



The Scottish Parliament
Pàrlamaid na h-Alba

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

AGENDA

5th Meeting, 2020 (Session 5)

Wednesday 5 February 2020

The Committee will meet at 9.45 am in the James Clerk Maxwell Room (CR4).

1. **Subordinate legislation:** The Committee will take evidence on and the Fuel Poverty (Additional Amount in respect of Remote Rural Area, Remote Small Town and Island Area) (Scotland) Regulations 2020 [draft] and the Fuel Poverty (Enhanced Heating) (Scotland) Regulations 2020 [draft] from—

Kevin Stewart, Minister for Local Government, Housing and Planning, Lynn Forsyth, Head of Fuel Poverty Policy, Adam Krawczyk, Head of Housing, Homelessness & Regeneration Analysis, and Alison Fraser, Solicitor, Scottish Government.

2. **Subordinate legislation:** Kevin Stewart, Minister for Local Government, Housing and Planning to move—

S5M-20386 —That the Local Government and Communities Committee recommends that The Fuel Poverty (Additional Amount in respect of Remote Rural Area, Remote Small Town and Island Area) (Scotland) Regulations 2020 [draft] be approved.

3. **Subordinate legislation:** Kevin Stewart, Minister for Local Government, Housing and Planning to move—

S5M-20385—That the Local Government and Communities Committee recommends that The Fuel Poverty (Enhanced Heating) (Scotland) Regulations 2020 [draft] be approved.

LGC/S5/20/5/A

Peter McGrath
Clerk to the Local Government and Communities Committee
Room T3.40
The Scottish Parliament
Edinburgh
Tel: 0131 348 5232
Email: peter.mcgrath@parliament.scot

The papers for this meeting are as follows—

Agenda item 1

Note by the Clerk

LGC/S5/20/5/1

Local Government and Communities Committee

5th Meeting, 2020 (Session 5), Wednesday 5 February 2020

Subordinate Legislation

Overview of instruments

1. The following instruments, subject to affirmative procedure, are being considered at today's meeting:
 - [The Fuel Poverty \(Additional Amount in respect of Remote Rural Area, Remote Small Town and Island Area\) \(Scotland\) Regulations 2020](#)
 - [The Fuel Poverty \(Enhanced Heating\) \(Scotland\) Regulations 2020](#)

The Fuel Poverty (Additional Amount in respect of Remote Rural Area, Remote Small Town and Island Area) (Scotland) Regulations 2020

Purpose

2. These Regulations make provision for the definition of Remote Rural Area, Remote Small Town or Island Areas as areas where households should have uplifts to the UK Minimum Income Standard (MIS) applied, for the purposes of calculating fuel poverty.

Background

3. The Fuel Poverty (Targets, Definition and Strategy)(Scotland) Act 2019 sets out new definitions of fuel poverty and extreme fuel poverty. The Local Government and Communities Committee was the lead Committee in scrutinising the Bill that became the Act at Stage 1. The Policy Note states that definitions are based on the recommendations made by the Scottish Fuel Poverty Definition Review Panel (the "Review Panel") and more closely align fuel poverty with low incomes, allowing the Government to target those households who most need support.
4. Under the new definition, a household is deemed to be in fuel poverty if a) their fuel costs are more than 10% (20% for extreme fuel poverty) of the net household income (after housing and some other costs have been deducted) and b) if after deducting fuel costs, childcare costs and any benefits received for a care need the amount of income remaining is less than 90% of the UK MIS.
5. The Bill, as drafted at Stage 1, did not contain a provision to allow for an uplift to be applied to the MIS for remote rural and island areas to take account of the higher cost of living in these areas, despite a recommendation by the Review Panel to the contrary and support for such a provision during the initial consultation on the Bill. In its Stage 1 report on the Bill, the Committee called for the Scottish Government to amend the Bill at Stage 2 to apply an uplift to the MIS for remote rural and island areas for the reasons set out above and overwhelming support from those who provided written and oral evidence to the

Committee. The Minister responded positively to this recommendation and tabled an amendment at Stage 2 which introduced the provisions which these Regulations will make operational.

6. The Regulations also specify that the Centre for Research in Social Policy at the University of Loughborough will determine the value of these uplifts. The policy note for the instrument provides further detail and is attached at **Annexe A**.
7. The Committee needs to report on this instrument by 10 February 2020.

