

Tenements Short Life Working Group - Energy Efficiency and Zero Emissions Heating

Final Report

November 2023

1. Note from Chair

We all deserve somewhere warm, safe and comfortable to live. The climate and cost of living crises we face have brought into sharp focus the challenging, but equally important, need to decarbonise our homes in a way that is achievable and affordable for all.

Some households will find this simpler than others depending on the age and construction type of their homes as well as their personal circumstances. Achieving a good level of energy efficiency and installing a zero emissions heating system in a newly built semi-detached house in the suburbs will not be the same as doing so in a rural Victorian cottage or a high-rise block in a city.

Furthermore, undertaking any sort of common works in mixed ownership and/or mixed use buildings presents various additional challenges, from disagreements between residents to confusion over ownership rights and responsibilities, to finding and then paying for contractors with the appropriate skills. Compounding this are the characteristics of many flats, varied as they are, with these properties tending to be older and facing additional constraints in terms of the options available to them to improve their energy/thermal efficiency and the move away from fossil fuel heating.

As a result of these issues and others, finding the best solution to decarbonising our tenement buildings will not be an easy task. However, given that flats account for more of our homes than any other single type of property, it is a task that we must undertake. As such I would like to thank all of the individuals and organisations who sat on the working group for their time, considerable expertise, their innovative ideas, and their patience with the process of seeking out solutions.

2. Background

In October 2021, the Scottish Government published its [Heat in Buildings Strategy](#)¹ (the Strategy) setting out its plans to decarbonise Scotland's homes and workplaces. In it, the Scottish Government committed to introduce regulations requiring all buildings to reach good energy efficiency standards by 2033 (equivalent to EPC Band C) with private rented properties having to meet these by 2028. All homes will also have to use zero direct emissions heating systems by 2045. Data from the most recent [Scottish House Condition Survey](#)² highlights the size of this task, with over 1.6 million homes being in EPC Band D or below and more than 2 million homes using mains gas or oil as their primary heating fuel.

Millions of people across Scotland live in dwellings that can be defined as tenements – whether these are high-rises, modern apartment complexes, four-in-a-blocks or traditional stone built tenement buildings. Scotland's tenements account for more than one-third of all homes across the country, with this figure rising substantially in many cities and urban areas. Tenements tend to be older than the rest of the housing stock with more than a quarter being at least one hundred years old. Given the significant share of Scotland's building stock represented by tenements, decarbonising these properties will be imperative to reaching the net zero target.

Box 1: Definition of Tenement

Throughout this report the term “tenement” is used, as set out in the Tenement (Scotland) Act 2004, to describe a building with two or more related but separate flats divided from each other horizontally. The term encompasses all types of flats, including, but not restricted to four-in-blocks, high-rise blocks, and modern apartment complexes.

As the term “tenement” is often particularly associated with a certain type of stone-built, pre-1919 building prevalent in Edinburgh and Glasgow we have referred to these types of properties as “traditional tenements” to differentiate them.

Often, however, improving the energy efficiency of, or installing zero direct emissions heating systems in, tenements requires upgrade works to happen at the same time and across the whole building for them to be both cost-effective and viable. In the Strategy, the Scottish Government acknowledges the challenges that common works pose in tenements and that these can prove to be a persistent and significant obstacle to taking action to decarbonise these buildings, unless owners can agree and act together.

Accepting that solutions will be required to address these challenges, the Strategy proposes that some tenements may be given until 2040-45 to both improve their energy efficiency and install a zero direct emissions heat supply depending on the complexities involved in coordinating works, in order to take full advantage of

¹ [Heat in Buildings Strategy - achieving net zero emissions in Scotland's buildings - gov.scot \(www.gov.scot\)](#)

² [Scottish House Condition Survey - gov.scot \(www.gov.scot\)](#)

potential innovations and opportunities (for example, developing heat networks or local heat and energy efficiency strategies), and recovering costs between the various owners. Given the high prevalence of tenements in certain local authority areas this additional time will very likely be required in some regions.

3. Short Life Working Group

Following a series of stakeholder workshops held in 2021, Patrick Harvie MSP, Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights approved the formation of an expert Tenements Short Life Working Group (SLWG).

The SLWG's main role was to offer advice and expertise to support the Scottish Government in developing options on the best approach for tenement buildings to reach a good level of energy efficiency and install a zero direct emissions heating supply, in line with the commitments made in the Heat in Buildings Strategy.

The Group was specifically asked to give consideration to:

- the merits of developing a whole building assessment for energy efficiency and zero direct emissions heating;
- possible amendments to existing legislation or the need for new powers;
- how best to encourage and promote energy efficiency improvements and installation of zero direct emissions heat systems under current arrangements;
- issues concerning support and delivery.

