

ENERGY EFFICIENT SCOTLAND OPTIONS FOR OVERSIGHT BODY

DECEMBER 2018

INTRODUCTION

Scottish Government has committed to a National Infrastructure Priority on Energy Efficiency of Buildings, with Energy Efficient Scotland as its cornerstone. The aim of the Infrastructure Priority is that, 'by 2035, ... we will have transformed the energy efficiency and heating of our buildings so that, wherever technically feasible, and practical, buildings are near zero carbon.'¹

The Existing Homes Alliance Scotland (EXHA) and others have argued that such an ambitious and complex programme requires the development of a national body tasked with the oversight of Energy Efficient Scotland (EES), with sufficient capacity to ensure an effective framework for the delivery of such a wide range of agencies, policies and programmes.²

In response to stakeholder support for such an oversight body, the Scottish Government commissioned an "options appraisal on the various potential governance structures for a SEEP [the precursor to EES] National Delivery Mechanism" which is expected to be completed by the end of 2018.³

This policy briefing provides a framework for assessing options for oversight arrangements for energy efficiency governance in Scotland. The briefing is based on a full scoping study commissioned by the Existing Homes Alliance and funded by the European Climate Foundation⁴. The research consisted of a literature review covering global, European, UK and Scottish sources, supplemented by a review of responses to relevant consultations⁵, and discussions with a small number of stakeholders. The study considers options for oversight within the context of a wider framework of energy efficiency governance⁶.

ExHA seeks to inform the debate by setting out our views on the key features of an oversight body that fit the current Scottish context and our preferred option for the most effective and appropriate oversight arrangements.

¹ <http://www.gov.scot/Publications/2017/01/2195>

² <http://existinghomesalliancescotland.co.uk/category/policy/>

³ https://www.publiccontractscotland.gov.uk/search/show/search_view.aspx?ID=JUN321296

⁴ <https://europeanclimate.org/>

⁵ Energy Strategy – Scotland's Energy Efficiency Programme (SEEP) January 2017, Scottish Government; Energy Efficient Scotland Consultation, May 2018, Scottish Government

⁶ The definition of energy efficiency governance used here is that developed by the International Energy Agency in *Energy efficiency governance: Handbook 2nd ed.* (IEA 2010b): '...the combination of legislative frameworks and funding mechanisms, institutional arrangements, and co-ordination mechanisms, which work together to support the implementation of energy efficiency strategies, policies and programmes.'

CONTEXT

The Government's overall approach and objectives for improving the energy performance of buildings are set out in the *Energy Efficient Scotland: Route Map (May 2018)*.⁷ Proposals for specific interventions have been consulted on through its *Energy Efficient Scotland Consultation (May 2018)*.⁸ Taken together these policy papers set out a range of targets and actions designed to deliver significant advances in energy efficiency and heat decarbonisation in domestic and non-domestic buildings across Scotland.

Energy Efficient Scotland (EES) is set to run over the next 20 years and 'will help secure an investment in excess of £10 billion over the lifetime of the programme'.⁹ It will run over several administrations, and impact numerous government portfolios and various levels of government. It will influence, and operate within, Scottish, UK and international legislative frameworks.

It will involve a wide range of agencies responsible for the existing and extensive range of policies and programmes aimed at tackling poor energy performance, climate change and fuel poverty. There are also expectations EES will develop new policies and programmes across a wide range of specialist areas, from building standards and low-carbon heat technologies to consumer advice and protection.

PROPOSED REMIT FOR OVERSIGHT BODY

The initial assessment of options identified a set of necessary components of governance as part of a coherent energy efficiency strategy. These components are used to propose a potential remit for oversight arrangements in the Scottish context below.