Delegated Powers and Law Reform Committee consideration

8. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on [14 January 2020](#) and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

The Fuel Poverty (Enhanced Heating) (Scotland) Regulations 2020

Purpose

9. This instrument follows on from the Commencement Regulations, published in September 2019, and will commence the provisions contained in section 3(4) of the 2019 Act. These provisions require Scottish Ministers to specify by Regulation what household types will have an enhanced heating regime applied to them for the purposes of calculating fuel poverty.

Background

10. Part a) of the new fuel poverty definition relates to the fuel costs necessary to heat the home to the requisite temperatures for the requisite number of hours. The requisite temperatures include enhanced heating temperatures as well as standard heating temperatures and the requisite heating hours includes enhanced heating hours as well as standard heating hours, which are set out on the face of the Act. The enhanced heating regimes recognise that some households are more vulnerable to the effects of a poorly heated home or need a slightly higher temperature, largely due to age, illness or disability. As their fuel bills will be higher, these regulations ensure that these additional costs are taken into account when calculating whether these households are in fuel poverty.
11. There are three categories of enhanced heating regimes, as set out in the Policy Note below. The Regulations specify, in accordance with the provisions of section 3(4), which types of households will have which enhanced heating regime applied to them for the purposes of measuring fuel poverty. The Policy Note states that these enhanced heating regimes are used solely as a statistical tool in calculating the prevalence of fuel poverty. They do not confer any benefits

or entitlements upon particular households. The Note provides further detail on the instrument and is attached at **Annexe B**.

12. The Committee needs to report on this instrument by 10 February 2020.

Delegated Powers and Law Reform Committee consideration

13. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on [21 January 2020](#) and [determined](#) that:

Regulation 2 of this instrument defines the term “benefits”. However, in line with the definition in section 3(10)(b) of the 2019 Act, it should instead define “benefits received for a care need or disability”.

14. The Scottish Government have accepted that this was an oversight and intends to correct it by correction slip given that it requires a minor amendment.
15. The Committee therefore drew this instrument to the attention of the Local Government and Communities Committee under the general reporting ground. In doing so, the DPLRC also welcomed the Scottish Government’s commitment to correct this error.

Written submissions

16. The Committee received two written submissions on the enhanced heating regulations. A submission from Professor Janette Webb, Co-Director UK Energy Research Centre, University of Edinburgh, who was on the Review Panel is attached at **Annexe C**. A submission from Energy Action Scotland is attached at **Annexe D**.

Procedure

17. Under Rule 10.6.1 (a), these instrument are subject to affirmative resolution before they can be made. It is for this Committee to recommend to the Parliament whether the draft instruments should be approved.
18. The Minister for Local Government, Housing and Planning has moved (by motions S5M-20385 and S5M-20386 set out in the agenda) that the Committee should recommend the approval of these regulations. The Minister will attend to speak to and move the motions. Ahead of the formal debate (as part of an earlier agenda item), there will be an opportunity for members to ask the Minister and officials questions about the background to and purpose of the regulations.
19. At the end of the debate, the Committee must decide whether or not to agree the motion, and then report to Parliament accordingly. Such a report need only be a short statement of the Committee’s recommendations.

ANNEXE A**POLICY NOTE****The Fuel Poverty (Additional Amount in respect of Remote Rural Area, Remote Small Town and Island Area) (Scotland) Regulations 2020****SSI 2020/XXX**

1. The above instrument was made in exercise of the powers conferred by section 3(6)-(9) of the Fuel Poverty (Targets, Definition and Strategy) (Scotland) Act 2019 (“the Act”). The instrument is subject to affirmative procedure.

Purpose of the instrument.

2. These Regulations make provision for the definition of Remote Rural Area, Remote Small Town or Island Areas, identified in the Act as areas where households should have uplifts to the UK Minimum Income Standard applied, for the purposes of calculating fuel poverty. The Regulations also specify that the Centre for Research in Social Policy at the University of Loughborough will be the facility which determines the value of these uplifts.

Fuel Poverty Definition

3. The Fuel Poverty (Targets, Definition and Strategy)(Scotland) Act 2019 (“the Act”) sets out the new definitions of fuel poverty and extreme fuel poverty. These new definitions are based on the recommendations made by the Scottish Fuel Poverty Definition Review Panel (the “Review Panel”) and more closely align fuel poverty with low incomes, allowing us to target those households who most need support. A household is deemed to be in fuel poverty if a) their fuel costs are more than 10% (20% for extreme fuel poverty) of the net household income (after housing and some other costs have been deducted) and b) if after deducting fuel costs, childcare costs and any benefits received for a care need the amount of income remaining is less than 90% of the UK Minimum Income Standard (MIS).

