

The Scottish Parliament has passed the [Heat Networks \(Scotland\) Act 2021](#) into law. The legislation has been introduced to regulate the heat network sector and allow for expansion of heat networks across Scotland. The Act introduces provisions for heat network licences, consents, zones, zone permits, building assessment reports and sets out powers of license holders etc.

Much of the detail of the legislation will require secondary legislation which will be consulted on in the coming months and years. Roll out of delegated powers should be complete by 2023.

### 1. Heat Network licence

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- 1.1 Section 2(1) prohibits any person from supplying thermal energy to a building through a heat network unless the person holds a “heat networks licence”. It sets out that any person who contravenes subsection (1) commits an offence which can be prosecuted either on summary complaint or on indictment and is liable to a fine, which on summary conviction may not exceed the statutory maximum. A reasonable excuse can be considered a defense for not having a licence.
- 1.2 Section 3(1) allows for Scottish Ministers by regulations to make exemptions from the requirement to hold a heat networks licence in certain circumstances or in relation to heat networks of a certain description.
- 1.3 Any person may apply for a heat networks licence. It is envisaged that applicants will be prospective heat network operators intending to supply thermal energy by means of a heat network. Section 5(3) provides that the licensing authority may grant an application only if it is satisfied that the applicant has the ability to perform the activities authorised by the licence and, when making such an assessment, it must have regard to the matters set out in subsection (4), namely the applicant’s knowledge, expertise and experience, the applicant’s ability to operate a heat network in a manner that minimises greenhouse gases, takes account of the just transition principles, contributes to Scotland’s fuel poverty targets, and such other matters as may be specified by the Scottish Ministers by regulations.
- 1.4 Section 6(1) allows the licensing authority to determine the conditions of a licence, which are referred to as the “standard conditions” (subsection (2)). Subsection (3) provides that the standard conditions may include conditions that apply to all licences or to licences of a particular description.
- 1.5 Section 9 provides that a heat networks licence has effect on the date specified in the licence and will continue to have effect until the licence is revoked by the licensing authority or is surrendered by the person holding the licence in accordance with the conditions of the licence.
- 1.6 The licensing authority may modify a heat networks licence following an application by a licence holder, or on the licensing authority’s own initiative (subsections (1) and (2)).
- 1.7 Section 11(1) provides that the licensing authority may revoke a licence issued by it if the licence holder no longer has the ability to perform the activities authorised by the licence, or has failed to comply with a condition of the licence.
- 1.8 Section 11A enables the Scottish Ministers, by regulations, to set out an appeals process for appeals against revocation of heat networks licences.
- 1.9 The Scottish Ministers may determine the form and manner in which a heat networks licence application and a heat networks modification application must be made as well as the information that must be included with these applications (section 12(1)).

## **2. Heat Network Consent**

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- 2.1 A heat network may not be constructed or operated without a heat network consent (section 17(1)).
- 2.2 Section 18(1) enables the Scottish Ministers by regulations to create exemptions to the requirement for a heat network consent in specified circumstances and in relation to heat networks of a specified description.
- 2.3 Section 18A enables Scottish Ministers, by regulations, to designate a local authority as a consent authority for the area of the local authority. A local authority can also request to become the consent authority. And before making regulations under subsection (1) Scottish Ministers must consult with the relevant local authority and any other parties Scottish Ministers consider appropriate.
- 2.4 A person may apply to the appropriate consent authority for a heat network consent (section 19(1)). It is envisaged that not all persons responsible for the construction of a heat network will go on to operate the network and conversely, not all heat network operators will be involved in heat network construction. Subsection (3) recognises this and allows for some heat network consent applications to be made either in relation to the construction of a heat network, the operation of a heat network, or both.
- 2.5 There are provisions for heat network consent conditions, limitations, transfers, modifications.
- 2.6 Section 24 enables the Scottish Ministers, by regulations, to set out the circumstances in which the appropriate consent authority may revoke a heat network consent. And section 24A enables consent holders to appeal to the Scottish Ministers in the event that a local authority, in its capacity as the appropriate consent authority, proposes to revoke a heat network consent.
- 2.7 Scottish Ministers may by regulations make provision for the payment of compensation to the holder of a heat network consent if a consent is modified or revoked.
- 2.8 Section 26A enables the Scottish Ministers to issue guidance about undertaking effective community engagement for the purpose of preparing a community engagement report (as defined in section 16(1B) where that is required in a heat network consent application, a heat network consent modification application or an application for consent etc. that is required by a heat network consent condition.
- 2.9 If it appears to the enforcement authority that a heat network is being, or has been constructed or operated on land without a heat network consent, or there has been a failure to comply with a condition or limitation of a consent, the enforcement authority may issue a contravention notice to the owner or occupier of the land or to other specified persons (subsections (1) and (2)).