The Group met virtually five times between February and October 2022 with the Scottish Government providing Secretariat support. Further details of the Group's membership and meetings has been included as an appendix.

4. Key Themes

Throughout the meetings held, the following key themes and challenges emerged. Discussion and consideration of these issues shaped the final conclusions made by the Short Life Working Group. These themes have been summarised and included below for awareness of the Scottish Government.

4.1 Information, Data and Evidence

There is a lack of robust data on tenements in Scotland, particularly regarding their state of repair. Despite the fact that a House Condition Survey is undertaken regularly, the level of detail required on the physical condition of the tenemental stock is currently not available. A greater evidence base providing information on what can and cannot be achieved in practice – both in relation to improving building fabric (including improving energy efficiency) and installing zero direct emissions heating systems - is required.

4.2 State of Repair

The repair and maintenance of these buildings must come first in the order of importance as there is little merit in installing additional energy efficiency measures

until the building is in a good state of repair. In order to maximise benefits to occupants, ameliorate fuel poverty, and to reach demand reduction targets, existing fossil fuel heating systems should only be replaced by zero direct emissions systems after appropriate property repair and energy efficiency measures are in place. The order of priority must be: repair > maintenance > energy efficiency > zero direct emissions heat.

4.3 Ownership and Responsibility

Property which is individually owned versus that which is commonly owned in, and around, a tenement is set out in the title deeds of each dwelling. Should there be contradictions or gaps in the deeds, responsibility defaults to those set out in the Tenements (Scotland) Act 2004. Despite this, there is often considerable confusion among owners about what is individually owned and what is commonly owned. Action is required to give owners clarity and make them better aware of their rights and responsibilities.

4.4 The Tenement Management Scheme

Under the Tenement (Scotland) Act 2004 works to install communal zero emissions heating systems (and potentially individual systems should communal grounds be required for siting), and certain communal energy efficiency works which are not deemed “maintenance”, are considered improvements to the building and therefore require unanimous approval from owners.

Even decisions which require only majority approval under the Tenement Management Scheme still face the significant obstacle of owners who cannot or will not pay for works. While local authorities can assist through payment of the 'missing share' this requires owners to make a case to the local authority and for the authority then to take on that debt which it is often reluctant to do. It is also only likely to be considered by a local authority in situations where it owns at least one flat in a block and possibly only then when works are to repair, rather than improve. Enforcement relies upon those owners who are in agreement initiating and pursuing legal action, which in practice also rarely occurs.

4.5 Scottish Law Commission Law Reform Project

The Scottish Law Commission (SLC) are considering a law reform project on the establishment of compulsory owners' associations (COAs)³. This work could prove significant in facilitating energy efficiency and zero direct emissions heat works, not least through commissioning and paying for building surveys and serving as a legal entity to hold funds.

The work being undertaken by the SLC is not a “silver bullet”, however, and will not solve every problem. While owners' associations may be mandated they could still vote against undertaking works and some form of enforcement mechanism would still be needed. Whether improvements to whole blocks of flats would be enforceable without consideration and wider reform of title conditions is unclear.

For COAs to effectively facilitate common works, various other work streams must also align to underpin this, including determining how tenement buildings would be

³ [Scottish Law Commission :: Tenement law: compulsory owners' associations \(scotlawcom.gov.uk\)](https://www.scotlawcom.gov.uk/tenement-law-compulsory-owners-associations)

assessed, how building reserve funds may operate, what guidance and support will be available from government, and what other finance mechanisms will be available to owners, both individually and collectively.

4.6 Encouraging Common Works

Building owners working cooperatively to undertake necessary works is the overriding issue we face and so facilitating this should be the priority. As owners are unlikely to be experts in the areas in which we are asking them to act they will require guidance and support. This issue is compounded by the fact that many tenements are not factored and so lack the professional building management that could help facilitate works.

While the SLC undertakes its review project, owners need to be encouraged and supported to work together to improve the energy efficiency of their buildings overall. The provision of guidance on, active promotion of, and support for owners' associations, buildings inspections and reserve funds prior to any legislation that would mandate any or all of these would assist this ambition.

4.7 Affordability and Cost

The issue of affordability is paramount. Making support available to owners to encourage and incentivise them to go further than just undertaking the minimum required repairs will be key.

Acknowledgement is needed, however, that certain energy efficiency measures may never be cost effective in terms of payback times for owners. Some types of interventions might be necessary in terms of addressing the climate crisis, but those installing these measures may never recover the additional costs from energy efficiency savings alone. These measures will require additional support.