UK Minimum Income Standard

4. The UK MIS is a well-respected measure, also used to help determine the value of the Living Wage, which uses focus groups of members of the public to determine what they consider the minimum income required for households to achieve an acceptable standard of living. It is calculated annually on behalf of the Joseph Rowntree Foundation by the Centre for Research in Social Policy at the University of Loughborough, with figures produced for a wide variety of household archetypes.

Remote Rural Area, Remote Small Town and Island Area Amount

5. The Review Panel recommended that, when applying the new definition of fuel poverty, an upward adjustment should be made to the MIS for households in remote rural areas to take account of the generally higher costs of living in such communities. The high living costs in these areas are evidenced in research commissioned by Highlands and Islands Enterprise, arguing for a specific MIS to be calculated for Scotland's remote and island communities.¹
6. Section 3 of the Act makes provision for such uplifts to the MIS to be applied to households in remote rural, remote small town and, separately, island areas, while Section 3(7) requires Scottish Ministers to define in Regulations the relevant terms, and also to specify a person who is to determine the amount of the uplifts.
7. For the purposes of defining the terms "remote rural area" and "remote small town", the existing 6-fold Scottish Government Urban Rural Classification² provides a suitable existing set of criteria based on population size and driving time from settlements of over 10,000 people.
8. For "island areas" the Act specifies that the definition must encompass all island areas. This is primarily to enable the calculation of a separate MIS uplift for island communities. However, it is also intended to avoid possible future scenarios whereby the populations of the largest island towns, such as Kirkwall or Lerwick, grow to over 10,000 people, which, under the 6-fold Scottish Government Urban Rural Classification, would see extensive areas of Orkney and Shetland no longer classed as remote. The best existing definition available which meets these requirements is the one introduced by the Islands (Scotland) Act 2019.
9. To calculate the amounts by which the MIS will be uplifted for remote and island communities, the Centre for Research in Social Policy at the University of Loughborough have been appointed on the basis of their established expertise in developing and compiling the MIS for the whole of the UK.

Consultation

10. A consultation was carried out on the draft fuel poverty strategy that included gathering views on what should be included in the legislation that became the Act. Individual stakeholder responses as well as an independent consultation analysis report have been published on the Scottish Government website.
11. At the time of the consultation, and in the legislation as originally laid, the proposal of the Review Panel to include upward adjustments to the MIS for households in remote rural areas was not taken on board. Instead it was claimed that the additional costs borne by rural and remote households were already taken into

¹ *A Minimum Income Standard for Remote Rural Scotland* – Highlands and Islands Enterprise, 2013
<http://www.hie.co.uk/regional-information/economic-reports-and-research/archive/a-minimum-income-standard-for-remote-rural-scotland.html>

² Scottish Government Urban Rural Classification ISBN: 978-1-78851-620-4 published March 2018
<https://www.gov.scot/publications/scottish-government-urban-rural-classification-2016/>

account in the modelling used to estimate fuel poverty, which allows for regional variations in temperatures and exposure to the wind, as well as differences in prevailing types of housing stock. However, stakeholder responses both to the consultation and to the Call for Evidence by the Local Government and Communities Committee, were overwhelmingly in favour of MIS uplifts for these areas. This led to the tabling by Scottish Ministers of amendments to the legislation at Stage 2 to introduce the provisions which these Regulations will make operational.

Impact Assessments

12. The children's rights and wellbeing impact assessment, equality impact assessment, Fairer Scotland duty assessment and health impact assessment published before the introduction of the Bill, all reflected the original policy position, which was to reject the Review Panel's proposal for upward adjustments to the MIS for households in remote rural areas. However, during passage of the legislation, an Island Communities Impact Assessment (ICIA) was prepared, which took account of the proposed amendments that Ministers lodged at Stage 2. This ICIA is also published on the Scottish Government website and is not required to be updated.³

Financial Effects

13. No Business and Regulatory Impact Assessment has been prepared for this order as no financial effect or impact on the private, voluntary or public sectors is foreseen.

Scottish Government
Housing and Social Justice Directorate
2019

³ <https://www.gov.scot/publications/island-communities-impact-assessment-fuel-poverty-targets-definition-strategy-scotland-bill/>

ANNEXE B**POLICY NOTE****The Fuel Poverty (Enhanced Heating) (Scotland) Regulations 2020****SSI 2020/XXX**

1. The above instrument was made in exercise of the powers conferred by section 3(4) of the Fuel Poverty (Targets, Definition and Strategy)(Scotland) Act 2019 (“the 2019 Act”). The instrument is subject to affirmative procedure.

