



SPICe Briefing

Pàipear-ullachaidh SPICe

# Heat Networks (Scotland) Bill (republished)

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The Heat Networks (Scotland) Bill introduces a regulatory and a licensing system for district and communal heating. This briefing provides key definitions and background information, as well as a summary of the main provisions.



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# Executive Summary

## Background

The Bill was introduced on 2 March 2020. It provides for a regulatory and licensing system for district and communal heating, to accelerate its use in Scotland.

Heat networks can **use a variety of heat sources** (e.g. Combined Heat and Power, gas boiler, renewable technologies and waste heat) which have varying degrees of carbon intensity. They are often more efficient than individual fossil fuel heating systems.

District or communal heat networks **generally work best in heat-dense areas** (e.g. urban areas and new-build developments), and deliver heat from a central source (known as an energy centre) through insulated pipes to local homes and other buildings.

The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 sets a target to reduce Scotland's emissions of all greenhouse gases to net-zero by 2045. This Act also requires a strategic delivery plan for meeting targets to be published at least every 5 years - known as the **Climate Change Plan**, it "expects to see an overall reduction in emissions of 33% from Scotland's buildings", and **aims that low carbon technologies (e.g. heat networks) will supply heat to 35% of domestic and 70% of non-domestic buildings by 2032.**

Recent advice to the Scottish Government from the Committee on Climate Change makes **recommendations on a resilient recovery from the Covid-19 pandemic**; in particular that "climate investments" should be used "to support the economic recovery and jobs". It is considered that Scotland has a crucial role to play in delivering training and apprenticeships to transition to net-zero. In particular, **new support to train designers, builders and installers is urgently needed for low-carbon heating.**

There are more than **830 heat networks currently operating in Scotland**, however estimates suggest that only around 1% of Scotland's total heat demand (hot water and space heating) was met by heat networks in 2018.

Since 2014, **three working groups and two consultations** have considered the regulatory environment in Scotland, and made recommendations and proposals for change to support and promote the technology.

In 2018 the Competition and Markets Authority published the final report in their Heat Networks Market Study. This recognises that **heat policy is devolved, and that competition, and the regulation of consumer protection are reserved.** It notes that **"unlike other comparable services such as gas and electricity networks, heat networks are not regulated"**, and recommended that a statutory framework should underpin the regulation of all heat networks. The Authority considers that the proposed licensing regime fulfils their recommendation.

## The Bill

**Part 1** provides key definitions, sets out a requirement for a heat networks licence, and makes it an offence to supply thermal energy through a heat network without a relevant licence. The licensing system is to be administered by a new licensing authority, Scottish Ministers, or another body designated by Ministers.

**Part 2** establishes the heat network consent process for specific projects. Heat network operators will be required to apply for consent to develop new heat networks or to expand existing ones. This Part interconnects with Part 7 which requires Ministers to identify key assets (e.g. property or apparatus).

**Part 3** places a duty on local authorities to consider undertaking the designation of heat network zones – those areas most suited to a heat network. Local authorities are not required to undertake this process, only to consider it, and they may direct Ministers to designate heat network zones on their behalf.

**Part 4** builds on the designation of heat network zones by allowing Ministers to award a Heat Network Zone Permit. Permits would be awarded via competition to a single, winning bidder thereby providing exclusivity for a specified number of years.

**Part 5** places a duty on public sector building owners to assess the viability of connecting their building to a heat network and to report to their local authority and Ministers to enable appropriate zoning and to encourage connection networks.

**Part 6** provides heat networks licence holders with various special rights and powers, similar to those held by gas and electricity companies (known as utility providers).

**Part 7** requires Ministers to identify the key assets (e.g. property or apparatus) of each heat network consent application they receive. It also enables them to make a transfer scheme in circumstances where an operator ceases to operate a particular heat network.

# Background

The [Heat Networks \(Scotland\) Bill](#) <sup>1</sup> (the Bill) provides for a regulatory and licensing system for district and communal heating, to accelerate its use in Scotland.

The Bill was introduced by the Cabinet Secretary for Transport, Infrastructure and Connectivity on 2 March 2020, with the Economy, Energy and Fair Work Committee leading Scottish Parliamentary scrutiny. Thirty-one written submissions have been received, and Stage 1 commences on 23 June <sup>2</sup>.

Alongside the Bill, the following documents have also been published:

- Policy Memorandum (PM) <sup>3</sup>
- Explanatory Notes (EN) <sup>4</sup>
- Financial Memorandum (FM) <sup>5</sup>

## What are Heat Networks?

Heat networks can use a variety of heat sources (e.g. Combined Heat and Power, gas boiler, heat pump, solar thermal) which have varying degrees of carbon intensity. They are often more efficient than individual fossil fuel heating systems, and can also be run fully from renewables, recovered waste, or surplus heat sources where appropriate. Emission savings are therefore dependent on the fuel mix used for each heat network and the heating system that they are replacing <sup>5</sup>.

Gas boilers, which power traditional heating systems, require high energy inputs to raise the temperature of cold water to provide hot water and space heating. In contrast, Euro Heat and Power, an international network promoting sustainable heating and cooling in Europe, states <sup>6</sup>:

“ District energy networks are also referred to as heat networks or district heating and cooling networks. They are suited to feed in locally available, renewable and low-carbon energy sources; solar thermal and geothermal heat, waste heat from industry and commercial buildings, heat from combined heat and power plants. The ability to integrate diverse energy sources means customers are not dependent upon a single source of supply.”

District or communal heat networks therefore generally work best in heat-dense areas (e.g. urban areas, new-build developments and some rural areas), and deliver heat from a central source (known as an energy centre) through insulated pipes to local homes and other buildings <sup>7 8</sup>.

They are generally more efficient than individual gas boilers, and can also be run wholly from renewable sources, reducing the need for customers to procure and maintain their own boilers <sup>7 8</sup>.

# Heat Networks and Decarbonisation

Just over half (52%) of Scotland's total energy consumption is for heat, with the remaining fairly evenly divided between electricity (24%) and transport (25%)<sup>9</sup>.

The [Climate Change \(Emissions Reduction Targets\) Act 2019](#), which amends the [Climate Change \(Scotland\) Act 2009](#) sets targets (from 1990 and 1995 baselines) to reduce Scotland's emissions of all greenhouse gases (GHG) to net-zero by 2045 at the latest, with interim targets for reductions of at least 56% by 2020, 75% by 2030, 90% by 2040.

These targets are based on advice from independent government advisers, the [Committee on Climate Change](#) (CCC), and are regularly reviewed.

Scotland's legislation requires a strategic delivery plan for meeting targets to be published at least every 5 years. The third Climate Change Plan (CCP)<sup>10</sup> covers the period from 2018 - 2032 and was published in February 2018. The CCP sits alongside the Energy Strategy<sup>11</sup>, which is guided by three core principles:

- A whole-system view
- An inclusive energy transition
- A smarter local energy model

The CCP<sup>10</sup> "expects to see an overall reduction in emissions of 33% from Scotland's buildings", and aims that low carbon technologies (e.g. heat networks) will supply heat to 35% of domestic and 70% of non-domestic buildings by 2032.

