

# Scottish Government Draft Energy Strategy and Just Transition Plan

Response from the Competition and Markets  
Authority

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## Contents

1. Summary .....	2
2. Consultation Response.....	3
Preparing for a Just Energy Transition.....	3
Sustainability Taskforce .....	3
Environmental Sustainability Agreements.....	4
Energy Demand .....	5
Heating and Cooling Our Buildings.....	5
Green Heating .....	7
Housebuilding .....	8
Energy for Transport .....	8
Decarbonising Public Transport.....	8
Electric Vehicle Charging.....	9
3. Closing.....	10

# 1. Summary

- 1.1 The Competition and Markets Authority (CMA) is an independent non-ministerial UK Government department and is the UK's lead competition and consumer protection authority. We have offices in each of the nations of the UK and have an increasingly significant presence in Edinburgh.
- 1.2 We help people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour. Within that context, the CMA's ambition includes supporting a resilient economy that can grow sustainably. In our Annual Plan we have made a public commitment to promoting environmental sustainability and helping to accelerate the transition to a net-zero economy. The three main pillars of the CMA's work on environmental sustainability are:
  - (1) ensuring that markets for sustainable products and services develop in competitive ways;
  - (2) helping consumers make informed choices about the climate impact of the goods and services they use; and
  - (3) ensuring that competition law is not an unnecessary barrier to companies seeking to pursue environmental sustainability initiatives.
- 1.3 The energy transition will have a considerable impact on markets and consumers, with new markets emerging, business models changing and consumers engaging with new and changing products and services. Government interventions will be a major feature of the transition and we encourage the Scottish Government to consider the effect of its policies on competition and consumers, to help foster and grow competitive markets and provide sufficient protection to consumers.
- 1.4 The CMA has undertaken work in several areas relevant to the consultation. We have not responded to the specific questions in the consultation but have instead provided an overview of relevant CMA work that the Scottish Government may wish to consider. We have therefore responded under the following themes:
  - (a) Preparing for a Just Energy Transition
  - (b) Energy Demand
  - (c) Energy for Transport
- 1.5 We have provided this submission to assist the Scottish Government in its ambition to see Scotland becoming a net-zero nation by 2045. We will publish this response on the CMA website.

## 2. Consultation Response

### Preparing for a Just Energy Transition

- 2.1 The CMA's purpose is to help people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour, with our ambitions articulated in terms of the outcomes we seek to achieve over the medium and long term. Each is set out below:
- (a) People can be confident they are getting great choices and great deals;
  - (b) Competitive, fair-dealing businesses can innovate and thrive; and
  - (c) The whole UK economy can grow productively and sustainably.
- 2.2 Supporting the transition to low-carbon growth continues to be a priority for the CMA.<sup>1</sup>

### *Sustainability Taskforce*

- 2.3 In March 2022, the CMA announced the creation of a Sustainability Taskforce, which is leading our work in this area by bringing together colleagues from across the CMA and drawing on external expertise.<sup>2</sup>
- 2.4 The Sustainability Taskforce's core function is to lead on our work to enable us to realise our strategic vision to:
- (a) ensure that new markets promoting environmental goals work in ways favourable to competition and consumers;
  - (b) ensure that consumers of environmentally friendly products and services can make informed choices and are not misled; and
  - (c) enable businesses to adopt (and make mainstream) technologies and practices that enhance and accelerate environmental sustainability and the transition to a net-zero economy, including through legitimate cooperation.
- 2.5 Our work on environmental sustainability includes advising governments across the UK on how competition and consumer laws can help meet their

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<sup>1</sup> CMA Annual Plan 2023 to 2024 - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>2</sup> CMA publishes environmental sustainability advice to government - GOV.UK ([www.gov.uk](http://www.gov.uk))

environmental goals. It has been the focus of several of our projects in recent years, including:

- (a) our guidance on avoiding making misleading environmental claims on goods and services;<sup>3</sup>
- (b) our enforcement work against those businesses that make misleading environmental claims in the markets for fashion and fast-moving consumer goods;<sup>4</sup>
- (c) our market study into electric vehicle charging in the UK;<sup>5</sup> and
- (d) consulting on a new set of guidance clarifying how we will apply the UK's competition rules to environmental sustainability agreements between competitors.<sup>6</sup>

2.6 Sustainability is a major topic of discussion in international competition and consumer fora like the Organisation for Economic Cooperation and Development (OECD), the International Competition Network (ICN), the International Consumer Protection and Enforcement Network (ICPEN) and the United Nations Conference on Trade and Development (UNCTAD). The CMA believes it is important to play an active part in this debate around the interplay between sustainability and competition and consumer regimes.