Purpose of the instrument.

2. This instrument follows on from the Commencement Regulations, published in September 2019, and will commence the provisions contained in section 3(4) of the 2019 Act. These provisions require Scottish Ministers to specify by Regulation what household types will have an enhanced heating regime applied to them for the purposes of calculating fuel poverty.

Policy Objectives**Enhanced Heating Regimes**

3. The Fuel Poverty (Targets, Definition and Strategy)(Scotland) Act 2019 (“the Act”) sets out the new definitions of fuel poverty and extreme fuel poverty. These new definitions are based on the recommendations made by the Scottish Fuel Poverty Definition Review Panel and more closely align fuel poverty with low incomes, allowing us to target those households who most need support. A household is deemed to be in fuel poverty if a) their fuel costs are more than 10% (20% for extreme fuel poverty) of the net household income (after housing and some other costs have been deducted) and b) if after deducting childcare costs and any benefits received for a care need the amount of income remaining is less than 90% of the UK Minimum Income Standard.
4. Part a) of the fuel poverty definition relates to the fuel costs necessary to heat the home to the requisite temperatures for the requisite number of hours. These are the temperatures and heating hours recommended by the Scottish Fuel Poverty Definition Review Panel as supporting mental and physical wellbeing. The requisite temperatures include enhanced heating temperatures as well as standard heating temperatures and the requisite heating hours includes enhanced heating hours as well as standard heating hours. Both the standard and enhanced temperatures and heating hours are set out on the face of the Act. The enhanced heating regimes recognise that some households are more vulnerable to the effects

- of a poorly heated home or need a slightly higher temperature, largely due to age, illness or disability. These households should be heating their home to either a higher temperature, for longer or for both and as a result would have higher fuel bills. We want to ensure that these additional costs can be taken into account when calculating whether these households are in fuel poverty or not.
5. The Act allows for three different enhanced heating regimes to be applied to household types for whom the standard heating regime is deemed insufficient. These three regimes apply either enhanced heating temperatures, enhanced heating hours, or both. The purpose of these Regulations is to specify, in accordance with the provisions of section 3(4), which types of households will have which enhanced heating regime applied to them for the purposes of measuring fuel poverty.
 6. The three enhanced heating regimes to be used are:
 - **Enhanced Heating Regime 1**, combining enhanced heating temperatures with enhanced heating hours;
 - **Enhanced Heating Regime 2**, combining enhanced heating temperatures with standard hours of heating;
 - **Enhanced Heating Regime 3**, combining standard temperatures with enhanced heating hours.
 7. These enhanced heating regimes are used solely as a statistical tool in calculating the prevalence of fuel poverty. They do not confer any benefits or entitlements upon particular households.
 8. The Regulations specify that Enhanced Heating Regime 1 will be applied to all households with at least one member who is aged 75 years or over, or has a long term physical or mental condition or illness lasting or expected to last 12 months or more, or is in receipt of benefits for a care need or disability, and where a member of the household is at home regularly during the morning or afternoon or both on weekdays. The age of 75 years and above originates with the Definition Review Panel, which identified this as the point where evidence suggests most people can reasonably be assumed to become more vulnerable to cold, and are very likely to be retired and so spending longer amounts of time at home. This enhanced heating regime also recognises that those under the age of 75 years, but who have long term conditions or illnesses, are also likely to have greater heating needs and are likely to spend more time in the home.
 9. Enhanced Heating Regime 2 will be applied to households with at least one member aged 75 years or over, or who has a long term physical or mental condition or illness lasting, or expected to last, 12 months or more, or is in receipt of benefits for a care need or disability, and where the home is NOT occupied during the morning or afternoon or both on weekdays. This enhanced heating regime recognises that while those aged 75 years or over, or those with long term conditions or illnesses may benefit from higher temperatures, the home may not be occupied during the day as many may work or spend significant time outside the home.

10. Enhanced Heating Regime 3 will be applied to households with a child aged 5 years or under and where the home is occupied regularly during the morning or afternoon or both on weekdays. While medical evidence suggests young children do not require higher heating temperatures, we recognise that such households may be spending longer periods of time at home.
11. Section 6 of the Regulations addresses the possibility of a household with members who qualify separately under Enhanced Heating Regime 1 and Enhanced Heating Regime 3. An example would be a household with a grandparent aged 75 years and a 3 year old grandchild. Where such a situation arises, Enhanced Heating Regime 1 will always be applied.

