



Law Society  
of Scotland

# Written evidence

## Climate Change Plan update

January 2021



## Introduction

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The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

We welcome the opportunity to provide evidence to the Scottish Parliament's inquiries on the Climate Change Plan update<sup>1</sup>. We have the following comments to put forward for consideration.

## General comments

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We welcome the Climate Change Plan update (Plan update) which seeks to support Scottish Government in achieving its climate change ambitions, particularly those under the Climate Change (Scotland) Act 2009, as amended by the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019.

The Plan update covers matters including possible regulatory frameworks at a fairly high level, and we expect that detail will be set out in respect of particular actions as consultation or work is undertaken. The high-level nature of the plan means that the full impacts of what is proposed cannot be assessed.

We welcome the coordinated approach set out by the Plan update and we note the importance of integrating this Plan update and related policies with other environmental strategies, in particular, the environmental policy strategy which is to be prepared under section 41A of the UK Withdrawal from the European Union (Continuity) (Scotland) Bill<sup>2</sup> and the expected biodiversity strategy<sup>3</sup>. We suggest that this Plan update should be seized as an opportunity for greater integration but note the potential for difficulties and competing priorities if the various plans are not properly co-ordinated.

We note that the Plan update was laid on 16 December 2020. This has resulted in there being only a short period of time, including the festive period, to consider the Plan update before responding to this inquiry. While

<sup>1</sup> <https://yourviews.parliament.scot/ecclr/ccp-update/>

<sup>2</sup> passed by the Scottish Parliament in December 2020.

<sup>3</sup> <https://www.gov.scot/publications/scottish-biodiversity-strategy-post-2020-statement-intent/>

our response captures our initial comments on a range of issues, we have not been able to consider all matters in full at this stage.

## Response

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### The Environment, Climate Change and Land Reform Committee

#### Climate change governance (including monitoring and evaluation)

We refer to our comments above regarding the importance of integrating this Plan update and related policies with other environmental strategies, in particular, the environmental policy strategy which is to be prepared under section 41A of the UK Withdrawal from the European Union (Continuity) (Scotland) Bill<sup>4</sup>. Section 41A(3) provides that “in preparing the strategy the Scottish Ministers must have regard to the desirability of securing that environmental policy .... (e) responds to global crises in relation to climate change and biodiversity.”

We also note the duties in section 36A of the Continuity Bill in relation to governance arrangements.

We welcome the revised monitoring framework including statutory annual reporting to the Scottish Parliament on the progress made towards delivering the Plan.

#### Behaviour change

We refer to our comments below under ‘Energy & heat networks’ in connection with communication to consumers and procurement. We consider that procurement strategies present a significant opportunity to influence the behaviours of the many and varied businesses in the market which are involved in servicing the public sector.

We consider that COP26, due to be hosted in Glasgow in November 2021, presents a major opportunity to demonstrate and promote Scotland’s progress towards the Scottish Government’s climate change aims.

#### Waste and circular economy

We welcome the commitments made in the Plan update and elsewhere<sup>5</sup> in relation to developing Scotland’s circular economy. We consider that this requires a deep transformation in order to achieve the desired aims.

It is important that plans around waste and the circular economy are considered together with developing environmental laws and policy given the interaction between matters such as the deposit and return scheme, the UK-wide extended producer responsibility (EPR) regime, plastic packaging tax, and market restrictions on single-use plastics. We recognise the importance of these proposals and how they fit with the developing environmental programme, however, it is crucial that the details dovetail with each other and aspects of the

<sup>4</sup> passed by the Scottish Parliament in December 2020.

<sup>5</sup> For example, Programme for Government 2019-2020 and 2020-2021.

environmental programme and climate change ambitions more generally. We also note the potential interaction between waste and circular economy plans with the provisions of the United Kingdom Internal Market Act 2020 and the development of intra-UK common frameworks following the UK's withdrawal from the EU.

We previously responded to Scottish Government's consultation on Developing Scotland's Circular Economy<sup>6</sup>. The plans outlined in the consultation focussed mainly on litter management, and while these are laudable targets, they do not fully represent the actions required to achieve a circular economy.

To ensure a truly circular economy, issues of demand and design require to be addressed, including facilitating optimising design of products and material flows to encourage or require lower impact methods of product and service delivery. We recognise that this will require deep rooted changes. Alternative business models may be able to play a role in achieving the desired objectives and there would be merit in considering business models as a means of moving beyond a focus of consumption and disposal pricing.

As referred to below, investment will be crucial to achieving the desired climate change aims and we consider that it is important that consideration is given to how the funds that are raised by measures such as plastic bag charges and plastic packaging tax will be used to further support a circular economy, and ensure a just transition in line with Scottish Government's ambitions in this regard, particularly in the context of a green recovery from COVID-19. The social and economic impacts of the measures will require to be carefully monitored and assessed so as to ensure that measures are meeting the just transition objectives.