The Minister for Energy, Connectivity and the Islands stated<sup>8</sup>:

“ Heat networks have huge potential to reduce [climate impacts] by providing more efficient, environmentally-friendly solutions. The Scottish Government is determined to unlock the potential for that sector wherever possible and stimulate local jobs across Scotland in the process of delivering projects. The benefits of heat networks are not only environmental – they can save space, remove combustion risk within buildings, and have been shown to save householders and businesses up to 36% in fuel costs, with consequent benefits for tackling fuel poverty and reducing costs faced by businesses and public bodies.”

## Covid-19: Green Recovery and a Just Transition

In April 2019 the First Minister declared a climate emergency<sup>12</sup>. Since then the Scottish Government has set a net-zero greenhouse gas emissions target, focused on the climate crisis in its budget<sup>13</sup>, and the [Just Transition Commission](#) has made interim recommendations<sup>14</sup> for “growing an inclusive, net-zero economy”. Decarbonisation has also been made the primary mission of the Scottish National Investment Bank<sup>15</sup>.

In September 2019, Glasgow was chosen to host COP26<sup>16</sup>, the most significant United Nations climate change conference since the [landmark Paris Agreement in 2015](#), and the largest summit that the UK has ever hosted.

This conference has subsequently been postponed <sup>17</sup>, and the immediate crisis of the COVID-19 pandemic has led to an unprecedented slowing of the economy, and an equally unprecedented level of UK and Scottish Government intervention.

Publication of an updated CCP to take the new net-zero target into account has also been postponed until the end of 2020 <sup>18</sup>, and in a letter to the Environment Climate Change and Land Reform Committee, the Cabinet Secretary for Environment, Climate Change and Land Reform stated <sup>19</sup>:

“ [...] we now also have to reconsider the approach we were originally taking. Once we can analyse and understand the implications of what is happening both socially and economically, the Climate Change Plan update will need to be recast to articulate a ‘green pathway to recovery that is in line with our Climate Change targets, including reaching net zero by 2045.”

Similarly, in evidence to the Economy, Energy and Fair Work Committee, the Cabinet Secretary for Economy, Fair Work and Culture stated that <sup>20</sup>:

“ We want a recovery that takes us in the direction of resuming our plans on wellbeing and a net zero economy. [...] We need to think about what stimulus we can provide to encourage businesses and households. [Ensuring that] our stimulus is combined with our work on the shift to low carbon that will need to take place in other areas, such as those relating to homes, communities, resilience, heating.”

One of the leading architects of the 2015 Paris Agreement, Christiana Figueres considers that <sup>21</sup>:

“ moments of crisis are always moments of opportunity”

Therefore, if governments put health, nature regeneration and climate action at the core of every decision they make in recovering from this pandemic, a stronger and more resilient society can emerge <sup>21</sup>.

On 1 April 2020 the Scottish Government asked the CCC for advice on a green recovery for Scotland <sup>22</sup>. This advice was published on 6 May 2020 <sup>23</sup>, and welcomes the Scottish Government's plans to reframe the CCP in the context of a green pathway.

The CCC recommends <sup>23</sup> that the Scottish Government, in partnership with Westminster, prioritises actions according to six principles for a resilient recovery:

- Use climate investments to support the economic recovery and jobs
- Lead a shift towards positive long-term behaviours
- Tackle the wider ‘resilience deficit’ on climate change
- Embed fairness as a core principle
- Ensure the recovery does not ‘lock-in’ greenhouse gas emissions or increased climate risk
- Strengthen incentives to reduce emissions when considering fiscal changes



Specifically, in relation to heat infrastructure, the following is relevant <sup>23</sup> :

- Scotland has a crucial role to play in delivering training and apprenticeships to develop the new and updated skills that are needed in the transition to net-zero and for the changing climate. In particular, new support to train designers, builders and installers is urgently needed for low-carbon heating [...]. The ability of a decarbonised manufacturing sector to compete in global markets is dependent on having a labour force with the requisite skills, not only in manufacturing products and materials, but also engineering, procurement and construction management services.
- New homes must be low-carbon, energy and water efficient and climate resilient, [...]. Moreover, deep retrofits to improve carbon and water efficiency [...] can be provided on a targeted basis. As we emerge from the crisis, supply chains must be developed to extend the provision of whole-house retrofits, including the roll-out of [...] low-carbon heating [...].

Heat networks, if successfully developed, have the potential to play a significant role in green recovery and a just transition.

## Are there Heat Networks in Scotland?

There are more than 830 heat networks currently operating in Scotland; a map <sup>24</sup> of these is maintained by [The Heat Network Partnership](#), a collaboration of agencies focused on the promotion and support of district heating schemes in Scotland. Examples include:

- **Aberdeen Heat and Power** generate, distribute, and retail space heating and hot water to public and private customers via four communal and district low-carbon heat networks; they installed their first network in 2005 <sup>25</sup>
- **West Whitlawburn Housing Co-operative** provides space heating and hot water to 543 homes through a biomass (wood chip) boiler. This boiler operates in conjunction with a 50,000 litre thermal store, as well as three gas boilers which provide top-up heat for peak demand and system resilience. The system was installed in 2014/15 to replace electric storage and panel heating which was expensive, inefficient and nearing the end of its life. <sup>26 27</sup>
- **Slateford Green Community Heating** provides space heating and hot water to 120 flats through two biomass (wood chip) boilers, sized to meet full demand, including peak loads; the second boiler acts as a backup <sup>28</sup>

Estimates suggest that only around 1% of Scotland's total heat demand (hot water and space heating) was met by heat networks in 2018, and that by 2025 this could rise to 6.7% <sup>3</sup>. Projections out to 2050 are available at a UK level, where the CCC estimates that, if "deployment challenges can be overcome", around 20% of total building heat demand can be provided by heat networks <sup>7</sup>.

At the launch of the Bill, the Minister for Energy, Connectivity and the Islands stated <sup>8</sup> :

“ [...] the sector is currently lacking a coherent regulatory framework and the Heat Networks Bill therefore marks the beginning of a transformational change, as we seek to create a supportive market environment for the necessary expansion of heat networks.”

## Existing Support for Heat Networks

A programme of existing support for heat networks is offered by the Scottish Government, as follows:

- The District Heating Loan Fund <sup>29</sup> aims to help address the financial and technical barriers to relevant projects. Since 2011, more than £15M has been lent to 50 different projects across Scotland
- The Low Carbon Infrastructure Transition Programme <sup>30</sup> is a partnership between Scottish Enterprise, Highlands and Islands Enterprise, [Scottish Futures Trust](#) and sector specialists. It supports the development of investment grade business cases to help projects secure public and private capital finance
- New homes consented from 2024 will be required to use renewable or low-carbon heat <sup>31</sup>. In relation to this, the Scottish Government states that it is "working with the construction sector [...] opening up a clear market opportunity for heat network developers and other technologies" <sup>32</sup>
- The Budget 2020/21 announced a £50m Heat Networks Early Adopter Challenge Fund - ring fenced for relevant local authority projects <sup>33</sup>
- Non-domestic rates relief of 50% for qualifying premises until 2032 <sup>34</sup>

## Development of the Bill and Consultation Process

In 2014 the Scottish Government set up a Special Working Group (SWG) to look at the existing regulatory environment covering district heating and to make recommendations for change to support and promote the technology. This reported in March 2016 and stated <sup>35</sup> :

“ The regulatory framework affecting district heating at present is nascent, has grown up piece-meal and has not been designed to support the development of the sector or to protect district heating customers. The opportunity exists to put in place a regulatory framework which will encourage the widespread use of district heating where it is the most appropriate and best value solution to heating needs and as part of this provide necessary customer protection. ”

Subsequently, a short life working group was set up to respond to the recommendations of the SWG.

