



OFFICIAL REPORT  
AITHISG OIFIGEIL

DRAFT

# Economy, Energy and Fair Work Committee

Tuesday 8 September 2020

Session 5



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**Tuesday 8 September 2020**

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**ECONOMY, ENERGY AND FAIR WORK COMMITTEE**

**27<sup>th</sup> Meeting 2020, Session 5**

**CONVENER**

\*Gordon Lindhurst (Lothian) (Con)

**DEPUTY CONVENER**

\*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

**COMMITTEE MEMBERS**

\*Colin Beattie (Midlothian North and Musselburgh) (SNP)

\*Maurice Golden (West Scotland) (Con)

Rhoda Grant (Highlands and Islands) (Lab)

\*Alison Harris (Central Scotland) (Con)

\*Richard Lyle (Uddingston and Bellshill) (SNP)

\*Gordon MacDonald (Edinburgh Pentlands) (SNP)

\*Andy Wightman (Lothian) (Green)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

David Armitage (Society of Chief Officers of Transportation in Scotland)

Ken Brady (Energy Saving Trust)

Aoife Deery (Citizens Advice Scotland)

Stacey Dingwall (Scottish Federation of Housing Associations)

Scott Restrick (Energy Action Scotland)

Gavin Slater (Glasgow City Council)

**CLERK TO THE COMMITTEE**

Alison Walker

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



## Scottish Parliament

### Economy, Energy and Fair Work Committee

*Tuesday 8 September 2020*

*[The Convener opened the meeting at 09:30]*

### Decision on Taking Business in Private

**The Convener (Gordon Lindhurst):** Good morning, and welcome to the 27th meeting in 2020 of the Economy, Energy and Fair Work Committee. We have apologies from Rhoda Grant.

Item 1 is a decision on taking business in private. Does the committee agree to take agenda items 3 and 4 in private?

As no members object, we agree to take items 3 and 4 in private.

## Heat Networks (Scotland) Bill: Stage 1

09:30

**The Convener:** Agenda item 2 is an evidence session on the Heat Networks (Scotland) Bill. We have two witnesses, who are Gavin Slater, head of sustainability at Glasgow City Council, and David Armitage, roads policy and asset manager at Aberdeenshire Council, who is representing the Society of Chief Officers of Transportation in Scotland.

I will start with a general question about the definitions in the bill and whether those adequately include current and future technologies. Are the definitions future proof?

**Gavin Slater (Glasgow City Council):** Thank you for inviting me to give evidence.

Yes, the definitions are more than adequate. I have no concerns that any of the definitions is not sufficiently future proofed.

**David Armitage (Society of Chief Officers of Transportation in Scotland):** The definitions are adequate and potentially useful, in that I can see that the differentiation between a district heat network and a communal heating system might be useful in framing secondary legislation appropriately. I agree that the definitions are good.

**The Convener:** Maurice Golden wants to drill down into that a bit.

**Maurice Golden (West Scotland) (Con):** In the past, we have seen the issue of incinerators that had planning consent for combined heat and power generation not being connected to a heat network. Are the definitions adequate to ensure that connections with waste heat producers are possible?

**Gavin Slater:** I do not have any concerns about that. The waste heat definitions are adequate.

**David Armitage:** My perspective is that of the road authorities, so I do not have any comment on the waste heat definitions.

**Maurice Golden:** Do you have any comments on the bill's provisions for decommissioning and whether those are sufficient?

**David Armitage:** From the point of view of roads authorities, I have some concerns about decommissioning. More detail might be needed, which could be done later in secondary legislation. If apparatus were to be decommissioned, assurance would be needed that the roads authority would not be left with the liability for systems that take up space under the road and would potentially deteriorate. For other utilities,

there is provision in other legislation for what happens if an organisation ceases trading. I am not sure that that is covered in the bill.

**Gavin Slater:** I second that. Likewise, local authorities do not want to be left with assets stranded. More detail is required on that and some other matters, but I imagine that that will come in secondary legislation.

**Maurice Golden:** Is what is set out in the financial memorandum sufficient or will additional resources be required?

**David Armitage:** Additional resources—*[Inaudible.]*—if they were landed with liabilities as a result of decommissioning, but the bill does not make that clear. That leaves scope for provisions to require organisations to insure against that in some way and to cover liabilities for apparatus left in the road.

**Gavin Slater:** I agree. That is a concern for local authorities, so more definition of that would be helpful for our understanding. More resource is required to support some elements of the bill.

**Maurice Golden:** Finally, you mentioned amendment of the bill by regulations. Is that adequate to ensure flexibility, or should certain aspects be included in the bill?

**David Armitage:** There is reasonable scope in the bill to pass secondary legislation and for licence conditions to be set by the licensing body, which would address a lot of the concerns.

**Gavin Slater:** I agree. That is definitely required because, although there is scope to allow for that, there is also scope for different interpretations of how to do these things, so secondary legislation is required to create uniformity across the country.

**Richard Lyle (Uddingston and Bellshill) (SNP):** Are the witnesses content that the bill leaves licence standard conditions to the licensing authority, or should those be set out in the bill? What are the implications of leaving the standards to the licensing authority?

**Gavin Slater:** The bill is not sufficiently detailed, but that detail could be contained in supplementary legislation. The bill contains a good framework, and it aligns itself with the direction of travel, certainly from Glasgow's perspective. However, the detail is still required, whether that is in the bill or in supplementary legislation.

**David Armitage:** My experience with previous legislation has been that having a lot of detail in a bill can cause problems when circumstances change. It is difficult to bring in new primary legislation, because that comes up relatively infrequently. With previous legislation relating to roads, I have found it better to have a lot of the detail in secondary legislation, which can be

amended as required, provided that the main principles are set out in primary legislation.

**Richard Lyle:** Basically, you are suggesting that the bill needs to be flexible. Is that the case?

**David Armitage:** Yes. In my experience, that usually works out best.

**Richard Lyle:** To follow that up, what standard conditions would you expect to be included in a licence? For example, would you expect standards on consumer protection? Might any conditions be problematic to include or uphold? David, do those issues touch on any of your responsibilities?

**David Armitage:** My comments relate to the councils' functions as roads authorities, but I expect licence conditions to include the statutory power to place and maintain apparatus in the road. Given the way that the bill is set out, with a distinction between heat networks and communal heating systems, it might be appropriate to have different licences. District heat networks might have statutory powers to place and maintain apparatus in the road, whereas communal heating systems would not have those powers. There are parallels with electronic communications licences, where public network licences normally come with the power to place and maintain apparatus in the public road, whereas private networks do not come with that power.

Those are the main types of licensing conditions that would impinge on my field of expertise. I cannot comment on consumer protection.

**Richard Lyle:** I understand that. Do you have any comments, Mr Slater?

**Gavin Slater:** I agree whole-heartedly with David Armitage. Access to the subsurface infrastructure is crucial.

On consumer protection, we are determined to see district heating as an environmental solution and a poverty solution. Therefore, it is crucial that there are conditions on pricing and on protecting people who are in fuel poverty as well as on maintaining market conditions to allow pricing to be competitive.

**Willie Coffey (Kilmarnock and Irvine Valley) (SNP):** I have one or two questions on the consent process, which are probably more for Gavin Slater. The policy memorandum includes fuel poverty as an assessment criterion, but that is not in the bill. Should that be a core part of the consent process for heat networks in communities?