Scottish House Condition Survey (SHCS)

12. Fuel poverty is measured at a national and local authority level through the SHCS. The SHCS is the largest single housing research project in Scotland, and the only national survey to look at the physical condition of Scotland's homes as well as the experiences of householders. It is the key source of the data, in combination with the social data collected from the Scottish Household Survey (SHS), required to calculate fuel poverty levels including the information needed to determine which households should have one of the enhanced heating regimes applied to them for the purpose of calculating fuel poverty.
13. The SHS is undertaken annually and conducts interviews with around 10,000 households gathering information on the composition of the household and many aspects of their lives. SHCS physical surveys of the properties are also undertaken with around 3,000 of these households to assess the general condition as well as the energy efficiency of the property. Information gathered through both the interviews and the physical surveys is used to calculate fuel poverty. Most of the SHCS data required under the new definition of fuel poverty will be unchanged from the previous definition, but one question in the SHS survey will become annual and be asked of all SHCS households to identify household occupancy patterns within the home.

Calculating Fuel Poverty

14. To calculate fuel poverty levels, information is drawn from a variety of questions in the SHS and SHCS. This includes questions on income, benefits received, childcare costs, and housing costs, which are cross referenced to calculate the net adjusted income of the household. The household's fuel costs are then calculated. These are not actual fuel costs because the way people use energy in the home, and the prices they pay for it, varies greatly, and, more importantly, households experiencing fuel poverty often ration heating to reduce their costs. Instead a modelled 'heating regime' is used, which calculates household fuel costs by assessing how much energy is needed to heat the home to the requisite temperatures, for the requisite hours, specified in the Act. Other reasonable indoor fuel needs are also factored in covering such things as heating water, cooking,

lighting and using appliances such as kettles, phone chargers, etc. This reflects the fact that the purpose of calculating fuel poverty is to assess whether households would be likely to experience excessive pressure on their finances if they were heating their home as it should be to maintain health and wellbeing.

15. Households which have one of the enhanced heating regimes applied to them will typically use more energy than those on the standard heating regime. However, the calculation on the amount of energy used also takes into account factors such as the energy efficiency of the home. This information is provided by the Building Research Establishment (BRE), as are the average costs of fuel.

16. The question in the SHS which will be used to establish occupancy patterns for the household asks 'Generally speaking, during winter when heating needs are greatest, at which of these times are you or someone else in your household regularly at home?' and then provides a list of options, set out below:
 - All day/all of the time
 - Weekday morning – 9am – noon
 - Weekday lunchtime – noon – 2pm
 - Weekday afternoon – 2pm – 5pm
 - Weekend evening
 - Weekend daytimes
 - Weekend evenings
 - Highly variable (no regular pattern)

17. Since both the standard and enhanced regimes assume 16 hours of heating a day at weekends, the intention behind this question is to identify households where a member is habitually at home during the day on weekdays. While the standard regime applies only 9 hours of heating on weekdays this rises to 16 hours a day for the enhanced regime. Those who answer in the affirmative to either, or both, of weekday mornings and weekday afternoons, or to highly variable, or all day/all of the time, will have enhanced heating hours applied to them. All the heating regimes are applied on a year round basis. The reference in the question to winter is simply meant to concentrate respondents minds on the time of year when it is coldest.

18. Where the household's fuel costs amount to 10% (or 20% for extreme fuel poverty) of its net adjusted income, part a) of the fuel poverty test will have been met. The remaining household income after deduction of its fuel costs, benefits received for a care need or disability and childcare costs is then calculated. If this figure amounts to less than 90% of the UK Minimum Income Standard (MIS) for that household type, part b) of the test will also have been met and the household will be considered fuel poor. For households in remote rural, remote small towns and island areas, uplifts will be applied so that their remaining income must amount to a greater proportion of the MIS if they are not to be considered fuel poor. This is intended to reflect the generally higher cost of living in these areas.