The Scottish Government designated energy efficiency as a national infrastructure priority in June 2015, covering energy efficiency and heat decarbonisation of both domestic and non-domestic buildings.

In January 2017, as part of [Scotland's Energy Efficiency Programme](#) (SEEP), and drafted in collaboration with the short life working group, the Government published a broad consultation paper on Local Heat and Energy Efficiency Strategies, and regulation of district heating<sup>36</sup>. The paper asked about the following:

- The role of Local Heat and Energy Efficiency Strategies (LHEES) in enabling local authorities to plan for energy demand reduction and heat decarbonisation of buildings across their area, in a phased approach to planning area-based delivery programmes to help achieve the national objectives of SEEP
- A regulatory framework for district heating, including: area-based zoning for district heating through LHEES; granting of concessions for district heating networks; licensing of district heating networks; connecting supply; surplus industrial heat, and consumer protection

An analysis of responses was published in November 2017<sup>37</sup>. Nearly 90 responses were received. Key themes that emerged included reducing energy use and heat waste, promoting decarbonisation of heat, and meeting targets on climate change, fuel poverty, energy security and affordable warmth. Key concerns related to availability of funding, and adequacy of support (or other resources) to produce or implement the LHEES. The broad principles for regulation were generally accepted, however the importance of tackling fuel poverty was considered to be paramount.

Based on the evidence and views gathered from stakeholders during the first consultation, more specific policy proposals were set out in a Second Consultation on Local Heat & Energy Efficiency Strategies, and Regulation of District and Communal Heating, which opened in November 2017<sup>38</sup>. This asked about specific policy proposals to:

- Coordinate the approach to the local planning and delivery of energy efficiency and heat decarbonisation programmes within SEEP, and for further detail on the proposal to create a statutory framework for LHEES
- Develop district heating in a strategic manner through a policy and regulatory system. Also to accelerate delivery and grow the market for district heating, leading to appropriately sited, low carbon, affordable systems

An analysis of responses was published in November 2018<sup>39</sup>. Just over 70 responses were received, and there was broad agreement for proposals in relation to District Heating Zones, Consents, and Licensing.

A Heat Networks Regulation Working Group was established in May 2019 to provide advice on how best to support the accelerated deployment of heat networks in response to the global climate emergency, ahead of the preparation of legislation. This group reported<sup>40</sup> in December 2019, and set out a number of recommendations including for the introduction of legislation.

# Constitutional Competencies - Heat Networks Market Study

In July 2018 the Competition and Markets Authority (CMA) published the final report in their Heat Networks Market Study <sup>41</sup>. This recognises that heat policy is devolved, however notes that competition and the regulation of consumer protection are reserved. The CMA states:

“ The Scottish Government is therefore considering how recommendations regarding the future regulation of heat networks can be implemented, including through pressing for further devolution of powers. ”

The CMA notes that "unlike other comparable services such as gas and electricity networks, heat networks are not regulated", and has recommended to both the Scottish and UK Governments that a statutory framework should underpin the regulation of all heat networks; furthermore:

“ We consider that a general authorisation or licensing regime that regulates heat networks against a set of regulatory principles laid down in rules and/or guidance would be a proportionate regulatory regime given the number and diversity of networks in the UK and the projected growth in the sector.”

The PM <sup>3</sup> notes that further powers on consumer advocacy (advice and support) were devolved by the [Scotland Act 2016](#), and that consumer protection is a devolved matter in Northern Ireland. Therefore, "the Bill must navigate a complex legislative context and does not provide for statutory minimum consumer standards for heat network customers within Heat Networks Licences, as the Scottish Government would wish".

The PM considers that the devolution of consumer protection for heat networks would enable distinct standards for Scottish Communities to be coherently administered by a single body.

“ As such the Scottish Government continues to discuss devolution with the UK Government and intend to request the devolution of consumer protection in relation to heat networks, so that consumer standards can be delivered through the Heat Networks Licences that the Bill will create. ”

Furthermore:

“ [...] the Bill is not reliant on devolution by the UK Government and [...] it is competent to progress without this because it enables any consumer protection powers that may be devolved to be readily incorporated as a condition of licence at a later date.”

The Presiding Officer's Statement on Legislative Competence agrees <sup>42</sup>.

## UK Government Response to CMA Recommendations

The UK Government responded to the CMA's recommendations with an initial consultation in 2018 <sup>43</sup>. This recognised that there are "significant challenges" for consumers, and that:

“ Heat network consumers do not currently enjoy the same level of protection as found in the regulated gas and electricity sectors. [...] this disparity should be rectified. We think protection may also be required for non-domestic consumers. ”

A second, more focussed consultation <sup>44</sup> , closed in early June 2020. This sought views on "policy options for regulating heat networks to protect consumers and ensure fair pricing, while supporting market growth and the development of low-carbon networks". In particular:

- Measures to increase investment
- Establishing consumer protections, equivalent to those offered to gas and electricity customers - including on transparency, pricing and quality of service
- Developing a regulatory approach
- Developing technical standards and certification and accreditation processes to improve quality, cost and reliability
- Giving heat networks equivalent rights and powers (such as undertaker or statutory access rights) compared with other utilities

# Part 1 - Heat Networks Licences

Part 1 provides key definitions, sets out a requirement for a heat networks licence, and makes it an offence to supply thermal energy through a heat network without a relevant licence. The licensing system is to be administered by a new licensing authority, Scottish Ministers, or another body designated by Ministers.

The PM states <sup>3</sup> :

“ The intention is to ensure that market participants are solvent, competent, fit and proper and provide their essential service in line with conditions set by a Licensing Authority, with ongoing monitoring and enforcement where necessary. This, in turn, will provide assurances to both consumers and investors in deciding whether to become involved in the sector.”

## Definitions, Requirements and Exemptions

**Section 1** defines a "heat network" as either a "district heat network", or a "communal heating system"; furthermore:

- A district heat network is a network by which thermal energy is distributed from one or more sources of production to more than one building
- A communal heating system is a system by which thermal energy is distributed from one or more sources of production to one building comprising more than one building unit

Further definitions are set out for thermal energy - meaning "heating, cooling or hot water", and for building unit - meaning "part of a building that is designed or altered to be used separately".

This section also allows Scottish Ministers to modify or further define the meaning of "heat network", "district heat network" or "communal heating system" by regulation.

**Section 2** sets out a requirement for a "heat networks licence" and prohibits the supply of thermal energy to a building through a heat network unless one is held. Contravention of this requirement is an offence, liable to a fine of not more than £10,000.

A flexible set of exemptions from the requirement to hold a relevant licence are set out in **Section 3**. This may be done by regulation, either in certain circumstances or in relation to heat networks of a certain description. Exemptions may be directed to "a person specified by name" or "persons of a description specified". Further flexibility is provided for in how the direction is published, its timescale, and whether conditions to apply.

**Section 4** defines "licensing authority" as Scottish Ministers or such other persons designated by Ministers as the licensing authority, by regulation.