**Gavin Slater:** It is a core consideration. David Armitage's earlier point about the bill's flexibility is important. Not every heat network will be connected to domestic properties. Some networks will be more industrially and commercially driven.

In Glasgow, we want domestic connections to be driven by alleviating fuel poverty and for there to be a control on the price for the sale of the heat. We hope that disbenefits to the operator of delivering heat at that cost will be recovered through commercial customers. Fuel poverty is a core consideration. As I said in my written submission, there is just a passing mention of it in the bill. I am not an expert in legislation, but the point has been made about the need for the bill to be flexible, and it seems appropriate for more detail to be in secondary legislation.

**Willie Coffey:** One would imagine that local communities must have a role in the process. Surely we are moving away from the idea of doing things to communities and towards doing things with communities. What should their role be in the process?

**Gavin Slater:** Absolutely. We have been working hard on the local heat and energy efficiency strategy process. By virtue of that, we are almost a step ahead of the bill in that we have already started to look at assigning district heating zones in the city. In doing that, we will be consulting communities on what that means. As you said, historically, district heating zones and other things have been done to areas, so we will be consulting with people in those zones to see what they want.

District heating is a fairly confusing subject, especially when it comes to pricing, because people are buying heat rather than a unit of gas, which is a very different thing. We have a few examples of successful schemes in the city, and we will use those and examples from places such as Aberdeen to look at how they have engaged with communities. A community engagement process is involved, but it is already wrapped up in the development of the local heat and energy efficiency strategies.

**Willie Coffey:** The granting of consent for networks will be done by the Scottish ministers. Do you see a role for local authorities—even if that is for smaller district networks—in determining whether networks go ahead in the communities that they serve?

09:45

**Gavin Slater:** Yes, absolutely. We should be consulted on that and be part of the process.

**Willie Coffey:** Lastly, not everyone will be totally satisfied and happy with a heat network coming along—we are talking about the planning process, after all. Should there be a right of appeal for communities or authorities to raise objections?

**Gavin Slater:** There absolutely must be a right of appeal. That is part of due process, so it must

be included. However, I do not envisage a situation in which district heating is imposed on people in such a way that they would appeal. All the evidence suggests that, where district heating has been installed, it represents improved living conditions and an improved heating situation and that people who live around the system tend to choose to connect to it. We have good examples in Glasgow of district heating systems growing because customers around the original system see the benefits and want to connect to it. Therefore, there should be an appeals process, but we hope that it would not be heavily used.

**Willie Coffey:** It is good to get that on the record.

**David Armitage:** The consent process is important from a roads authority point of view. The way that the bill is structured is helpful in that regard, in that there should be only one consent in any area, because the insulated pipes are a large piece of apparatus to accommodate in the road and it would be unsustainable to have more than one system serving the same area. It is not like telecommunications, where there are multiple sets of cables. The licensing system for the pipes should be exclusive, so that there is only one system in an area.

**Willie Coffey:** What do you mean by that? Do you mean there should be one consent process so that only the Scottish ministers have that power?

**David Armitage:** No. The consent would be for a local distribution monopoly, as we have for electricity companies. It will be important to have an exclusive consent for an area, so that there cannot be multiple pipes running through the same area, which would be technically inefficient and unsustainable, given the space in the road.

**The Convener:** We now have questions from Colin Beattie.

**Colin Beattie (Midlothian North and Musselburgh) (SNP):** Competition law indicates that network zone permits are not perpetual. Where an operator ceases or is required to cease operating a network, the bill allows for transfer schemes and connected compensation. What are the strengths and weaknesses of a transfer system, as provided for in the bill, and how might that be improved?

**Gavin Slater:** In the long term, a city will be keen to be in as much control as possible of how a network grows. The fact that ownership will revert to the council or whoever is involved at the end of a consent or a licence condition will help to control the planning and growth of the network. David Armitage spoke about having only one system for roads, which also helps, because you want to have one main distribution system connecting

what are effectively various islands of district heating.

I do not think that ownership necessarily has to be transferred back to the council—it could be transferred to another operator, or the same operator could take on a new term of the licence. However, for a city to look at least at how the systems connect, will mean that it can maintain a certain standard and a level of holistic planning.

**Colin Beattie:** Is the assumption that ownership goes back to the council? That might not happen. There are many different options, and the bill seeks to create a competitive situation, on the distribution side and/or on the production side. How does that fit with what you are proposing?

**Gavin Slater:** I am sorry; I did not mean to give the impression that it would automatically transfer back to the council. The bill mentions the establishment of key performance indicators on what a city would look for with regard to environmental conditions and improvements and with regard to quality improvements. Those indicators would control certain aspects of the performance of the network. A change of ownership may provide an opportunity to revise the KPIs, to improve the performance or to change certain aspects, such as what is acceptable as an input fuel for the network. It would create the opportunity to refresh and improve the consent, if the KPIs or standards are not sufficiently strong.

**Colin Beattie:** I will take a slightly different angle on that: evidence to the committee indicates that the business case for a heat network might be for up to 40 years, and it could be 15 years before key infrastructure is paid off. Therefore, in effect, the bill creates localised monopolies. What will be the impact of that on consumers?

**Gavin Slater:** District heating is a monopoly; that is unavoidable. Customers are connected to one source. Transfer of ownership helps to break that up. I would lean on the KPIs and the licence controls, set by the licensing authority, to control the monopoly in some way, to ensure that the conditions in place were not allowed to escalate to the point where an operator could take advantage of consumers.

**Colin Beattie:** The two key areas of concern are, first, pricing and how to keep it competitive and, secondly, what the service levels should be and how to maintain them. How will those concerns be addressed?

**Gavin Slater:** The control for pricing would be monitored more on the domestic side. The major concern is to protect domestic customers from having to pay for a utility at an inflated price. If district heating is to act as a fuel poverty alleviation measure, we must ensure that the cost

is competitive with other utilities, and KPIs would be set to ensure that.

With commercial or industrial customers, the feeling is that there would be a bit more flexibility, to allow the operator to compete. If an operator has a licence and consent to operate on its own, given that it would have to deliver to domestic customers at a specific price, it could try to get commercial or industrial customers at a different price, to compete with gas or other fuels in the market.

**Colin Beattie:** Who would decide whether a price is competitive and fair?

**Gavin Slater:** Perhaps that would have to sit—

**Colin Beattie:** Would we have price caps?

**The Convener:** I wonder whether we might bring in David Armitage on some of the questions. That might give Gavin Slater a breather to think about the answer to that question. Does Mr Armitage have comments on the issues that Mr Beattie has been raising?

**David Armitage:** Yes. To go back to the transfer schemes, from a roads authority point of view, the bill is good in that it envisages transfer schemes so that the apparatus would not be just left but transferred to a new operator. Once the apparatus is in the road, it should be used for its full service life by somebody, although—*[Inaudible.]*—in the bill.

On the question of monopolies, there should be a local monopoly on the distribution apparatus, which is basically the case with most other utility companies: there is one set of gas pipes, with somebody maintaining them; one set of electricity transmission and distribution equipment; and one set of water and sewage pipes. There can be elements of competition on the other aspects. You could have competition on who sells the energy to consumers, which is a parallel of what happens with other utilities, but it would be chaotic if competition resulted in multiple sets of apparatus being installed in the road.

