

Response to proposals for a Heat in Buildings Bill

March 2024

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1. Executive Summary

- 1.1 Over the past year Consumer Scotland has engaged with the Scottish Government as it prepared proposals to introduce a Heat in Buildings Bill which, if passed by the Scottish Parliament, would prohibit the use of fossil fuel heating as the primary heating system in all buildings by 1 January 2046 and serve as an enabler for subordinate regulations designed to improve the energy efficiency of Scotland's buildings.
- 1.2 Consumer Scotland's draft work programme 2024-2025 contains three strategic challenges which inform all of its work. These challenges include affordability, climate change mitigation and adaptation, and consumers in vulnerable circumstances; all of which are key features of the Heat in Buildings Bill consultation.
- 1.3 Climate change mitigation and adaptation has been a key feature across Consumer Scotland's work since its inception. We have carried out research to understand how consumers engage with the transition to Net Zero. We have also launched research looking to understand consumers' motivations and experiences of installing low carbon technologies, including solar PV and heat pumps. Consumer Scotland has also produced a range of submissions and briefings to help inform and support government officials. This has helped to inform government work on decarbonisation, and to support consumers to transition safely and at the pace and scale required to meet Scotland's statutory greenhouse gas emissions reduction targets.¹
- 1.4 Consumer Scotland does not underestimate the challenge of decarbonising Scotland's buildings, nor the significant ask being made of consumers to help to meet the science-based target to reduce the emission of designated greenhouse gasses in Scotland to net zero by the end of 2045.² However, we also recognise the opportunity to raise the energy efficiency of buildings in Scotland. This could help facilitate the achievement of Scotland's emissions reduction targets, lead to substantial health benefits, and lower energy consumption and bills, all to the benefit of current and future consumers.
- 1.5 To help ensure the delivery of these benefits in practice, our response sets out our initial thoughts on proposals for a Heat in Buildings Bill and the further action we think the Scottish Government needs to take in advance of bringing the Bill to parliament:
 - Consumer Scotland broadly supports the *principle* of the proposals set out in the consultation but is currently unable to take a view on behalf of residential or small business consumers on much of their *substance* on the basis of the information presented in the consultation.
 - Consumer Scotland broadly supports the proposals set out in the consultation as they relate to Heat Networks. But greater recognition is required that connection to a heat network will not always be the optimum solution for all property types or use cases – even in new buildings. We are also generally

supportive of plans for waste and unused heat to be used by heat networks where this technically feasible and cost effective. We consider that there is an opportunity to create a new market for waste and unused heat that requires further development.

- Public sector decarbonisation could serve as an accelerant for decarbonisation in local communities. This potentially makes the case for public sector buildings to decarbonise faster, but adequate resourcing is required.
- Consumer Scotland also supports proposals to introduce a Heat in Buildings Standard for all buildings, with appropriate trigger points to encourage early action upon a relevant change of circumstances and appropriate abeyances provided to consumers who may struggle to meet requirements due to circumstances beyond their direct control. Exemptions should be granted sparingly. However, we have some concerns about how the proposed Heat in Buildings Standard could be implemented, principally around the implications for consumer protection and consumer outcomes.
- Customer journeys need to be thought through and stress-tested before decisions on key aspects of the proposals are made.

1.6 We have also considered a range of issues not covered by the scope of this consultation. We intend to explore these further in a series of short papers.

2. Introduction

- 2.1 Consumer Scotland is the statutory body for consumers in Scotland. Established by the Consumer Scotland Act 2020,³ our Purpose is to improve outcomes for current and future consumers. We are independent of the Scottish Government and accountable to the Scottish Parliament. Our core funding is provided by the Scottish Government, but we also receive funding for research and advocacy activity in the electricity, gas, post, and water sectors via industry levies which are derived from consumers' bills.
- 2.2 Our responsibilities relate to consumer advocacy. In our 2023-2027 Strategic Plan,⁴ we have identified three cross-cutting consumer challenges, which guide our work during this period. They are:
- Affordability
 - Climate change mitigation and adaption
 - Consumers in vulnerable circumstances
- 2.3 Consumer Scotland welcomes the opportunity to contribute to this consultation. We are pleased to provide one part of the necessary input on the interests and protections on behalf of consumers.
- 2.4 This is the first response by Consumer Scotland on the Scottish Government's Heat in Buildings (HiBs) programme. We recognise the significant contribution that heat in buildings makes to Scotland's greenhouse gas emissions, and the importance of improved energy efficiency to realising a just transition to Net Zero. We also recognise that legislation is likely to be a necessary component to addressing energy inequalities and improving Scotland's energy productivity. However, we consider that positive consumer outcomes will only be achieved if the Scottish Government's proposed Heat in Buildings Bill, and the subordinate legislation it will enable, is designed and implemented effectively.
- 2.5 To guide our response to this consultation, we have utilised our Consumer Principles. These are based on frameworks that have been developed over time by both UK and international consumer organisations. Reviewing policy against these principles enables the development of more consumer-focused policy and practice, and ultimately the delivery of better consumer outcomes.⁵ The Consumer Principles are:
- **Access** – can people get the goods or services they need or want?
 - **Choice** – is there any meaningful choice?
 - **Safety** – are consumers adequately protected from risks of harm?

- **Information** – is it accessible, accurate, and useful?
- **Fairness** – are goods and services detrimental or inequitable to individuals or groups of consumers?
- **Representation** – do consumers have a meaningful role in shaping how goods and services are designed and provided?
- **Redress** – if things go wrong, is there an accessible and simple way to put them right?
- **Sustainability** – are consumers enabled to make sustainable choices?

2.6 Viewed through these lenses, our initial assessment is that the evidence, data, and analysis required to support the specific proposals presented by the Scottish Government in the consultation is in large part currently unavailable. As a result, we have been unable to form an informed view as to much of the substance of the proposals contained within the consultation. Our response therefore focuses on the principles which underpin the proposals and, where we have sufficient information, on the consumer outcomes we envisage might be realised, based on our understanding of how they are likely to be operationalised.

2.7 Our concerns primarily relate to issues of consumer protection, and are not limited to the questions as set out in the consultation document. For this reason, we intend to publish a series of short papers during the 2024-2025 financial year to explore these issues in greater detail, before parliamentary scrutiny of the proposed Heat in Buildings Bill commences.

Consultation Process

2.8 On 28 November 2023, the Scottish Government published an open consultation entitled “Delivering Net Zero for Scotland’s Buildings – A Consultation on proposals for a Heat in Buildings Bill”.⁶ A separate consultation is also being conducted to the same timelines on proposals to introduced a new Social Housing Net Zero Standard.⁷ On the same day, the Scottish Government also published a report on energy efficiency and zero emissions heating from the Tenements Short Life Working Group,⁸ and a summary of the results of qualitative research undertaken by the Energy Saving Trust and Taylor McKenzie which explored the attitudes of homeowners in Scotland to proposals to introduce regulation on energy efficiency and zero direct emissions heating, on behalf of the Scottish Government.⁹

2.9 A Heat in Buildings Bill consultation-stage Strategic Environmental Assessment (SEA),¹⁰ Island Communities Impact Assessment (ICIA),¹¹ Child Rights and Wellbeing Impact Assessment (CRWIA),¹² Equalities Impact Assessment (EIA),¹³ Fairer Scotland Duty Impact Assessment (FSDIA),¹⁴ and a partial Business and Regulatory Impact Assessment (BRIA)¹⁵ were also published on 28 November 2023. These impact assessments were hosted on bespoke webpages separate to the consultation and its supporting documents, and no reference to them is made in the consultation document itself.

2.10 During the consultation period, the Scottish Government organised a series of ten in-person public engagement events across central Scotland,¹⁶ and supplemented these with a total of six online events, of which four were targeted at communities in Lanarkshire,¹⁷ Fife,¹⁸ Aberdeenshire,¹⁹ and the Northern Isles,²⁰ respectively. Separately, a public engagement strategic framework for the overall HiBs programme was published on 13 December 2023.²¹

2.11 Overall, the consultation is part of the process necessary to deliver on the Scottish Government's commitment, as set out in its Heat in Buildings Strategy, to:

*"introduce primary legislation, subject to consultation and limits on devolved competence, that provides the regulatory framework for zero emissions heating and energy efficiency, and underpinning powers to support this transition and the wider Heat In Buildings programme."*²²

2.12 The consultation builds on an extensive history of policy development on what is now referred to as the Scottish Government's HiBs programme, including:

- The 2015 Infrastructure Investment Plan, which declared energy efficiency as a national infrastructure priority²³
- A 2017 consultation on the introduction of Local Heat and Energy Efficiency Strategies (LHEES) and the regulation of heat networks²⁴
- A 2017 consultation on Scotland's Energy Efficiency Programme (SEEP)²⁵
- A 2017 consultation on improving condition standards and energy efficiency in the residential private rented sector (PRS)²⁶
- A second 2017 consultation on the introduction of LHEES and the regulation of heat networks²⁷
- A 2018 consultation on the Energy Efficiency Scotland (EES) programme²⁸
- A 2019 consultation on the EES programme²⁹
- A 2019 consultation on the content of draft regulations brought under s 55 of the Energy Act 2011, requiring improved condition standards and energy efficiency in the residential PRS³⁰
- A 2019 consultation on improving energy efficiency in owner occupied homes³¹
- A 2020 consultation on the introduction of a New Build Heat Standard for dwellings and non-domestic properties³²
- A 2021 consultation on proposals to reform domestic Energy Performance Certificates (EPCs)³³
- A 2021 call for evidence on the introduction of minimum standards of energy efficiency in existing non-domestic properties³⁴

- A 2022 consultation on the introduction of a New Build Heat Standard for dwellings and non-domestic properties³⁵
- A 2023 consultation on proposals to reform domestic EPCs³⁶

2.13 The Heat in Buildings Bill consultation sought views on the consumer and public interest from expert and non-technical stakeholders, including businesses and members of the public.