4.8 Use of Archetypes in Regulation

Any regulatory approach which looks to address tenements through splitting buildings into archetypes and construction types will inherently contain both merits and drawbacks.

Regulating tenements is unquestionably a complex area and so splitting these buildings into subsets does provide a welcome level of simplicity. The usefulness of archetypes, however, will depend on what they are being used for, with the greatest value likely to be in highlighting issues or challenges presented by certain types of building. Variations in site, construction materials, fuel source availability, ownership and other factors will mean that costs and ability to upgrade can vary greatly even within the same archetype.

4.9 Assessment and Standards

There is a need to reform the EPC assessment process for tenements to represent their energy efficiency performance and determine their potential for improvement more accurately. It is counterproductive that some removable measures which can reduce heat loss, including shutters, and thick curtains, are not currently considered.

Providing owners with a fairly simple menu of measures that could be applied in their individual dwelling could prove an appealing route to meet future standards as

progress has been hampered in the past by complexity. Adequate consideration, however, would be required to ensure materials forming the basis of measures were appropriate and their interaction with the existing building fabric was of benefit overall.

Developing a “whole building assessment” for both energy efficiency and zero direct emissions heat may be required to understand what measures are necessary across a whole tenement. The scope of such an assessment would need to be carefully considered to decide what it would need to include – the point of importance being that it provides owners with the knowledge and information they need.

4.10 Skills

It is vital that when looking at regulating for energy efficiency and zero direct emissions heat, the Scottish Government takes action to ensure there are sufficient numbers of appropriately trained architects, surveyors and tradespeople available within the industry to undertake the works that would be required, preferably with local knowledge and specialist expertise.

4.11 Enforcement

Compulsion is not necessarily the best way to get owners to undertake works and may be unpopular. It is likely, however, that compulsion will be required in some cases. What any enforcement measures will look like and where responsibility for imposing them will lie are important considerations. If this responsibility falls on local authorities they will require adequate and specific funding and resources to address the challenges this may bring.

5. Recommendations

5.1 Recommendation 1: Owners will require funding from government and access to finance.

The SLWG fully supports the Scottish Government’s aim of decarbonising Scotland’s buildings, including tenements, and the targets set out in the Heat in Buildings Strategy. To achieve these, however, owners will require very significant financial support from government. Without substantial investment from the state many owners simply will not be able to afford the works required to meet new standards and the targets will not be met.

Given the nature of many tenement buildings the costs of improving energy efficiency are often higher and the options for zero direct emissions heating systems more limited than for other portions of Scotland’s housing stock. Flats are more likely to be of traditional construction than the rest of the housing stock and often have limitations on available space. They may also require common measures to be taken across the entire building, potentially including undertaking significant repair and maintenance work prior to improved energy efficiency measures even being considered. Without significant financial assistance, undertaking the necessary improvements will be unachievable for many owners.

Any new funding programmes developed by government to tackle the challenge of tenements will need to address the issue of owners within a single tenement being in potentially significantly different financial situations from one another. Funding for necessary works must either be available to the building as whole (possibly via compulsory owners' associations should they be established in future) or significant assistance provided to each owner in the building to identify what funding is available to them individually.

The Group recognises that government resources are finite, even in the context of addressing the climate emergency, and that options for private finance are required. While it is clear that the decarbonisation of Scotland's building stock will be a generational challenge to be achieved over multiple parliaments, estimates in the Heat in Buildings Strategy suggest costs in excess of £33 billion with a commitment across the current parliamentary session of £1.8bn of public investment. This serves as a stark illustration of the gap between available public money and the total expenditure required. Therefore, the SLWG stresses the importance of the work being undertaken by the [Green Heat Finance Taskforce](#),⁴ and was pleased to be invited to provide evidence to the Taskforce on the specific challenges and opportunities presented by tenements. We look forward to its findings.

While the costs of decarbonising our building stock will be enormous and owners will require considerable support, the Group is also keen to highlight the significant economic and cultural opportunities that the transition to Net Zero can bring if correctly harnessed. Local jobs and supply chains can be prioritised to boost communities, new green jobs and industries developed, and our built environment enhanced and future proofed to ensure our homes and buildings are safe, warm and efficient for generations to come.

5.2 Recommendation 2: The SLWG supports the Scottish Government's proposals to take a phased approach to regulating tenement buildings.

The SLWG strongly supports the establishment of compulsory owners' associations as recommended by the [Scottish Parliamentary Working Group on Tenement Maintenance](#)⁵ and which is now being considered by the SLC. It also understands the timeline and process of the SLC in undertaking its work.