TABLE 1: PROPOSED REMIT FOR OVERSIGHT BODY

Enabling Frameworks	Oversight Body Role
Statutory Targets	Oversee and monitor progress against statutory targets on energy performance, heat decarbonisation, and as required targets related to fuel poverty and climate change
Strategies	Oversee delivery of Energy Efficient Scotland Route Map and relevant components of Fuel Poverty Strategy, Climate Change Plan, Energy Strategy
Regulation	Oversee enforcement of regulation and standards and implementation of guidance (building standards, historic buildings, common areas, planning). Consider best use of regulation, standards and guidance going forward.
Institutional arrangements	

⁷ <https://beta.gov.scot/publications/energy-efficient-scotland-route-map/>

⁸ <https://www.gov.scot/Publications/2018/05/8637/353295>

⁹ Scottish Government, *Energy Efficient Scotland: Route Map* pg. 11

Energy Efficient Scotland Route Map	Oversight of implementing agencies; budget requirements and spend
	Policy and programme development Review and revise strategies as required.
	Commissioning and evaluating programmes
Support for local authorities	Oversight of measures to support local authorities to deliver programmes: provision of data, procurement and best practice guidance, facilitation of networking and partnership working
Stakeholder engagement	Liaison with stakeholders (energy suppliers, delivery bodies, professional institutions, trade bodies, academia, research organisations, third sector)
Supply chain	Oversight of measures to improve skills, accreditation, quality assurance
Research	Support research and development (eg technology, behaviour change, engagement)
Public engagement, advice and protection	Oversight of programmes to raise awareness and engage building owners, occupiers and managers. Maintaining a single national point of consumer engagement, advice and support that can refer into local schemes and support – as delivered by Home Energy Scotland Oversight of programmes to maintain and enhance trust, consumer rights and redress e.g. complaints procedures
Co-ordinating mechanisms	
Governmental co-ordination	Lead and facilitate co-ordination: Intra-government - Energy/Climate Change, Housing, Health, Education Inter-government - EU, UK, Scotland, local authority, devolved nations Coordination of relevant regulatory regimes Coordination of monitoring and reporting to Ministers and Parliament

KEY CONSIDERATIONS

The research found the following questions should be considered when establishing an oversight body for energy efficiency governance:

- What type of organisation should be created and where should it be housed?
- Who will provide oversight and accountability?
- What factors are critical to oversight body effectiveness?
- What skill sets will be required to make the arrangement successful?
- How should an oversight body be organised internally?
- How will it be funded?

This policy summary focuses on the first three questions regarding the **type of organisation, leadership and success factors**.

A key finding of the research is that the establishment of a single agency responsible for oversight is key to achieving maximum impact. This model most readily addresses the need for coherent energy efficiency governance, encompassing this complex and cross-cutting policy agenda, the need to engage with different levels of government, and to provide leadership, support and coordination to a diverse range of stakeholders.

Therefore, the study only assessed approaches based upon an agency, rather than two other options which could also be considered by the Scottish Government, namely direct oversight by government and amending the functions of an existing body. However, our recommendations for key features of an oversight body, as set out below, can be applied to any proposed approach for oversight of EES.

TABLE 2: KEY FEATURES OF AN OVERSIGHT BODY

Oversight body – key features for assessment of options
Central factors regarding the effectiveness of EE agencies/arrangements
<ul style="list-style-type: none"> • Location in government - Independent agency rather than department within government structure with broad remit • Independence and flexibility in decision making • Statutory authority – more effective in overseeing strategy and regulatory interventions
Core competencies
<ul style="list-style-type: none"> • Ability to work collaboratively with multiple public and private agencies and stakeholders with EE responsibilities/interests • Ability to leverage private-sector participation into energy efficiency implementation • Ability to influence energy goods and services providers, including utilities and energy services companies • Ability to facilitate the role of energy regulators in scaling-up energy efficiency • Adequate resources, including staff expertise and funding • A credible scheme for monitoring and evaluation
Success Factors
<p>Political leadership: Commitment by senior level politicians is identified as the most important factor influencing coherent institutional governance.</p> <p>Institutional leadership: Management, management structures and staff levels are also central to determining success.</p> <p>Technical capacity: Central here are sufficient levels of relevant knowledge and expertise to develop and share the best scientific and other advice, to shape perceptions and understanding among stakeholders and end users, and to support the delivery of policy and programmes.</p>

Funding: Adequate funding for institutions is required which is secure and predictable and delivered in a way which allows for independence in decision making.

