a building which is occupied by more than one final customer, for the use of space or process heating, cooling or hot water;

“district heat network” means the distribution of thermal energy in the form of steam, hot water or chilled liquids from a central source of production through a network to multiple buildings or sites for the use of space or process heating, cooling or hot water;

“installation” means work an owner is entitled to instruct or carry out under section 19 (installation of service pipes etc.) of the 2004 Act in accordance with these Regulations;

“notice of the proposals” means notice given under regulation 4 or revised notice;

“owner” has the meaning given by section 28 (meaning of “owner”, determination of liability etc.) of the 2004 Act;

“relevant contributor” means any owner of a flat in the tenement who is not an owner of the other part of the tenement but is required, by virtue of the management scheme which applies

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(a) 2004 asp 11.

as respects the tenement, to contribute to the cost of maintenance of the other part of the tenement;

“revised notice” means a notice under regulation 5(2)(b);

“the other part of the tenement” means the part of the tenement—

(a) through which pipes, cables or other equipment would be led; and

(b) to which such equipment would be fixed,

under these Regulations; and

“title condition” has the meaning given by section 122(1) (interpretation) of the Title Conditions (Scotland) Act 2003(a).

### *Prescribed services*

#### **Services permitting installation of pipes etc. in tenements**

**3.**—(1) Subject to paragraph (2), the following services are prescribed for the purposes of section 19(1) (installation of service pipes etc.) of the 2004 Act—

(a) heating services supplied by a district heat network; and

(b) communal heating.

(2) Paragraph (1) does not apply to the extent that a title condition enables an owner to instruct or carry out an installation.

### *Procedures for installation rights*

#### **Installation notice requirements**

**4.**—(1) Where proposing an installation, the owner must give notice to each owner of the other part of the tenement of—

(a) the nature and extent of the work to be carried out;

(b) the safety standards which the work is required to meet;

(c) a timetable for carrying out the work, including the dates by which it is proposed the work will be commenced and completed;

(d) what disruption (if any) is expected to be caused; and

(e) the address to which any objections or other representations relating to the notice are to be sent.

(2) That notice must be in the form specified in Schedule 1.

#### **Installation objections or representations**

**5.**—(1) Where an owner gives notice of the proposals, any owner of the other part of the tenement may object or make other representations in relation to that notice, by giving notice of the objections or representations not later than 28 clear days after notice of the proposals.

(2) If the owner giving notice of the proposals still wishes to proceed, that owner—

(a) must try to reach agreement with an owner who objects or makes representations under paragraph (1); and

(b) may revise the proposal set out in the notice by giving a revised notice.

(3) Under paragraph (2)(a), the owner giving notice of the proposals must propose an alternative dispute resolution process, unless doing so would not be suitable (or agreement has been reached).

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(a) 2003 asp 9. Section 122(1) was relevantly amended by paragraph 43(11) of schedule 5 to the Land Registration etc. (Scotland) Act 2012 (asp 5).

(4) Where a revised notice is given under paragraph (2)(b), the owner giving notice of the proposals must—

- (a) give notice to each owner of the other part of the tenement of the revised notice; and
- (b) allow objections or other representations in relation to the revised notice in accordance with paragraphs (1) and (2).

(5) That revised notice must be in the form specified in Schedule 2.

### **Carrying out installation**

**6.**—(1) An installation may only begin—

- (a) if no objections or representations are made under regulation 5(1), after 28 clear days have elapsed from giving of the notice of the proposals;
- (b) if an objection or representation is made, when agreement is reached under regulation 5(2)(a); or
- (c) if revised notice is given, when agreement is reached in accordance with regulation 5(4).

(2) The owner giving notice of the proposals may apply to the sheriff under section 6(1)(b) (application to sheriff for order resolving certain disputes) of the 2004 Act for an order allowing an installation to be carried out only after—

- (a) 28 clear days have elapsed from giving of the notice of the proposals; and
- (b) the owner has complied with regulation 5(2) (and regulation 5(4) as the case may be).

(3) When considering an application made in accordance with paragraph (2), 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.

### **Costs of installation**

**7.** Nothing in these Regulations creates liability on an owner given notice of the proposals or revised notice to contribute to the cost of carrying out an installation.

### **Damage for installation**

**8.**—(1) The owner instructing or carrying out an installation must, so far as reasonably practicable, ensure that the other part of the tenement is left substantially in no worse a condition than that in which it was in immediately before the installation (subject to the installation itself).

