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Delegated Powers and Law Reform Committee
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Lagh

Heat Networks (Scotland) Bill: Stage 1



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Contents

Introduction	1
Overview of the Bill	2
Delegated powers	3
Annex	4

Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

- (a) any—
 - (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
 - (ii) [deleted]
 - (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
- (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
- (c) general questions relating to powers to make subordinate legislation;
- (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
- (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;
- (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;
- (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
- (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.
- (i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>



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Introduction

1. At its meetings on 11 August and 15 September 2020, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the [Heat Networks \(Scotland\) Bill](#) ("the Bill") at Stage 1. At its first meeting to consider the Bill, the Committee agreed to write to the Scottish Government with a question on one of the delegated powers. The Committee considered the Scottish Government's response at its meeting on 15 September 2020. The full correspondence is included in the Annex.
2. The Committee submits this report to the lead Committee for the Bill under Rule 9.6.2 of the Standing Orders.
3. The Scottish Government has provided the Parliament with a [Delegated Powers Memorandum](#) ("DPM") on the delegated powers provisions in the Bill.

Overview of the Bill

4. This Scottish Government Bill was introduced by the Cabinet Secretary for Transport, Infrastructure and Connectivity, Michael Matheson MSP, on 2 March 2020.
5. The overall purpose of the Bill is to encourage greater deployment of heat networks in Scotland, in order to help reduce emissions from heating homes and buildings.
6. A heat network is a network by which thermal energy is distributed from one or more sources of production to a building or buildings. The heat network operates like a giant central heating system, this avoids the need for individual boilers or electric heating systems in every building. Heat networks are often more efficient than individual fossil fuel systems and can be fully run from renewables or recovered from surplus heat sources. It follows that they have the potential to reduce emissions and assist in Scotland meeting its climate change emissions targets.

Delegated powers

Section 56 - Interpretation of Part 5 - definition of "relevant person"

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: negative procedure

7. Section 52 requires that a relevant person must provide a report which provides an assessment of the potential for each non-domestic building it has an interest in to connect to a heat network. "Relevant person" is defined in section 56 as a Scottish public authority within the meaning of section 3(1)(a) of the Freedom of Information (Scotland) Act 2002, and such other person, or persons of such description as the Scottish Ministers may specify by regulations.
8. The DPM explains that the duty under section 52(1) is initially being placed on public authorities as relevant persons, however, flexibility is required to be able to amend the definition of "relevant person" to expand the scope of the duty to other persons if required. This may be required, for example, should the rate of deployment of heat networks in Scotland not be sufficient to meaningfully contribute to Scotland's climate change targets. A regulation-making power in this context would afford that flexibility.
9. The Committee asked the Scottish Government to explain why, given these powers allow the scope of this new statutory duty to be extended into the private sector, which may have financial implications for private bodies, it is appropriate for the power to be subject to the negative rather than the affirmative procedure.
10. In its response the Scottish Government explained that under the Assessment of Energy Performance of Non-domestic Buildings (Scotland) Regulations 2016 (SSI 2016/146), owners of larger non-domestic buildings (over 1,000m²) are required to undertake an assessment of the energy performance when the property is sold or rented to a new tenant. Those types of private non-domestic buildings are most likely to be captured under extension of "relevant person" definition as they would typically be considered a suitable anchor loads for a heat network. In light of those existing requirements, Ministers do not expect the preparation of a building assessment report for larger non-domestic buildings will be a resource-intensive exercise. Therefore, the Scottish Government considers the negative procedure to be appropriate.
11. In light of the response from the Scottish Government, the Committee is content with this power in principle and that the exercise of the power will be subject to the negative procedure.
12. The Committee is also content with all other delegated powers in the Bill.