OVERSIGHT MODELS

As stated above, the research found that a dedicated, independent agency was fundamental to effective and efficient energy efficiency governance. Therefore, the study looks at types of agencies that currently exist in Scotland and suggests which of these might be best matched to delivering the proposed remit and which are most likely to contain the key factors listed above. These are: Executive Agencies (EA), Non-Ministerial Departments (NMD) and Non-Departmental Public Bodies (NDPB).

EXECUTIVE AGENCY

Executive Agencies are not core departments of the Scottish Government but are described as *integral to the Scottish Government* (SG 2011). They are set up by a Framework Agreement, rather than by statute, which lays out their relationship with Ministers. Their remit is described as well-defined and linked to government objectives. They have **a strong focus on the management and direct delivery of public services**. Ministers lay out their strategic direction, and remain accountable for their functions, but not their day-to-day running. They are staffed by civil servants, including the Chief Executive, who is directly accountable to Ministers and through Ministers to Parliament. Ministers approve and provide funding.

CURRENT EXAMPLES

Transport Scotland, Scottish Prison Service

ADVANTAGES

Close to government with a more direct input into policy, access to public budget, status among stakeholders, authority.

LIMITATIONS

Under direct Ministerial budgetary and political control, may be revoked without recourse to Parliament. Less suitable for an organisation that is undertaking oversight rather than delivery.

NON-MINISTERIAL DEPARTMENTS

NMDs are headed by an Office Holder (an individual or a board) and **are set up to deliver specific statutory functions as determined by Ministers but** are not under direct ministerial control. They are instead directly accountable to Parliament for the discharge of those functions. They operate within the policies and priorities set by Ministers and the relationship with Ministers is set out within Frameworks or other agreements. They are staffed by civil servants. Where the Office Holder is a corporate body, Ministers have responsibility for appointments to that body.

CURRENT EXAMPLES

Scottish Housing Regulator, Revenue Scotland

ADVANTAGES

More independent of Ministers than EAs, legally defined duties, more likely for Parliament to have a say in revoking it.

LIMITATIONS

These tend to be focussed solely on the delivery of specific statutory duties.

NON-DEPARTMENTAL PUBLIC BODIES

There are three types of NDPBs: Executive, Advisory and Tribunals. Tribunals relate mainly to the justice system and are not relevant here. Advisory NDPBs are limited to the provision of independent, expert advice and so are not suitable for an oversight body.

Executive NDPBs are not part of either the Scottish Government or the Scottish Administration. They carry out administrative, commercial, executive, advisory or regulatory functions on behalf of Government. They provide specialist advice to Ministers and others and are normally established by statute. Ministers set the strategic framework and are ultimately but not directly responsible for their services. Ministers also set the framework of governance and accountability.

CURRENT EXAMPLES

Highlands and Islands Enterprise, Scottish Futures Trust, Community Justice Scotland.

ADVANTAGES

Greater political and budgetary autonomy than EAs. Flexibility in operations. Establishment in statute makes them more difficult to wind up and creates status.

LIMITATIONS

While they provide specialist advice they may have less influence on policy than say an EA, or NMD, as they are outside government and report to Ministers not Parliament.

ANALYSIS OF OPTIONS

Non-Ministerial Departments seem the least relevant of these three types as these are related to delivery of a specific statutory responsibility. While EES oversight arrangements will require influence over regulation, enforcement, licensing and certification requirements, this will be only one set of the components requiring to be governed.

An **Executive Agency** could be more appropriate as this would have the capacity and influence required. However, limitations of an EA are significant and include:

- Not usually set up by legislation so lack stable foundation and autonomy.
- Less political independence, though could have more input into policy than an NDPB.
- Tend to be tasked with direct delivery of public services rather than oversight alone. Our research strongly identified that need for a new independent oversight body – setting up a new body to undertake direct delivery would likely involve the assimilation of the functions currently carried out by a wide range of delivery organisations which would entail significant disruption and negatively impact what are already very demanding delivery timescales for EES.