(2) If the owner fails to comply with the duty in paragraph (1), an owner of the other part of the tenement or a relevant contributor may—

- (a) carry out, or arrange for the carrying out of, such work as is reasonably necessary to restore the part so that it is substantially in no worse a condition than that in which it was in immediately before the installation (subject to the installation itself); and
- (b) recover from the owner any expenses reasonably incurred in doing so.

### **Access for installation**

**9.**—(1) For the avoidance of doubt, if section 17 (access for maintenance and other purposes) of the 2004 Act does not apply, the owner or occupier of any part of the tenement that access is required to, or through, for the purpose of an installation must allow access for that purpose.

(2) That access is to be provided in accordance with section 17 of the 2004 Act.

St Andrew's House  
Edinburgh

2016

Authorised to sign by the Scottish Ministers

## SCHEDULE 1

Regulation 4(2)

### Form of installation notice **INSTALLATION NOTICE**

This notice is given by an owner proposing to install equipment through or to common parts of a tenement for the purpose of providing a heating service to that owner's flat.

**Heating service for which the installation is required:**

*(see note for completion 1)*

**To the owner(s) of the other part of the tenement:**

*(see note for completion 2)*

**Name and address of the owner giving notice:**

*(see note for completion 3)*

**Flat to which the notice relates (if different from the above):**

*(see note for completion 4)*

**The nature and extent of the work to be carried out:**

*(see note for completion 5)*

**The safety standards which the work is required to meet:**

*(see note for completion 6)*

**The timetable for carrying out the work, including the proposed dates of commencement and completion:**

*(see note for completion 7)*

**What disruption is expected to be caused (if any) to other owners within the tenement:**

*(see note for completion 8)*

**Any objections or other representations relating to this notice must be sent to:**

*(see note for completion 9)*

**Date:**

*(see note for completion 10)*

*Notes for completion*

*(These notes are not part of the notice)*

1. Please state whether the service is district heating or communal heating.
2. This notice must be sent to each owner of the other part of the tenement through or to which equipment would be led or fixed. You must insert the full name and address of the owner, if known.
3. You must insert your full name and address.

4. This is only applicable if you do not currently reside at the above address, e.g. you may be the landlord instructing the proposed installation. Otherwise put “not applicable”.
5. Provide information on where the equipment will be led through or fixed to the tenement. You should obtain this information from the installing utility company.
6. Provide the safety standards that the installing utility company will adhere to when installing the service. You should obtain this information from the installing utility company.
7. The utility company will have provided you with a proposed timetable for the work. This will show the time period within which the work is due to be completed. You should provide this information here.
8. Some owners within the tenement may not be owners of the other part of the tenement through or to which equipment would be led or fixed. However, there may be general disruption to the whole tenement resulting from the installation work, e.g. drilling, banging, dust etc. You should provide any details of work which will affect any owners in the tenement.
9. Specify the address to which any objections or other representations are to be sent. The deadline for such objections or representations is not later than 28 clear days after this notice is given. In accordance with section 30(4) of the 2004 Act, this notice is taken to be given on the day of posting or, if transmitted by electronic means, the day of transmission.
10. Provide the date on which you are posting the notice; or if you are transmitting the notice by electronic means, the date of transmission.

## SCHEDULE 2

Regulation 5(5)

### Form of revised installation notice

#### **REVISED INSTALLATION NOTICE**

This notice is given by an owner proposing to install equipment through or to common parts of a tenement for the purpose of providing a heating service to that owner's flat. This notice contains revised details proposed after an objection or representation was received from an owner of the other part of the tenement.

#### **YOU MUST ATTACH ANY PREVIOUS NOTICE OF THE PROPOSALS TO THIS REVISED NOTICE**

##### **Heating service for which the installation is required:**

*(see note for completion 1)*

##### **To the owner(s) of the other part of the tenement:**

*(see note for completion 2)*

##### **Name and address of the owner giving notice:**

*(see note for completion 3)*

##### **Flat to which the notice relates (if different from the above):**

*(see note for completion 4)*

##### **Any revisions to the nature and extent of the work to be carried out:**

*(see note for completion 5)*

##### **Any revisions to the safety standards which the work is required to meet:**

*(see note for completion 6)*

##### **Any revisions to the timetable for carrying out the work, including the proposed dates of commencement and completion:**