## **3. Heat Network Zones**

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- 3.1 Section 37 provides that a local authority (within its area) may at any time designate a “heat network zone” being an area that is particularly suitable for the construction and operation of a heat network, in accordance with section 39, or pursuant to a direction by the Scottish

Ministers under section 44(1)(a) or (2). The Scottish Ministers may designate an area in accordance with section 40 (subsection (2)). Subsection (3) defines a “heat network zone” as an area designated by a local authority or the Scottish Ministers.

- 3.2 Each local authority must carry out a review to consider whether one or more areas in its area is likely to be particularly suitable for the construction and operation of a heat network. Section 38(2) provides that the first review must be carried out as soon as practicable after the day on which section 38 comes into force and each subsequent review by no later than 5 years after the local authority last published a statement setting out its decision under subsection (5).
- 3.3 Section 39(1) sets out the list of matters that a local authority must have regard to when considering whether to designate an area as a heat network zone. These are: the potential for a heat network to use thermal energy from renewable sources or waste heat, buildings that could act as anchor loads, existing infrastructure in the area that could assist in the development of a heat network, the potential for a heat network to contribute to Scotland’s fuel poverty targets and any targets set by regulations under section 76C(1), and any building assessment report received under section 54. The Scottish Ministers may also specify further matters by regulations.
- 3.4 Where the Scottish Ministers are considering whether to designate an area within a local authority area as a heat network zone following a request made by a local authority or on the Scottish Ministers own initiative, they must have regard to the matters referred to in section 39(1) and must consult with each local authority in whose area the proposed zone would be situated as well as such other persons as they consider appropriate (section 40(3)).
- 3.5 There are provisions for both local authorities and Scottish Ministers to vary a heat network zone. And local authorities can work together in creating a zone should they require.
- 3.6 Section 44(1) allows the Scottish Ministers to direct a local authority to designate or vary a heat network zone in its area. The Scottish Ministers may direct two or more local authorities to jointly designate or vary a heat network zone (subsections (2) to (4)). Before issuing a direction, the Scottish Ministers must have regard to the matters referred to in section 39(1) and consult with each local authority in whose area the proposed zone would be situated and such other persons as they consider appropriate (subsection (5)).

#### **4. Heat Network Zone Permits**

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- 4.1 Section 47(1) provides that the permit authority may by notice provide that a person may only operate a heat network in a heat network zone if the person holds a heat network zone permit.
- 4.2 Section 49 provides that a heat network zone permit continues to have effect for the period specified in it unless it is revoked, in accordance with section 50.
- 4.3 Section 50(1) allows the permit authority to revoke a heat network zone permit if: the heat networks licence held by the person is revoked; a heat network consent in relation to the operation of a heat network situated in the heat network zone to which the permit relates, is revoked; or in other circumstances which the Scottish Ministers may specify by regulations.
- 4.4 Scottish Ministers can, by regulations, set out an appeals process for appeals against the revocation of heat networks zone permits. And similar powers are conferred to Ministers to

make provisions for the payment of compensation to the holder of a heat network zone permit if that permit is revoked.

## **5. Building Assessment Reports**

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- 5.1 Section 52(1) requires that a “relevant person” must prepare building assessment reports in relation to each non-domestic building in which it has an interest. Section 56 defines “relevant person” for Part 5 of the Bill as Scottish public authorities and any other person the Scottish Ministers may specify by regulations. Subsection (4) provides that a relevant person with an interest in a building is a person with a right of ownership in the building or such other interest as the Scottish Ministers may specify by regulations.
- 5.2 Scottish Ministers can, by regulations, provide exemptions from the duty to prepare building assessment reports to specified relevant persons, persons of a specified description, for specified non-domestic buildings and non-domestic buildings of a specified description.