2.14 Consumer Scotland supports the Scottish Government's desire to encourage a broad level of civic engagement with the proposals set out in the consultation document. The HiBs programme will have implications for the vast majority of current and future consumers in Scotland. We therefore consider it important that the Scottish Government hears the voice of consumers in both the residential and non-domestic sectors throughout the development and implementation of relevant HiBs policy. However, for this to have value beyond that which can be obtained through polling, consumers and their representatives must be empowered to form informed and considered views on both the overarching principles and substance of the Scottish Government's proposals, both in terms of their design and their implementation. This necessitates that robust and extensive evidence and analysis is made available to consumers, and presented in such a way as to drive substantive engagement by both expert and non-technical stakeholders, at an appropriately early stage in the policy development lifecycle to facilitate informed debate and aid consensus building.

2.15 We agree with the Scottish Government that there is significant scope for engagement by and for consumers in the development of the proposed Heat in Buildings Bill, and we acknowledge the Scottish Government has undertaken previous consultations on the wider HiBs programme as noted above. However, Consumer Scotland recommends that further modelling and analysis of the impact of these proposals on consumers should be undertaken before the Scottish Government reaches decisions on key aspects of the Bill in order to avoid any unintended detriment.

3. Heat in Buildings Standard

- 3.1 Heating, ventilating, and cooling (HVAC) Scotland's buildings currently accounts for more than a fifth of Scotland's annual greenhouse gas emissions.³⁷ Any credible plan to reach Net Zero must therefore consider how this can be significantly reduced. This is likely to require a continued reduction in primary energy demand through improvements to building fabric and appliance efficiency, and the decarbonisation of any residual demand through the enhanced use of low carbon heating technologies.
- 3.2 As a sector in which a range of mature and rapidly maturing solutions already exist, it is likely that the overwhelming majority of HVAC emissions will need to be curtailed to provide headroom for sectors which are harder to decarbonise. Early action by the buildings sector is also likely to be important in meeting the annual emissions reduction targets set out in legislation;³⁸ the Climate Change Plan Update sets out that the Scottish Government is targeting a 68% reduction in emissions from buildings between 2020 and 2030.³⁹ However, the Climate Change Monitoring Report 2023 shows that progress in reducing the energy intensity of residential buildings and the emissions intensity of non-domestic buildings in Scotland are both currently off track.⁴⁰ The Climate Change Committee's Progress in Reducing Emissions in Scotland 2022 Report to Parliament also assesses energy efficiency in existing non-fuel poor homes as having "insufficient plans", and emissions reductions in commercial buildings and low carbon heating in non-fuel poor homes are both assessed as showing "significant risks".⁴¹
- 3.3 In this context, the Scottish Government is proposing to introduce a Heat in Buildings Standard, which would prohibit the use of fossil fuel heating systems as the primary heating system in all buildings by 1 January 2046, and introduce minimum standards of energy efficiency for all dwellings in the owner occupier⁴² and private rented sectors, and some properties in the residential short term lets (STLs) sector. The Scottish Government is not proposing to include an energy efficiency component of the proposed Heat in Buildings Standard for non-domestic buildings.
- 3.4 For new buildings and existing buildings undergoing conversion, the Building (Scotland) Act 2003 provides the Scottish Ministers with powers to introduce regulations which specify the minimum standards required of their fabric and construction.⁴³ A "New Build Heat Standard" which specifies a minimum standard of energy efficiency and prohibits the use of fossil fuel heating systems will apply to all buildings where an application for a building warrant is made in Scotland from 1 April 2024.⁴⁴
- 3.5 For existing buildings, the Scottish Ministers have powers under s 55 of the Energy Act 2011 to introduce regulations which specify a minimum standard of energy efficiency in the residential PRS, and powers under s 61 to introduce regulations which specify a minimum standard of energy efficiency in the non-domestic PRS.⁴⁵ Sections 63 and 64 of the Climate Change (Scotland) Act 2009 also place an obligation on the Scottish Ministers to make regulations to require the owners of non-domestic buildings and

dwellings with a useful floor area of at least 50 square metres, respectively, to take action to improve the energy performance of relevant buildings, and reduce the emission of designated greenhouse gases produced by or otherwise associated with those buildings.⁴⁶ The consultation proposes to grant the Scottish Ministers the additional powers required to create the Heat in Buildings Standard.

- 3.6 Consumer Scotland considers that the introduction of a new Heat in Buildings Standard will help to raise the energy efficiency of Scotland's dwellings and help to accelerate the rollout of low carbon heating across all buildings. Research carried out by Consumer Scotland in 2023 found that domestic consumers are supportive of taking action to tackle climate change.⁴⁷ However, it also found that they need more guidance and support to understand what they can do to participate. The introduction of the proposed Heat in Buildings Standard will be an important step in engaging and supporting consumers on the actions they will need to take to decarbonise their homes and businesses, and where they can go to get appropriate support.

Question 1: To what extent do you support our proposal to prohibit the use of polluting heating systems in all buildings after 2045?

- 3.7 Consumer Scotland supports the introduction of a Heat in Buildings Standard to help accelerate the decarbonisation of Scotland's buildings. We are also supportive of the intention to prohibit the use of fossil fuel heating systems as the primary heating system in all buildings by 2046 to facilitate Scotland's journey to Net Zero. We consider the proposed backstop date of 31 December 2045 to be consistent with the science-based target to reduce the emission of designated greenhouse gasses in Scotland to net zero by the end of 2045⁴⁸ and, as a sector that has a credible pathway to curtailing the vast majority of its primary emissions, we consider it appropriate to include all buildings within the scope of the proposed Heat in Buildings Standard. However, with almost half of consumers still unaware that fossil fuel heating systems produce emissions which contribute to air pollution and climate change,^{49,50} it will be important that sufficient support is made available to help consumers understand what the Standard requires of them, and why and under what circumstances they are being asked to act. Appropriate flexibility should also be built into the Standard to account for consumers who have difficulty meeting it.
- 3.8 We recommend that the proposed backstop date for low carbon heating is specified on the face of the Bill, and that the Scottish Ministers are given powers to bring this date forwards in future if evidence suggests that this is feasible, cost-effective, and in the consumer interest, in the context of the whole-economy Net Zero target set out in law. The approval of parliament should be required to amend the date to a point in time after 31 December 2045, in the event that the evidence suggests a relaxation of the backstop date may be necessary. Other specific parameters of the proposed Heat in Buildings Standard are likely to be more appropriately defined in subordinate legislation.

Question 2: To what extent do you agree that we should introduce a minimum energy efficiency standard to be met by private sector landlords by the end of 2028?

3.9 Consumer Scotland supports the principle of setting a deadline for minimum energy efficiency standards to be met by residential PRS landlords. However, based on the information that has been made available we are currently unable to take a view on the appropriateness or practicability of the 31 December 2028 backstop proposed in the consultation. To support sufficiently well-informed decision making, we recommend that further information is made available on:

- the scope of the proposed requirements;
- the proposed monitoring and enforcement regime;
- the assessment of wider housing market impacts; and
- incentivising a positive resolution to the issue of “split incentives”.

3.10 We acknowledge that a suite of consultation-stage impact assessments has been prepared to accompany the consultation document. However, we consider it important that greater clarity is provided on the rationale, evidence, and analysis that sits behind the proposal to designate 31 December 2028 as the backstop date for the energy efficiency component of the proposed Heat in Buildings Standard for the residential PRS, in the context of the market pressures the sector has experienced since 2020. Further detail on the pathway to implementation of the Scottish Government’s proposals for the energy efficiency component of the proposed Heat in Buildings Standard in the residential PRS would also be helpful in assessing likely outcomes for tenants or landlords as consumers.

Question 3: To what extent do you agree that we should introduce a minimum energy efficiency standard to be met in owner occupied homes (which still have a polluting heating system) by the end of 2033?

3.11 The consultation document sets out proposals which would require all owner occupied homes without a valid abeyance or exemption to meet the energy efficiency component of the proposed Heat in Buildings Standard by 1 January 2034. However, it is proposed that where an owner occupied residential property already uses low carbon heating by the relevant date for compliance, on application to the relevant monitoring and enforcement body it would be granted an exemption from meeting this requirement. The consultation does not seek views on whether this represents an appropriate level of ambition for the owner occupier sector in Scotland, or the consequences of the proposal to grant exemptions to properties in the circumstances described.