It is important to get the right balance between competition and monopoly. With utilities, that balance means a managed, strongly regulated monopoly for the apparatus in the road—obviously, good regulation is needed—plus competition for the supply of whatever people are buying. That is probably the way to go.

**Colin Beattie:** Does Gavin Slater want to add anything?

**Gavin Slater:** On the price cap question, it is difficult to predict how that would work, because each district heating system is unique. The length of pipe, the type of energy generation system—whether that is combined heat and power, a heat



pump or something else—the cost of the apparatus, equipment and installation, which depends on where it is, how much soft ground you can use and the extent to which roads have to be dug up, are all different in every case. Therefore, a price cap would have to be determined individually for each network built. As to who would determine the price, there would have to be a calculation to manage that.

**The Convener:** Maurice Golden has a follow-up question.

**Maurice Golden:** On the pricing and maintenance of assets, who would have visibility on an operator's costs? Would that be the regulator, or would there be a role for the council or competitors? Prior to a transfer, how do we ensure that the operator is pricing heat at the right levels and maintaining the assets? Who would have knowledge and visibility of its operations?

**Gavin Slater:** I am not entirely sure, if I am honest. There are enough district heating networks to make it possible to compile a database of cost for assets, networks, pipes and everything else—that is achievable. On how to create the visibility of operations and where that responsibility sits, I am not entirely sure.

**David Armitage:** As far as I can see in the bill, that is a role for the regulator, which is equivalent to the way in which other utilities operate.

**The Convener:** I will bring in Andy Wightman with another follow-up question.

**Andy Wightman (Lothian) (Green):** David Armitage implied earlier that there should be no more than one consent in any one area, but the bill makes no provision for that. I want to be clear on whether you think that that should be the case, or whether you were stating what you think is the case in the bill.

10:00

**David Armitage:** It should be the case, and I interpreted the district licensing model that is set out in the bill as meaning that that would be the case. However, if it does not mean that, I hope that it would be operated in that way.

**Andy Wightman:** I think that that would be the case in the zones, but that the bill would allow for more than one consent in an area outside the zones. However, we will clarify that.

**David Armitage:** The important thing is to not have multiple pieces of apparatus in the same road.

**Andy Wightman:** That is clear; I understand that, thank you.

Gavin Slater implied that councils will have a statutory role in heat networks, but the bill gives no role to councils in licensing. Consents will be granted by Scottish ministers by default. Councils will not be able to issue permits; that will be done by Scottish ministers. The only substantive power in the bill for councils is to designate a zone. Should councils have more statutory powers?

**Gavin Slater:** No, I do not necessarily think that that should happen. I may have misinterpreted the bill in thinking that licensing could be done by the Scottish ministers or the licensing authority and that the licensing authority may be the local authority. Local authorities might struggle to take on all those statutory functions, given the resource that would be needed to do that. I am not trying to place more requirements on local authorities.

**Andy Wightman:** I am not suggesting that councils should have more powers, but I want to be clear about your understanding of the influence that councils would like to have and whether the bill enables them to have that influence. Even in the consenting process, deemed planning consent can be given by Scottish ministers, ignoring local planning authorities.

**Gavin Slater:** Yes, we would absolutely prefer to be included in that discussion and not have that happen to us. We interpret the process of the local heat and energy efficiency strategies as pre-empting where those zones should be, and that Scottish ministers should agree with that and not seek to put zones in places where councils do not want them.

**The Convener:** Thank you. We now come to questions from Gordon MacDonald.

**Gordon MacDonald (Edinburgh Pentlands) (SNP):** Thank you, convener. The bill places a duty on public sector building owners to assess the viability of connecting their building to a heat network, but, in considering the viability of a heat network zone, should there be a duty to connect for all non-domestic buildings, regardless of ownership? Following on from the discussion with Colin Beattie about competitive pricing, are there any other ways in which we can encourage owners of older commercial buildings in city centres or dense urban areas to include their properties in a heat network zone?

**Gavin Slater:** There should be a compulsion to connect, and there are certain times when it makes sense to do that, such as when a building is being refurbished, re-leased or sold. To date, one of the difficulties with district heating has been the lack of a surety with regard to customers, which is critical for the success of any district heating network, so there must be compulsion to connect.

For owners of older buildings, ultimately, it will come down to the cost of the heat and the improvements that it makes to their buildings. If we cannot compel building owners to connect to the network, a simple way to get them to connect is to make it good value for them to do so.

**Gordon MacDonald:** How could the designating and permitting process be improved to ensure a more strategic and joined-up approach to local implementation of national policy on heating new and existing buildings?

**Gavin Slater:** Honestly, I am not sure.

**Gordon MacDonald:** David, do you have a view on that?

**David Armitage:** No, I am afraid that I do not.

**Gordon MacDonald:** Section 39 of the bill identifies key criteria to be considered in identifying anchor buildings. Are those criteria adequate or are changes to the bill required?

**David Armitage:** I cannot really comment on that.

**Gavin Slater:** At the level that the bill is pitched, that is probably adequate. I cannot immediately think of anything that is missing, and it follows the thinking through from the creation of the Scottish heat map and everything else that we are looking at in having regard to the amount of thermal energy required but also ensuring that the use of renewable sources is considered. Therefore, the bill covers that well.

**Gordon MacDonald:** Finally, part 5 requires building assessment reports to be carried out. Is there a danger in the way that the bill is written that community-owned assets will be missed? When a building assessment report is carried out that shows that a building is particularly suitable for connection to a heat network, should there be a requirement for an explanation for why it cannot or should not be connected?

**Gavin Slater:** Yes, there should be an explanation given for that. There could be a number of explanations, including a building's proximity to a heat supply. However, if a building is known to be suitable, every effort should be made to connect it to the network, if not immediately then certainly strategically in plans for the growth of the network.

**David Armitage:** I do not have anything to add to that.

**The Convener:** On the local heat and energy efficiency strategies—LHEES—there have been a couple of pilot projects by Glasgow City Council and Highland Council. Gavin, what has the experience been and what lessons have been learned from the LHEES pilot projects? Does the bill adequately take account of those lessons?

**Gavin Slater:** In Glasgow, we took a significantly different approach to the other authorities. Most of the LHEES pilot projects were done in a small area, whereas our LHEES was for the whole city from the outset. That has been a significant undertaking, which follows on from our previous energy master planning work. It follows a consistent line of thought throughout the city on how we deal with these matters strategically.

On the lessons learned, the LHEES process is still quite loose and not well defined, so a lot of that has had to be established internally in the council. We have concentrated on two issues, one of which is the creation of zones for district heating. Before the bill was produced, we looked at the concession model approach that we see across Europe of getting in operators to deliver district heating networks. The bill covers the same approach that we were adopting. We are happy that the work that we have done to date has not been in vain and will not be changed by the bill. Section 38(1) of the bill sets out that assessment of the zones should be reviewed, and section 38(2)(b) states that it should be repeated every five years. As I set out in my submission on the bill, we want to ensure that, if a LHEES had been undertaken close to the time of the legislation coming into effect, that work would not necessarily have to be repeated. For Glasgow City Council at least, the LHEES process has echoed what is set out in the bill. We are pleased that the bill is following the same thought process that we have been following.