## **6. Powers of Licence Holders**

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- 6.1 A licence holder can, with the authorisation of the Scottish Ministers, compulsorily acquire land required for the construction or operation of a heat network. This includes the power to acquire any interest or rights (including new rights) over land (section 57(2)).
- 6.2 A network wayleave right in respect of the land may be conferred on a licence holder in four ways: by the owner of the land either by agreement with the licence holder, or unilaterally; by a necessary wayleave; or by positive prescription.
- 6.3 A wayleave document (being a written document conferring a network wayleave right on a licence holder) may include a development condition (section 58(2A)). This, as defined in subsection (2B), is a condition in a wayleave document restricting or regulating the development or use of the land to which the wayleave document relates by a relevant person as may be required to prevent interference with the exercise of the network wayleave right conferred by the wayleave document. In terms of section (2C) a development condition may in particular include a condition either requiring such operations or activities as may be specified in the wayleave document to be carried out on, under or over the land; or requiring the land to be used in such way as may be so specified.
- 6.4 Section 58(2F) provides that a network wayleave right constitutes a real right. A real right in land is a right directly in the land. A subordinate real right (i.e. a right other than ownership) continues to exist regardless of who owns the land. In other words it is said to ‘run with the land’. It is also enforceable against third parties. This differs from a personal right which is a right against a person only, for example as a result of a contract.
- 6.5 On an application by a licence holder, the Scottish Ministers may grant a necessary wayleave conferring a network wayleave right on a licence holder if it is considered necessary or expedient for a purpose connected with the supply of thermal energy by means of a heat network by the licence holder (section 59(1)).
- 6.6 Section 61 provides that a network wayleave right may be assigned by one licence holder to another, but a network wayleave right conferred by a necessary wayleave may only be assigned with the consent of the Scottish Ministers (subsections (1) and (2)).

- 6.7 A network wayleave right in respect of land (however conferred) may only be varied either by a “variation agreement” or in accordance with this section (section 61A(1)). A variation agreement is an agreement between the owner of the land and the licence holder entitled to the benefit of the network wayleave right to vary the network wayleave right.
- 6.8 Where a network wayleave right is varied under section 61A(7)(a) so as to place or increase a burden on an occupier of the land, or where the occupier is not also the owner of the land, the owner, either or both of those persons may recover from the licence holder compensation in respect of the variation of the network wayleave right (section 61B(1)).
- 6.8 Section 64(1) provides that a licence holder may carry out a survey for the purpose of determining whether the land is suitable for a purpose connected with the construction or operation of a heat network. And section 65(1) provides that a licence holder may exercise a network land right, which may include the right to install and repair existing apparatus in land and carry out any works to the land that are necessary for or incidental to those works.
- 6.9 Section 67 makes provisions in respect of compensation payable for damage or disturbance caused by a licence holder in exercise of their power to enter on to land to carry out a survey or to replace or repair apparatus.

## **7. Heat Network Key Assets**

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- 7.1 Section 69 applies to a heat network consent application or a heat network consent modification application relating to the construction and operation of a heat network, or the operation of a heat network.
- 7.2 Section 60(4) defines “key asset” for the purposes of Part 7 of the Bill, being any property that forms part of the heat network and is necessary to the operation of the heat network. It is for the Scottish Ministers to determine any question as to whether property forming part of a heat network is necessary to the operation of the heat network (subsection (6)).
- 7.3 The types of property that could constitute a key asset are land, building, apparatus and such other type of property as may be specified by the Scottish Ministers by regulations (subsection (5)).
- 7.4 Following receipt of a heat network consent application, the Scottish Ministers must prepare a schedule of key assets (section 70(1)).
- 7.5 There are further provisions relating to notification Scottish Ministers of changes to key network assets, modifying schedule of key network assets, as well as to the transfer of schemes.
- 7.6 Section 76A requires the Scottish Ministers must prepare a “Heat Networks Delivery Plan”. Subsection (1) specifies that the Plan must detail how the provisions of the Act – and supporting policies – will result in the greater use of heat networks in Scotland.

## **8. Miscellaneous and General**

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- 8.1 Section 76C places an obligation on the Scottish Ministers to ensure that 2.6 terawatt hours and 6 terawatt hours of thermal energy is supplied through heat networks in Scotland by 2027 and 2030, respectively.
- 8.2 Section 77(1) allows the Scottish Ministers by regulations to make provision for the payment of a charge or fee to specified persons in respect of matters set out in subsection (2) in relation to the performance of that person's function.
- 8.3 Section 77A requires the Scottish Ministers to publish a strategy which specifies the costs that local authorities will incur as a result of performing their functions under this Act.

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