3.12 Consumer Scotland supports the principle of setting a deadline for minimum energy efficiency standards to be met in owner occupied homes. We acknowledge that there is a strong case for a backstop date to be implemented in respect of the energy efficiency

component of the proposed Heat in Buildings Standard. Reliance on market forces alone is also unlikely to deliver the scale or pace of change necessary to meet the emissions reduction trajectory for buildings required to help realise the Scottish Government's statutory emissions reduction targets⁵¹ in a fair and equitable way. We recognise the positive role of backstop dates in supporting the development and growth of the market for energy efficiency in Scotland, and consider that an appropriately designed Standard will help to support local supply chains scale up to meet the needs of consumers.

3.13 However, we are unable to take a view on the appropriateness or practicability of the 31 December 2033 backstop date for energy efficiency proposed in the consultation for owner occupiers without further information on:

- the proposed monitoring and enforcement regime
- the assessment of wider socioeconomic impacts

3.14 We therefore recommend that the Scottish Government sets out the rationale, evidence, and analysis that sits behind the proposal to designate 31 December 2033 as the backstop date for the energy efficiency component of the proposed Heat in Buildings Standard for the owner occupier sector.

Question 4: Do you agree with our proposal to set a minimum energy efficiency standard that can be met by either installing a straightforward list of measures, or showing a good level of energy efficiency based on a reformed EPC fabric efficiency metric?

3.15 The consultation document sets out a proposal that building owners who are subject to the energy efficiency component of the proposed Heat in Buildings Standard could be provided with the opportunity to demonstrate compliance by producing a valid EPC which shows that the property meets the relevant requirements of the Standard by the relevant date for compliance. Alternatively, the consultation also proposes that consumers may be able to produce such other evidence (e.g. invoices, photographs, etc.) as might demonstrate the installation of a "*simple list of measures*", where these have been assessed as technically suitable for the property. These measures are presented in the consultation document as:

- 270 mm loft insulation;
- cavity wall insulation (CWI);
- draught-proofing;
- heating controls;
- 80 mm hot water cylinder insulation; and
- suspended floor insulation.

- 3.16 Through the Scottish Government's work on EPC reform, the consultation notes that the combination of the above measures has been assessed as sufficient to enable most properties to reach what it describes as "*a good standard of energy efficiency*", which in practice will equate to a "Fabric Efficiency" rating of EPC C in the revised residential EPC which will be in place by the time the relevant HiBs regulations take effect.⁵²
- 3.17 Consumer Scotland is supportive of setting a minimum energy efficiency standard, to support as many buildings as possible to reach a good standard of thermal efficiency. In the absence of widespread consumer understanding of what a "Fabric Efficiency" rating of EPC C might entail, we also acknowledge that an illustration of the interventions that are likely to be typical of the measures required to be compliant with the energy efficiency component of the proposed Heat in Buildings Standard is likely to be helpful for many people and small businesses. However, we have concerns about proposals to also use this list of measures as the basis for evidencing that the energy efficiency component of the proposed Heat in Buildings Standard has been met.
- 3.18 The approach set out in the consultation document is acknowledged by the Scottish Government to exclude a significant number of households, where one or more of the measures listed would not be suitable for the property – leading to divergent consumer outcomes driven primarily by the age and type of a property, and the methods used in its construction. The consultation document suggests that where measures are deemed to be unsuitable for the property, building owners would be issued, on application to the relevant monitoring and enforcement body, with an exemption or abeyance where they have installed any and all of the other measures from the given list that have been assessed as suitable for the property. The consultation does not however provide any detail on how consumers might be expected to demonstrate which measures are technically suitable for the property without an EPC and its associated recommendations report, whether this would be subject to challenge by the relevant monitoring and enforcement body, or how the Scottish Government proposes to minimise the risk of gaming this provision.
- 3.19 The proposals set out in the consultation also raise a variety of consumer protection concerns. For example, by removing the requirement to undertake a science-based assessment of a property's energy efficiency,⁵³ we consider that they expose consumers to avoidable and potentially significant risk arising from the adoption of measures which are not suitable for their property.⁵⁴ The proposals also invite risk associated with the omission of appropriate consideration of measures not included on the specified list that may facilitate better consumer outcomes in all of the circumstances of the case.⁵⁵
- 3.20 We also consider the use of a list of measures, as set out in the consultation, risks undermining the revised purpose and value of EPCs, and removes a potentially important touchpoint with independent technical advice and expertise. The Scottish Government and its stakeholders have invested considerable resource to reform residential EPCs, and Consumer Scotland is generally supportive of the proposals for EPC reform that now seem set to be actioned before the Heat in Buildings Act passes into law. We consider that there could be considerable benefit derived from capitalising on the work that has been put into EPC reform, and using EPCs as the only measure by which compliance with the proposed Heat in Buildings Standard is measured. Such an approach could hold advantages for monitoring and enforcement, mitigate gaming risk,

improve consumer protection from mis-selling, limit divergence in consumer outcomes, and lead to better overall consumer outcomes than an approach that relied in whole or in part on a list of measures approach, as set out in the consultation. In addition, a reliance on EPCs alone might help to encourage and support more consumers to engage more fully with their EPC and its associated recommendations report. This could help to encourage consumers to adopt measures to improve their property beyond the minimum requirements set out in the proposed Heat in Buildings Standard, and lead to better overall consumer outcomes.

Question 5: What is your view on the initial proposed list of measures to meet the minimum energy efficiency standard?

- 3.21 While supportive of introducing a minimum energy efficiency standard, Consumer Scotland does not consider that the proposed list of measures outlined in the consultation document would be the best measure of this being met. We are concerned that the use of a list of measures against which to assess compliance with the energy efficiency component of the proposed Heat in Buildings Standard could lead to consumers being encouraged to install measures which are unsuitable for their property or circumstances,⁵⁶ and could increase the risk of avoidable consumer detriment. As such, we recommend against the use of the proposed list of measures in the manner proposed in the consultation and recommend instead that consumers are required to evidence their compliance with the energy efficiency component of the proposed Heat in Buildings Standard by producing a valid EPC (and where relevant, seeking an appropriate abeyance or exemption based in part on the information contained within the EPC and its accompanying recommendations report). This will keep messaging clear, evidence consistent, limit divergent consumer outcomes, and support consumers to go beyond the minimum levels of energy efficiency defined by the proposed Heat in Buildings Standard.

Question 6: Do you think that properties for which most or all of the measures on the initial proposed list are not relevant should be required to meet an equivalent minimum energy efficiency standard?

- 3.22 Using the list of measures set out in the consultation document to indicate whether the energy efficiency component of the proposed Heat in Buildings Standard has been met will ultimately mean that a large number of properties where one or more of the given measures are unsuitable will not meet “*a good standard of energy efficiency*”. Unaddressed, this would encourage divergent consumer outcomes and put the principles of a Just Transition⁵⁷ at risk.
- 3.23 We acknowledge that the list of measures set out in the consultation document excludes more expensive measures (e.g. solid wall insulation) on the premise that it would be unfair to require consumers to face excessive costs when meeting the energy efficiency component of the proposed Heat in Buildings Standard in homes for which less expensive measures are unsuitable. We note however the intended role of the proposed high cost cap in providing this protection for all consumers, and the potential

for the appropriate use of abeyances or exemptions where issues of consent in buildings with multiple owners or mixed use (MoMu) cannot be reasonably resolved.

- 3.24 The consultation document does not set out how many properties the Scottish Government anticipates could meet the energy efficiency component of the proposed Heat in Buildings Standard under the list of measures approach, and does not include an assessment of whether this is sufficient to meet the emissions reduction pathway for buildings set out in the Climate Change Plan Update.⁵⁸ Consumer Scotland is therefore unable to assess whether the proposals set out in the consultation represent a credible response to the challenge they are designed to address.
- 3.25 The Heat in Buildings Strategy set out that the Scottish Government would bring forward regulations to improve the energy efficiency of owner occupied dwellings, where such improvements were “*technically feasible and cost effective*”.⁵⁹ To encourage as many consumers as possible to take action consistent with this objective, the Scottish Government will need to ensure that there is a clear and consistent approach to applying the proposed Heat in Buildings Standard. This should be accompanied by messaging which complements any support – both in terms of financial and non-financial assistance – that the Scottish Government might continue to make available. Further consideration also requires to be given to the design and availability of appropriate incentives to encourage consumers to take action before the relevant date for compliance and, where appropriate, action over and above the minimum requirements defined by the proposed Heat in Buildings Standard.
- 3.26 As a general principle, we would encourage the Scottish Government to ensure that their approach to all properties is consistent, aspirational, and acts to motivate consumers to take action to make their properties more energy efficient and less costly to heat.

Question 7: Do you think that an alternative approach to setting the minimum energy efficiency standard is required?

- 3.27 Any approach used to set the minimum energy efficiency standard should be robust and backed up by sufficient evidence, data, and analysis to show how the implications for consumers, markets, and supply chains have been assessed and reflected in the design choices made by the Scottish Ministers.
- 3.28 We would encourage the Scottish Government to ensure that its approach to all buildings subject to the energy efficiency component of the proposed Heat in Buildings Standard is consistent, aspirational, and acts to motivate consumers to take action to make their properties more energy efficient and less costly to heat. Any approach should support consumers to take early action to improve the efficiency of their property, and encourage consumers to view the energy efficiency component of the proposed Heat in Buildings Standard as a floor, not a ceiling.

