POLICY NOTE

THE CLIMATE CHANGE (LOCAL DEVELOPMENT PLAN) (REPEALS) (SCOTLAND) ORDER 2025

SSI 2025/283

The above instrument was made in exercise of the powers conferred by Section 73(2) and 96(2)(b) of the Climate Change (Scotland) Act 2009. The instrument is subject to affirmative procedure.

Summary Box

The instrument is to repeal Section 3F of the Town and Country Planning (Scotland) Act 1997 and Section 73 of the Climate Change (Scotland) Act 2009, using existing provisions under Section 73(2) and 96(2)(b) of the Climate Change (Scotland) Act 2009.

Consequentially Section 72 of the Climate Change (Scotland) Act 2009 should be repealed.

Policy Objectives

This legislative instrument is an order to repeal Section 3F of the Town and Country Planning (Scotland) Act 1997[1]. Consequential repeal will be Section 72 of the Climate Change (Scotland) Act 2009[2] (initiating legislation) and Section 73[3] of that act (reporting and repeal legislation).

Section 3F is legislation acting on planning authorities to include a specific approach to greenhouse gas emissions policies in their local development plans.

Section 73 is an annual reporting requirement on Scottish Ministers in respect of the duty under Section 3F. The Annual Report also has to include an assessment of the continuing need for the requirements set out by Section 3F.

Section 73(2) sets the condition for the repeal of the legislation, which is if Scottish Ministers consider the requirements of the legislation no longer necessary, the legislation may be repealed by order.

Ministers laid in Parliament, and published, the Fifteenth Annual Report of the Operation of Section 72 of the Climate Change (Scotland) Act 2009[4] on 27 March 2025, as required by Section 73 of the Climate Change Scotland Act.

This latest Annual Report concludes that after 1 January 2025 the latest policy and regulatory position goes beyond what Section 3F can achieve and that the requirement to include

[1] https://www.legislation.gov.uk/ukpga/1997/8/section/3F
[2] https://www.legislation.gov.uk/asp/2009/12/section/72
[3] https://www.legislation.gov.uk/asp/2009/12/section/73
[4] https://www.gov.scot/publications/climate-change-act-section-72-fifteenth-annual-report/pages/1/

policies within local development plans under Section 3F is no longer necessary. The conclusion enables a Repeal Order to be prepared under existing provision of the Climate Change (Scotland) Act 2009.

Building proposals may require a planning permission and a building warrant. Section 3F is a requirement for greenhouse gas emissions policy that uses a set approach to be included in the local development plans (LDP) prepared periodically and adopted by the planning authority for the area.

Planning applications are determined in accordance with the adopted development plan and relevant material considerations. As such, consideration of policy prepared under Section 3F for individual buildings happens as a planning application is prepared (by, or on behalf of, the applicant), and then determined by the relevant planning authority.

Repeal of the legislation removes the requirement on planning authorities to include in local development plans prepared by them greenhouse gas emissions policies. It also removes associated annual reporting requirements on Scottish Ministers.

Whilst repeal would remove such requirement on planning authorities, applicants/ developers, and stakeholders in the continued application of Section 3F, it does not affect the Scottish Government's nor planning authority's focus for emissions reduction overall given existence of other relevant policy and regulatory instruments.

Policies related to emissions reduction and the deployment of low and zero-carbon generating technologies are included in National Planning Framework 4 (NPF4), which is in force since February 2023 and forms part of the statutory development plan for decision making on planning applications. The New Build Heat Standard (NBHS) and associated building regulations came into force from 1 April 2024 and required new building proposals constructed under a building warrant applied for on or after 1 April 2024 to achieve zero direct emissions for water and space heating.

In May 2024, Scottish Ministers committed to undertake a review of the NBHS and the associated building regulations in response to concerns raised on restrictions on the use of woodburning stoves and bioenergy, particularly in rural and island communities. The review was conducted over the period from May to October 2024. To ensure concerns on the use of woodburning stoves and bioenergy (and peat) heating systems were addressed promptly, and to bridge the gap between the current form of the regulations and a future regulatory amendment, Scottish Ministers issued a temporary Direction under section 3 of the Building (Scotland) Act 2003 which came into force on 20 September 2024. This temporarily permitted the use of bioenergy (or peat) heating systems in new homes, in advance of the overall review concluding. This Direction does not cover non-domestic buildings.