Consultation

19. A consultation seeking views on the kinds of household to which each of the three enhanced heating regimes should be applied was launched on 24 June 2019 and ran until 16 August 2019. The Act also requires us to consult with people with lived experience of fuel poverty and the Energy Savings Trust ran a series of focus groups to discuss the enhanced heating regimes. Individual stakeholder responses, a consultation analysis report, and a report on the focus groups have been published on the Scottish Government website.
20. The comments provided by stakeholders helped inform the content of these Regulations. Specifically, Enhanced Heating Regime 3 will now be applied to households with children aged 5 years or under and who spend more time at home, rather than just those aged under 3 years, as originally proposed.
21. Some respondents suggested that a detailed list of long-term illnesses or disabilities should be prepared that would indicate whether any household member requires an enhanced heating regime. However, it would have been very challenging to compile such a list and would have required new and overly intrusive questions to be added to the survey. To maintain a simple, non-intrusive approach we will continue to rely on self-reporting of conditions by households through the survey.
22. There were also a number of other household types that respondents suggested should have an enhanced heating regime applied to them, such as those including pregnant women, premature babies, or those with temporary or fluctuating illnesses. However, the SHS and SHCS are annual surveys and the heating regimes are based on annual costs, so they cannot easily capture short term illnesses or conditions. Consequently, these have not been included within the regulations. Nonetheless, it is acknowledged that some of the additional household types identified by respondents may have particular needs which should be addressed, and these will be considered during the preparation of the Fuel Poverty Strategy.

Impact Assessments

23. A children's rights and wellbeing impact assessment, an equality impact assessment, a Fairer Scotland duty assessment and a health impact assessment were carried out before the introduction of the Bill and published on the Scottish Government website. These drew upon the responses to the Fuel Poverty Strategy Consultation which ran from November 2017 to February 2018 and considered all relevant aspects of the proposed legislation including the original provisions for a single enhanced heating regime, combining higher temperatures and longer heating hours. During the passage of the Bill an island communities impact assessment (ICIA) was carried out and this has also been published on the Scottish Government website.
24. Despite the expanded range of enhanced heating regimes now included in the Act the existing impact assessments still provide a satisfactory assessment of the

effects on the relevant age groups and disabilities. The proposals which will be brought into effect by these Regulations are all likely to have positive rather than negative impacts for these groups compared to the original proposals. For instance the impact assessments rejected the idea of applying the original enhanced heating model, which combined higher temperatures with longer heating hours, to households with children under five years old, on the basis that medical evidence does not recommend higher temperatures. However, they did note that such households are likely to need heating for longer periods of time, due to spending more time at home, and made clear that this issue could be reconsidered when it came to laying Regulations.

25. Other aspects of impact assessments have seen little substantive change as a result of the expanded range of enhanced heating regimes. The case for raising the age from 60 to 75 years for automatic qualification for what is now Enhanced Heating Regime 1 (combined higher heating temperatures and longer heating hours) remains unchanged. Namely that evidence shows more older people than ever before are living healthy, active independent lives, well into their retirement. Those aged between 60-74 years who are more vulnerable, will qualify for enhanced heating via the criteria on long term physical or mental conditions or illnesses lasting, or expected to last, 12 months or more. In light of these considerations, a wholesale re-evaluation of the impact assessments was considered unnecessary.
26. A review by Scottish Government statisticians was conducted to examine whether there was a case for undertaking an ICIA specifically in respect of the enhanced heating regime proposals. This concluded that the prevalence of the household characteristics used to determine applicability of the enhanced heating regimes is not significantly different in island communities compared with those on the Scottish mainland. Consequently, no new ICIA has been prepared.

Financial Effects

27. No Business and Regulatory Impact Assessment has been prepared for this order as no financial effect or impact on the private, voluntary or public sectors is foreseen.

Scottish Government
Housing and Social Justice Directorate
December 2019

ANNEXE C**Written submission from Professor Janette Webb, Co-Director UK Energy Research Centre, University of Edinburgh**

- The proposed Enhanced Heating Scotland Regulations appear to address adequately the recommendations of the Scottish Fuel Poverty Definition Review Panel in relation to the need for extended heating use (whether at standard or enhanced temperatures) among vulnerable groups likely to be at home for most of the time, due to health, disability or age criteria.
- The regulations should for example be responsive to the concerns that raising the age of those deemed vulnerable on grounds of age from 60 to 75 might arbitrarily disadvantage those in the 60-74 age group who struggle to cover higher heating costs associated with longer periods at home. The regulations will capture those people in the 60-74 age group who are vulnerable due to health problems or disability.
- The effectiveness of the Regulations will however depend on how they are implemented. Those in the relevant groups should be a priority for energy efficiency upgrades to their home. It seems unlikely however that energy efficiency improvements will be sufficient to meet the enhanced heating standards. Ultimately this group is likely to need an enhanced welfare benefit payment, in line with the Panel's recommendation for closer linking of income poverty (using a Minimum Income Standard) with inability to pay heating bills. Such a benefit could potentially be created by restructuring the significant budget for the Winter Fuel Payment, which is now devolved to Scotland, to target this on vulnerable householders. This benefit is currently paid to households with someone over Pension Credit age, but could be targeted, or alternatively the payment could be taxed, creating an addition to income tax revenues to benefit vulnerable households.