## The Economy, Energy and Fair Work Committee

### Energy & heat networks

We welcome the policy content set out in the Plan update on energy. It is clear that efforts have been made to consider the issues arising in relation to energy. However, we note that the Plan update contains little detail as to the practicalities of how the outcomes will be achieved.

The Plan update recognises that the Scottish Parliament does not have devolved competency in all relevant areas, for example, electricity generation is reserved under Schedule 5 of the Scotland Act 1998. This necessarily means that the Plan update contains a number of 'asks' for UK Government and will rely on the UK Government to undertake these in order to contribute to achieving the outcomes in these areas. We consider that there are many areas of consistency between the Plan update and the UK Government's *Energy White Paper: Powering our net zero future*<sup>7</sup> which is welcome.

In relation to heat networks, we have previously given evidence on the Heat Networks (Scotland) Bill<sup>8</sup>. In our evidence, we recognised the legal challenges associated with requiring building owners/occupiers to connect

<sup>6</sup> <https://www.lawscot.org.uk/media/368103/19-12-19-env-consultation-circular-economy-proposals.pdf>

<sup>7</sup> <https://www.gov.uk/government/publications/energy-white-paper-powering-our-net-zero-future>

<sup>8</sup> <https://www.lawscot.org.uk/research-and-policy/influencing-the-law-and-policy/our-input-to-parliamentary-bills/bills-201920/heat-networks-scotland-bill/>

their buildings to a heat network within a heat network zone. However, we also noted that this may impact the Bill's ability to deliver the stated policy intention of increasing the roll out of heat networks. In order for heat networks to be more viable for investment, there will need to be a connection between potential heat customers and the heat networks. This may require complementary policy measures to incentivise customers to connect to heat networks. There are matters of competition to be considered in the context of heat networks. These are addressed in our evidence on the Bill. We note that the Plan update states that consideration will be given to extending Permitted Development Rights (PDR) for zero-emission heat networks and micro-renewable technologies. We agree that it seems appropriate to consider these changes as a potential measure to facilitate development and use of these technologies.

Development of heat networks requires to dovetail with other heat and building strategies in order to create sufficient demand which is key to achieving the desired aims around carbon reduction. Clear communication with consumers and the public at large in relation to innovation and energy developments will be crucial to driving change and is likely to encourage innovation by businesses who may be rewarded with an early return on investment as a result of consumer up-take. It would be of particular assistance if this communication included a trajectory of technological developments and regulatory requirements (for example, in relation to energy efficiency measures for properties) so that consumers may make informed choices.

We note the references within the Plan Update to developing a regulatory framework for to decarbonise heat and buildings<sup>9</sup>. The Plan update does not provide any detail at this stage. We suggest that the design of such a framework will require careful consideration and in preparing this framework, it would be particularly valuable to review and take account of lessons from mechanisms which have been used in the past, for example, the carbon reduction commitment.

It is important that the potential wider implications of technological and energy innovation are considered holistically to avoid shifting carbon production from one vector to another or imposing additional costs on certain activities over another. For example, taking into account the additional costs, heat and other emissions from increased use of data and technology. In this regard, we consider that clearer information is needed for businesses and consumers about where emissions are coming from and we support public education in this regard. While channelling consumer and individual business actions in a responsible way is important, in order to fully achieve the climate change ambitions, it will be necessary to give consideration to measures which will reduce large scale carbon emissions. We recognise that there will be wider economic considerations to such measures.

## **Technology and business**

We note that the Plan update focuses on innovation and technology, particularly in the context of energy developments. While this is welcome, the Plan update appears to assume that innovation and creation of new technology will automatically lead to dissemination within the market. However, this may not necessarily be the case and further action may be needed to ensure uptake by both businesses and individuals to ensure that the targets are met. We also note that the Plan update fails to address intellectual property (IP) rights and

<sup>9</sup> For example, paragraphs 3.2.35 and 3.2.57

consideration may need to be given as to whether any adjustments are needed to balance IP rights with the need to ensure speedy access to new technologies where those facilitate climate change: as IP is a reserved matter, this would require engagement with the UK Government should any changes be needed. Furthermore, we note that privacy and data protection are important consideration in the context of the internet of things, including energy services, for example the ability to control household heating remotely. The plan should ensure that the rights of privacy and data protection are respected while facilitating strong coordination and collaboration to ensure best use of resources. This will be of particular importance in the context of achieving the desired aims of a green recovery from COVID-19.

We recently responded to the Scottish Government's consultation on the Digital Strategy for Scotland<sup>10</sup>. Digital development has a significant role to play in contributing towards achieving climate change ambitions and therefore it is important that these strategies are complementary to ensure coordinated strategic development in this area.