**The Convener:** Thank you. Before I come to David for his comments, is the approach that you adopted in Glasgow what some refer to as a "whole-system approach"? You hinted at your approach being different to that of other local authorities, so how does it distinguish itself from other approaches? What are the advantages and disadvantages of the different approaches?

**Gavin Slater:** We interpreted the LHEES process by taking a holistic approach to district heating planning for the city and to designating zones across the city that would work. Other authorities have taken a similar approach, but they have focused on a specific area. I understand that they will then replicate that approach for other areas in the cities. The end point will be the same, but the approach has been slightly different. We did not want to have to develop several strategies for several areas. We have tried to create one large strategy, which is tied into our housing strategy to ensure that we have a whole-system approach, as you said, to housing development, housing management, asset management, public buildings and heat supply to those buildings.

**The Convener:** To follow on from that, should any changes be made to the statutory system in

the bill, on the basis of the pilot project? Have you been given enough time for planning and implementation, once the bill is enacted?

**Gavin Slater:** The work that we have done on LHEES puts us in a good position. Once the bill is enacted, a good bit of time will be required for local authorities to understand the impact on them, if they have not already done a considerable amount of work in that way. However, most local authorities have been doing that in some form and have been consulted on the bill, so it should not be a surprise when it goes through. Some local authorities are in a better position than others in resource terms and with regard to how they have aligned energy and planning resources to work on these matters. It will be different for each area.

**David Armitage:** I do not have anything to add to that. I do not have direct experience of it.

**The Convener:** We now come to questions from Alison Harris.

**Alison Harris (Central Scotland) (Con):** Thank you. On the building assessment reports, I want to explore further the duty and why it does not apply to all non-domestic buildings. Should it be extended?

**Gavin Slater:** I cannot see a reasonable justification for not extending it.

**David Armitage:** I do not have anything to add on that.

**Alison Harris:** Is it likely that the process will rely on existing data from energy performance certificates? If so, please expand on the strengths and weaknesses of that approach.

**Gavin Slater:** Energy performance certificates are lacking in certain areas, and better building assessments can be done. Energy performance certificates have some value and give an indication of a building's performance, but the recommendations that they contain are not always appropriate. The data collected as part of that process will be of use, but the assessment needs to be done in a different way.

10:15

**The Convener:** Finally, we come to questions from Andy Wightman.

**Andy Wightman:** The provisions in part 6 of the bill relate to wayleaves and the compulsory purchase of land to install heat network systems. The Government is consulting on whether to provide heat network operators with licences to operate under roads and, if so, how. David Armitage, in your evidence, you point out that that might be appropriate to provide the same sort of statutory powers available for utility companies but that smaller operators in particular might be better

to ask for permission under the New Roads and Street Works Act 1991. Are you confident that the conversation is going to lead to a place that you are comfortable with, or do you want amendments to the bill?

**David Armitage:** I hope that it will lead to a place that I am comfortable with. My concern is that, under existing legislation, there are two ways that companies can lay and maintain apparatus in the road. One is by having the statutory power to do so; the other is by having permission from the roads authority. I am very concerned that the bill should not create a third way, and it is not clear from the bill whether it would. I think that it probably would not, but that would need to be addressed.

On the two ways that do—[*Inaudible.*]*—*statutory powers—[*Inaudible.*]*—*responsibilities as well. To exercise statutory powers to place and maintain apparatus in the road, it is necessary to comply with quite a lot of legislation and codes of practice, and people need to know how to do that. Therefore, it might be better for a small operator to have a process whereby it asks for permission from the roads authority, which can then help. For example, the works must be registered in the Scottish road works register. Roads authorities have a statutory duty to co-ordinate works of all kinds, which is done through the register. However, to use the register, an organisation must sign up to it and have trained people who know how to use it. That might be difficult for some, and it is easier to do that through the roads authority, which would register the works for the operator. It is just a matter of getting the right legislation, but my concern is that the way that the bill is drafted could be interpreted as saying that an operator might get a wayleave through a road, which is not what would happen. The bill might need to be tightened a bit to make it clear that, if an operator is working on the road, that must be done in one of those two ways—through statutory powers or through application to the roads authority.

**Andy Wightman:** Your concern about the possible third way that the bill could create of laying apparatus in a road is linked to whether the term "land" includes roads. Is that correct?

**David Armitage:** Yes.

**Andy Wightman:** In law, I think that the term "land" would include roads. In that sense, I read the bill as creating a third way. You do not think that that is helpful.

**David Armitage:** That would not be helpful. The two ways that exist are more than adequate.

**Andy Wightman:** Have you had any discussions with the Scottish ministers about that question?

**David Armitage:** Yes. I am a member of a Transport Scotland group that advises on road works legislation, so I have some input to that.

**Andy Wightman:** Yes, but have you had specific discussions about the Heat Networks (Scotland) Bill and the provision of wayleave powers and roads in that respect?

**David Armitage:** Yes, that has been an item on the agenda for the road works policy group, of which I am a member. However, that is just an advisory group.

**Andy Wightman:** Your preference would be to make it clear that the definition of “land” should not include roads and that there should be a separate section or subsection in the bill that deals with roads and which makes it clear that wayleaves under roads should be dealt with under either of the two existing legal avenues. Is that correct?

**David Armitage:** Yes, that is correct.

**Andy Wightman:** That is helpful. Are you aware of how advanced Scottish Government thinking is on the question of getting authority to work under roads? The Government said that it will table an amendment at stage 2. I do not know when stage 2 will be. It could be this December; time is ticking. Do you know what the timescale is?

**David Armitage:** I am afraid that I do not. Transport Scotland members of the advisory group have direct contact with ministers on the timescale.

**Andy Wightman:** Thank you for drawing that matter to the committee’s attention. Other witnesses have pointed out potential legal complexities with wayleave powers, which is useful. Most people are broadly content with the general policy framework of the bill, but the devil will be in the detail, so thank you for your evidence.

**The Convener:** Thank you. As there are no further questions, I thank our two witnesses for speaking to us today. I will suspend the meeting briefly to allow for a change of witnesses.

10:22

*Meeting suspended.*

10:34

*On resuming—*

**The Convener:** Welcome back. We will continue with agenda item 2, under which we are taking evidence on the Heat Networks (Scotland) Bill. I welcome our next panel of witnesses. Stacey Dingwall is policy lead on energy efficiency and fuel poverty for the Scottish Federation of Housing Associations; Aoife Deery is senior energy policy

officer for Citizens Advice Scotland; Scott Restrict is technical and training manager for Energy Action Scotland; and Ken Brady is programme manager for the district heating loan fund at the Energy Saving Trust.

We will start with questions from Maurice Golden.

**Maurice Golden:** Are the definitions in the bill adequate to include current and future technologies?

**Scott Restrict (Energy Action Scotland):** Is that question to anyone in particular?

**The Convener:** It would help if witnesses type the letter “R” in the chat function or raise their hand so that I know to bring you in, unless the committee member wishes to address the question to a specific witness.

**Scott Restrict:** I am happy to kick off.

At this stage, the definitions need to be relatively wide in their scope; aspects of them can be sharpened in secondary legislation. It is important to ensure that we capture the main aspects of a heat network in the bill and through its transitions.