The establishment of COAs, however, is not guaranteed nor is their ability to be the "silver bullet" able to deliver on all of the works that may be required. There remains uncertainty over the extent to which it will be possible and proportionate to mandate certain works and measures. Furthermore, while COAs could serve to facilitate the undertaking of common energy efficiency and zero direct emissions heat works in tenements this would not be their primary role and the SLWG would not wish to see discourse regarding potential future duties or obligations on COAs hinder the work of the SLC in any way.

⁴ [Heat in Buildings: Green Heat Finance Taskforce - gov.scot \(www.gov.scot\)](#)

⁵ [Tenement Working Group - Built Environment Forum Scotland \(befsc.org.uk\)](#)

Given this, the Group acknowledges the value of an approach which looks to improve the energy efficiency of the tenement stock as much as possible using the powers that may be available to the Scottish Government at different junctures and supports the proposed approach set out by the Scottish Government [Box 2].

Box 2: What might a phased approach to regulating tenements look like?

A phased approach to regulating tenements could, at phase 1, see individual flats within tenement buildings required to meet new energy efficiency standards, where this is feasible and cost-effective, alongside the rest of the housing stock. Depending on their suitability for individual zero direct emissions heating systems, certain types of tenements may initially not be asked to replace their existing fossil fuel systems until more suitable options could be offered to them, for example through development of a heat network or an assessment of communal heating options for the building being carried out.

At phase 2, all individual flats could be required to meet both new energy efficiency standards and use a zero direct emissions heating system.

This approach would be developed to work alongside the prospective legislative changes the SLC may propose following completion of its law reform project considering the establishment of compulsory owners' associations. For example, should COAs be established in future they may prove well placed to organise the undertaking of a future whole building assessment for energy efficiency and zero direct emissions heat recommending suitable common energy efficiency measures and zero direct emissions heating systems for the building. A whole building energy efficiency standard could also be considered in future should it be determined that such a standard was necessary, proportionate and enforceable.

Individual owners should be required to improve the energy efficiency of their dwellings as much as possible and consider zero direct emissions heating options where these are viable. This approach should be aligned across the owner occupied, private rented and social housing sectors.

Concurrently, the Scottish Government must work to encourage, support and facilitate common energy efficiency works where these are possible and promote the voluntary adoption of owners' associations in tenements. Easily accessible sources of bespoke advice and guidance for owners looking to undertake works will also be essential. Existing providers of advice should be properly supported and funded by Scottish Government.

While the Group supports this phased approach, it stresses the importance that the Scottish Government provides clarity to owners on what it expects can be achieved in terms of energy efficiency and zero direct emissions heating in these buildings. To this end the Group would support consideration of a "whole tenement" energy efficiency standard being set in future should the development of future powers make this fair and workable.

5.3 Recommendation 3: A Whole Building Assessment for energy efficiency and zero direct emissions heating should be developed.

The SLWG recommends that a methodology be developed for a Whole Building Assessment (WBA) for energy efficiency and zero direct emissions heat. Such an assessment should provide information and recommendations to owners on both the energy efficiency measures and zero direct emissions heat systems which are most appropriate for their building as a whole and for their individual dwellings. As part of the phased approach discussed in Recommendation 2 above, the WBA could also potentially be used, in future, as a basis for regulation should a whole building energy efficiency standard be set.

Development of such an assessment is regarded by the SLWG as vital in providing information to owners on which individual and communal measures are suitable for their flat and building, the extent to which these measures would improve the energy efficiency and comfort of their homes, and the costs and potential savings. Crucially, this assessment would highlight communal zero direct emissions heating options for the whole building, which otherwise and individually, each owner alone would be unlikely to consider.

The Group is aware of other current and proposed assessment procedures which may be required on some tenement properties, for example the Single Building Assessment on fire safety and five-yearly maintenance reports recommended by the Scottish Parliamentary Working Group on Tenement Maintenance. It also notes the recommendation of the Climate Change Committee for the introduction of Green Building Passports. In order to ensure minimised disruption to owners, economic utilisation of available skills, and consistency of data and outputs, the relevant teams within Scottish Government should work closely to ensure any future assessments or tools are aligned and where possible combined. Similarly, any new methodology for a whole building assessment will need to be able to take account of the likelihood that each individual flat within a block will still require its own EPC.

5.4 Recommendation 4: Key Scottish Government work streams supporting the Scottish Law Commission project must be taken forward and properly aligned.