*(see note for completion 7)*

##### **What disruption is expected to be caused (if any) to other owners within the tenement:**

*(see note for completion 8)*

##### **Any objections or other representations relating to this revised notice must be sent to:**

*(see note for completion 9)*

##### **Date:**

*(see note for completion 10)*

*Notes for completion*

*(These notes are not part of the notice)*

1. Please state whether the service is district heating or communal heating.
2. This notice must be sent to each owner of the other part of the tenement through which equipment would be led or fixed. You must insert the full name and address of the owner, if known.
3. You must insert your full name and address.
4. This is only applicable if you do not currently reside at the above address, e.g. you may be the landlord instructing the proposed installation. Otherwise put “not applicable”.
5. Describe any revisions to the information on where the equipment will be led through or fixed to the tenement. You should obtain this information from the installing utility company.
6. Describe any revisions to the safety standards that the installing utility company will adhere to when installing the service. You should obtain this information from the installing utility company.
7. Describe any revisions to the proposed timetable for the work, including the time period within which the work is due to be completed. You should obtain this information from the installing utility company.
8. Some owners within the tenement may not be owners of the other part of the tenement through or to which equipment would be led or fixed. However, there may be general disruption to the whole tenement resulting from the revised installation work, e.g. drilling, banging, dust etc. You should provide any details of work which will affect any owners in the tenement.
9. Specify the address to which any objections or other representations are to be sent. The deadline for such objections or representations is not later than 28 clear days after this revised notice is given. In accordance with section 30(4) of the 2004 Act, this revised notice is taken to be given on the day of posting or, if transmitted by electronic means, the day of transmission.
10. Provide the date on which you are posting the revised notice; or if you are transmitting the revised notice by electronic means, the date of transmission.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations prescribe services for which an owner of a flat is entitled to lead through, and fix to, common parts of a tenement pipes, cables or other equipment in accordance with section 19 of the Tenements (Scotland) Act 2004 (“the 2004 Act”). They also set out the procedure for exercising those rights.

Regulation 3 provides that these services are heating supplied by a district heat network and communal heating (both of which are defined in regulation 2). These Regulations only apply where the title conditions do not make provision allowing equivalent works.

Regulation 4 requires notice of an installation to be provided in the form contained in Schedule 1.

Regulation 5 provides for objections and representations in relation to notice of a proposed installation. This includes requirements as to revised notices, which must be provided in the form contained in Schedule 2.

Regulation 6 sets out when work may begin on an installation.

Regulation 7 provides that these Regulations do not make other owners in the tenement liable for the costs of such installations.

Regulation 8 requires the owner exercising installation rights under these Regulations to reinstate the premises as far as possible to the condition they were in prior to the work being undertaken and reimburse the cost of repairing any damage done.

Where section 17 of the 2004 Act does not apply, regulation 9 provides for the avoidance of doubt for access to be required to be provided to common parts of the tenement for the purpose of an installation.

Where any notice is required to be given under the Act or these Regulations, the requirements of section 30 of the 2004 Act (giving notice to owners) apply.

A Business and Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Family and Property Law Team, Scottish Government, St Andrew’s House, Regent Road, Edinburgh, EH1 3DG and online at [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **ANNEX C: List of consultees**

### **Corporate bodies**

Convention of Scottish Local Authorities, and all local authorities in Scotland  
Energy Savings Trust  
Equality and Human Rights Commission  
Faculty of Advocates  
Forestry Commission  
Health and Safety Executive  
Historic Environment Scotland  
Historic Houses Association for Scotland  
Judges of the Court of Session  
Keeper of the Registers of Scotland  
Law Society of Scotland  
Members of the European Parliament representing Scotland  
National Trust for Scotland  
Property Managers Association Scotland  
Royal Institution of Chartered Surveyors (RICS)  
Scotland Office  
Scottish Courts and Tribunals Service  
Scottish Land and Estates  
Scottish Law Agents Society  
Scottish Law Commission  
Scottish Natural Heritage  
Scottish Water  
Scotland Gas Networks  
Scottish Arbitration Centre  
Scottish Mediation Network  
Scottish Power  
Scottish Property Federation  
Scottish and Southern Energy  
Society of Local Authority Lawyers and Administrators in Scotland (SOLAR)

### **Individuals**

John MacLeod, University of Glasgow  
Professor Angus McAllister  
Professor George Gretton  
Professor Kenneth Reid  
Professor Robert Rennie  
Professor Roderick Paisley  
Ken Swinton, University of Abertay  
Douglas Cuisine

# ANNEX D: CONSULTATION ON THE TENEMENTS (SCOTLAND) ACT 2004 (HEATING SERVICES) REGULATIONS



## RESPONDENT INFORMATION FORM

**Please Note.** If you are responding by hard copy through the post this form **must** be returned with your response to ensure that we handle your response appropriately. This form does not need to be completed when replying through Citizen Space as Citizen Space contains mandatory fields asking for details of the person or body responding to the consultation and whether the person or body is happy for their response to be published.