Following the conclusion of the review, Building Regulations (Scotland) Amendment (No. 2) Regulations 2024 was laid in Parliament on 8 November 2024, and came into force on 1 January 2025. The amendment permits bioenergy (and peat) systems as a main heating system, and any type of secondary heating systems in new buildings, while maintaining the prohibition on mains gas and oil boilers as a main heating system. Findings from the NBHS review work suggest the estimated emission from buildings through the use of such bioenergy and peat systems and any type of secondary heating systems is considered potentially negligible based on the low number of bioenergy installations as main heating system across Scotland, and low percentage of new build homes with secondary heating

system, of which some 80% are wood-fired systems, thus does not significantly affect the case for repeal of Section 3F as the objective of emission reduction from the operation of new buildings remains the same.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, The Climate Change (Local Development Plan) (Repeals) (Scotland) Order 2025 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

In 2017 consultation 'Places, People, Planning'[5] about potential changes to the planning system was undertaken, including a proposal to withdraw Section 3F. A position statement[6] later in 2017 reported that there was general support for removing Section 3F but also some concerns about removal being inconsistent with the (then) emerging Climate Change Plan. Consultation analysis[7] in 2017 did not report concern about lost business from withdrawal of Section 3F. Given this, no further re-run of public consultation on the principle of Section 3F withdrawal was considered necessary.

Given the conclusions of the Annual Report are made with awareness of the latest policy and regulation, it can be considered that the previous concerns highlighted around consistency with the then emerging Climate Change Plan has been addressed as these latest policy and regulation on heat related emissions are rooted in the Climate Change Plan.

The conclusions of the Annual Report are supported by the presence of latest policy and legislation, and engagements on those have been undertaken and considered.

<u>NBHS and associated building regulations</u>
The New Build Heat Standard consultation part 2[8] was undertaken between July and October 2022 (the policy and regulations are now in force). The majority of respondents supported the proposals. Concerns raised were summarised as being unanticipated consequences for the

[5] https://consult.gov.scot/planning-architecture/a-consultation-on-the-future-of-planning/supporting_documents/694570_v4_20170109.pdf
[6] https://consult.gov.scot/planning-architecture/places-people-and-planning-position-statement/supporting_documents/SCT06174881481_Places_FINAL%202.pdf
[7] https://www.gov.scot/binaries/content/documents/govscot/publications/corporate-report/2017/06/planning-review-analysis-of-consultation-responses-june-2017/documents/planning-review-analysis-consultation-responses-pdf/planning-review-analysis-consultation-responses-pdf/govscot%3Adocument/Planning%2BReview%2Banalysis%2Bof%2Bconsultation%2Bresponses.pdf
[8] https://consult.gov.scot/energy-and-climate-change-directorate/new-build-heat-standard-part-two/

prohibition of bioenergy, non-domestic buildings with complex heat needs, and the provision of emergency back-up supplies. None of these matters are affected by Section 3F repeal.

National Planning Framework 4

Draft National Planning Framework 4 (NPF4) contained policy on minimising lifecycle greenhouse gas emissions and was consulted on between November 2021 and March 2022. The published analysis report[9] of consultation responses (October 2022) included the following points:

- that the policy should be strengthened;
- that there should be clarity on emissions assessment;
- there should be emphasis on reducing embodied emissions;
- concerns about planning authority resources to deliver the policy;
- burdens on applicants could disadvantage applicants without the means to undertake assessment; and
- increased construction costs to minimise emissions should not counteract other benefits like affordable housing provision.

The draft NPF4 also included policy on green energy, of which a part related to small scale energy generation. Comments made included:

- that the policy should be consistent with the Heat Decarbonisation Implementation Programme, heating and cooling policy, and local energy policy statement;
- greater clarity on 'small scale' was sought;
- energy demand reduction through energy efficiency should be referenced;
- decentralisation;
- upscaling domestic green energy roll-out;
- heat pumps;
- approach overly permissive.
- grid, manufacturing and landscape capacity issues were raised;
- inconsistencies with other renewable energy policies.

The comments expressed about inconsistency with the emerging Climate Change Plan no longer apply as latest policy and legislation responds to updated Climate Change Plan and Scottish Government climate change aims. There was general support for proposals under the NBHS throughout consultation. Consultation on draft NPF4 raised concerns about increased construction costs related to emissions reduction and the potential impact of that on other benefits of construction.

Comments also sought policy consistency across Government on decarbonisation, greater domestic renewable energy roll-out and decentralisation of energy. The Annual Report also concludes with some of the same concerns around burdens for applicants with parallel implementation of Section 3F and NBHS. At the time, NBHS and associated building regulations set a clear minimum zero-direct emissions standard for heating buildings and so act on calls from draft NPF4 consultation for greater domestic renewable energy roll-out and

[9] https://www.gov.scot/publications/draft-fourth-national-planning-framework-analysis-responses-consultation-exercise-analysis-report/documents/

decentralisation of energy – in relation to heating demand, which has been the most significant source of emissions from buildings.