### **Trade and investment**

It is important that commercial practices evolve to ensure that climate change objectives succeed, and our targets are met. The Plan update recognises that attracting private capital is key to the successful delivery of the Scottish Government's climate objectives. It is noted that the Scottish National Investment Bank (SNIB) will "work with...partners to channel and crowd in investment" and "introduce further mechanisms to leverage its available capital"<sup>11</sup>. It is not clear how it is proposed that this will be achieved.

Commercial laws and trading relationships play a key role in creating an attractive investment environment. The ability to secure loan finance is directly related to the ease with which the financing party is able to take security over assets and our current legal framework places Scotland at a competitive disadvantage. The law regarding security over moveable property is outdated, hampering the ability of business to use their intellectual property (IP), plant, equipment and stock, shares and balances as collateral to fund businesses. Introducing the Scottish Law Commission's draft Moveable Transactions Bill would remedy these barriers, providing opportunities for businesses of all sizes, including those with valuable IP, particularly common in the innovation sphere. We also note that Crown preference was reintroduced by the UK Government in insolvencies from December 2020 and this has the effect of increasing the risks to holders of floating charges, which may make it less likely that debt finance is provided to Scottish companies. We consider that advancing the Moveable Transactions Bill could mitigate the impacts of this policy change and allow greater certainty for investors.

Numerous factors can play a role in making Scotland an attractive destination for environmentally responsible companies to establish themselves and in attracting overseas investments to boost those businesses. Ensuring access to finance – whether through public funding initiatives such as the SNIB or opening channels to private finance as would be achieved by the implantation of a modern law for taking security over moveable property – is key to developing businesses so that they can capitalise on those opportunities. This must be

<sup>10</sup> <https://www.lawscot.org.uk/research-and-policy/influencing-the-law-and-policy/our-responses-to-consultations/digital-scotland-strategy/>

<sup>11</sup> Paragraph 1.2.14

made available timeously so that Scotland can continue to capitalise upon and expand its existing reputation for environmentally sustainable business, already championed in key industries including renewable energy. If ability to access finance is delayed, Scotland will lose out as investments will go elsewhere.

As governments, businesses and individuals around the world focus on a green recovery, there are opportunities for Scottish businesses to export products and services, which enhance those efforts. Products and manufacturing processes which promote environmental objectives and assist in the fight against climate change can boost Scotland's reputation as a supplier of "green" goods and services; regulation has a role to play in this regard. Trading arrangements can be framed to promote wider objectives, including in contributing to environmental protection and guarding against climate change at the same time as providing opportunities for growth. The ability to sell goods and services from Scotland to other parts of the globe therefore also plays a role in attractive investment.

We also note that whether operating in Scotland, throughout the UK, or looking at these wider international opportunities, there is also a role for SG and its agencies to provide support for businesses that goes beyond the purely financial in order to help them to identify opportunities for trade, investment, or collaborative ventures – both here and overseas – in a way which ensures that the green agenda works in tandem with the economy.

### **Public procurement**

It is to be expected that paragraphs 1.2.8 to 1.2.10 on green procurement policy would in, a high-level document be in general terms but as in other areas, the implementation of this welcome objective will be key. We understand that the UK Government is proposing to amend public procurement rules and is likely to tailor them to ensuring a green recovery. The Scottish Government has the opportunity to take similar steps or to be more radical if it chooses. In both cases, the rules will need to be in line with our international obligations, for example those under the UK-EU Trade and Cooperation Agreement and WTO law and ensure that alleged green or social concerns cannot be challenged as economic nationalism. The relevant specification of requirements and Pre-Qualification Questionnaire will need to be underpinned by objective indications of the way in which a particular requirement will make a genuine contribution to green objectives.

## **The Local Government and Communities Committee**

### **Planning**

We note the importance of the link between the Plan update and the National Planning Framework (NPF). We consider that planning has an opportunity to play a significant role in driving forward the Scottish Government's ambitions in relation to climate change and influencing land use management. Following the Planning (Scotland) Act 2019, the NPF will be subject to Parliamentary scrutiny and it directly influences local development plans. It is of particular importance that appropriate prominence is given to the process for developing, consulting and agreeing NPF4 and that sufficient detail flows from the Plan update and NPF4 so as to give planning authorities maximum clarity as to the duties and material considerations as well as an

understanding of how the objectives operate in practice and relate to ‘on the ground’ sites. This will enable developers, such authorities, local communities and all with an interest in planning applications (and those dealing with planning appeals, such as Local Review Bodies and DPEA reporters) to better understand how the objectives should be applied in practice.