The Executive NDPB is ExHA's preferred option for the following reasons:

- Independent agency which confers status, influence and stability
- Established in statute giving it more political and budgetary autonomy than those agencies established by framework agreements alone, while helping develop its reputation and define its powers. This also facilitates parliamentary and stakeholder input, creating conditions which allow for long-term consensus. However, we should be aware that its ability to adapt to changing circumstances may be limited by having its functions defined too rigidly in statute.
- Report to ministers and parliament, ensuring political and institutional leadership and accountability.
- Clear remit for oversight and not delivery, so would build on and co-ordinate existing delivery infrastructure.

CASE STUDY: COMMUNITY JUSTICE SCOTLAND

The recently launched Community Justice Scotland (CJS) Executive NDPB is of interest as it appears to display many of the competencies and characteristics outlined as fundamental to effectiveness, efficiency and maximum performance. It is also relevant due to the complex and cross-cutting nature of its policy agenda, its need to engage with different levels of government, and its role in providing leadership, support and coordination to a diverse range of stakeholders. It is a relatively small, and new, agency with a limited budget set up within the context of public spending constraints in Scotland. Thus, the system it operates in has similarities to the energy efficiency system described above, and its role in providing support and oversight, rather than direct delivery, makes it a useful comparator.

OTHER APPROACHES:

It should be noted that a variation on the option of a dedicated agency tasked with oversight could include amending the functions of an existing agency. A precedent for this is Zero Waste Scotland which has, for a number of years, had an overarching role in relation to the Scottish Government's Zero Waste Plan, although it should be noted that ZWS is not a statutory agency. As an example, this role includes the development and co-ordination of programmes to encourage participation of the public and businesses at national and local level to meet zero waste objectives.

There are clearly similarities between this role of ZWS and the role that any future oversight arrangements might have in relation to Local Heat and Energy Efficiency Strategies. There is thus a potential option to build on the functions of an existing body with relevant energy efficiency experience and expertise, such as the Energy Saving Trust, to create an oversight body for EES, although like ZWS,

EST is not a statutory body. It is outside the scope of this report to undertake further analysis specifically on this option, but we note that it could merit further investigation.

CONCLUSIONS AND RECOMMENDATIONS

This policy briefing provides a framework for assessing options for oversight arrangements for energy efficiency governance in Scotland. The main recommendations on how best to ensure coherent governance include the need for:

- a legislative framework which lays out the components of any energy efficiency strategy such as targets.
- an agency formed by statute with responsibility for oversight and setting out a framework for delivery, and provided with adequate independence, authority and capacity.
- overall responsibility rests with a single senior official, preferably a Minister.

The briefing also outlines the advantages and limitations of different organisational types in Scotland, core competencies, and key factors of success. Based on the analysis, the Existing Homes Alliance's preferred option is for the Executive NDPB model as it helps create status, allows for flexibility in its functions and for political autonomy; and will build on the existing delivery infrastructure.

Being set up by statute can provide the opportunities required for building consensus among politicians and stakeholders around its aims and design. This can also help ensure consistent focus and funding over successive administrations. Ultimate responsibility for the success of such an agency lies with the relevant Minister, ensuring it has the political relevance required to drive through change.

Such an agency could help oversee the effective and efficient delivery of policy if designed to fit within the current energy efficiency system, filling identified gaps, providing a coordinating/leadership role, avoiding duplication, and providing specialist services and support for other agencies, including local authorities.

RECOMMENDATIONS:

- The Scottish Government should commit to establishing an oversight body for EES as it is a complex, ambitious and long-term programme. The oversight body should have sufficient capacity to ensure an effective framework for the delivery of such a wide range of agencies, policies and programmes.
- The Scottish Government should consult on the remit and type of model for the oversight body. The options should reflect the research findings that a single, independent agency with responsibility for oversight is central to effective and efficient governance.
- All proposed models for an oversight body should be assessed against the key features provided in Table 2.
- The ambition should be to have the oversight body in place by 2020, at the inception of the EES programme.

We encourage discussion amongst stakeholders of these findings and recommendations and welcome any comments or suggestions.