The PM states <sup>3</sup> :

“ The CMA’s Market Study suggested that Ofgem would be an appropriate body to act as the sector regulator. However, as Ofgem is a statutory body established by UK-wide legislation, it is the Scottish Government’s view that appointing it as a sector regulator in Scotland on a statutory basis would be beyond the competence of the Scottish Parliament. [...] The Scottish Government remains open to Ofgem taking on this function in Scotland, if UK Government legislative change allows, and if that is appropriate following the passage of the Bill.”

## Applications for a Licence

**Section 5** sets out a framework for licence applications. Anyone may apply for a licence, however it "is envisaged that applicants will be prospective heat network operators intending to supply thermal energy by means of a heat network" <sup>4</sup> .

An application may be granted if the licensing authority is satisfied that the applicant has the ability to perform the authorised activities. When assessing an application, regard must be had for:

- The applicant’s knowledge, expertise and experience
- The applicant’s ability to operate a heat network in a manner that minimises GHG emissions from the heat network
- Other matters as specified in regulations

If a licence is refused, the relevant authority must set out its reasons, and specify the period "within which the applicant may make representations about the proposed refusal".

## Conditions and Duration of a Licence

**Section 6** makes provision for a set of "standard provisions" that the licensing authority must determine. These are to apply to:

- All heat networks licences
- Heat networks licences of a particular description

And to make provision for:

- Conditions that do not apply to a particular heat networks licence or a heat networks licence of a particular description
- The coming into effect and suspension of these conditions

Each network licence incorporates the relevant conditions, however these may be excluded or modified as appropriate to the specific case. Before making any modification, notice must be given to the applicant stating the reasons for that change, and allowing for 28 days to make representations to the licensing authority about any change.

When determining the standard conditions, the licensing authority is required to have regard to the following:

- The interests of users of thermal energy supplied by means of a heat network
- The desirability of furthering or promoting the reduction of GHG emissions from the operation of heat networks
- The desirability of furthering or promoting the use by heat networks, whether that is renewable thermal energy, waste heat or cold

Further supplementary provisions in relation to standard conditions are set out in **Section 7**. These require the conditions to be published and reviewed from "time to time". Conditions may also be modified, and consequential modifications may be made to licences as a result.

Before the authority makes any modifications to the conditions, or the conditions of a licence, relevant licence holders must be given notice, and that notice must be published. A period of 28 days is allowed for to make representations to the licensing authority about any change.

**Section 8** allows for "special conditions" to be included in a licence in addition to the standard conditions. **Section 9** ensures that a licence has effect on the date specified in it, and continues to have effect until it is either revoked or surrendered.

## Modification and Revocation of a Licence

Modifications to a heat networks licence are allowed for in **Section 10**. The licensing authority may do this following an application by the holder, or on its own initiative. Notice of the proposed modification must be given, as well as the reasons, and allowing for a 28 day representation period.

**Section 11** details how a heat networks licence might be revoked. This may be done if the licence holder:

- No longer has the ability to perform the activities authorised by the licence
- Has failed to comply with a condition of the licence

In deciding whether the licence holder no longer has the ability to perform the authorised activities, the authority should have regard to the criteria set out in Section 5 that relate to an applicant's "knowledge, expertise and experience", ability to operate a network that minimises GHG emissions, and any other matters specified by Ministers in regulations.

A heat networks licence may not be revoked unless the authority is satisfied that it is reasonable, having had regard to the terms of the licence, the responsibilities of the licence holder to their customers, and any other relevant matters.

Notice must be given before revoking a licence, stating the reasons for that action, and allowing for a 28 day representation period.



## Miscellaneous

**Sections 12 - 18** are miscellaneous and allow for:

- Ministers to determine the "form and manner" of applications under this part
- Regulations to set out procedures to be followed in determining licences
- Ministers to issue guidance to the licensing authority
- The licensing authority to prepare and maintain a register of licences

## Stakeholder Views on Licences

**Scottish Renewables** states <sup>45</sup> :

“ Licensing proposed in the Bill will help improve standards and quality in the industry. We support the licensing regime as proposed, noting that a key priority for our members is that any additional regulatory burden be accompanied by commensurate benefits. The heat network licence, zoning and permit proposals will all grant benefit.”

**West Dunbartonshire Council** considers the proposals to be "fair" and to clearly outline the "terms required and implications of non compliance" <sup>46</sup> . **Glasgow City Council** states <sup>47</sup> :

“ The licensing regime proposed by the bill provides a robust framework for the assignation and control of licences, however, until such time as the standard conditions are created, it is difficult to envisage how successful these will be in promoting the creation of DH networks.”

The Competition and Markets Authority <sup>48</sup> considers that the "licensing regime detailed in the legislation" fulfils their recommendation for a "statutory framework [...] that underpins regulation of all heat networks", however:

“ Without seeing specific conditions at this stage, it is difficult to comment on how this will affect consumer protection for heat network customers.”

In relation to the creation of a licensing authority, **Scotia Gas Networks Commercial Services** <sup>49</sup> believes that it is:

“ [...] critical that an independent body controls and administers the licensing process to support transparency. It is also important that there is a published set of clear criteria and associated descriptions/requirements for interested parties to review. ”

**Aberdeen Heat and Power** asks for a clearer definition of a licence to be provided, as it is "not clear whether this would be a city wide or a suburb zone of the city" <sup>50</sup> .

**Citizens Advice Scotland** believes that the proposals offer some consumer protection in that they ensure a form of “fit and proper” test for potential developers and operators. However, this <sup>51</sup> :

“ [...] may lead to potential tension with the system of general authorisation which has been proposed in the BEIS Market Framework consultation and which would apply in the rest of the UK. ”

## Part 2 - Heat Network Consent

Part 2 establishes the heat network consent process for specific projects. Heat network operators will be required to apply for consent to develop new heat networks or to expand existing ones. This Part interconnects with Part 7 which requires Ministers to identify the key assets (e.g. property or apparatus) of each heat network consent application that is necessary for its operation. The PM states <sup>3</sup> :

“ [...] a project-specific approval process is [...] needed to scrutinise how new heat networks (and expansions to existing heat networks) meet local and national objectives. [...] the Bill will ensure that the sector is subject to a similar consenting regime as that for other energy utilities, such as under the Electricity Act 1989 consents process.”

### Requirements and Exemptions

**Section 17** requires that a heat network should not be operated unless a relevant consent is held, relating to the:

- Construction of the heat network, or (as the case may be)
- Operation of the heat network

"Heat network consent" means one granted under section 20(1)(a) of the Bill, or one transferred under section 22(1).

The potential to exempt requirement for heat network consent is provided for in **Section 18**. Ministers may, by regulation, provide that the requirements in Section 17 do not apply in specified circumstances, or in relation to heat networks described. This can be indefinite, or for a specified period, and unconditional, or subject to specified conditions.

### Applications for Consent

**Section 19** allows for applications to be made to Scottish Ministers for consent, and for that "heat network consent application" to be made in relation to the construction or operation of a heat network, or both. The EN states <sup>4</sup> :

“ 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. [This section therefore] 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.”

Ministers may agree to a heat networks consent application and grant a heat network consent, or refuse the application under **Section 20**. Before agreeing, they must be "satisfied that each person to whom the consent is to be granted has (or will have) a right to use each listed asset of the heat network for the purpose of operating the heat network". The definition of a "listed asset" is set out in Part 7 means the property detailed in the "schedule of key heat network assets for the heat network". Where Ministers propose to

refuse an application, notice must be given setting out the reasons for refusal, and specifying the date by which representations may be made.