Responses to this consultation must either be on-line through Citizen Space or hard copy. We will not accept responses by email.

### 1. Name/Organisation

Organisation Name

Title Mr  Ms  Mrs  Miss  Dr  Please tick as appropriate

Surname

Forename

### 2. Postal Address

Postcode	Phone	Email
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3. Permissions - I am responding as:

Individual / Group/Organisation

Please tick as

(a) Do you agree to your response being made available to the public?

Yes  No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis  
Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation will be made available to the public.

Are you content for your response to be made available?

Please tick as appropriate  
 Yes  No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?  
Please tick as appropriate  Yes  No

## SUMMARY OF QUESTIONS

**Question 1:** Should the proposed Regulations be made? Yes/No. Please give reasons for your answer.

Yes  No

Comments

**Question 2:** Do you have any comments on the draft Regulations, including on the proposed procedure for the installing owner to follow? Yes/No. Please outline any comments you may have.

Yes  No

Comments

**Question 3:** Do you have any comments on the proposal that if objections are received, the installing owner must propose an alternative dispute resolution process unless this is not suitable? Yes/No. Please give reasons for your answer.

Yes  No

Comments

**Question 4:** The draft Regulations provide a default scheme in order to protect existing title conditions which may be contained within individual homeowners' title deeds. Is this the correct approach? Yes/No. Please give reasons for your answer.

Yes  No

Comments

**Question 5:** If a section 104 Order under the Scotland Act 1998 is made in relation to the installation of gas pipes in common parts of tenements, should

the same procedures as outlined in the draft Regulations for heating services apply? Yes/No. Please give reasons for your answer.

Yes  No

Comments

**Question 6:** Do you have any other comments you would wish to make?

Yes  No

Comments

## **ANNEX E: Business and Regulatory Impact Assessment (BRIA)**

### **Title of Proposal**

Prescribe District and Communal Heating Services in regulations under section 19 of the Tenements (Scotland) Act 2004 (“the 2004 Act”).

The proposed regulations under section 19 would only cover district and communal heating services. However, the intention is that an Order under section 104 of the Scotland Act 1998 would 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 proposed regulations on district and communal heating pipes should be read as including the proposed 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 with 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 draft 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 has been approached for secondary legislation to be made to assist the installation of district and communal 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 proposed 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**

This partial BRIA forms part of a public consultation.

- **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 the work to alleviate fuel poverty and/ or to provide more efficient heating and energy services.

### **Benefits**

#### **Option 1**

Individuals and businesses would continue to follow their own procedures that 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**

Would provide a regulated set of procedures to follow. The action and responsibility of each person is made clear.

It 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 follow an alternative dispute resolution (ADR) process if suitable.

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 to proceed.

### **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.

Any ADR process will incur costs as will any application to the Sheriff. However, the installer will not choose to use ADR if ADR should be unsuitable due to costs. And 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 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; 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 modify 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 have taken this point on board in the draft regulations.

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 is in the draft regulations attached to this consultation paper.

### **Legal Aid Impact Test**

The proposed draft regulations set 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

Following comments during the preparation of this BRIA, the draft regulations now make specific reference to the use of an ADR service where suitable for the installing owner to try to reach agreement with an owner who objects or makes representations. This could reduce the need for an application to the Sheriff.

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**

The policy does not need enforcement or sanctions. 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 would remain the case if the proposed regulations should be made.

If the regulations should be made, the Scottish Government would monitor their effectiveness and consider any representations made on their operation in practice.

### **Implementation and delivery plan**

Depending on views from consultees, the Scottish Government would intend to make the proposed regulations in relation to district and communal heating services. The Scottish Government would also intend to work 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 would come into force at around the same time.

The Scottish Government will also discuss with the Lord President's Office if any new court rules may be needed as a result of these planned regulations and Order.

- **Post-implementation review**

If the regulations should be made, the Scottish Government would monitor their effectiveness 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 concerns.