While the Scottish Law Commission undertakes its law review work examining compulsory owners' associations, it is important that the Scottish Government simultaneously takes forward work on the five-yearly building inspections, and building reserve funds that were also recommended by the Scottish Parliamentary Working Group on Tenement Maintenance. Work to ensure the necessary delivery and support programmes, and skills and supply chains are in place to allow owners' associations to carry out the duties they may have placed on them is vital and the progress of this may impact the outcome of the SLC's considerations. The need for local supply chains with knowledge of specific local climate, construction and materials, and skills should not be underestimated.

As discussed in recommendation 2, encouraging, supporting and facilitating common energy efficiency works where these are possible and promoting the voluntary adoption of owners' associations in tenements will also be key to success.

The Group understands that responsibilities for these work streams will rest with different teams across Scottish Government and indeed fall under various Ministerial portfolios likely including Housing, Zero Carbon Buildings, Justice, and Skills. Strong communication and joint working between the relevant teams and officials responsible for these areas will play an important role in their success.

5.5 Recommendation 5: The Tenements Act should be further amended to support energy efficiency and zero direct emissions heat common works.

The SLWG recognises that the Tenement (Scotland) Act 2004 was amended in 2009 to include “installation of insulation” as a “maintenance” measure, thus allowing decisions on this to be approved by majority under the Tenement Management Scheme (TMS) where the scheme applies.

The Group recommends that the Scottish Government consider whether the Act could be amended further, expanding the definition of “maintenance” measures to include an expanded list of energy efficiency measures, the installation of communal zero emissions heating systems, and the use of common areas for siting of equipment necessary for individual zero direct emissions heating systems.

The Act could also be amended to alter 50:50 ties in the voting process from a negative to an affirmative decision to improve the likelihood of works being undertaken.

The Scottish Government may also wish to consider whether it can be made easier for owners to undertake other measures which could play a role in reaching net zero, for example installation of electric vehicle charging infrastructure. Action should be considered to ensure that the installation of renewable energy and microgeneration equipment, or any other measure that could reduce emissions, cannot be unreasonably blocked by owners.

Communication and messaging around any amendments would be important as works considered “maintenance” under an amended Tenements (Scotland) Act 2004 would not necessarily be considered maintenance in the context of the requirements of other Acts, for example the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Further engagement with stakeholders, including local authorities, will be important to ensure that any changes proposed are effective, necessary and enforceable.

5.6 Recommendation 6: Expert advice is required on traditional and protected buildings

Around 27% of tenements in Scotland are traditional buildings (constructed before 1919) - a higher proportion than any other type of housing across the stock. While there are significant similarities in the challenges faced and opportunities presented by tenements, and traditional and protected buildings, the latter represents a distinct and invaluable part of Scotland's built environment and deserves specific consideration to ensure regulation, available skills, the supply chain, and assessment methods are appropriate.

In the Heat in Buildings Strategy the Scottish Government committed to develop approaches and solutions to transition Scotland's traditional and protected buildings to zero direct emissions heating while respecting and preserving the special characteristics of these buildings. To achieve this and to ensure new regulations best harness the opportunity presented by these buildings in moving towards net zero, the SLWG recommends that Scottish Government convene an expert group to consider how best to regulate traditional and protected buildings for energy efficiency and zero emissions heating.

6. Appendix – Short Life Working Group Information

6.1 Membership:

- Prof Lori McElroy MBE (Chair) – University of Strathclyde
- William Watson - Aberdeen City Council
- Ailsa Macfarlane – Built Environment Forum Scotland
- Jackie Timmons - City of Edinburgh Council
- Ian Smith - Changeworks
- Elaine Waterson / Clare Hamilton - Energy Saving Trust
- David Weatherall - Future Climate
- Duncan Thomson - Glasgow City Council
- Lila Angelaka / Roger Curtis / Simon Montgomery / Virginia Sharp - Historic Environment Scotland
- Alison McDiarmid - Property Managers Association
- Christina Gaiger - Royal Incorporation of Architects in Scotland
- Euan Ryan - Royal Institute of Chartered Surveyors
- Mike Heffron - Under One Roof
- Prof Douglas Robertson - University of Stirling
- Cassandra Dove - Scottish Federation of Housing Associations

6.2 Meetings:

Meeting 1 – 28 February 2022

Focus: Heat in Buildings Strategy; tenement archetypes; potential approaches to regulation; whole tenement energy efficiency standard; whole building assessment.

Meeting 2 – 30 March 2022

Focus: Proposed New Housing Standard; Scottish Law Commission law reform project; Green Heat Finance Taskforce.

Meeting 3 – 25 April 2022

Focus: Costs of and options for interventions in tenements; whole building assessment.

Meeting 4 – 27 July - 2022

Focus: Traditional and protected buildings; support and delivery programmes; potential recommendations.

Meeting 5 – 13 October 2022

Focus: Final conclusions and recommendations.



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