Question 8: Do you agree that the use of bioenergy should continue to be permitted in certain circumstances?

- 3.29 The consultation document sets out proposals to provide sufficient flexibility in the HiBs regulations to allow for an abeyance to be granted in respect of the low carbon heating component of the proposed Heat in Buildings Standard for properties which currently use bioenergy as the primary heating fuel. The consultation also proposes that abeyances should be granted in circumstances where the use of bioenergy is assessed as the only low carbon heating system suitable for a property in all of the circumstances of the case on the relevant date for compliance.
- 3.30 In our response to the Scottish Government's draft Energy Strategy and Just Transition Plan,⁶⁰ Consumer Scotland highlighted the diverse and evolving role that bioenergy may play in certain rural, remote rural, and island communities, and the interdependencies that are likely to exist between heat and non-heat energy markets and influence the affordability of bioenergy for any given end use:

“Underlining the increasingly interconnected nature of the energy system, it is likely that the use of bioenergy solutions will often need to be supported through multiple local markets to stimulate sufficient levels demand to enable economies of scale to deliver value to consumers.”

- 3.31 We also highlighted that the Climate Change Committee has assessed that bioenergy is likely to play long-term role in supporting the production of sustainable aviation fuel,⁶¹ and noted that the use of bioenergy in other settings (such as a limited role in providing heat in buildings) as a bridge to that future role could provide whole system benefits if appropriately supported through policy.
- 3.32 We would therefore caution against an outright ban on the use of bioenergy as a primary heating fuel in dwellings or non-domestic properties. We consider that this could have a disproportionate impact on specific communities who are or may become reliant on bioenergy for heat or non-heat purposes; prohibition could put consumers who are reliant on bioenergy at increased risk of vulnerability if there are no technically suitable or cost-effective alternatives available. We agree therefore that in certain circumstances, where the evidence and local circumstances support it, the use of bioenergy as a primary heating fuel should be allowed to continue. In order to give this effect, we recommend that the HiBs regulations and guidance are drafted in such a way as to allow the relevant monitoring and enforcement body to grant abeyances for the use of bioenergy in limited and prescribed circumstances. In providing the relevant monitoring and enforcement body with discretion to allow the continued use of bioenergy for space and hot water heating in dwellings and non-domestic properties, we also consider that the relevant HiBs regulations should be drafted in such a way to require due regard to be had for the wider context for bioenergy use in the local area.

4. Property Purchases

- 4.1 The Climate Change Plan Update sets out that the Scottish Government is targeting a 68% reduction in emissions from buildings between 2020 and 2030.⁶² While the introduction of the proposed Heat in Buildings Standard will help to raise the energy efficiency of Scotland’s dwellings and accelerate the rollout of low carbon heating across all buildings, the progress that has been made in reducing emissions from buildings in Scotland since 1990⁶³ suggests that reliance on market forces and backstop dates for the low carbon heating and, where relevant, the energy efficiency components of the proposed Standard, is unlikely to deliver the pace of change that the Scottish Government’s statutory CO₂e emissions reduction pathways⁶⁴ require. The consultation document therefore sets out proposals for the Heat in Buildings Bill to give the Scottish Ministers powers to designate a series of trigger points that would apply to building owners following a relevant change of circumstances.
- 4.2 The consultation proposes that the point at which a property transaction involving the sale of a dwelling or non-domestic premises is completed, or a long-term⁶⁵ lease for a non-domestic property is entered into, should be considered to be a relevant change of circumstances. Collectively, these circumstances are referred to in the consultation document as a “property purchase”. It is proposed to define a trigger point to align with the timing of such transactions, which would place an obligation on the purchaser or non-domestic PRS landlord to undertake any work required to meet the Heat in Buildings Standard within a reasonable timeframe, where this would require action before the relevant backstop date. A “grace period” is proposed to allow the relevant building owner sufficient time to undertake such works and evidence their compliance with the Heat in Buildings Standard or, where relevant, to apply for an appropriate abeyance or exemption – with penalties imposed for non-compliance without a valid abeyance or exemption at the end of this period.

Question 9: To what extent do you support the requirement to end the use of polluting heating following a property purchase?

- 4.3 Consumer Scotland supports the Scottish Government’s assessment that the sale of a dwelling, or the sale or entering into of a long-term lease of a non-domestic premises, would be an appropriate point to encourage consumers to undertake any necessary works required to meet the low carbon heating and, where relevant, energy efficiency components of the proposed Heat in Buildings Standard. We consider that this could support a market-based mechanism to drive compliance with the Standard and the adoption of low carbon heating and (where relevant) improved standards of energy efficiency, before the relevant backstop dates.
- 4.4 The introduction of a Heat in Buildings Standard trigger point at the point of sale of a dwelling, or the sale or long-term lease of a non-domestic premises, should encourage potential property buyers to factor in the cost of any necessary improvements as part of

their offer for the property, and allow non-domestic PRS landlords and tenants to contract with greater certainty as to future liabilities arising from the introduction of the proposed Heat in Buildings Standard. With support from the developing green finance sector, and appropriate advice provided through the conveyancing process, this should help to better reveal the value that consumers and the wider property market place on energy efficiency and low carbon heating than is the case today. It is also a natural point for consumers to consider any improvements necessary and factor this into the financing of their property, which should help to mitigate the additional financial burden the proposed Standard will place on consumers.

- 4.5 We recommend that the Scottish Government undertakes modelling to estimate the societal benefits and distributional impacts of the introduction of any trigger point for the proposed Heat in Buildings Standard, as part of business plan development. We consider that this would help to inform the development of any assistance that may be necessary to support consumers subject to a Heat in Buildings Standard trigger to engage with its requirements in a manner that drives positive consumer outcomes. Such information may also be of benefit to public engagement activity on the wider HiBs programme.
- 4.6 It will also be important to carefully consider how any Heat in Buildings Standard triggers will work in practice. A trigger point which applies at the point of sale of a dwelling, or the sale or entering into of a long-term lease of a non-domestic premises, could be a natural point for consumers to engage with their EPC, and the improvements recommended to enable the property to meet or exceed the relevant requirements of the proposed Heat in Buildings Standard. In the residential sector in particular, a reformed EPC should, if appropriately designed, be a good indication of the measures available to improve the fabric efficiency of the building in a manner that supports compliance with the proposed Standard.
- 4.7 We welcome the Scottish Government's consideration of the development of an assessment tool which would help building owners to better understand which types of low carbon heating would be suitable for their building, and highlight cases where no suitable technical solution currently exists. We consider that such a tool, if designed and used appropriately, could:
 - improve consumer confidence in their choice of low carbon heating;
 - play an important role in identifying where an abeyance should be granted; and
 - improve consumer protection in the low carbon heating market.
- 4.8 In principle and in theory, we consider that it may be helpful for this tool to include an assessment of the technical requirements and compatibility of different heating systems for the given property, and the effects of occupancy on their design and operation in that setting.

Question 10: We are proposing to give those purchasing a property a “grace period” to end their use of polluting heating. Do you agree with this proposal?

- 4.9 The rationale for providing a grace period for owner occupiers and non-domestic PRS landlords following the completion of a relevant property transaction is in our initial assessment sound, in that it is intended to allow sufficient time for any necessary works to be appropriately scoped, planned, financed, and delivered, and thereby removes an artificial pressure to complete works quickly to demonstrate compliance with the letter of the proposed Heat in Buildings Standard. We agree that this approach is more likely to support compliance with the *spirit* of the proposed Standard, and deliver better consumer outcomes as a result.
- 4.10 Consumer Scotland is however not yet in a position to take a specific view on the length or timing of any grace period. We consider it important that an appropriate balance is struck between the desirability of early action to reduce the emission of designated greenhouse gasses from buildings, and the need to provide consumers with sufficient time to plan, design, and install the optimum package of interventions for their circumstances. We do not consider it to be in the consumer interest for abeyances to become the norm, and we recommend that the Scottish Government undertakes further work to evidence the ability of the supply chain to deliver against any timeframes that may in time be proposed to form the basis of a grace period, throughout Scotland and with reasonable “headwinds” against timely delivery applied.
- 4.11 Greater clarity is also required on how a grace period would interact with the backstop dates for the low carbon heating and, where relevant, energy efficiency components of the proposed Heat in Buildings Standard. For example, The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015⁶⁶ contain provisions that allow for a grace period for residential PRS landlords in England and Wales, in circumstances where a natural or legal person has only recently taken on responsibility for a relevant non-compliant residential PRS property. The consultation does not explore whether similar provisions – or others like them in the owner occupier, non-domestic, or STLs sectors – may support positive consumer outcomes in Scotland.
- 4.12 This notwithstanding, we consider that it will be important for the relevant monitoring and enforcement body to be provided with sufficient flexibility in law and guidance to take account of any mitigating circumstances following the end of any grace period, and discretion to grant appropriate abeyances on the facts of each case.

Question 11: To what extent do you support our proposal to apply a cost cap where people are required to end their use of polluting heating following a property purchase?

- 4.13 The consultation document highlights that the Scottish Government is considering whether some or all consumers should be subject to a high cost cap. It is suggested that this would limit the maximum cost that consumers would be expected to face to meet either the energy efficiency component of the proposed Heat in Buildings Standard, the low carbon heating component of the proposed Standard, or both.