- **Summary costs and benefits table**

As previously stated at this stage 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).	Negligible savings through clearer procedures.  May be some costs in relation to ADR and going to court. These should be low as ADR will only be used when cost-effective and few applications to court are expected.
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 proposed regulations would also 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:**

**Paul Wheelhouse, Minister for Community Safety and Legal Affairs**

**Scottish Government Contact point: Sandra Jack ext 42025**

## ANNEX F: Partial Equality Impact Assessment (EQIA)

<b>Title of policy/ practice/ strategy/ legislation etc.</b>	<p>The Tenements (Scotland) Act 2004 (Heating Services) Regulations.</p> <p>This EQIA relates to proposed regulations under section 19 of the Tenements (Scotland) Act 2004 on the installation of district and communal heating pipes in common parts of tenements. However, it is also proposed to make an Order under section 104 of the Scotland Act 1998 on the installation of gas pipes in common parts of tenements. Therefore, this EQIA covers the proposed Order as well as the proposed regulations. References to the proposed regulations should be read as covering the proposed Order as well.</p>	
<b>Minister</b>	<p>Paul Wheelhouse, Minister for Community Safety and Legal Affairs</p>	
<b>Lead official</b>		
<b>Officials involved in the EQIA</b>	<b>name</b>	<b>team</b>
	<p>Sandra Jack Simon Stockwell</p>	<p>Family and Property Law</p>
<b>Directorate: Division: Team</b>	<p>Learning and Justice: Civil Law: Family and Property Law</p>	
<b>Is this new policy or revision to an existing policy?</b>	<p>An existing policy but no regulations made to date.</p>	

## **Screening**

### ***Policy Aim***

To introduce

- Regulations to entitle 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;
- Such services to be prescribed: district heating and communal heating (Heating Services);
- A simple process for the installing owner to follow and to ensure any owners who object are given a chance to outline their objections; and
- If no agreement can be reached by the installing owner then they can to make an application to the Sheriff for an order.

### ***Who will it affect?***

The policy will affect homeowners of tenement properties who wish to be connected to a heating service (district heating and communal heating). A separate order is being proposed for the installation of Gas. The regulations will assist in the programme of work by government to combat fuel poverty.

### ***What might prevent the desired outcomes being achieved?***

There is no evidence to suggest that there are issues which will prevent the desired outcomes being achieved. The Regulations set out the procedure to be followed when an owner is seeking to install pipes in relation to the prescribed services. The procedure allows for objections to be made and encourages agreement to be sought. However, where agreement cannot be reached the installing owner must propose an alternative dispute resolution (ADR) process in order to resolve any dispute, unless ADR is not appropriate. If ADR fails to produce an agreement or the ADR process was not applicable an installing owner can then consider making an application to the Sheriff to seek an order allowing the proposed installation to be carried out.

## **Stage 1: Framing**

### ***Results of framing exercise***

A meeting was held with other members of the Family and Property Law team as well as from a colleague from Energy where the impacts of the bill on the protected groups. In particular we discussed whether homeowners who are given notice of the proposed installation might be unable to read the notice due to a disability or because a lack of knowledge of the English language. We raised this point with one of our BRIA interviewees and they confirmed

that this was not an issue that they had come across. We concluded it would not be proportionate to make specific provision in relation to this point.

### ***Extent/Level of EQIA required***

Following the framing exercises, we believed that the level of EQIA needed was low as the degree of impact on the protected characteristics was limited.

## Stage 2: Data and evidence gathering, involvement and consultation

Include here the results of your evidence gathering (including framing exercise), including qualitative and quantitative data and the source of that information, whether national statistics, surveys or consultations with relevant equality groups.

Characteristic	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and action taken
<b>AGE</b>	No evidence	N/A	N/A
<b>DISABILITY</b>	No evidence	N/A	N/A
<b>SEX</b>	No evidence	N/A	N/A
<b>PREGNANCY AND MATERNITY</b>	No evidence	N/A	N/A
<b>GENDER REASSIGNMENT</b>	No evidence	N/A	N/A
<b>SEXUAL ORIENTATION</b>	No evidence	N/A	N/A
<b>RACE</b>		N/A	N/A
<b>RELIGION OR BELIEF</b>	No evidence	N/A	N/A
<b>MARRIAGE AND CIVIL PARTNERSHIP</b> (the Scottish Government does not require assessment)	No evidence	N/A	N/A

<p>against this protected characteristic unless the policy or practice relates to work, for example HR policies and practices - refer to Definitions of Protected Characteristics document for details)</p>			
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### Stage 3: Assessing the impacts and identifying opportunities to promote equality

Having considered the data and evidence you have gathered, this section requires you to consider the potential impacts – negative and positive – that your policy might have on each of the protected characteristics. It is important to remember the duty is also a positive one – that we must explore whether the policy offers the opportunity to promote equality and/or foster good relations.