## Transfer, Modification, Revocation and Compensation

Under **Section 21** Ministers may grant a consent, subject to appropriate conditions or limitations. **Section 22** allows for the transfer of a consent, subject to Ministerial approval, and the modification or addition of any conditions or limitations. An application may be made to modify a heat network consent, or Ministers may make any modification under their own initiative, that they consider appropriate, in **Section 23**. A copy of the modified consent must be given to the consent holder.

**Section 24** allows Ministers to "revoke a heat network consent in such circumstances and in such manner as may be specified by them by regulations".

Should Ministers modify or revoke a consent, Ministers may by regulation, make provision for the payment of compensation to the licence holder under **Section 25**. Further provision is made for the:

- Circumstances in which compensation is payable
- Calculation of compensation
- Procedure for claiming compensation
- Review and appeal of decisions made under the regulations

## Miscellaneous

**Sections 26 and 27** are miscellaneous and allow for regulations which stipulate the form and manner in which a relevant application is to be made, and the information that is to be included. Regulations may also be made which set out the procedure to be followed, and the consideration given to "the likely environmental effects" when determining an application.

## Enforcement

**Section 28** defines Scottish Ministers, or any other person designated by Ministers, by regulation, as the "enforcement authority". The EN states <sup>4</sup> :

“ Regulations made under this section are intended to allow the Scottish Ministers to retain some flexibility regarding the designation of the enforcement authority. For example, it may be that in time, the administration of enforcement functions is better achieved by a third party, particularly if this person is also required to act as the licensing authority.”

The enforcement authority is given the power to require information about activities on land in **Section 29**. This applies if it appears to them that a heat network is being, or has been constructed or operated without consent. It also applies if there has been a failure to comply with a condition or limitation in a consent.

Further provisions allow for a "contravention notice" to be served where the authority gives notice of its concerns, and requires information to be provided about any operations being carried out, or any matter relating to conditions or limitations applying to the heat network.

**Section 30** is lengthy and allows for an "enforcement notice" to be issued by the enforcement authority to any person:

- Constructing, or who has constructed a heat network
- Operating, or who has operated a heat network

An enforcement notice may also be issued if there has been a failure to comply, or secure compliance, with a condition or limitation to a relevant consent.

An enforcement notice must specify the date on which it is to take effect (at least 28 days after it is issued), and set out the reasons why it has been given. It must specify the measures that are required to be taken and/or the activities that must cease. It may also require the:

- Alteration or removal of buildings or works
- Carrying out of building or other operations
- Cessation of certain activities

It should specify the period for compliance and may require different steps to be taken over different periods.

Provision for the withdrawal, waiving or relaxation of an enforcement notice is made in **Section 31**, regardless of whether it has taken effect. The person to whom the notice was given should be informed immediately. The withdrawal of a notice does not prevent another one being issued.

**Section 32** allows for regulations to be made which set out an appeals process, including who may appeal, on what grounds, and how appeals may be determined.

The offence of failure to comply with an enforcement notice is provided for in **Section 33**, with prosecution either on summary complaint or indictment liable to a fine of up to the statutory maximum (£10,000); however:

“ It is a defence for a person charged with an offence [...] to show that the person did everything that the person could reasonably be expected to do to secure compliance with the enforcement notice. ”

The period for compliance is specified in the enforcement notice or other extended period as allowed by the enforcement authority.

If the period for compliance ends, without the required steps taken, then **Section 34** allows the enforcement authority to enter land and to recover expenses from the person to whom the enforcement notice was given. Any materials removed from the land may be sold,

"unless those materials are claimed by the owner of the materials within 3 days of their removal". After any sale, the authority must pay the proceeds, minus expenses, to the owner.

It is an offence to intentionally obstruct the enforcement authority without reasonable excuse, and can attract a fine of up to £1000 on summary conviction (level 3 on the standard scale).

## Deemed Planning Permission

**Section 35** amends section 57 of the [Town and Country Planning \(Scotland\) Act 1997](#) to add new sections (2C) and (2D). The EN states <sup>4</sup> :

“ Section (2C) provides that on granting or modifying a heat network consent under section 20(1)(a) or 23(1) of the Heat Networks (Scotland) Act 2021 (the “2021 Act”), the Scottish Ministers may give a direction for planning permission to be deemed to have been granted, subject to conditions (if any) to be specified in the direction. Planning permission will be granted under subsection (2C) for so much of the operation or change of use to which the consent relates as constitutes development and for any development ancillary to the operation or change of use.”

Section 2(D) provides that, on "modifying a heat network consent under section 23(1) of the Heat Networks (Scotland) Act 2021", Ministers may:

- Vary an existing planning permission deemed to be granted under subsection (2C) and / or
- vary conditions attached to an existing planning permission deemed to be granted

This approach is similar to that taken in the existing [energy consents process](#), where the planning permission can be deemed to be granted by Ministers as part of one application process that is administered by them.

## Interpretation

**Section 36** defines "enforcement notice" as the meaning given in section 30 i.e. written notice from the "enforcement authority".

## Stakeholder Views on Consenting

The **Association for Decentralised Energy** expects that the consenting process will <sup>52</sup> :

“ [...] drive positive wider outcomes from heat network development, including meeting net zero commitments, addressing fuel poverty, and reducing air pollution. ”

**Scottish Renewables** notes <sup>45</sup> that fuel poverty is included as a proposed assessment criterion for consents in the PM, allowing development to be directed towards appropriate areas. However:

“ The initial phases of heat network development typically focus on large non-domestic buildings to establish the initial spine of the network and so there may be limited considerations in this regard immediately following passage of the Bill. ”

The **Alliance for Sustainability Leadership in Education Scotland** <sup>53</sup> believes that the powers to "coordinate conditions of consent" will allow for a "much needed coherent approach to heat network development which has been lacking".

## Part 3 - Heat Network Zones

Part 3 places a duty on local authorities to consider undertaking the designation of heat network zones – those areas most suited to a heat network. Local authorities are not required to undertake this process, only to consider it, and they may direct Ministers to designate heat network zones on their behalf.

The PM states <sup>3</sup> :

“ Currently local authorities are encouraged to develop Heat Network Strategies and Scottish Planning Policy encourages Local Development Plans to co-locate developments with high heat demand with sources of heat supply. Furthermore, since 2017 the Scottish Government has supported local authorities to pilot the development of Local Heat & Energy Efficiency Strategies, which include the identification of strategic heat network zones. Despite this, the Scottish Government has not seen a fully strategic approach to planning for heat networks to date, and this has led to a patchwork of different approaches and methodologies which are not standardised across Scotland. This has allowed for some heat network developments to “cherry pick” the best sites, which risks undermining longer term growth of networks in some areas. ”

### Designation of a Zone

**Section 37** allows a local authority, or Ministers to designate an area, in the relevant local area, "that is particularly suitable for the construction and operation of a heat network", as set out in section 39 (for LAs) or section 40 (for Ministers).

Under **Section 38** each local authority must "carry out a review to consider whether one or more areas in its area has the potential to be designated as a heat network zone". This must be done "as soon as practicable" after this section comes into force, and at least every five years thereafter.