I think that there was a question earlier about the difference between a district heating scheme and other schemes, such as combined heat and power schemes, and whether there needs to be a lengthy list of definitions. In the bill, the definition of a heat network seems to come down to two categories—district heating and community heating. It is important to keep those two categories and to work with them, rather than having an endless list.

From the point of view of housing providers, which may well be the operators of community heating schemes that serve only their own buildings, there might be a need in the bill for separate provisions that are appropriate for a commercial district heating scheme.

**Ken Brady (Energy Saving Trust):** In our written submission on the bill, we referred to a particular hybrid shared loop heat pump system that is now operational across the United Kingdom and which will become more prevalent. That system should be included in the bill because, strictly speaking, it is neither community nor district heating. It ties householders into a sort of monopoly supply agreement. Although they are free to choose their tariffs, they have to rely on the operator for maintenance provision, which is important in a shared loop system. There is not time to go into detail, but the system has two or more heat pumps that are shared in a communal loop system, so there is not a central heat source. We feel that that should be included in the bill, and I think that the Scottish Government is considering that.

**Maurice Golden:** I see that none of the other witnesses has any comments on the definitions in the bill. On waste heat in particular, does the bill adequately define and capture waste heat?

**Scott Restrick:** That question delves into quite a technical issue about ambient emissions and whether a commercial or industrial process within a zone should be tied into being an energy source, although its processes and its waste are, in effect, a heat source that could be connected to a network. A witness in the previous evidence session referred to the need to provide an explanation for why such a heat source would not connect. The assumption is that, when it is technically possible for such a process to act as a heat source, it would be up to the owner of a plant or building within a heat network zone to state why it should not do so.

**Ken Brady:** One of the issues is the lack of compulsion on operators to sell the waste heat. That brings us to the question of anchor loads. There is an issue to do with the lack of compulsion on anchor loads within zones to connect to a heat network. That is a slightly different debate, but it ties into the waste heat issue. One way around that is the Danish system, in which there is a standing charge on anchor loads, regardless of whether they connect to the network. That incentivises the anchor loads and the big operators to connect.

**Maurice Golden:** Do you have any specific information on what else should be included in the bill to better address that issue?

**Ken Brady:** There are legal complexities. We are on the heat networks regulation working group, and we have raised that matter. Within zones, we would prefer more compulsion on anchor loads—particularly large anchor loads—to connect, otherwise it will be difficult for people to invest in the zones. However, there are apparently legal complexities that make it difficult under Scots law to make it mandatory for big operators to connect. It is a grey area, but the issue is important. We must incentivise anchor loads and residual and waste heat generators to connect to heat networks. A standing charge is one solution.

**Maurice Golden:** What are the potential downsides of implementing a standing charge?

**Ken Brady:** There are caveats with regard to a standing charge. An independent operator with a large renewable generation plant obviously would not expect that. Obviously, the downside is the cost to the operator. The idea behind the standing charge is to incentivise people to connect to the network. The pipes would go up to the curtilage of a building. A small standing charge is an incentive for an operator. Although you cannot legally make it mandatory to connect to a network, you can

legally impose a standing charge as part of the licensing concession.

**Richard Lyle:** Are the witnesses supportive of the proposed licensing regime? How might that be improved to ensure that consumers are protected and UK developers have the confidence to invest?

**Aoife Deery (Citizens Advice Scotland):** [*Inaudible.*]*—so it is good that—[Inaudible.]—*in the bill. That provides some indirect consumer protection, by introducing a fit-and-proper-person test to ensure—*[Inaudible.]—*are able to do so in the best way. We would like to see some improvements to the proposed licensing process. There should be a greater role for community engagement in the licensing process and potentially in the consenting process, as well. That will ensure better consumer outcomes for heat network consumers.

**Richard Lyle:** Are the witnesses content that the bill leaves licence standard conditions to the licensing authority, or should those be in the bill? What are the implications of each approach?

**Stacey Dingwall (Scottish Federation of Housing Associations):** On behalf of our members, I want to say that we support the licensing regime that is set out in the bill. Our members who are heat network providers would like a bit more clarity on the transition to the licensing system for existing providers, with regard to what cost and other burdens that might involve.

**Richard Lyle:** Lastly, should addressing fuel poverty be included in the standard conditions of a heat network licence, or would it be more appropriate to include that as a factor in consenting or zoning?

10:45

**Aoife Deery:** We want fuel poverty to have a more central role in the bill. Potential heat network providers are asked to produce an impact assessment, including on fuel poverty, but we think that that could be strengthened.

As the committee is aware, we are in a strange situation in that consumer protection is not devolved. It is difficult to reduce fuel poverty if there are no powers over pricing, which is one of the consumer protections that are reserved.

We would like there to be a more overt reference to fuel poverty in the bill. I will defer to my colleague Scott Restrick on that, because he referred in his written submission to the need for the process to have a greater link to the impact on fuel poverty.

**Richard Lyle:** We all know that fuel poverty must be addressed and that doing that is very

important but, as you have said, consumer protection is reserved.

**Stacey Dingwall:** I echo Aoife Deery's comments. We would like to see a much stronger link between fuel poverty and other policies in the area. Fuel poverty is a particular concern for our members in remote and rural areas, who are already disadvantaged by being in off-gas-grid areas and having to pay higher prices. Therefore, it is a fundamental concern that equity of pricing is achieved through the bill. However, as Aoife Deery said with regard to pricing, consumer protection is a reserved matter.

**Scott Restrick:** There are provisions in section 5 and possibly in section 6, where the purpose of the bill could be made more explicit. We need to go back to the question why we need more heat networks in Scotland. Is it purely about meeting climate change targets, or are we trying to use heat networks in a more socioeconomic way to address the issue of the cost of heat, so that we have more local control over the unit cost of heat supplying specific areas? If we are designing heat network zones specifically to tackle fuel poverty, we need to have provision for that in the bill that allows us to measure the success or otherwise of any proposals by licensees for what they would do for the occupants of an area in the zone. There must be a metric for that, which must be in the bill, rather than something that might be brought in under secondary legislation.

**Ken Brady:** To add to what Scott Restrick has said—*[Inaudible.]* We have asked for transparency on pricing and tariffs so that it would be part of the licensing arrangements that operators must publish their tariffs, including standing charges.

**Maurice Golden:** What impact could divergence from a UK-wide system of regulation have on investment and prices?

**Aoife Deery:** I will comment on the previous point and then, in more detail, on that question. I totally agree that there should be transparency on tariffs. The committee will be aware that, as was discussed in the previous evidence session, heat networks create monopolies, which means that consumers have less choice. In the gas and electricity market, consumers who feel that their bills do not represent a good deal can switch to a better deal. Heat network customers are not afforded that opportunity, so consumers should at least be able to see what operators are charging, in the spirit of transparency.

On the differences between the UK system and a Scottish system, what is being proposed on a UK level is a system of general authorisation, with a special licence if a heat network provider wants specific rights and powers. That throws up some interesting questions for the committee and for the

bill. Providers and operators might be more likely to want to operate in the rest of the UK, as opposed to in Scotland, because there are fewer obstacles in the sense that they do not need to get a licence, as they would have to do in Scotland. That does not mean that we do not support the licence, because, again, it is a form of a fit-and-proper-person test.