The NPF4 policy was adjusted for its final form and work continues on planning and climate change guidance including the consideration of lifecycle greenhouse gas emissions of development proposals.

The Annual Report

Communication of the Annual Report has included:

- being laid in the Scottish Parliament;
- direct notification to two Committees of the Scottish Parliament and an MSP;
- highlighted to Heads of Planning Scotland Climate Change, Energy & Resources Sub-Committee
- highlighted to Planning, Architecture and Regeneration 'X' followers; and
- highlighted through inclusion in an update e-mail to those signed-up to receive that service from Planning, Architecture and Regeneration Directorate.

No feedback has been received as a result of these notifications.

Initial informal meetings with two industry representative organisations and a wildlife charity were held after publication of the previous Annual Report in March 2024 which also concluded the Section 3F legislation was no longer necessary. The following high-level points were made:

- one industry representative organisation indicated support for the repeal, with a caveat seeking guidance on handling Section 3F local development plan policy in local decision making in the event of repeal;
- another industry representative organisation indicated support for the reasons that led to the proposed repeal, but highlighted concern for impact on investment in renewables, and on the Government's climate change aims; and
- a wildlife and environment charity indicated their view that where the intent of Section 3F is met and exceeded through other enforceable and alternative legal means, it may be possible that Section 3F has been superseded and no longer necessary.

Review of NBHS and associated building regulations

The review[10] of the NBHS and associated building regulations was conducted over the period between May to October 2024 in response to the concerns raised on prohibiting the use of woodburning stoves and wider bioenergy (and peat) heating systems in rural and island settings.

Engagements were held, with stakeholders from previously identified affected groups as well as stove industry representatives and island and rural communities, via workshops, 1 to 1 meetings and two Ministerial roundtables to identify a possible regulatory amendment. Stakeholders were also encouraged to submit additional evidence. Officials also engaged with local authority building standards officers via the Scottish Building Standards Hub – hosting a number of sessions with a core group of verifiers and held a wider session in September 2024 which was well attended (over 190 local authority verifiers).

[10] https://www.gov.scot/publications/new-build-heat-standard-factsheet/

The review concluded that to ensure the concerns of rural and island communities are comprehensively addressed, the best amendment to take forward is to permit all bioenergy and peat heating systems, and to allow the installation of any form of heating system to be used as secondary heating systems, whilst maintain the prohibition of mains gas and oil boilers, which is now reflected in the Building (Scotland) Amendment (No.2) Regulations 2024[11].

A BRIA addendum[12] was prepared which considered the emissions, health and environmental, and business impacts associated with any potential options for regulatory change of the NBHS. The conclusions are:

- Emissions impacts as a result of the changes are estimated to be potentially negligible when considered within the context of building emissions.
- There were potential negative impacts on air quality and human health identified as a result of domestic burning.
- There could be some positive impacts for businesses who manufacture, sell and distribute heating systems and fuels which could be permitted under the amendment.
- As the current number of bioenergy and peat installations is overall low, any impacts identified – both positive and negative – are expected to be limited.

Review of NBHS and interaction with Section 3F

The discussion paper issued by Scottish Government to all invitees ahead of the September 2024 engagement workshop included a section specific to the proposed repeal of Section 3F and requested any further offer of evidence and/ or request for discussion around the proposal for repeal. None was received.

The effect of the Repeal Order

The effect of the legislation being repealed would be immediate and national for the onward preparation of local development plans by planning authorities across Scotland, in that they would no longer have to include Section 3F type policy consideration in their local development plan preparation.

Repeal of the legislation does not alter or repeal any current adopted local development plan policies that are a response to Section 3F. Onward handling will be for planning authorities in the first instance. A forum is available through Heads of Planning Scotland should matters about implementation need to be raised.

The Annual Report is clear that removing Section 3F following the introduction of NBHS means there is no break in the overall policy support and push for greenhouse gas emissions reduction from new buildings, with low and zero-carbon generating technologies remain supported.

Findings from the NBHS review work suggest the estimated emission from buildings through the use of bioenergy and peat systems, and exemption allowing all forms of heating for secondary heating systems is considered potentially negligible. This is based on exisitng data suggests the low number of bioenergy installations as main heating system across Scotland, and low percentage of new build homes had secondary heating systems, of which some 80% are wood-fired systems. The evidence, thus does not significantly affect the case for repeal of

[11] https://www.legislation.gov.uk/ssi/2024/327/made
[12] https://www.gov.scot/publications/bria-new-build-heat-standard-amended-2024/

Section 3F as the objective of emission reduction from the operation of new buildings remains the same.