Following a review, the local authority must decide:

- To proceed to consider whether to designate
- Not to proceed to consider whether to designate
- To request that Ministers consider whether to designate

Local authorities may not request Ministers to designate an area, if that area is subject to the Ministerial power of direction under section 44.

Local authorities must, after each review, publish a statement setting out their reasons and decision in relation to whether or not to designate a heat network zone area. The specifics of what must be included in this statement, and how it is to be published and circulated may be set out by regulation.

**Section 39** sets out the basic process and requirements for a local authority to designate a heat network zone. In considering whether to do this, it must have regard to the potential for use of:



- Thermal energy from renewable sources
- Waste heat or cold
- Buildings in the area that require considerable and consistent use of thermal energy (known as anchor buildings)
- The nature and extent of existing infrastructure in the area that could assist
- Any building assessment report received under section 54
- Any other matters specified by Ministers in regulation

Prior to designation, there is a requirement to consult relevant persons, as specified by regulations.

Having complied with the requirements to consider relevant matters (e.g availability of thermal energy and anchor buildings), and having consulted; a local authority may designate or decide not to designate a heat network zone.

If a local authority chooses to designate a zone, it must "identify the area in a document by reference to a map", specify in that document the date on which the designation commences, and publish the document in accordance with regulations.

**Section 40** is similar to section 39, and allows Scottish Ministers to designate a heat network zone, either following a local authority request, or on their own initiative. Ministers are required to have regard to relevant matters, as set out in section 39 (e.g availability of thermal energy and anchor buildings), as well as to consult with each local authority in whose area the proposed zone would be situated, as well as other appropriate persons.

Ministers may designate a heat network zone, or decide not to. If they do, the requirement to publish a document setting out location and timings etc applies as per section 39.

## Variation of a Zone

**Section 41** enables a local authority to vary a heat network zone designated by them. In considering whether to do this, the local authority must have regard to relevant matters, as set out in section 39 (e.g availability of thermal energy and anchor buildings), as well as consulting relevant persons, as specified by regulation. A local authority may decide to vary a heat network zone, or decide not to; if the decision is made to vary a zone, it must identify the area, as varied, in a document by reference to a map, specify in that document the date on which the variation commences, and publish the document in accordance with regulations.

**Section 42** is similar to section 41, and enables Scottish Ministers to vary a heat network zone which was designated, either following a request from a local authority, or on their own initiative. Ministers must have regard to relevant matters, as set out in section 39 (e.g availability of thermal energy and anchor buildings), as well as consulting the relevant local authority and persons, as considered appropriate. They may decide to vary a heat network zone, or decide not to; if the decision is made to vary a zone, they must identify the area, as varied, in a document by reference to a map, specify in that document the date on which the variation commences, and publish the document in an appropriate manner.

## Joint Action, Ministerial Direction and Guidance

**Section 43** allows for two or more local authorities to act jointly in relation to a heat network zone. Where an area is in more than one local authority area and has the potential to be designated as a heat network zone, joint designation may be considered. Otherwise, Ministers may be requested to designate the area as a heat network zone. Similarly, where two or more local authorities have acted jointly to designate, they may act jointly to vary that zone.

Where two or more authorities act jointly, references to "a local authority" are references to the local authorities acting jointly and references to "a local authority's area" are references to the combined area of the local authorities. The relevant sections are:

- Section 37 - power to designate heat network zone
- Section 39 - designation of a heat network zone by local authority
- Section 40 - designation of heat network zone by Scottish Ministers
- Section 41 - variation of heat network zone by local authority
- Section 42 - variation of heat network zone by Scottish Ministers

A ministerial power of direction to a local authority (or two or more authorities) to designate or vary a heat network zone is allowed for in **Section 44**. Before issuing a direction, Ministers must have regard to relevant matters, as set out in section 39 (e.g availability of thermal energy and anchor buildings). Ministers must also consult with each relevant local authority and other appropriate persons.

Where joint action is taken to designate or vary a heat network zone by Ministerial direction, the local authority (or authorities) must identify the area as designated/varied in a document with reference to a map, specify the day on which the designation/variation commences and publish it in an appropriate manner.

**Section 45** allows Scottish Ministers to issue guidance about the designation and variation of heat network zones by local authorities. Local authorities must have regard to this guidance when acting under this Part.

## Stakeholder Views on Heat Network Zones

The **Common Weal Energy Working Group & The Energy Poverty Research initiative**<sup>54</sup> seeks to remind Ministers about the "potential for the affirmation of assumptions rather than the identification of viable [...] development areas". Noting that data used for the purposes of identifying heat network zones will rely on "generally available data [...] contained in the Heat map which identifies areas of heat density", and:

“ [...] to extrapolate to using this as a modelling tool for heat loads ensures that embedded assumptions are affirmed but the real ground conditions are not described. With limited resources and within tight budgets the local authorities are unlikely to commit staff time for detailed site surveys without significant support from the Scottish Government. ”

There is some concern shown by **SSE Enterprise**<sup>55</sup> over the "lack of any guidance on timing or deadlines for local authority designation of heat zones [which] might impact on market growth". Furthermore:

“ We would also like to see heat network zoning being made a statutory duty for local authorities. ”

**Vattenfall**<sup>56</sup> agrees with SSE Enterprise regarding heat network zoning being made a statutory duty for local authorities, and calls for an obligation to also "take action to seek partnerships to deliver heat networks in those zones".

**Homes for Scotland** make a number of points in relation to the establishment of heat network zones, including<sup>57</sup> :

- Asking how the designation of a zone will interact with planning and building standards
- An appropriate lead-in time will be required if additional development costs are likely to arise
- New homes should not be required to be network compatible if, in instances where the network remains unestablished, this would delay completion and/or habitation
- Care must be taken to ensure work on heat network zones does not force a move to very high-density home building in instances where this is otherwise inappropriate or impractical

## Part 4 - Heat Network Zone Permits

Part 4 builds on the designation of heat network zones by allowing Scottish Ministers to award a Heat Network Zone Permit. Permits would be awarded via competition to a single, winning bidder thereby providing exclusivity for a specified number of years.

The PM states <sup>3</sup> :

“ The Bill aims to maximise the deployment of large, strategically-sited heat networks by introducing Heat Network Zone Permits. These will offer the market the opportunity to be the sole heat network with a Heat Network Zone, following a robust initial competitive process for that right. This provides the Heat Network Zone Permit holder with increased assurance over the potential customer base from which to recover the initial infrastructure costs, without the uncertainty caused by a potential future competitor.”

### Definitions

**Section 46** defines “permit authority” as Scottish Ministers or “such other person” as designated by regulation.

### Requirement, Application, Duration and Revocation

**Section 47** provides that a heat network may only be operated in a relevant zone if a permit, issued by the permit authority, is held. A permit may also be revoked. This section also allows for Ministers to make regulations which “specify” circumstances and procedures where permits may not be issued or revoked.

Ministers must publish a notice and give notice of the revocation of a permit in a form and manner specified by regulation.

The process of applying for a heat network zone permit is allowed for in **Section 48**. Regulations may provide for:

- How the permit authority is to invite applications for permits
- Who may apply for a permit
- The form and manner of making an application
- Information that must be included in an application
- Publication or notification of applications
- Publication or notification of the decision
- Publication or notification of the permit

Regulations may differ for different heat network zones.

**Section 49** provides that a heat network zone permit has effect for the period specified in it unless it is revoked under the next section.