#### Do you think that the policy impacts on people because of their age?

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			✓	No effect.
Advancing equality of opportunity			✓	No effect.
Promoting good relations among and between different age groups			✓	No effect.

#### Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			✓	No effect.
Advancing equality of			✓	No effect.

opportunity				
Promoting good relations among and between disabled and non-disabled people			✓	No effect.

**Do you think that the policy impacts on men and women in different ways?**

<b>Sex</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			✓	No effect.
Advancing equality of opportunity			✓	No effect.
Promoting good relations between men and women			✓	No effect.

**Do you think that the policy impacts on women because of pregnancy and maternity?**

<b>Pregnancy and Maternity</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			✓	No effect.
Advancing equality of opportunity			✓	No effect.
Promoting good relations			✓	No effect.

**Do you think your policy impacts on transsexual people?**

<b>Gender reassignment</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			✓	No effect.
Advancing equality of opportunity			✓	No effect.
Promoting good relations			✓	No effect.

**Do you think that the policy impacts on people because of their sexual orientation?**

<b>Sexual orientation</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			✓	No effect.
Advancing equality of opportunity			✓	No effect.
Promoting good relations			✓	No effect.

**Do you think the policy impacts on people on the grounds of their race?**

<b>Race</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			✓	No effect.
Advancing equality of opportunity			✓	No effect.

Promoting good race relations			✓	No effect.
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**Do you think the policy impacts on people because of their religion or belief?**

<b>Religion or belief</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			✓	No effect.
Advancing equality of opportunity			✓	No effect.
Promoting good relations			✓	No effect.

**Do you think the policy impacts on people because of their marriage or civil partnership?**

<b>Marriage and Civil Partnership<sup>1</sup></b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			✓	No effect.

<sup>1</sup>In respect of this protected characteristic, a body subject to the Public Sector Equality Duty (which includes Scottish Government) only needs to comply with the first need of the duty (to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010) and only in relation to work. This is because the parts of the Act covering services and public functions, premises, education etc. do not apply to that protected characteristic. Equality impact assessment within the Scottish Government does not require assessment against the protected characteristic of Marriage and Civil Partnership unless the policy or practice relates to work, for example HR policies and practices.

## Stage 4: Decision making and monitoring

### *Identifying and establishing any required mitigating action*

Have positive or negative impacts been identified for any of the equality groups?	No.
Is the policy directly or indirectly discriminatory under the Equality Act 2010 <sup>7</sup> ?	No.
If the policy is indirectly discriminatory, how is it justified under the relevant legislation?	Not applicable.
If not justified, what mitigating action will be undertaken?	Not applicable.

### *Describing how Equality Impact analysis has shaped the policy making process*

The EQIA process has confirmed that the proposed regulations have no impact on any of the protected characteristics.

### *Monitoring and Review*

If the proposed regulations are made, the Government will monitor their impact and consider any representations made on their operation in practice.

---

## Stage 5 - Authorisation of EQIA

Please confirm that:

- ◆ This Equality Impact Assessment has informed the development of this policy:

Yes  No

- ◆ Opportunities to promote equality in respect of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation have been considered, i.e.:

- Eliminating unlawful discrimination, harassment, victimisation;
- Removing or minimising any barriers and/or disadvantages;
- Taking steps which assist with promoting equality and meeting people's different needs;
- Encouraging participation (e.g. in public life)
- Fostering good relations, tackling prejudice and promoting understanding.

Yes  No

- ◆ If the Marriage and Civil Partnership protected characteristic applies to this policy, the Equality Impact Assessment has also assessed against the duty to eliminate unlawful discrimination, harassment and victimisation in respect of this protected characteristic:

Yes  No  Not applicable

### Declaration

**I am satisfied with the equality impact assessment that has been undertaken for The Tenements (Scotland) Act 2004 (Heating Services) Regulations and give my authorisation for the results of this assessment to be published on the Scottish Government's website.**

**Name: TO BE COMPLETED AFTER THIS CONSULTATION.**

**Position:**

**Authorisation date:**



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