ANNEXE D

Written submission from Energy Action Scotland

Fuel Poverty (Enhanced Heating) (Scotland) Regulations 2020

Energy Action Scotland (EAS) is the Scottish charity dedicated to ending fuel poverty. EAS has been working with this remit since its inception in 1983 and has campaigned on the issue of ending fuel poverty and delivered many practical as well as research projects to tackle the problems of cold, damp homes. EAS works with both the Scottish and the UK Governments on energy efficiency programme design and implementation.

EAS welcomes the opportunity to respond to this Call for Evidence. Given its remit, EAS's response focuses primarily on those areas that it considers may impact most on fuel poor and vulnerable consumers. We have responded in detail to a number of questions and have also included additional general points that we hope the Local Government and Communities Committee will take into account and/or give due consideration during their scrutiny of the EHR Regulations.

Fuel poverty impacts directly on health. Its effects are felt across our health and social care services from bed blocking (where people cannot be returned to cold, damp homes or homes with no power), to primary care which sees a 19% increase in attendance at GP from older people with respiratory illness for every degree the temperature drops below 5 degrees centigrade. Fuel poverty leads to cold, damp homes and with 4800 excess winter deaths in 2017/18ⁱ, many of these caused by respiratory diseases, having an achievable fuel poverty strategy will help to mitigate these adverse impacts on health.

This response to the Regulations makes use of the draft regulations and the policy note⁴, the Scottish Government's response to the Enhanced⁵ Heating Regime (EHR) consultation, and the EAS response to the EHR consultation⁶.

Health and Disability

EAS disagreed to the question regarding EHR1 which asked whether we agreed or disagreed that Enhanced Heating Regime 1 should be applied to those households where a member has a long term mental or physical illness lasting or expected to last 12 months or more AND they regularly spend more time in the home during winter. We disagreed for a number of reasons. We suggested that it would be helpful to differentiate temperature sensitive conditions including those where higher temperature is not in fact desirable for management of the condition of the occupant

⁴ The Fuel Poverty (Enhanced Heating) (Scotland) Regulations 2020

⁵ Scottish Government, Enhanced Heating Consultation: Scottish Government Response, December 2019

⁶ Energy Action Scotland, EAS Response to Scottish Government Consultation on the Enhanced Heating Regimes within the new definition of Fuel Poverty, August 2019

and that it would also be helpful to have a list of broad categories of illnesses and conditions that would be sensitive to colder temperatures and for this to be reflected in the survey questions.

EAS welcomes the Scottish Government's response to the consultation on not having a list of illness/condition categories:

“Our approach is also more inclusive - allowing the interviewee to self-identify as having any long term physical or mental illness or condition without having to answer detailed questions about their illness or condition – questions that people may feel uncomfortable responding to”

The Scottish Government response goes on to say *“The question on a long term physical or mental illness or condition is a well-established question, which is used to compare views and experiences across the full range of topics covered by the Scottish Household Survey (SHS) between those in good health or not. This question is also a core question within all three of the Scottish Government's main population surveys (including the Scottish Health Survey and Scottish Crime and Justice Survey) and the combined large samples are used for comparisons across equalities groups (this question is used as an equality check to see how policies are landing on different groups)”*

We would like this core question to be reflected on by the Committee in its deliberations about these Regulations – we agree that the mechanism of determination for “illness” should be treated simply and fairly as possible. The SHS determines the question of health and disability under Q. HF1A and HF2A⁷ and any response - (1) to (19) from this would result in the higher temperature regime being applied for the SHCS fuel poverty assessment. We would still advocate the need to ensure that the SHS process is sensitive enough to account for the cold related illnesses noted in the winter mortality evidence⁸. Going forward this would perhaps provide robust evidence for certain identifiable conditions being good proxies for the risk of fuel poverty. A simple binary approach would not allow for this insight.

We also suggested the use of the word “condition” alongside “illness” and are pleased to see that this has been adopted. We are also pleased to see that the Scottish House Condition Survey (SHCS) will not require medical evidence to confirm diagnoses of people and that self-reporting will be accepted as part of this validation.

⁷ <https://www2.gov.scot/Resource/0054/00548028.pdf>

⁸ <https://www.nrscotland.gov.uk/files/statistics/winter-mortality/iwm-background-2013-14.pdf>

Periods of Time at Home

EAS suggested that the SHCS assessor should be clear that questions about regularity of occupation are applied to weekdays only and we are pleased to see that the Scottish Government has taken this suggestion on board.