Impact Assessments

A Business and Regulatory Impact Assessment has been undertaken. A forum for raising issues around onward handling of planning applications by planning authorities is already in place and could be a means for implementation matters to be raised by planning authorities.

A Child Rights and Wellbeing Impact Assessment concludes no impact on children's rights and is compatible with the United Nations Convention on the Rights of the Child requirements.

A Data Protection Impact Assessment (DPIA) is not required – the repeal order is not about handling personal information.

An Equalities Impact Assessment (EQIA) screening has been undertaken and concluded no assessment is required. The proposed Repeal Order is a procedural matter and is not expected to have direct or indirect impact on people because the latest legislation and policy are in place and go beyond what the legislation to be repealed can achieve. Neither the legislation to be repealed nor the latest policy and regulation are applied to particular groups of people.

A Fairer Scotland Duty Assessment (FSDA) is not required – the repeal order can be regarded as a technical procedure to meet the requirements of existing legislation, supporting implementation of latest policy and legislation, and is not a strategic decision.

An Island Communities Impact Assessment (ICIA) is not required – this order is about repealing legislation that has been surpassed. The legislation to be repealed applies Scotland wide. The main policy and legislation that effectively replace it are the New Build Heat Standard (NBHS) and National Planning Framework 4 (NPF4). The New Build Heat Standard has been subject to Island Communities Impact Assessment[13] and associated addendum[14]. National Planning Framework 4 has been subject to Island Communities Impact Assessment[15] as part of an Integrated Impact Assessment. While NPF4 includes a planning approach to renewable energy and greenhouse gas emissions reduction, the main potential issues for islands set out in the NPF4 ICIA are not about Section 3F type issues instead are: young peoples retention, employment and education, transport, housing tenure and type, communications connections, influence on decision making, tourist infrastructure.

For the New Build heat Standard ICIA, it considered potential differential impacts for Islands and found that the uptake of zero direct emissions heating technologies in new buildings in island and remote areas do not face more significant barriers than in other parts of Scotland. The ICIA also found that the Scottish islands were relatively well-placed in terms of access to

[13] https://www.gov.scot/publications/new-build-heat-standard-nbhs-2024-island-communities-impact-assessment-icia/documents/
[14] https://www.gov.scot/publications/icia-new-build-heat-standard-amended-2024/
[15] https://www.gov.scot/publications/scotland-2045-scotlands-fourth-national-planning-framework-draft-integrated-impact-assessment-society-equalities-impact-assessment/

technical expertise in small-scale domestic renewables in the form of Microgeneration Certification Scheme certified contractors.

The evidence from the preparation of NPF4 and NBHS is not suggestive of there being a significantly different effect/ barriers between islands or other parts of Scotland in relation to building level renewable heating. It also suggests that the islands are well placed in terms of contractors for the deployment of such technology. The repeal does not alter the NPF4 or NBHS and associated building regulations, but allows building designers and decision makers to focus on its implementation without the burden of parallel operation of Section 3F.

It is concluded that it is not considered necessary to conduct an Island Communities Impact Assessment for the repeal of Section 3F.

A Strategic Environmental Assessment (SEA) pre-screening notice issued to the relevant consultation bodies. The screening found that the decision making framework in relation to greenhouse gas emissions from the operation of new buildings is addressed by National Planning Framework 4, the New Build Heat Standard and associated building regulations. With these in force there is no break in Scottish Government support for emissions reduction from new buildings with the repeal of Section 3F and greenhouse gas emissions will continue to be a feature of decision making on the consenting for new buildings.

A common thread through the assessments is that the legislation to be repealed has been surpassed by current planning, heat, and building standards policy/ regulation – National Planning Framework 4, New Build Heat Standard and associated building regulations. Repeal of Section 3F does not make any change to those policies.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business is that any benefits of retaining Section 3F in parallel with national planning Framework 4, New Build Heat Standard and associated building regulations are only for manufacturers and installers of low and zero carbon generating technology but the benefits may only be slight and may not result in additional units manufactured or installed. Repeal of the legislation was not thought to create significant, if any, reduction in demand for products and services from manufacturers and installers of low and zero-carbon generating technology. Benefits of the proposed repeal are likely to be for those involved in the design of development, applicants for planning permissions, planning authorities, and Scottish Ministers as procedural and implementation burdens from the parallel operation of Section 3F, National planning Framework 4, New Build Heat Standard and associated building regulations are resolved by repeal of Section 3F, and a focus can be on applying the latest policy and legislation in relation to greenhouse gas emissions reduction.

Scottish Government
Planning, Architecture and Regeneration Directorate

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