**2.7 The CMA has made a public commitment to promoting environmental sustainability and helping to accelerate the transition to a net-zero economy.<sup>7</sup> Governments across the UK and internationally are making policy choices and intervening in different ways to address the threats to the environment. We would welcome engagement with the Scottish Government to discuss the impact of these policy choices on consumers, businesses and the wider economy, now and into the future.**

### ***Environmental Sustainability Agreements***

2.8 In February 2023, we published a consultation on draft guidance on environmental sustainability agreements.<sup>8</sup> The purpose of the guidance is to

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<sup>3</sup> Green claims code: making environmental claims - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>4</sup> Misleading environmental claims - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>5</sup> Electric vehicle charging market study - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>6</sup> Draft guidance on the application of the Chapter I prohibition in the Competition Act 1998 to environmental sustainability agreements - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>7</sup> Sustainability - Exploring the possible - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>8</sup> Draft guidance on environmental sustainability agreements - GOV.UK ([www.gov.uk](http://www.gov.uk))

provide direction on the application of the competition rules to agreements between competitors or potential competitors in relation to environmental sustainability ('environmental sustainability agreements'). The guidance also sets out specific additional advice in relation to agreements which combat or mitigate climate change ('climate change agreements') where a more permissive approach is adopted. In particular, climate change agreements are defined as agreements which contribute to the UK's binding climate change targets, which include Scotland's target to bring emissions to net-zero by 2045, with interim targets of 75% below the baseline by 2030, and 90% lower than the baseline by 2040.

- 2.9 Given the scale of the challenge to address environmental sustainability and particularly climate change, and the degree of public concern about such issues, the CMA is keen to ensure that businesses are not unnecessarily or erroneously deterred from lawfully collaborating in this space due to fears about competition law compliance. This is particularly important for climate change because industry collaboration is likely to be necessary to meet the UK's binding international commitments and legislative obligations to achieve a net-zero economy, and to play an essential part in delivering the net-zero ambitions across the UK.
- 2.10 We continue to be open to hear from business, other regulators, consumer organisations and consumers directly, as well as third sector organisations on this, and would be pleased to continue engaging with the Scottish Government as well.**

## Energy Demand

### *Heating and Cooling Our Buildings*

- 2.11 Reflecting the forecast growth in heat networks and the ability to heat our homes, the CMA opened a market study in December 2017. The final report published in July 2018 found that some customers – a number of whom were on privately operated networks – were getting poorer deals in terms of price and service quality.<sup>9</sup> The recommendations included the establishment of a sector regulator which would:

- (a) introduce consumer protection for all heat network customers so they get the same level of protection as customers in the gas and electricity sectors;

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<sup>9</sup> Heat networks market study - GOV.UK ([www.gov.uk](http://www.gov.uk)).

- (b) address low levels of transparency so customers know they are on a heat network and there are clear agreements or contracts between customers and heat network operators;
- (c) make sure customers are aware of what they are paying as this is often unclear; and
- (d) protect customers from poorly designed, built and operated heat networks by preventing developers from using cheaper options to meet planning regulations that end up being paid for by the customer over the longer-term.

2.12 The CMA welcomed the Scottish Government's acceptance of the recommendations and our subsequent detailed engagement at Ministerial and official level, including through the CMA's role on the Scottish Government's heat networks regulatory working group.<sup>10</sup>

2.13 In its 2019 Scottish House Condition Survey, the Scottish Government examined the distribution of dwellings in terms of the primary heating fuel used.<sup>11</sup> Overwhelmingly, the most common heating fuel being used was mains gas (81%), with 11% using electricity and 5% using oil. It further notes that there were higher rates of electricity and oil as primary heating fuel in rural locations, 20% and 28% respectively compared to urban dwellings where electricity was used in 9% and oil in less than 1% of dwellings.