If a licence or consent to operate a heat network is revoked, then the permit authority may revoke a relevant permit under **Section 50**. Before revocation, the licensing authority must give notice, stating the reasons why this is proposed, and specifying a period of no less than 28 days within which representations may be made.

## Enforcement

**Section 51** creates an offence for the operation of a heat network in a relevant zone without a permit. This offence does not apply if the heat network is operational, and all permissions etc are in place, "immediately before the day on which the notice [...] relating to the designated heat network zone takes effect". There may be instances where there established heat networks already exists within a designated heat network zone - this allows them to continue to operate.

The criminal penalty for an offence committed under this section, on summary conviction, is a fine "not exceeding the statutory maximum" of £10,000. Conviction on indictment could attract an unlimited fine

## Part 5 - Building Assessment Reports

Part 5 places a duty on public sector building owners to assess the viability of connecting their building to a heat network and to report to their local authority and Ministers to enable appropriate zoning and to encourage connection networks.

The PM states <sup>3</sup> :

“ [...] there is a lack of data on the energy performance of non-domestic buildings and this risks resulting in Heat Network Zones which are not as robust as they otherwise might be. This may increase the risk that their designation is challenged. To ensure sufficient and reliable data is available, the Bill will place a duty, initially, on public sector building owners to undertake an assessment of the viability of their buildings to connect to a heat network. [...] Buildings with large-scale heat demand can act as an ‘anchor load’ for heat network developments by providing a substantial, long-term, secure customer. Public sector buildings are especially useful as anchor loads as they often provide predictable demand profiles. ”

### Preparing Reports

**Section 52** requires that a "relevant person" (as specified in section 56) carries out a "building assessment report" for each non-domestic building in which they have an interest. That assessment must set out

- The potential for that building to be supported by a heat network
- The expected operational life span of the existing heating system

Relevant persons are defined as having:

- A right of ownership in the building, or
- Such other interest as specified by regulations

### Exemptions, Notification and Guidance

Exemptions from the duty to prepare building assessment reports are allowed for by **Section 53**. Ministers may, by regulations, provide that exemptions to section 52 apply to "specified relevant persons", "persons of a specified description", or in relation to "specified non-domestic buildings" and "non-domestic buildings of a specified description".

**Section 54** requires that a building assessment report is sent to the relevant local authority and to Ministers "as soon as reasonably practicable" after preparation.

Under **section 55**, Ministers may issue guidance about the preparation of building assessment reports. This section also and requires relevant persons to "have regard" to any guidance issued.

**Section 56** provides relevant definitions for this Part, including that "non-domestic building" means a building other than a dwelling, and that "relevant person" means public authorities and any other person that Ministers may specify by regulations.

## Stakeholder Views on Building Assessment Reports

The **Association for Decentralised Energy**<sup>52</sup> welcomes the introduction of Building Assessment Reports, and considers them to be:

“ [...] a helpful first step towards addressing the retrofit question. At present, the governments and local authorities have very few tools through which to require changes to existing buildings. Building Assessment Reports will help to give government oversight of the opportunities and limitations for public sector and non-domestic buildings for low carbon heating retrofit, providing helpful data and examples for introducing future policies and regulations.”

**SSE Enterprise**<sup>55</sup> welcomes the requirement to prepare these reports, and thinks that:

“ [...] it should be extended to all non-domestic buildings as soon as feasible. However, it would be beneficial if, as a result of the assessment, public buildings would be obliged to connect, if efficient to do so. This measure would greatly support the market by improving the investment case”

## Part 6 - Powers of License Holders

The PM<sup>3</sup> provides some context for this section, explaining that gas and electricity companies (known as utility providers) are generally considered to be ‘statutory undertakers’, as defined in the [Electricity Act 1989](#). This gives them special rights and powers that enable them to carry out their activities. Similarly, this Part provides heat networks licence holders with various special rights and powers.

The PM<sup>3</sup> states:

“ [...] heat network developers report multiple problems because there is no right of wayleave for district heating pipes, which can often lead to longer and more expensive pipe runs, legal delays etc. ”

Furthermore:

“ [...] there is a need for a right of access for repairs and the right to gain access to a property to install a prepayment meter if the customer defaults. ”

The Bill therefore moves to place licensed heat networks developers and operators on a level playing field with other utilities by providing them with new rights in relation to:

- The compulsory acquisition of land
- Wayleaves (a statutory right giving licence holders the power to install lines/pipes and associated equipment on private land and to have access for relevant purposes)
- Survey works
- Access to land to carry out their work

### Compulsory Acquisition

**Section 57** allows a licence holder (with the authorisation of Ministers) to compulsorily acquire land required in connection with the construction or operation of a heat network.

This includes the power to acquire:

- Any right or interest in or over land
- A servitude or other right in or over land by the creation of a new right

The [Acquisition of Land \(Authorisation Procedure\) \(Scotland\) Act 1947](#) applies to this process. Licence holders will therefore be able to compulsorily purchase land under existing standard procedures.

However, "land held or used by or on behalf of a Minister of the Crown or a department of the Government of the United Kingdom" is exempted.



# Wayleave Rights

**Sections 58 - 63** are significant.

The PM<sup>3</sup> provides some context by explaining that the majority of Scotland's heat demand is currently met by gas and electricity, with an extremely large user base. This means that the costs of construction and maintenance can be spread.

“ In contrast, heat networks are a solution aimed at coupling local heat demand with local supply. They are therefore much more contained, resulting in fewer customers from whom to recover the substantial upfront costs of development. To offset this, heat networks must be used for many years. While this is very possible with modern heat networks having lifetimes of fifty years or more, it relies on coordination across a range of different stakeholders and long-term contracts with customers to provide a degree of confidence in the long-term use of the system.”

The creation of a "network wayleave right" enables licence holders to install pipework and other apparatus up to a building, however the owner would be under no obligation to use the system or to become a customer. It would be up to the operator to design a heat tariff which is attractive to building owners and tenants. The PM<sup>3</sup> states that:

“ A stronger clause mandating use or limiting the source of heating only to a heat network is not proposed at this stage. It is unclear how an obligation on building owners to use the heat network or to become a customer could be legislated for in a practical sense as a contractual agreement would still be needed between both parties for the supply of heat, hot water or cooling. Such an approach would likely require the regulation of pricing where connection had been secured on a 'mandatory' or 'obligatory' basis, to safeguard consumers, but the Scottish Government believes that the Parliament may not have devolved competence to provide for this in the Bill.”

**Section 58** defines a "network wayleave right" as a right for a licence holder, for a "purpose connected with the supply of thermal energy by means of a heat network by the licence holder", to:

- Install and keep installed heat network apparatus on, under or over any land
- Enter upon the land to install, inspect, maintain, adjust, alter, repair, replace, upgrade, operate or remove the heat network apparatus

This right may be given to the licence holder by agreement, or by a "necessary wayleave", which is compulsory, and set out in the next section.

**Section 59** allows Ministers to grant a necessary wayleave to a licence holder if they consider that it is "necessary or expedient [...] to exercise the right for a purpose connected with the supply of thermal energy". One of these wayleaves has effect for the period specified in it, and is subject to appropriate terms and conditions, as set out by Ministers.