The Planning (Scotland) Act 2019 contains certain requirements in relation to the NPF and climate change and places certain duties on the Scottish Ministers. In addition, changes made by, or in tandem with, the 2019 Act mean that Scottish Planning Policy (SPP) will form part of the NPF in the future. The current SPP was published in 2014 and while it includes links to climate change, it is likely that this will require significant updating in due course to fully reflect the climate change ambitions.

The Plan update includes multiple references to delivering a place-based approach and to the 20-minute neighbourhood concept. While these are laudable aims, it is important that the appropriate legal and policy mechanisms are in place to enable this to be achieved and that there is clarity as to how the desired outcomes will be achieved in practice.

We note the Plan update refers to continuing to review energy consenting processes, “making further improvements and efficiencies where possible, and seeking to reduce determination timescales for complex electricity generation and network infrastructure applications.” While the plan update provided limited detail in relation to the review, we broadly welcome improvements and efficiencies which may be made to the process. However, it is important that increasing the speed of determinations of applications is not done at the expense of the quality of the decision-making.

## **The Rural Economy and Connectivity Committee**

### **Rural affairs**

We note that it is crucial that there is strong integration between relevant policies and plans in the rural sphere in order to achieve the greatest possible benefits – for example, those relating to the management of land, wildlife, moorland, and peatland. Given the Scottish Government’s commitments in relation to tackling climate change, it is crucial that policies and plans are fully considered against the background of achieving the desired climate change objectives while providing detail as to how the objectives will be achieved in practical terms.

### **Agriculture and forestry**

The Committee on Climate Change has recognised the opportunities for Scotland to achieve ambitious greenhouse gas emission reduction targets but recognises that urgent action is needed to drive down

emissions<sup>12</sup>. The UK's exit from the EU presents an opportunity for Scottish Government to consider plans for future rural support in line with its National Performance Framework and climate ambitions.

Support for agriculture and the rural economy should not be considered as an isolated issue – not only does agriculture and the rural economy impact on food, farming and the environment, but also upon our wider economy and trade. It is important that there is a degree of stability and forward planning in terms of financial support for those in the agriculture and forestry sectors to enable businesses to take informed decisions about their operations. This is also likely to assist longer-term planning and investment which is likely to help to achieve climate related ambitions in these sectors.

It is important that new policies and arrangements for financial support do not have wider detrimental impacts on the environment and therefore it is of particular importance to consider the longer-term implications and possible unintended consequences of policies and plans which are being introduced. In order to help to achieve climate change ambitions, it would be appropriate for future rural support schemes not to result in negative implications for those who have acted environmentally responsibly and shown leadership in this area.

We consider that securing new entrants to the agriculture and forestry sectors and ensuring the sectors remain attractive for those operating within them and for investment will be important in maintaining the strength of these sectors in contributing to climate change and emissions reduction. We refer to our comments above in relation to securing investment in Scotland.

### **Green recovery**

We previously responded to the Rural Economy and Connectivity Committee's Inquiry on the impact of COVID-19 on the rural economy and connectivity in Scotland<sup>13</sup> and to the Scottish Government's consultation on the Digital Strategy for Scotland<sup>14</sup>.

We note that digital connectivity remains a challenge for those in rural and remote communities. For example, Ofcom's Connected Nations 2019 Scotland report<sup>15</sup> highlighted that it is estimated "that around 12,300 premises in Scotland cannot access either a decent fixed broadband service or get good 4G coverage indoors (from any operator)." It appears that improvements in this regard are being made, for example, Ofcom's report notes that "indoor 4G coverage from all four operators is available to 79% of premises in Scotland, up from 75% in 2018 and 57% in 2017", however, it is clear that there remain areas where basic levels of connectivity are not available.

<sup>12</sup> *Reducing emissions in Scotland 2018 Progress Report to Parliament*, Committee on Climate Change and *Reducing emissions in Scotland 2019 Progress Report to Parliament*, Committee on Climate Change

<sup>13</sup> <https://www.lawscot.org.uk/media/369045/20-06-03-rur-mar-recc-written-evidence-regarding-covid-19.pdf>

<sup>14</sup> <https://www.lawscot.org.uk/research-and-policy/influencing-the-law-and-policy/our-responses-to-consultations/digital-scotland-strategy/>

<sup>15</sup> <https://www.ofcom.org.uk/data/assets/pdf/0028/186409/connected-nations-2019-scotland-report.pdf>

There has been increased use of digital services across a range of matters as a result of the Coronavirus pandemic<sup>16</sup> and we expect that digital connectivity will play a central role in the green recovery from COVID-19.

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<sup>16</sup> [https://yourviews.parliament.scot/ehrc/impact-covid-19-pandemic-equalities-human-rights/consultation/view\\_respondent?uuld=586496863](https://yourviews.parliament.scot/ehrc/impact-covid-19-pandemic-equalities-human-rights/consultation/view_respondent?uuld=586496863)