2.14 Heat networks form an important part of the Scottish Government's draft energy strategy and just transition and its plan to reduce carbon emissions. The Heat Networks (Scotland) Act 2021 sets ambitious targets for the amount of heat to be supplied by heat networks – 2.6 Terawatt hours (TWh) of output by 2027 and 6 TWh of output by 2030 (3% and 8% respectively of current heat supply).<sup>12</sup>

2.15 Much progress has been made towards regulating heat networks with the Heat Networks (Scotland) Act 2021 giving effect to the CMA's recommendations as far as possible within devolved competence. This includes the Scottish Government requiring registration with the Heat Trust stakeholder-led customer protection scheme as a condition of grant funding.<sup>13</sup>

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<sup>10</sup> [Heat Networks Regulation Working Group : Interim Recommendations Report \(www.gov.scot\)](http://www.gov.scot)

<sup>11</sup> [2 Key Attributes of the Scottish Housing Stock - Scottish house condition survey: 2019 key findings - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>12</sup> [Heat networks delivery plan - gov.scot \(www.gov.scot\)](http://www.gov.scot).

<sup>13</sup> [Heat networks delivery plan - gov.scot \(www.gov.scot\)](http://www.gov.scot).



- 2.16 The 2021 Act does not provide consumer protection powers as these remain reserved to the UK Government. However, the UK Government introduced the Energy Security Bill in July 2022 which introduces regulation and appoints Ofgem as the heat networks regulator across Great Britain.<sup>14</sup> We welcome the agreement between the Scottish and UK governments that alignment between the two regulatory systems is desirable and the commitment to ensure consumer protection and licensing can both be dealt with by Ofgem in Scotland.<sup>15</sup>
- 2.17 We offer to engage further with the Scottish Government as plans develop.**

### ***Green Heating***

- 2.18 A move from a traditional source of home heating will involve energy sources that are unfamiliar to some domestic consumers. To help more people move to green heating and better insulate their homes, it is essential they can be confident they are being treated fairly and that strong consumer protections are in place.
- 2.19 In September 2022 the CMA launched a call for information looking at consumer experiences, business practices and the level of protections offered by standards bodies in the green heating and insulation sector.<sup>16</sup>
- 2.20 Our work in this area is exploring whether further steps or action is needed to help ensure consumers are treated fairly and businesses are supported to meet their obligations under consumer protection law. The work has been examining several issues, including:
- (a) how consumers select products and business suppliers;
  - (b) how businesses in the sector promote their products/services to consumers;
  - (c) the provision of key information to consumers by businesses before, during and after the product's installation;
  - (d) the complaints and redress process if things go wrong for consumers; and

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<sup>14</sup> Energy Security Bill - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>15</sup> Heat networks delivery plan - gov.scot ([www.gov.scot](http://www.gov.scot)).

<sup>16</sup> Consumer protection in green heating and insulation sector - GOV.UK ([www.gov.uk](http://www.gov.uk))

(e) the role of certification schemes and codes of practice in increasing consumer confidence in the sector.

**2.21 We will publish a report summarising our key findings soon and would be pleased to continue our engagement with the Scottish Government based on our findings.**

## ***Housebuilding***

2.22 In February 2023 we launched a market study into housebuilding in England, Scotland and Wales.<sup>17</sup> The study is looking at whether builders are delivering the right sorts of homes that communities and buyers need; examining whether the practice of ‘banking’ land before or after receiving planning permission is anti-competitive; and exploring how councils oversee the delivery of homes and how developers negotiate affordable home requirements.

2.23 As part of this study, we will also look at innovation: considering whether factors may be holding builders back from adopting new building techniques or moving towards more sustainable, net-zero homes.

**2.24 We are engaging with the Scottish Government’s Local Government and Housing Directorate during this study which is due to conclude by February 2024.**

## **Energy for Transport**

### ***Decarbonising Public Transport***

2.25 Improved public transport networks benefit passengers through improved choice, service and better value fares. They benefit residents through improved air quality and reduced congestion and benefit the local economy by driving wider economic growth and recovery.