4.14 In practice, it is suggested that where building owners can demonstrate that where:

- they have invested in low carbon heating and/or (where appropriate) energy efficiency up to the value of the relevant cost cap; or
- that there are no relevant improvements that are suitable for their property within the relevant cap; or
- that there are no outstanding relevant improvements that are suitable for their property without the sum of the total costs incurred by the building owner on relevant improvements breaching the level of the relevant cap,

on application to the relevant monitoring and enforcement body they will be deemed to have met the relevant requirements of the proposed Heat in Buildings Standard. However, the consultation document does not specify whether in such circumstances a building owner would be granted an abeyance, or an exemption.

4.15 The consultation document sets out a range of different proposals for how a high cost cap could be applied. However, the consultation does not differentiate between a cost cap for energy efficiency, a cost cap for low carbon heating, and a cost cap for overall compliance with the proposed Heat in Buildings Standard.

4.16 The Heat in Buildings Strategy set out that the Scottish Government would bring forward regulations to improve the energy efficiency of owner occupied and PRS dwellings “*where technically feasible and cost effective*”.⁶⁷ Consumer Scotland considers that the proposed introduction of a high cost cap for meeting the proposed Heat in Buildings Standard is consistent with the second element of this commitment.

4.17 We consider that an appropriately designed high cost cap could help to protect consumers from unreasonable costs, incentivise innovation, and provide financial markets with a better indication of the investment needed to comply with the proposed Standard. We acknowledge the challenge in determining the value and overall approach to designing an appropriate cost cap, and consider that different approaches may be required for the energy efficiency and low carbon heating components of the proposed Standard, in the event that a decision is made to include low carbon heating systems within the scope of the cap.

Question 12: Which of the following methods of applying a cost cap do you support?

4.18 The consultation document sets out a range of different proposals for how a high cost cap could be applied. These include:

- a “flat cap” of £x for dwellings and £y for non-domestic buildings;
- a “size-based” cap of £n per square metre of floor space; and
- a “purchase price-based cap” applied as a percentage of the purchase price.⁶⁸

4.19 The consultation also highlights significant drawbacks with each of these designs.

- 4.20 Consumer Scotland supports the introduction of an appropriate high cost cap or caps in principle and in theory. However, without further information on the potential scope of a high cost cap, or any financial modelling or assessment of the distributional impacts of different high cost cap models in the consultation document or its associated impact assessments, we are currently unable to take a view on the most appropriate way to implement such provisions.
- 4.21 We acknowledge the challenge in determining the value and the overall approach to designing an appropriate cap, and consider that different approaches may be required for the energy efficiency and low carbon heating components of the proposed Heat in Buildings Standard, in the event that a decision is made to include low carbon systems within the scope of the cap. There is also likely to be a need to consider how a high cost cap might interact with any public subsidy or funding that might be made available to certain groups of consumers – for example, in locations where the system value of energy efficiency is particularly high, but individual incentives are low.
- 4.22 We therefore consider that the proposed Heat in Buildings Bill should provide the Scottish Ministers with powers to make regulations which could include a high cost cap or caps. The Scottish Ministers should also be provided with powers to amend those regulations if circumstances change. However, we also consider that significant further work is required to design an appropriate cap or caps before such regulations are drafted. There are material consumer protection concerns around the design of any high cost cap which sit beyond the scope of the questions set out in the consultation document and which require further consideration. For example, we consider the risk that a high cost cap could be exploited by unscrupulous traders to “mark up” the cost of a package of measures such that vulnerable consumers are overcharged, warrants further consideration.

Question 13: To what extent do you support the proposal that the Scottish Ministers should be given powers to extend the circumstances in future in which people could be required to end their use of polluting heating?

- 4.23 Consumer Scotland recognises the need to review compliance with the proposed Heat in Buildings Standard and the uptake of low carbon heating, and build in the flexibility required to respond to developments in the market and wider changes in circumstance, by amending in future the circumstances in which consumers may be required to install low carbon heating. As such, we support the proposal for the Scottish Ministers to be granted powers to extend in future the circumstances which would trigger the onset of an earlier date for compliance with the low carbon heating component of the proposed Heat in Buildings Standard than the relevant backstop date.
- 4.24 It will be important to review not only compliance with the Standard, but also how consumers respond to incentives, to ensure that government can adapt and continue to encourage consumers to meet the proposed Standard before taking enforcement action.

5. Connecting to Heat Networks

- 5.1 The consultation document sets out proposals to grant the Scottish Ministers and Scottish local authorities powers to require all buildings within a heat network zone to end their use of fossil fuel heating when certain conditions are met. The proposals would not require existing buildings within a heat network zone to join a heat network, but would instead act as a trigger point for consumers within the heat network zone to adopt any form of low carbon heating. This means that property purchase would not serve as a trigger point for buildings within a designated heat network zone.
- 5.2 The proposals set out in the consultation document would also provide the Scottish Ministers and Scottish local authorities with powers to require property developers to connect all new buildings to a heat network, where they are within a designated heat network zone and a heat network connection is available. This aims to support the financial case and viability of local heat networks.
- 5.3 The consultation document also sets out further proposals relating to waste or unused heat. It is proposed that waste or unused heat could be provided to local heat networks – potentially lowering costs to end users connected to the network. This would require non-domestic consumers within a heat network zone to provide information about waste or unused heat at their premises. Proposals are also set out to require non-domestic buildings to provide any waste or unused heat to a local heat network.
- 5.4 Consumer Scotland acknowledges the important role that heat networks can play in supporting the decarbonisation of Scotland’s buildings. The upcoming introduction of regulations will help to create the conditions for better heat network consumer outcomes as heat networks continue to grow to meet Scotland’s demand for more sustainable forms of heating. In the new regulatory regime, Consumer Scotland will become the statutory advocate for heat network consumers in Scotland.

Question 14: To what extent do you support our proposal to provide local authorities or Scottish Ministers with powers to require buildings within a heat network zone to end their use of polluting heating systems by a given date?

- 5.5 Consumer Scotland supports proposals to provide local authorities with powers to require buildings within a heat network zone to end their use of fossil fuel heating by a given date, once certain conditions are met. We recognise the important role of heat networks in the decarbonisation of Scotland’s buildings, particularly in urban areas where other types of low carbon heating may not be suitable.
- 5.6 As a general principle, active engagement and participation will lead to more impactful customer engagement and ultimately better outcomes for consumers.⁶⁹ Key to this will be ensuring that consumers are engaged in this process and fully understand what is

being asked of them. It is imperative as part of this process that consumers are provided with clear, easy to understand information about joining a heat network, and the journey to connection.

- 5.7 In addition, it will be important for consumers to understand not only the potential benefits of connection to a heat network, but also the implications. Consumers must be aware that they are moving onto monopoly supply contracts and the consequences of this. This could be included in LHEES Delivery Plans, or through the HiBs Public Engagement Strategy.
- 5.8 It is however important to recognise that a heat network connection may not be the most technically feasible or cost effective solution for all building types and uses within a heat network zone. It will be important to ensure that this is properly considered when providing consumers with the opportunity to join a heat network, and Consumer Scotland welcomes proposals to provide this flexibility to the owners of all existing buildings. Consumers should be given a meaningful choice of alternative options to decarbonise their properties, and should be provided with the time and information to fully understand the cost implications of these options. This could also serve as a competitive measure to encourage heat network developers to provide consumers with the best possible prices when connecting to a network.

Question 15: To what extent do you support our proposal to provide powers to local authorities or Scottish Ministers that require developers to connect new buildings within heat network zones to a heat network?

- 5.9 Consumer Scotland is broadly supportive of providing powers to local authorities to require developers to connect new buildings to a heat network where they are within a heat network zone. This proposal will help to support the Scottish Government's ambitions for heat networks, as set out in the Heat Network Delivery Plan.⁷⁰ We recognise that this will help to ensure that new developments can be purposely built to provide low carbon heating to residents from construction, and will help to provide more certainty to developers and increase the financial viability of heat networks.
- 5.10 However, it is essential that consumers as new owners or tenants are provided with sufficient information about their new heating system, such as pricing information, the heat source of the network, and most importantly that they will be on monopoly supply and therefore unable to switch.
- 5.11 It is also important to recognise that a heat network connection may not be the most technically feasible or cost effective solution for all new building types and uses within a heat network zone; for example, new buildings built to Passivhaus standards,⁷¹ temporary buildings, or buildings with low occupancy. While a presumption in favour of connecting new buildings within a heat network zone may therefore be appropriate where the opportunity to connect exists, we recommend against the adoption of any approach that would prevent the developer of new buildings from evidencing that an alternative low carbon heating system would be more technically feasible or cost effective in all of the circumstances of the case.

Question 16: To what extent do you support our proposal to require occupiers of non-domestic properties to provide information about unused heat on their premises?

5.12 In principle, Consumer Scotland supports the proposal to require the occupiers of non-domestic properties to provide information about waste or unused heat. We recognise that the intention of this is to help to utilise waste and unused heat and reduce costs for consumers connected to heat networks. However, it will be important that government supports businesses through the development of appropriate processes and guidance to ensure that any requests to provide this information are clear, practical, and proportionate.