Annex

Letter to the Scottish Government on the Heat Networks (Scotland) Bill at Stage 1

The Delegated Powers and Law Reform Committee considered the above Bill on 11 August 2020 and seeks an explanation of the following matter:

Section 56 – Interpretation of Part 5 – definition of “relevant person”

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: negative procedure

This section defines “Relevant person” as a Scottish public authority within the meaning of section 3(1)(a) of the Freedom of Information (Scotland) Act 2002, and such other person, or persons of such description as the Scottish Ministers may specify by regulations.

The DPM explains that the duty under section 52(1) is initially being placed on public authorities as relevant persons, however, flexibility is required to be able to amend the definition of “relevant person” to expand the scope of the duty to other persons if required.

In its policy note at paragraph 77 the Scottish Government states that it does not expect the preparation of a building assessment report to be a resource-intensive exercise because it expects that “most, if not all, of the information that may be required would already be available to public sector bodies through their climate change reporting, as required by the Climate Change (Duties of Public Bodies: Reporting Requirements) (Scotland) Order 2015/37, or through information provided to them from, for example, their current energy supplier”.

However, the power in section 56 allows the Scottish Ministers to extend the scope of the duty in section 52 beyond the Scottish public sector. Whilst the duty to prepare building assessment reports is not expected to be too onerous for public authorities, this is because they are already subject to climate change reporting requirements. That would not be the case for bodies in the private sector and would constitute a new regulatory burden.

Could you expand on why, given these powers allow the scope of this new statutory duty to be extended into the private sector, which may have financial implications for private bodies, it is appropriate for the power to be subject to the negative rather than the affirmative procedure?

I’d be grateful if you could please email your response to the Delegated Powers and Law Reform Committee e-mail address above by 5pm on Monday 7 September 2020.

Andrew Proudfoot, Clerk to the Delegated Powers and Law Reform Committee

Response from the Scottish Government on the Heat Networks (Scotland) Bill at Stage 1

Thank you for your letter to James Hynd of 13 August 2020 requesting an explanation on the rationale behind the proposed use of delegated powers in the Heat Networks (Scotland) Bill. I have addressed this point below.

Section 56 – Interpretation of Part 5 – definition of “relevant person”

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: negative procedure

The Delegated Powers Memorandum (DPM) explains “that the duty under section 52(1) is initially being placed on public authorities as relevant persons, however, flexibility is required to be able to amend the definition of “relevant person” to expand the scope of the duty to other persons if required”.

Could you expand on why, given these powers allow the scope of this new statutory duty to be extended into the private sector, which may have financial implications for private bodies, it is appropriate for the power to be subject to the negative rather than the affirmative procedure?

The Policy Memorandum at paragraph 77, states that the Scottish Government does not expect the preparation of a building assessment report to be a resource-intensive exercise due to the existing duties on public sector as “required by the Climate Change (Duties of Public Bodies: Reporting Requirements) (Scotland) Order [(SSI 2015/247), or through information provided to them from, for example, their current energy supplier”. The Scottish Government expects the same will apply to private non-domestic buildings.

Under the Assessment of Energy Performance of Non-domestic Buildings (Scotland) Regulations 2016 (SSI 2016/146) (“the Regulations”), owners of larger non-domestic buildings (over 1,000m²) are required to undertake an assessment of the energy performance when the property is sold or rented to a new tenant. Those types of private non-domestic buildings are most likely to be captured under extension of “relevant person” definition as they would typically be considered a suitable anchor loads for a heat network.

In light of existing requirements to obtain similar information under the Assessment of Energy Performance of Non-domestic Buildings (Scotland) Regulations 2016 (SSI 2016/146) Ministers do not expect the preparation of a building assessment report for larger non-domestic buildings – those considered suitable for anchor loads - under section 52(1) of the Heat Networks (Scotland) Bill to be a resource-intensive exercise. Therefore, the Scottish Government considered negative procedure to be appropriate rather than the affirmative procedure.

I hope you find this helpful.

Urszula Kasperek, Senior Policy Advisor, Heat Networks Team