2.26 We note the Scottish Government's ambition to transition all vehicles to run on zero emission energy, including cars, buses, HGVs, ferries and planes. It is vital in achieving that ambition that the Scottish Government works alongside key bodies that also have a critical role such as local authorities, regulators and business.

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<sup>17</sup> Housebuilding market study - GOV.UK ([www.gov.uk](http://www.gov.uk))

2.27 Bus and rail travel are a crucial part of the UK's transport infrastructure, particularly for those without access to private transport, those on low incomes, and those in vulnerable circumstances. The Scottish Government will have multiple policy objectives to balance, and any trade-offs are for them, as elected representatives, to make. We would, in all cases, encourage policy making to be informed by a strong understanding of the relevant markets and the impact of choices on competition and consumers. We encourage the Scottish Government to consider our Competition Impact Assessment guidelines as it develops its policies.<sup>18</sup>

**2.28 The CMA worked closely with Transport Scotland during the development of the Transport (Scotland) Act 2019 and remains available to work with Transport Scotland and the Scottish Government as both consider the changes that will occur in pursuit of the proposed decarbonisation of public transport.**

### *Electric Vehicle Charging*

2.29 In December 2020, we launched a market study into electric vehicle charging to make sure that this new and fast-growing sector was working well for UK drivers.<sup>19</sup>

2.30 In our final report, published in July 2021, we found that although progress is being made, the UK has a long way to go in delivering the necessary infrastructure.<sup>20</sup> While Scotland currently has the most public electric vehicle charging points outside of London by population, the anticipated growth in this area will be a challenge, particularly for more rural areas such as the Highlands and Islands and the Scottish Borders where people will continue to rely on cars as their main means of transport.

2.31 We note that the Scottish Government recognises its proposed model to set up a national public charging network will be difficult to scale up and we would encourage it to continue to consider ways to attract greater private investment to further expand and upgrade its network.

2.32 No-one can predict precisely how this sector will evolve. However, ensuring competition can flourish is important as it will encourage continued innovation, more choice, lower prices, greater investment, and improved quality.

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<sup>18</sup> [Competition impact assessment: guidelines for policymakers - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

<sup>19</sup> [Electric vehicle charging market study - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

<sup>20</sup> [Electric vehicle charging market study - final report \(www.gov.uk\)](https://www.gov.uk)

- 2.33 Healthy competitive markets are critical to meet the challenge of delivering the necessary infrastructure, as is the need to push forward the pace of roll-out ahead of demand. Working in partnership with other bodies that also have a key role such as local authorities, distribution network operators and energy regulators, will be vital.
- 2.34 At this crucial early stage, it is also important to build people’s trust in the sector so no-one is left behind in the transition. As well as expanding the chargepoint network, it is also important that chargepoints work reliably, are easy to find, use, pay for and can be accessed by everyone.
- 2.35 Our market study made a number of recommendations to governments and regulators across the UK, including the need to develop a strategy. We are pleased that the Scottish Government has published its draft vision for Scotland’s public electric vehicle charging network, which includes the need to attract private sector investment to enable healthy competition.<sup>21</sup>
- 2.36 We welcome the Scottish Government’s work to date on implementing some of our recommendations and stand ready to support ongoing progress in this area.**

### 3. Closing

- 3.1 To deliver its ambition of net-zero, we encourage the Scottish Government to be mindful that its policies and their subsequent implementation help ensure that competitive, fair-dealing businesses can innovate and thrive, that consumers are protected and that the Scottish economy can grow productively and sustainably.
- 3.2 Supporting the transition to low-carbon growth continues to be a priority for the CMA.<sup>22</sup> We stand ready to share our understanding and expertise – some of which we have outlined above – to assist the Scottish Government as it develops and seeks to implement its just transition plan.

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<sup>21</sup> [Draft Vision for Scotland’s Public Electric Vehicle Charging Network \(transport.gov.scot\)](https://transport.gov.scot)

<sup>22</sup> [CMA Annual Plan 2023 to 2024 - GOV.UK \(www.gov.uk\)](https://www.gov.uk)