Another important point is that, when it comes through in the rest of the UK, the heat network market framework will put in place consumer protections, such as pricing and redress. We are a wee bit concerned about the timing, because, if the Heat Networks (Scotland) Bill is enacted and implemented before the market framework is embedded, consumer protections will not have caught up, so consumers will not be protected as the heat network market starts to grow.

**The Convener:** Do any of the other panel members wish to answer the supplementary question?

It would appear not. Oh, sorry—I beg your pardon. Scott Restrick wants to come in.

**Scott Restrick:** There was a slight delay there—we will blame that on the internet.

There might be contention between the two systems. Aoife is right about the legislative timelines moving at different paces. In energy terms, there is the issue of consumer protection, which is a reserved matter. In Scotland, we are looking to have a proper framework for expansion of heat networks as a heat service. It is right that we consider what the Scottish Government can do to protect consumers. Obviously, the rest of the UK will be able to do more, because consumer protection is a reserved matter.

On pricing, there is a precedent with gas networks and independent gas networks and how regulation and pricing work for those. There is something called special condition 18, which has a long history that I will not go into. That limits the price of gas supplied through independent networks by limiting it, in effect, to the average price that you would expect to pay on the mains network. Lessons could be learned from that, if we are looking at a light-touch approach to price capping.

**Aoife Deery:** It would be—*[Inaudible.]*—to get some clarity on pricing and whether it is something that Scottish Government can do anything—*[Inaudible.]*—what Scott Restrick alludes to. I highlight a report published by the Competition and Markets Authority in 2018, which showed that many heat networks provide really good value for money and that they can reduce fuel poverty. However, the CMA also found that there was a huge variance in prices charged, so we know that some heat networks are charging more than gas

and electric equivalents. That should be borne in mind, and if the committee can get any clarity on pricing, it would be appreciated.

**The Convener:** Thank you. We move to questions from the deputy convener.

**Willie Coffey:** I will continue the discussion on fuel poverty. I understand that the policy memorandum includes the impact on fuel poverty as an assessment criterion. That is as far as it goes. Our previous panel of witnesses all seemed to agree that that should be strengthened and that it should be in the bill. Is that your view?

**Scott Restrick:** Yes. That was our main argument in our response to the call for evidence. It seems to be the elephant in the room that we have a bill on heat networks that does not seem to have a provision to tie a licensee or network operator to an assessment of the network's impact on fuel poverty as part of the licensing process. We must look at this from the point of view that the heat network is there for a reason. We hit on environmental targets, but we want to do something more useful about the cost of energy and limit the potential for fuel poverty to be an issue in certain areas. We support the view that something is needed in the bill, in section 5 or 6, that specifies impact on fuel poverty as that type of test and as an aspect of licensing.

It is fine to ask for an assessment. It would probably need to be in secondary legislation, but it is important to define that assessment. Often, we rush to utilise what is available, so things such as energy performance certificates might, on the face of it, appear to be a useful way to gauge the impact on fuel poverty, but we would warn against using something like an energy performance certificate for an assessment, unless it is significantly amended and made fit for purpose.

**Aoife Deery:** We agree that that aspect could be strengthened in the bill. We would like to see more emphasis on reducing and alleviating fuel poverty. I agree with Scott Restrick's comments. He makes an interesting point about defining the assessment. Yes, an assessment needs to be carried out, but what are the components of the assessment? Community engagement could fit well here, in that it would allow a potential heat network provider to properly understand how people experience fuel poverty and their view on what might help. It would also be interesting to know what weight the assessment would carry.

**Stacey Dingwall:** We support strengthening the focus on fuel poverty in the bill. The committee will have seen the evidence from our member Lochalsh and Skye Housing Association, which has run its own heat network for 12 years for 20 per cent of its stock—the other 80 per cent is on electric heating. Even though it can achieve lower

prices for that 20 per cent of its stock that is on the heat network, the price is still higher than it would be if it were on gas. It is important to take that situation into consideration for remote and rural areas, and reducing fuel poverty is a fundamental concern, especially for such areas.

**Ken Brady:** EST would also welcome a strengthening of the bill's provisions on affordable warmth and fuel poverty. I would go further and say that, as part of the concession agreement to operate within a zone, there could be a provision that providers must offer a price that is less than that of a counterfactual heat source. That is the case in Denmark, where a prerequisite for the granting of a licence is that providers must offer a fair price that is either comparable to, or less than, that of the counterfactual heat source.

**Willie Coffey:** The views on fuel poverty are clear. Turning to the matter of deemed consent, which is in the gift of Scottish ministers, should there be a role for local authorities in the process? What should the community role be? How is the community's voice given effect in any aspect of the process?

11:00

**Aoife Deery:** I will leave my colleagues to comment on the local authority aspect, but it will be no surprise to the committee that we want greater community involvement at the very early stages, not just through consultation but through genuine involvement throughout the process. It should not be a case of being consulted just once online, which, it is fair to point out, is inaccessible for many people. I think that there—[*Inaudible.*]—wide range of consultations that involve the public in different ways should be encouraged.

To demonstrate what happens when community engagement does not take place and providers do not know their consumers well, we can look at the heat network that was set up in 2012 in north-west Glasgow, which the committee might be aware of. The area is in the top 1 per cent of deprived areas in Scotland. In 2018, more than 90 consumers were disconnected from the heat network due to high arrears, which was due to a price rise. Those households included vulnerable households and households with children. In practice, that meant that households were left without heating and hot water. The arrears were also due in part to low awareness of how to use the new system to best effect. Another barrier was that the provider was charging a reconnection fee of over £270, and a proportion of debt had to be repaid before reconnection was possible. Obviously, that was not possible for many in the area. Had better community engagement happened beforehand, the providers would have better understood the needs, incomes and characteristics of the

consumers and the situation could have been resolved more quickly or avoided.

**Ken Brady:** [*Inaudible.*—so you could theoretically designate a heat zone based on heat loads, but without the end users you do not have a heat network.

**Willie Coffey:** That begs the question of whether we could find ourselves in a situation where a community had no say in whether a heat network was granted permission and no say in the pricing policy applied to them, and it could be more expensive than the previous system because people would not be able to switch supplier. Is that possible?

**Aoife Deery:** That is why we are so keen for community engagement to be embedded earlier in the process and for the Scottish Government to work very closely with its colleagues in the Department for Business, Energy and Industrial Strategy on consumer protection issues, including pricing, to ensure that consumers are protected.

**Willie Coffey:** How can we achieve that, if consumer protection is a reserved matter? How can we get elements of that in the framework of the bill to get the sort of assurance that you seek?

**Aoife Deery:** That is a difficult question. The Scottish Government is working closely with colleagues in BEIS to—[*Inaudible.*—this committee to ensure that the bill makes space to embed consumer protections properly, such as in the licensing system, so that, when the consumer protections are developed in the market framework, the bill is ready to receive them, so to speak. It is a really difficult question to unpick, but I must emphasise that consumers should be at the heart of the process. As my example demonstrated, there have been poor outcomes in the past, and we want to see better outcomes for consumers.