Question 17: To what extent do you support our proposal to potentially require buildings with unused heat to provide this to a local heat network?

- 5.13 We are supportive of the principle of encouraging buildings with waste or unused heat to provide it to a local heat network. It will however be important for government to effectively engage with business to ensure that any such requests are made appropriately by heat network developers, and only where it is feasible and practical for waste or unused heat to be provided for the purposes intended.
- 5.14 The rollout of heat networks provides an unique opportunity to encourage businesses to supply their waste or unused heat to a local heat network. Given the Scottish Government's ambition for the growth of heat networks across Scotland, there is an opportunity to create a new market through which business can provide any useful waste or unused heat to a local heat network. However, we consider that placing a "requirement" on businesses to supply this heat could undermine the market value of heat.
- 5.15 In any other energy market, a business that provides a service to the system is compensated on commercial terms for the provision of that service. We do not consider the provision of waste or unused heat to a heat network to be so fundamentally different to these other markets that participating businesses should not be fairly compensated.
- 5.16 Implemented effectively, we consider that a market for waste or unused heat could help businesses to offset their costs, and at the same time reduce the overall cost to consumers connected to that heat network. We think however that this is likely to require a greater role for the commercial skill of the heat network sector than is suggested by the proposal to "require" waste and unused heat to be made available to heat network operators.

6. Monitoring and Enforcement

- 6.1 The consultation document sets out proposals for a number of trigger points, relevant dates for compliance, and backstop dates for the uptake of low carbon heating and, where appropriate, investment in improved levels of energy efficiency. It also highlights the need for compliance with the requirements of the proposed HiBs regulations to be monitored and, where necessary, enforced – and the role of appropriate abeyances in supporting compliance.
- 6.2 Consumer Scotland recognises that there will need to be an appropriate system to monitor and enforce compliance with the proposed Heat in Buildings Standard. We would be supportive of a system which is compassionate and responsive, that also incentivises consumers to comply with the regulations. Research conducted by Consumer Scotland in 2023 found that consumers support efforts to reduce emissions and tackle climate change, but that they need more guidance and support to understand what they can do to participate.⁷²

Question 18: We will need to have a way to monitor if people are meeting the Heat in Buildings Standard, and discussed two options for this. Which do you support?

- 6.3 The consultation suggests that the relevant monitoring and enforcement body could use information held on the Scottish EPC Register to assess whether buildings have met the relevant requirements of the proposed Heat in Buildings Standard. Alternatively, the consultation suggests that sampling of the information available to the monitoring and enforcement body (including but not limited to EPC data) may suffice; for example, by assessing only a percentage of properties that reached the end of their grace period in a given month, or a percentage of all buildings once the backstop dates for the low carbon heating and, where relevant, energy efficiency components of the proposed Standard have passed.
- 6.4 Consumer Scotland supports the use of EPCs to monitor compliance with the proposed Heat in Buildings Standard. In lieu of a comprehensive buildings survey, we consider that this would be the most technically robust method available, and is consistent with our position that a valid EPC should be the only document consumers should be asked to produce to demonstrate compliance with the proposed Standard. We agree with the Scottish Government's assessment that consumers will already be relatively familiar with EPCs, and consider that this could serve to better engage consumers with their EPCs and their associated recommendations reports. The Scottish Government's EPC reform programme should also allow the relevant monitoring and enforcement body to do more, more easily with the relevant EPC data. Properly integrated with the wider HiBs programme, in principle and in theory this should support the development of a software solution capable of combining information from the national EPC database,

relevant dates for compliance for each building, and data on any relevant abeyances or exemptions that may be in effect at the given time. This would significantly reduce the administrative burden on the relevant monitoring and enforcement body and support timeous engagement with consumers who have been unable or who are unwilling to meet the requirements of the proposed Standard. Such an approach may also help to support the use of incentives to encourage consumers to take earlier action than required by law, or to install appropriate measures in excess of the minimum requirements set out in the proposed Heat in Building Standard.

- 6.5 We acknowledge that the Scottish Government has proposed that sampling of the wider data available to the relevant monitoring and enforcement body could provide an alternative approach to the monitoring and enforcement process. However, on the basis of the proposals set out in the consultation document, we are not convinced that it is sufficiently rigorous to give the Scottish Government or its stakeholders the necessary assurance for an accurate assessment of HiBs policy's impact on greenhouse gas emissions to be made, or for non-compliance with the proposed Heat in Buildings Standard to be appropriately and consistently challenged. We consider that this could be seen to threaten the principles of a Just Transition,⁷³ and could undermine the policy's overarching objectives if the chances of being identified as non-compliant were deemed by consumers to be insufficiently high.

Question 19: We will need to have a way to enforce the Heat in Buildings Standard. We discussed possible options to help achieve compliance. What are your views on these ideas?

- 6.6 The consultation document sets out a series of potential penalties for non-compliance with the proposed Heat in Buildings Standard, including council tax or non-domestic rates surcharges. However, with the exception of civil penalties for non-compliance in the residential PRS, the Scottish Government does not propose to impose penalties during the initial phases of the proposed Standard's introduction. Little detail is provided as to how the penalty regime might work or under what circumstances it might be employed.
- 6.7 To lower emissions from buildings to meet Scotland's greenhouse gas emissions reduction targets⁷⁴ it will be important to have an appropriate system to enforce the proposed Heat in Buildings Standard. The use of both market and financial product mechanisms could be an appropriate way to help support compliance as they would provide financial signals to encourage property owners to invest to maintain or enhance the value of their properties. However, given that the Scottish Government has identified cost as the most likely reason for non-compliance with the proposed Standard, any penalties – particularly civil penalties – should be proportionate, and only used as a last resort to encourage compliance.
- 6.8 Consumer Scotland recognises the need to have appropriate measures in place to enforce compliance with the proposed Heat in Buildings Standard. However, we would encourage the Scottish Government to further consider how it can *incentivise* compliance in the first instance. Consumers should also be encouraged to view the energy efficiency component of the proposed Standard as a floor, not a ceiling. We want

to ensure that any system is fair, proportionate, and compassionate in order to fully support consumers that are struggling to achieve the proposed Standard.

- 6.9 If the principal objective of enforcement action is to support all buildings to meet the relevant requirements of the proposed Heat in Building Standard (or, where relevant, to be deemed as having met them, through the granting of an appropriate abeyance or exemption), we think there is merit in further thought being given as to how the imposition of penalties can help to deliver this outcome.

Question 20: To what extent do you support our proposals to modify the Standard or exempt certain people from the need to meet the Heat in Buildings Standard?

- 6.10 Consumer Scotland is supportive of the proposal to give Scottish Ministers powers to modify the proposed Heat in Buildings Standard, and allow the relevant monitoring and enforcement body to grant consumers appropriate abeyances or exemptions in certain, limited circumstances. The detail of the circumstances in which such abeyances and exemptions might be deemed appropriate should be left for subordinate legislation and guidance, and should not be defined on the face of the proposed Heat in Buildings Bill.

Question 21: Which people, businesses, or types of buildings, if any, should be eligible for a modified standard or exemptions?

- 6.11 Consumer Scotland does not currently take a specific position on the application of abeyances or exemptions for specific groups of consumers. We believe that the granting of appropriate abeyances should be done on a case-by-case basis to ensure a fair and consumer-centric approach, and that exemptions should be used sparingly. However, we do not consider that these are matters that should be defined on the face of the proposed Heat in Buildings Bill.

Question 22: To what extent do you support our proposals to give certain people extra time to meet the Heat in Buildings Standard?

- 6.12 Consumer Scotland supports the inclusion of provisions within the proposed Heat in Buildings Bill to provide the relevant monitoring and enforcement body with powers to grant consumers appropriate abeyances or exemptions if they experience difficulty in meeting the proposed Heat in Buildings Standard. We do not currently take a view on the specific circumstances which should give rise to an abeyance being granted as we consider these to be matters more appropriately defined in subordinate legislation. However, we support the principle of consumers being granted the necessary time and support to meet the relevant requirements of the proposed Heat in Buildings Standard, should they have difficulty meeting them due to circumstances beyond their direct control.

Question 23: Which people, businesses, or types of buildings, if any, should be eligible for extra time?

- 6.13 Consumer Scotland does not currently take a view on which people, businesses, or types of buildings should be eligible for an abeyance to meet the proposed Heat in Buildings

Standard; we consider these to be matters more appropriately defined in subordinate legislation. We are however supportive of a principled approach that seeks to ensure that consumers have the necessary time and support to meet the relevant requirements of the proposed Heat in Buildings Standard, should they have difficulty meeting them due to circumstances beyond their direct control..

7. Public Sector Buildings

- 7.1 The Scottish Government is proposing that all buildings owned by a Scottish public sector body should use low carbon heating by 1 January 2039. The proposals set out in the consultation document would also place a requirement on public sector organisations to begin work to transition to low carbon heating earlier than the proposed backstop date. Further duties on public authorities which would provide them with more certainty on the process, timescales, and necessary preparations are also to be considered.
- 7.2 Consumer Scotland has no role in representing the interests of other public sector organisations. However, we recognise that the public sector estate could play a significant role supporting the wider decarbonisation of Scotland's buildings, and we acknowledge the role that public sector buildings could play in supporting and accelerating the decarbonisation of local communities.
- 7.3 We agree with the Scottish Government's assessment that there is a strong case for the public sector to demonstrate leadership by taking early action to decarbonise its estate. This could contribute to the development of local supply chains for low carbon heating and energy efficiency products while also providing warmer and more sustainable buildings for those who use them.