In their response with regards to EHR1, the Scottish Government say that an annual survey cannot capture all information and that people's situations can suddenly change. We would caution using the Home Energy Scotland advice service as the only backup here – the intent behind having different heating regimes is to try and capture as many of the different heating situations people find themselves in: one size does not fit all and therefore there needs to be many different solutions.

We also recommended the wording in the survey question is changed from “regularly spend more time at home during winter” to “regularly at home during the day and evening when it is not summer”. The Scottish Government, in their draft Regulations, are using the wording at (a):

Enhanced heating temperatures and enhanced heating hours are appropriate for households where both—

- (a) the dwelling is frequently occupied during the morning or afternoon or both on weekdays by any member of the household when it is cold,

We are encouraged to see that the above has taken on board another of our suggestions, that:

“the SHCS assessor should be clear that questions about regularity of occupation are applied to weekdays only”. We had also been concerned about previous use of the word “winter” and are pleased that the Scottish Government has chosen to use the word “cold” instead.

EAS was pleased to see that the Delegated Powers and Law Reform Committee had noted that there needed to be clarification⁹ over “benefits received for a care need or disability”. In our consultation response, we suggested that these benefits should be defined in the Regulations as well as the Act itself. We were also concerned about those who have a care need or disability but don't receive corresponding benefits. The Scottish Government said that it is not possible to include households who may be eligible for these benefits but are not claiming them as the interviewer cannot assess their eligibility. We would strongly suggest that the Fuel Poverty Strategy is able to cater for people falling outside thresholds, as these are quite blunt.

We had recommended that for EHR1 part 3 that the term used is “spends at least 3 days (out of 5 days) at home ALL DAY”. The wording in the draft Regulations states:

⁹ Delegated Powers and Law Reform Committee, Scottish Parliament, Meeting 21 January 2020
<https://shar.es/a3O5MU>

(a) the dwelling is not frequently occupied during the morning or afternoon or both on weekdays by any member of the household when it is cold
 The word “frequently” is not defined in the Regulations and we would advise that it is included as this could be left open to interpretation. As we had suggested in our response, “frequently” could be defined as 3 out of 5 days.

Enhanced Heating Regime 3 (EHR3) (standard temperature, longer hours)

We had recommended that EHR3 should be applied to all households with a child under the age of 5 here and also throughout the scrutiny of the Bill and we are pleased to see that the Scottish Government has finally accepted our request.

Initial resistance for this was based on the assumption that the Scottish Government’s Early Learning and Childcare¹⁰ funding would ensure that children between 3-5 would not be at home during the week. However, this could not be universally assumed in all local authorities and the Audit Scotland report¹¹ did question the success of the initial 600-hour rollout and that the increase to 1140 hours from August 2020 would face some significant challenges.

Impact Assessments

This is discussed in the Policy note attached to the draft Regulations, which says:

“Despite the expanded range of enhanced heating regimes now included in the Act the existing impact assessments still provide a satisfactory assessment of the effects on the relevant age groups and disabilities. The proposals which will be brought into effect by these Regulations are all likely to have positive rather than negative impacts for these groups compared to the original proposals. For instance, the impact assessments rejected the idea of applying the original enhanced heating model, which combined higher temperatures with longer heating hours, to households with children under five years old, on the basis that medical evidence does not recommend higher temperatures. However, they did note that such households are likely to need heating for longer periods of time, due to spending more time at home, and made clear that this issue could be reconsidered when it came to laying Regulations.”

Certain groups, such as pregnant women, were referred to in the equalities impact assessment¹² for the Fuel Poverty Bill:

“The absence of an impact assessment relating to pregnant women was noted and it was suggested that this is an issue that needs to be addressed urgently. Reasons given included: health issues, and the need for early intervention in tackling

¹⁰ <https://www.gov.scot/policies/early-education-and-care/early-learning-and-childcare/>

¹¹ <https://www.audit-scotland.gov.uk/report/early-learning-and-childcare>

¹² Scottish Government, Equality Impact Assessment – Results : Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill and Fuel Poverty Strategy, June 2018

inequality as it was suggested that children born into poverty are more likely to continue in poverty and experience additional inequalities”

We feel strongly that the impact assessments should be re-run as the picture has changed considerably from June 2018 and will change further in ways that are more complex, the aggregation of which may appear to negate the impact of the differential effects on specific groups of households. The Impact Assessments need to be re-assessed to account for all the applicable EHRs and also the range of MIS that could be relevant for each of the EHRs.