**Willie Coffey:** Do any of the other witnesses have any other views on that issue?

**Ken Brady:** A bad operator should have its licence revoked.

**Scott Restrick:** Obviously, we are not a local authority, but many of our members are, and we consulted our members on that in order to provide evidence to the committee. Witnesses in the previous evidence session reflected on that—and they would be better suited to answer questions about the operations of local authorities—but I want to underline the idea that the granting of licences will be a duty on Scottish ministers, and not necessarily local authorities. However, there is a clear role for local authorities in the nuances of operations in areas that they are very familiar with.

We are concerned about the issue of market failure and the question of what happens if an

operator is deemed to have failed either on the provisions of its licence or otherwise. Who will pick up the operation of the scheme and will there be a cost to the public purse, or does something need to be built into licensing to provide an assurance and cover the cost of market failure? It would not be a good outcome if it is left to local authorities to pick things up where there has been a market failure.

**The Convener:** We move to questions from Colin Beattie.

**Colin Beattie:** Thank you, convener. To comply with competition law, heat network zone permits will not last in perpetuity. There will be a point at which others can apply to operate the network in future, once the capital costs of the infrastructure have been recovered. It is proposed that, in order for that to be done on a competitive basis, it might be necessary to invoke a transfer scheme to ensure that the incoming operator has full rights over the assets that it is taking over. What are the strengths and weaknesses of the transfer scheme that is set out in the bill, and is there a way to improve it?

**Scott Restrick:** I alluded to that a moment ago. It is not particularly clear how a transfer would be paid for, regardless of whether the transfer was because of market failure, because the licence had come to an end, or for another reason. Would that be a cost to the public purse, or should the cost be reflected in the licensing system? We do not want the end users to have to pay for the cost of a transfer. The process should be completely transparent to the end user—the householder in this case—and that should not create a situation where householders or users of the system are in effect paying more than they were previously. Protection is needed in the transfer process.

**Colin Beattie:** Do others have a view on that?

**Aoife Deery:** I echo Scott Restrick's point. I also emphasise that there should be continuity of supply during a transfer, so that consumers who are connected to the heat network that is being transferred should not experience disruption to supply. We see the transfer scheme as a supplier-of-last-resort mechanism, as Scott alluded to. There should be provision for that in the bill in case of market failure, but I defer to Scott on the detail of that.

**Colin Beattie:** Do you think that the detail of that should not be left to secondary legislation?

**Aoife Deery:** I do not take a strong view on whether that should be in primary or secondary legislation. I defer to my colleagues on that.

**Ken Brady:** We have looked at that on the working group. A supplier-of-last-resort mechanism is an issue. Obviously, the



arrangements are transitional. It is the role of the regulator to play an aggregator role. We totally agree with Scott Restrick that end users should not be penalised. Like Aoife Deery, we do not have a particular view on whether the detail should be in primary or secondary legislation. It is an issue that must be resolved. The supplier-of-last-resort approach is the elephant in the room, particularly given that, at the moment, there are a lot of existing schemes that could, under certain conditions, cease to trade and operate.

**Colin Beattie:** I will take a different angle on that question. The evidence that the committee has heard so far indicates that business cases for existing heat networks can be for up to 40 years—to me, that is a lifetime—with perhaps 15 years before key infrastructure is paid off. In effect, that creates localised monopolies. What are the likely impacts of that on consumers?

**Aoife Deery:** As we have said before, localised monopolies will lead to a lack of choice for consumers, which is detrimental, compared to the choice that is afforded to their counterparts in the regulated gas and electricity markets. It is, therefore, very important to have robust consumer protection in other ways. There was a conversation about price caps earlier in the meeting. Once the regulator has been appointed, we believe that it would be their role in the market to ensure that prices do not rise disproportionately. The regulator should have the power to impose price, if that is deemed to be getting out of control and not providing good value for money for consumers. Again, I emphasise that those consumers would not have the choice to switch to another provider. It is extremely difficult to leave a heat network.

**Colin Beattie:** The biggest issue would be pricing. We have had a fair discussion already about the different options, and it is obviously one of the biggest concerns. However, other aspects could be a concern, such as levels of service and—if you are looking at a 40-year window—reinvestment in the system. How do we handle those aspects? How do we ensure a minimum level of service?

**Ken Brady:** It is quite normal for operators to have a sinking fund set aside for on-going maintenance, capital replacement costs and so on. That should be part of the business planning for the life cycle of the scheme.

**Colin Beattie:** Should there be anything in the bill about that? There could be substantial reinvestment in the project.

**Ken Brady:** I think that most business cases are presented for consumption by funders and investors, and a business case without a sinking fund would probably be dismissed as not practical,

to be honest. It is a fairly standard operational requirement for a business case.

**Colin Beattie:** I assume that the sinking fund would be part of the formula for the transfer.

11:15

**Ken Brady:** It should all be included, yes.

**Colin Beattie:** How do we maintain service levels? We have talked about pricing, which is important, and different mechanisms can be brought in for that, but how do we ensure that, in a captive market, levels of service are maintained?

**Ken Brady:** I think that you would hold the operator to account through the heat supply agreement, which a service level agreement should be part of. If the operator contravenes that, the end user should be able to take action against the operator, not only through the complaints process but through third-party moderation. However, no one has mentioned the Heat Trust so far. It is a UK-wide body that looks after consumer interests. The code is voluntary, but it is a great model that could be replicated, particularly for third-party arbitration.

**Colin Beattie:** Is there a case for something stronger in the bill on that?

**Ken Brady:** The difficulty is enshrining consumer protection in the bill. We have considered that throughout our discussion and, unfortunately, that matter is reserved. That is one of the problems with enshrining consumer protection.

**The Convener:** Aoife Deery and Scott Restrick have comments on Colin Beattie's last point, before we move to questions from Gordon MacDonald.

**Aoife Deery:** I echo Ken Brady's thoughts. I was just about to mention the Heat Trust, which does great work in spreading good service standards and facilitating the sharing of good practice. I flag its work as a precursor to what should be embedded in the regulations. However, as Ken pointed out, it is a voluntary scheme, and there is very low uptake in Scotland, to our knowledge. We want to see more heat networks becoming registered participants in the Heat Trust to share good practice and learn from the community ahead of regulation.

Ken Brady is completely right to say that consumer protection is a reserved matter, which makes the conversation a bit complicated. Otherwise, we would look at whether, in relation to service standards, a regulator should have a role in enforcement, such as revoking licences in severe situations or taking any other such action it deemed proportionate and appropriate.

I also echo the comments about having a robust and independent route for complaints. Only Heat Trust members' consumers have access to the energy ombudsman to resolve complaints. It would be a quick win to just expand access to the energy ombudsman for all heat network consumers to deal with complaints.

**Scott Restrick:** To pick up on Aoife Deery's last point, there are good lessons that we can learn from the way in which the renewables industry grew up, running alongside the Renewable Energy Consumer Code. People who made the choice to invest in renewables can take complaints about installation or operation of renewables to that independent body. The Heat Trust is a similar body. It is a voluntary system, similar to RECC, but RECC, although not mandatory, has become part and parcel of the growth of the renewables industry in the UK. I do not know whether a similar approach for heat networks could be explicitly supported in the bill. I do not know whether it is possible to direct that operators must be members of a body, but I am sure that there are ways through the licensing system that that could be scored or valued in some way.