Question 24: To what extent do you support our proposal to require all buildings owned by a Scottish public authority to be using clean heating systems by 2038?

- 7.4 Consumer Scotland is supportive of the proposal to put a requirement on public sector bodies which requires them to use low carbon heating in their buildings. We also support early action by the public sector which could support the growth and development of local supply chains.
- 7.5 However, public sector decarbonisation could have a more direct and significant role in supporting local communities. For example, there is a case for public sector decarbonisation to serve as an accelerant for decarbonisation in local communities. As has been identified by local authorities in the preparation of their LHEES, where feasible and appropriate, large public sector locations could serve as an anchor load for a local heat network which could supply neighbouring communities with heat. The Clyde Gateway project in Dalmarnock also demonstrates the potential for waste heat from the public sector estate to be used for the benefit of the local community.⁷⁵ Such examples could not only support local supply chains, but also support the business case for heat networks. Such an approach would not be suitable for all public sector locations but as an example it illustrates the opportunity for public sector decarbonisation and the impact it could have on local communities.

Question 25: We are considering the following further duties on public sector organisations to support planning for the transition by 2038: please tell us which options you would support?

- 7.6 Consumer Scotland is broadly supportive of introducing additional duties on public authorities to support the planning of the heat transition, particularly where this additional duty supports public bodies to prepare for transition and serves to encourage them to act earlier.
- 7.7 There should also be broader recognition and consideration for the role that public sector decarbonisation could play to support wider decarbonisation in local communities; contributing to the delivery of LHEES.
- 7.8 To support the Scottish Government's ambition for public sector decarbonisation this needs to be backed by appropriate levels of funding and support to ensure public authorities have the ability and expertise to meet these duties. Putting in place longer-term decarbonisation plans will also put public authorities in a stronger position when existing heating systems break down and replacements need to be considered.

8. Amendments to Existing Legislation

- 8.1 The Scottish Government is proposing to introduce powers within the proposed Heat in Buildings Bill which could require the Scottish Ministers to set a new or amended renewable heat target. This could involve setting an alternative target, or a change to the metrics that inform the current target. The intention of this proposal is to make the target easier to understand, and to ensure it provides a stronger illustration of progress.

Question 26: Do you agree with our proposals to include powers in the proposed Heat in Buildings Bill to change the current requirement in legislation for a narrowly-defined renewable heat target?

- 8.2 Consumer Scotland does not take a view on additional powers to change the current requirement in legislation for a narrowly defined renewable heat target. We recognise the opportunity to improve the metrics that are used to inform any target, and welcome the Scottish Government's ambition to make targets more measurable and easier for consumers to understand.

Question 27: Do you agree that the Heat Networks (Scotland) Act 2021 should be amended in light of the passage of the Energy Act 2023?

- 8.3 The Energy Act 2023 brings additional protections for heat network consumers throughout the UK, by creating the legislative framework required for the regulation of heat networks. The introduction of regulation will help to support better consumer experiences of using heat networks as they continue to expand to meet Scotland's heat demands. We welcome the Scottish Government's consideration and wider thinking on possible legislative changes to enable alignment with the Energy Act 2023 to ensure the sector is safely and proportionately regulated in Scotland.
- 8.4 Consumer Scotland does not take a view on any specific changes or amendments to existing legislation in relation to the Heat Networks (Scotland) Act 2021. However, we welcome the Scottish Government's ambition to ensure alignment with wider GB legislation so that consumers in Scotland are fully protected as heat networks continue to grow.

Question 28: Are there any further amendments to the Heat Networks (Scotland) Act 2021 that the Scottish Government should consider?

- 8.5 Consumer Scotland does not take a view on specific amendments to the Heat Networks (Scotland) Act 2021.

9. Other issues

- 9.1 There are a number of other issues that sit outside the scope of the consultation that we consider to be of relevance to the development of the proposed Heat in Buildings Bill, and the HiBs regulations it will enable. Whilst we highlight some of these below, we intend to publish a series of short papers during the 2024-2025 financial year to explore these issues in greater detail, before parliamentary scrutiny of the proposed Heat in Buildings Bill commences.

Public engagement

- 9.2 Recent research conducted by the UK Energy Research Centre (UKERC) found that although the public shows clear support for the transition to low carbon heating, consumer knowledge of specific low carbon technologies remains low.⁷⁶ The Heat in Buildings programme is likely to be the single biggest ask that the Scottish Government has made of consumers outside the response to the COVID-19 pandemic, and carries significant costs. There is a significant opportunity to make Scotland's buildings warmer and more energy efficient while also tackling the social and economic impacts of high energy prices and high levels of fuel poverty. However, it also carries significant risks that need to be better quantified and properly understood before legislation is brought forward.
- 9.3 In addition to regulation, we consider that there is a pressing need for a comprehensive and coordinated public engagement campaign that helps to support consumers in taking the action that is to be requested of them. This engagement must help to inform consumers about what will be required of them, why and under what circumstances they are being asked to act, and where they can go for advice and information to help realise positive consumer outcomes. It could also help to join up action being taken by both national and local government. We acknowledge that the Scottish Government recently published a strategic framework for public engagement on the heat transition.⁷⁷ Whilst this is a welcome development, there is an urgent need for implementation to support consumers with the necessary information and guidance.
- 9.4 Given the scale of the action required by consumers over the coming years, there is significant risk of adverse consumer outcomes if consumers are not sufficiently informed or engaged with the transition to low carbon heating. The legacy of harm stemming from the Green Deal should be a prescient and cautionary tale as we consider the scale of action needed to transition.⁷⁸ Recent work carried out by the Competition and Markets Authority (CMA) also identified a number of practices of concern within the green heating and insulation sector.⁷⁹

Exemptions from the energy efficiency component of the proposed Heat in Buildings Standard for owner occupied dwellings with a low carbon heating system installed by the relevant date for compliance for energy efficiency

- 9.5 The consultation document sets out proposals to require that all owner occupied homes in Scotland meet a good standard of energy efficiency by 1 January 2034. The consultation also proposes that owner occupiers may be subject to an earlier date for compliance where there has been a change of circumstances that engages a relevant trigger point (to be defined in the HiBs regulations), and subject to a grace period and the application of any relevant abeyances or exemptions (which may include a high cost cap). However, it is proposed that owner occupied dwellings in which a low carbon heating system is installed by the relevant date for compliance for the energy efficiency component of the proposed Heat in Buildings Standard would be eligible for an exemption from meeting this requirement, and would instead be deemed to meet the Heat in Buildings Standard in its entirety. For example, an owner occupied property that currently uses any form of electric heating as the primary source of space and hot water heating, or derives such heat from a heat network, would already be compliant with the proposed Heat in Buildings Standard. The consultation document notes that this flexibility would not extend to properties in the residential PRS but does not specify whether it is proposed to extend the provision of exemptions in the circumstances given above to those properties in the STLs sector which would be subject to the proposed Heat in Buildings Standard, and are otherwise referred to in the consultation as part of the residential owner occupier sector.
- 9.6 We acknowledge that the proposals set out in the consultation document are intended to provide residential owner occupiers with choice as to whether and how to improve the energy efficiency of their homes, given that the emission of designated greenhouse gasses from the primary source of space and hot water heating will already have been abated by the use of low carbon heating. However, we consider that in their current form the proposals could invite adverse outcomes for consumers in vulnerable circumstances and act against the principles of a Just Transition.⁸⁰ We also consider that the proposals potentially undervalue the energy system value of energy efficiency, and could under certain conditions increase the cost of the transition for all consumers and delay the adoption of low carbon technologies (including but not restricted to low carbon heating) by consumers who currently rely on fossil fuel heating systems.

Exemptions from the energy efficiency component of the proposed Heat in Buildings Standard for all of non-domestic buildings

- 9.7 Regulations currently require the owner of any non-domestic building with a floor space of at least 1,000 square metres to install prescribed improvements to the energy efficiency of the property following its sale or the commencement of a new tenancy within it, where those improvements have been identified on assessment as technically feasible and cost effective.⁸¹
- 9.8 The Heat in Buildings Strategy set out that the Scottish Government would consult in 2022 on expanding such requirements to all non-domestic buildings, with a view to

bringing forward regulations from 2025 which would require all non-domestic building owners to improve the energy efficiency of their properties, subject to relevant conditions and the application of appropriate abeyances and exemptions.⁸²

- 9.9 The HiBs consultation sets out proposals to include all non-domestic buildings in the proposed Heat in Buildings Standard. The proposals would require all non-domestic buildings in Scotland to adopt low carbon heating by the backstop date of 1 January 2046, subject to the application of any relevant trigger points, abeyances, or exemptions. However, the Scottish Government is not proposing to include an energy efficiency component of the proposed Heat in Buildings Standard for any non-domestic premises.
- 9.10 In England and Wales, regulations have prevented non-domestic PRS properties of any size from being let where the energy efficiency rating of the property does not meet a minimum standard (equivalent to EPC E), from 1 April 2018 for new tenancies and from 1 April 2023 for existing tenancies.⁸³ The European Union’s Energy Performance of Buildings Directive (EPBD) also now requires Member States to set minimum standards of energy efficiency for all buildings.⁸⁴
- 9.11 The omission of an energy efficiency component for the proposed Heat in Buildings Standard for non-domestic buildings risks placing many of Scotland’s small business non-domestic PRS tenants at a competitive disadvantage, and could increase the cost of goods and services for consumers in Scotland. We also consider that the proposals in their current form undervalue the energy system value of energy efficiency, and could under certain conditions increase the cost of the transition for all consumers and delay the adoption of low carbon heating by consumers who currently rely on fossil fuels.