**Gordon MacDonald:** Ken Brady, you indicated earlier that there should be more compulsion to connect to a heat network, and I think that it was also you who said that there is no heat network without end users. How would you improve the bill to make heat networks more viable? Would that include expanding the duty to connect to all non-domestic buildings?

**Ken Brady:** We have explored that option but, as I said, there is a legal impediment to making it mandatory for anchor loads. We think that there is a gap and a mismatch here, because investors will not come in unless you have anchor loads. It is an issue, because you can identify, in theory, where the zones should be, but without the big anchor loads, you will not get investors and you will not get a viable heat network. Therefore, it could be an issue going forward. The plan is to install the pipes up to the curtilage of the buildings, so that there is the potential to connect, and then people are incentivised to connect on price. If you can offer the heat at a lower price to the end user, the chances are that they will connect. That is where things are disjointed, and where there could be a gap, so that some of the zones may not be viable without the anchor loads.

**Gordon MacDonald:** I can see that nobody else wants to come in on that. Bearing in mind what Colin Beattie said about the fact that operators could be responsible for a heat network zone for up to 40 years, should there be regular reviews of individual heat networks, to allow for analysis of their performance and success? What criteria should be used to assess them?

**Ken Brady:** I believe that there is a proposal for reviews every five years. I would be in favour of an annual review, but the industry has pushed back a bit on that. All the metrics that we have discussed should be included: affordable warmth provision, levels of complaints, technical standards and service provision standards. Those should all be KPIs.

**Aoife Deery:** We support independent reviews taking place every three to five years. How consumers have experienced the heat network and how prices compare to regulated market prices should be central to the reviews but, above all, how consumers are truly experiencing the heat network should be at the heart of the reviews.

**Gordon MacDonald:** Finally, should building assessment reports be carried out on all potential anchor load buildings, including community buildings? If a building is suitable for connection to a heat network, should there be a requirement for an explanation as to why it cannot or should not be connected?

**Ken Brady:** Absolutely. Owners of suitable buildings should have to explain why they cannot or should not connect.

**Scott Restrick:** Yes, that should happen in the designated zones. To take a blanket approach across all parts of the network, building owners should have to explain why they should not connect. If it is technically feasible, they should have to explain why they do not want to do that. Witnesses in the first evidence session picked up the point that there could be perfectly reasonable explanations for that.

**Alison Harris:** The duty to assess the viability of connecting a building to a heat network does not apply to all non-domestic buildings. Should the duty be extended?

**Scott Restrick:** It is not something that we have a view on. Non-domestic buildings are slightly outwith Energy Action Scotland's remit although, obviously, we recognise that buildings do not exist in isolation and that there could be an anchor load that made a network more economical but also one that was a heat source. There are many examples of non-domestic heat sources being utilised to heat other buildings, in effect. However, we do not have a view on how non-domestic buildings would interact with the network as a contributor or a load. I am afraid that it is not something that we have any expertise on, and I would not want to go into that.

**Ken Brady:** The only thing that I can add to that is that there may be an issue with NHS estates, where they need their own security of supply, so there could be provision for those.

**Alison Harris:** The process relies on existing data from energy performance certificates. What are the strengths and weaknesses of that approach? Scott Restrick mentioned EPCs earlier.

**Scott Restrick:** It is a pet subject of mine. Energy Action Scotland did a report for the Scottish Government, which was published at the beginning of 2019. It is a technically heavy report, but it is a technical subject. It covered domestic and non-domestic EPCs and their usage. It also suggested various things that could be done to both sets of EPCs to provide a degree of sharpening, increased accuracy or improvement in the information in an EPC. I suggest that we do not utilise the EPC to design heat networks. It was mentioned in the earlier evidence session that there are tools that have been designed specifically for that purpose. An EPC can probably be useful for very early stage feasibility assessments, when looking at building loads, but not for the design stage. Similarly, we have issues with using the EPC as a measure of fuel poverty. That is not its purpose. Its purpose is to provide a relative indicator of energy efficiency, not to assess whether individuals are able to afford energy in their homes. There are aspects of the EPC process that could be improved and which could provide some useful data, but that would necessitate a change in the process.

**Alison Harris:** On the exemptions from the duty to prepare a building assessment report, where and to whom might those exemptions apply? Is there a risk that potentially high-value anchor buildings could be missed?

**The Convener:** Aoife Deery wants to come in on that, and perhaps on the previous questions.

**Alison Harris:** I apologise—I did not realise that.

**Aoife Deery:** That is fine. I cannot comment on exemptions, but I echo Scott Restrick's views on EPCs. To put it from a consumer perspective, CAS has looked at consumer awareness and understanding of EPCs, which is quite low. As they are currently set out, the EPC reports that all households should have are not particularly consumer friendly. If EPCs were to be used to a greater extent, they should be redesigned to make them more consumer friendly.

**Ken Brady:** On exemptions, we need to be clear about why a particular building is exempt, because an opportunity could be missed. We want to capture anchor loads as much as is possible.

**Andy Wightman:** I will go back to a point that Ken Brady made about an obligation to connect and anchor loads. You said that legal impediments had been identified by the expert group and that it is a grey area. Can you say more about that?

What exactly is the impediment? Is it a reserved matter? Is it a human rights issue?

11:30

**Ken Brady:** Unfortunately, that is privileged advice from Scottish Government lawyers, so we cannot comment more on that. It was raised in the working group, and we asked some questions but, as I said, it is privileged legal advice that was given to Scottish Government ministers, so we were unable to question that.

**Andy Wightman:** Do you know what that advice is?

**Ken Brady:** We do not.

**Andy Wightman:** You have no idea what the legal impediment is.

**Ken Brady:** No.

**Andy Wightman:** You have no idea at all. You are completely blind on that.

**Ken Brady:** We were not privy to that information.

**Andy Wightman:** You were told that there is a legal impediment, but you were not told what it is.

**Ken Brady:** Yes.

**Andy Wightman:** Part 6 is a substantial bit of the bill, which gives powers to heat network licence holders on compulsory purchase and wayleaves, which will be critical. The explanatory notes make it clear that folk can run into problems in relation to utilities and getting access to land and that the costs can rise. Part 6 is designed to ensure that the relevant powers are available to network licence holders. Do any of the witnesses have views on the powers in part 6 of the bill and whether those are appropriately framed?

**Scott Restrick:** That is a pass from me, I am afraid. It is not an area that we have any expertise in. I think that the issue was mentioned in the earlier evidence session, but that is pretty much the extent of my knowledge.

**Andy Wightman:** Does Ken Brady have any insights?

**Ken Brady:** Could you repeat the question, please?

**Andy Wightman:** Do you have a view on whether the provisions in part 6, which is to do with compulsory purchase and wayleaves, are appropriately framed?

**Ken Brady:** Generally, wayleaves should work in the same way as they do for any other utility. We want to incentivise the extension of heat networks. We do not get involved in the minutiae of that, and we have not been involved in the

working group on that. There may be some exceptions—we have issues with railways, for example—but, generally, wayleave rights should be the same as for any other utility.

**Aoife Deery:** I was going to make exactly the same points as Ken Brady. There should be parity with the wayleave rights that are afforded to utilities providers in the regulated energy market.

**The Convener:** I see that there are no further questions from committee members to our witnesses. I thank all four witnesses for attending virtually today. Thank you for your evidence.

11:33

*Meeting continued in private until 12:30.*

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