Consumer economics

- 9.12 The Heat in Buildings Strategy set out a commitment that the Scottish Government would ensure that its actions to progress the decarbonisation of heat in buildings “*have no detrimental impact on fuel poverty, unless additional mitigating measures can also be put in place*”.⁸⁵ We acknowledge that many of these “mitigating measures” sit beyond the scope of the proposed Heat in Buildings Bill. Nevertheless, any assessment of the technical suitability and cost effectiveness of a given low carbon heating system (whether or not in combination with improvements to energy efficiency) must necessarily feature an assessment of the likely energy bill impacts that such investment would entail. It is unclear from the proposals set out in the consultation how it is intended for this to be done in the event that the proposed list of measures approach is adopted, or how consumers might be incentivised to invest in an appropriate package of heat and non-heat measures to ensure optimum consumer outcomes.
- 9.13 This issue is particularly acute in the PRS and non-domestic PRS sectors, where more information is needed on whether or how the Scottish Government intends to incentivise the mitigation of split incentives. However, given the energy system value of many of the technologies that may play a role in supporting the delivery of affordable low carbon heating – for example, by facilitating electricity demand flexibility and/or negative demand – we consider that considerable consumer value is likely to be derived from appropriately holistic, whole energy system policymaking for all buildings.

9.14 More broadly, we recommend that the Scottish Government further explores the wider socioeconomic impacts of the proposals set out in the consultation, and their reasonable alternatives.

10. References

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- ² Climate Change Committee (2019) [Net Zero – The UK’s contribution to stopping global warming](#), p 265
- ³ Consumer Scotland Act 2020
- ⁴ Consumer Scotland (2023) Strategic Plan 2023-2027
- ⁵ Citizens Advice Scotland (2018) Leading by Example: A principled journey through regulation
- ⁶ Scottish Government (2023) [Heat in Buildings Bill consultation](#)
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- ¹⁰ Scottish Government (2023) [Heat in Buildings Bill consultation: Strategic Environmental Assessment](#)
- ¹¹ Scottish Government (2023) [Heat in Buildings Bill consultation: Island Communities Impact Assessment](#)
- ¹² Scottish Government (2023) [Heat in Buildings Bill consultation: Child Rights and Wellbeing Impact Assessment](#)
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- ¹⁴ Scottish Government (2023) [Heat in Buildings Bill consultation: Fairer Scotland Duty Impact Assessment](#)
- ¹⁵ Scottish Government (2023) [Heat in Buildings Bill consultation: Business and Regulatory Impact Assessment \(partial\)](#)
- ¹⁶ Eventbrite (2024) [Heat in Buildings consultation events](#)
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- ²⁰ Keep Scotland Beautiful (2024) [Online Heat in Buildings consultation event: Orkney Islands & Shetland Islands](#)
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- ²² Scottish Government (2021) [Heat in Buildings Strategy](#), ch 8
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- ²⁵ Scottish Government (2017) [Scottish energy strategy: Scotland's Energy Efficiency Programme \(SEEP\)](#)
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- ²⁸ Scottish Government (2018) [Energy Efficient Scotland consultation](#)

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- ²⁹ Scottish Government (2019) [Energy Efficient Scotland: consultation on further development of the programme](#)
- ³⁰ Scottish Government (2019) [The Energy Efficiency \(Private Rented Property\) \(Scotland\) Regulations 2019: consultation](#)
- ³¹ Scottish Government (2019) [Improving energy efficiency in owner occupied homes: consultation](#)
- ³² Scottish Government (2020) [New Build Heat Standard: scoping consultation](#)
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- ³⁴ Scottish Government (2021) [Energy efficiency - regulation in existing non-domestic buildings: call for evidence](#)
- ³⁵ Scottish Government (2022) [New Build Heat Standard: consultation - part two](#)
- ³⁶ Scottish Government (2023) [Energy Performance Certificate \(EPC\) reform: consultation](#)
- ³⁷ Scottish Government (2023) [Scottish Greenhouse Gas Statistics 2021, Annex B: Table 1](#)
- ³⁸ [Climate Change \(Emissions Reduction Targets\) \(Scotland\) Act 2019](#), s 10
- ³⁹ Scottish Government (2020) [Update to the Climate Change Plan 2018 -2032](#), p 254
- ⁴⁰ Scottish Government (2023) [Climate Change Plan Monitoring Report 2023: Buildings](#)
- ⁴¹ Climate Change Committee (2022) [Progress in Reducing Emissions in Scotland: 2022 Report to Parliament](#), Table 3.3
- ⁴² The Scottish Government proposes that owner occupied dwellings that use low carbon heating by the backstop date for the energy efficiency component of the proposed Heat in Buildings Standard would be exempt from any obligation to meet the requirements of the energy efficiency component of the Standard
- ⁴³ [Building \(Scotland\) Act 2003](#)
- ⁴⁴ [The Building \(Scotland\) Amendment Regulations 2023](#)
- ⁴⁵ [Energy Act 2011](#)
- ⁴⁶ [Climate Change \(Scotland\) Act 2009](#)
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- ⁴⁹ ClimateXChange (2020) [Public awareness of and attitudes to low-carbon-heating technologies: an evidence review](#)
- ⁵⁰ ECIU (2023) [Public confusion on gas boiler ban](#)
- ⁵¹ [Climate Change \(Scotland\) Act 2009](#)
- ⁵² The Scottish Government’s proposals for EPC reform are focussed on the energy efficiency of the fabric of a dwelling, and so the inclusion of hot water cylinder insulation would in practice have no impact on the “Fabric Efficiency” rating under the proposed revisions to the EPC regime for residential properties in Scotland
- ⁵³ The Standard Assessment Procedure (SAP) for the energy rating of dwellings is the methodology currently used by the Scottish Government to estimate the energy performance of residential properties and produce EPCs and their associated recommendations reports. The Simplified Building Energy Model (SBEM) serves a similar role in non-domestic buildings.
- ⁵⁴ For example, traditional forms of cavity wall insulation are not suitable in properties constructed with a steel or timber frame.
- ⁵⁵ For example, phase change thermal storage technologies, or “behind the meter” electricity generation or storage
- ⁵⁶ For example, traditional forms of cavity wall insulation are not suitable in properties constructed with a steel or timber frame.
- ⁵⁷ [Climate Change \(Scotland\) Act 2009](#), s 35C

- ⁵⁸ Scottish Government (2020) [Update to the Climate Change Plan 2018 -2032](#), p 254
- ⁵⁹ Scottish Government (2021) [Heat in Buildings Strategy](#), ch 8
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- ⁶³ Scottish Government (2020) [Update to the Climate Change Plan 2018 -2032](#), p 254
- ⁶⁴ [Climate Change \(Emissions Reduction Targets\) \(Scotland\) Act 2019](#), s 10
- ⁶⁵ A long-term non-domestic lease is defined in the consultation document as a commercial lease which lasts for “over 20 years”, or one that is “capable” of lasting for more than 20 years
- ⁶⁶ [The Energy Efficiency \(Private Rented Property\) \(England and Wales\) Regulations 2015](#)
- ⁶⁷ Scottish Government (2021) [Heat in Buildings Strategy](#), ch 8
- ⁶⁸ The consultation document is silent on how a purchase price-based cap might apply to non-domestic PRS landlords
- ⁶⁹ Citizens Advice Scotland (2020) [Engaging Hearts and Minds](#)
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- ⁷² Consumer Scotland (2023) [Consumers and the transition to net zero](#)
- ⁷³ [Climate Change \(Scotland\) Act 2009](#), s 35C
- ⁷⁴ [Climate Change \(Scotland\) Act 2009](#)
- ⁷⁵ Scottish Water (2023) [Deputy First Minister Unveils New Green Heating in Dalmarnock](#)
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- ⁷⁷ Scottish Government (2023) [Heat transition: public engagement strategic framework](#)
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- ⁷⁹ Competition and Markets Authority (2023) [Consumer protection in the green heating and insulation sector](#)
- ⁸⁰ [Climate Change \(Scotland\) Act 2009](#), s 35C
- ⁸¹ [The Assessment of Energy Performance of Non-domestic Buildings \(Scotland\) Regulations 2016](#)
- ⁸² Scottish Government (2021) [Heat in Buildings Strategy](#), p 100
- ⁸³ [The Energy Efficiency \(Private Rented Property\) \(England and Wales\) Regulations 2015](#)
- ⁸⁴ European Council (2024) [Infographic - Fit for 55: making buildings in the EU greener](#)
- ⁸⁵ Scottish Government (2021) [Heat in Buildings Strategy](#), p 36