A necessary wayleave may be applied for if a request for a wayleave has been given to the landowner, and that landowner has:

- Given notice in writing that they will not enter into a wayleave agreement

- Agreed to enter into a wayleave agreement but "subject to terms and conditions to which the licence holder objects", and / or a person with an interest in the land (other than the owner) will not enter into or consent to the agreement
- Not agreed to enter into a wayleave agreement within 28 days of the licence holder giving relevant notice

The notice must state the reasons for the wayleave agreement, and specify a period (of not less than 28 days) within which the landowner must agree.

Ministers must allow for representations to be made by the landowner or other persons with an interest in that land before granting a necessary wayleave.

The power to grant a necessary wayleave does not apply to land held (or used by, or on behalf of) a Minister of the Crown or department of the Government of the United Kingdom.

**Section 60** binds "any person who is at any time" owner or occupier of land to which a necessary wayleave applies, or to which a network wayleave right, set out in a wayleave agreement applies.

**Section 61** ensures that a wayleave right "may be assigned by one licence holder to another", but that same right, conferred through a necessary wayleave may be re-assigned only with the consent of Ministers. A wayleave agreement is void if it prevents or limits the transfer (known as assignation) of the wayleave right to another licence holder , or if it subjects that assignation to a condition (including payment).

A requirement to remove equipment (apparatus) when notified is set out in **Section 62**. If a network wayleave right expires, is terminated by the owner, or relates to heat network apparatus that ceases to be used for relevant purposes, then the landowner may give written notice to the licence holder requesting that it be removed. Various notice requirements are also set out, as well as a 3 month time limit for compliance by the licence holder. This time limit applies unless the:

- Licence holder applies for the grant of a necessary wayleave or compulsory purchaser order
- Application for the grant of a necessary wayleave is refused
- Compulsory purchase order is not confirmed

A framework for compensation of owners or occupiers is set out in **Section 63**. This applies where the licence holder (or authorised person acting on behalf of the licence holder):

- Causes damage to the land (or something on the land)
- Disturbs a person's enjoyment of the land

Disputes in relation to compensation are "to be referred to and determined by the Lands Tribunal for Scotland", and sections of the [Land Compensation \(Scotland\) Act 1963](#) relating to procedure and expenses apply.

Ministers may make further provision about compensation by regulation.

## Other Powers Over Land

**Section 64** gives licence holders (or those authorised by the licence holder) power to 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". At least 14 days notice is required before carrying out a survey.

This power also includes the right to "search and bore the land" to find out the "nature of the subsoil" and whether "minerals or other matter" are present. A right of entry "at all reasonable times" is allowed for, as long as:

- Evidence of authority to carry out the survey is provided to the owner or occupier
- The survey is carried out with as little disruption or damage as possible
- If any damage is caused, "reasonable steps to remedy the damage" are taken

It is an offence to intentionally obstruct, without reasonable excuse, a licence holder (or person authorised by the licence holder) from carrying out a survey. On summary conviction, this may attract a fine of up to £1000 (level 3 on the standard scale).

Powers to enter land to replace or repair apparatus are set out in **Section 65**. A "network land right" is defined as a power to:

- To install heat network apparatus in replacement for, or in addition to, existing heat network apparatus that is lawfully situated on, under or over any land
- to inspect, maintain, adjust, alter, repair, replace, upgrade, operate, remove or add to any existing heat network apparatus that is situated on, under or over the land
- To carry out any works to the land that are necessary for or incidental to the powers mentioned above

These powers also allow for felling, lopping, or cutting back "the roots of any tree or shrub on, under or over the land that is in close proximity to heat network apparatus that is, is being or is to be installed by the licence holder" so that it does not obstruct or interfere with the apparatus or constitute a danger to persons.

At least 7 days notice must be provided before carrying out a network land right, unless it is an emergency. In which case, notification must be given "as soon as possible after carrying out those works".

As with sections 63 and 64, a right of entry "at all reasonable times" is allowed for, as long as:

- Evidence of authority to enter the land is provided to the owner or occupier
- The work is carried out with as little disruption or damage as possible
- If any damage is caused, "reasonable steps to remedy the damage" are taken

It is an offence to intentionally obstruct, without reasonable excuse, a licence holder (or person authorised by the licence holder) from carrying out works. On summary conviction, this may attract a fine of up to £1000 (level 3 on the standard scale).

Emergency works are defined as those which:

- Stop anything already occurring
- Prevent anything imminent from occurring that is likely to cause danger to persons or property, the interruption of supply, and any other reasonable works.

**Section 66** places restrictions on the powers of licence holders to carry out a survey or to exercise a network land right where land is occupied by a "statutory undertaker", and where it is likely to "obstruct or interfere with" their work (known as statutory undertaking). Statutory undertakers are defined as:

- The holder of a licence under section 6(1) of the Electricity Act 1989
- A gas transporter within the meaning of Part 1 of the Gas Act 1986
- The Civil Aviation Authority
- A holder of a licence under Chapter 1 of the Transport Act 2000
- The operator of an electronic communications code network within the meaning of paragraph 1(1) of schedule 17 of the Communications Act 2003
- Any other person who is a statutory undertaker within the meaning of section 214(1) of the Town and Country Planning (Scotland) Act 1997

Surveys and network land rights may only be carried out with consent from the relevant statutory undertaker, unless it is unreasonably withheld, as determined by Ministers.

**Section 67** provides for compensation payable for damage or disturbance caused whilst carrying out a survey or replacing or repairing apparatus. Disputes in relation to compensation are "to be referred to and determined by the Lands Tribunal for Scotland", and sections of the [Land Compensation \(Scotland\) Act 1963](#) relating to procedure and expenses apply.

Ministers may make further provision about compensation by regulation.

**Section 68** provides for interpretation of this part.

## Stakeholder Views on the Powers of Licence Holders

The **Scottish Road Works Commissioner** states <sup>58</sup> :

“ I note that the Bill contains provisions to grant some rights to organisations delivering heat networks that would grant them rights as an undertaker. The policy memorandum states that “civil engineering (i.e. the digging of trenches and the laying of pipes) accounts for roughly 40% of a [heat] network’s capital costs”, the memorandum goes on to explain that costs can be reduced through granting greater utility rights to heat network developers. It is imperative that these rights, in terms of road works are compatible with the purpose of the New Roads and Street Works Act 1991 and subsequent legislation.”

**Glasgow City Council** believes this Part to be balanced <sup>47</sup>, particularly in relation to "the provision of compensation and removal of assets should they no longer be used".  
Furthermore:

“ As the infrastructure that will be subject of wayleave will be largely hidden, the installation should provide a temporary inconvenience that will be worth bearing for the benefits it will provide. This also brings heat networks in line with other utilities. ”

The **Law Society of Scotland** is content <sup>59</sup>, and considers that these powers "seem to be similar to such rights granted to other utility companies such as in relation to servitudes".

## Part 7 - Key Heat Network Assets

Part 7 requires Ministers to identify the key assets (e.g. property or apparatus - defined under Section 69) of each heat network consent application they receive. It also enables Ministers to make a transfer scheme in circumstances where an operator ceases to operate a particular heat network.

This part links closely with Part 2 relating to the establishment the heat network consent process for specific projects. The PM<sup>3</sup> states:

“ The ability to make such a transfer is essential in two, broad circumstances: ”

- Firstly, in the event that there is a failure in supply of some kind (e.g. due to the liquidation of the heat network operator or the revocation of a Heat Networks Licence, Consent or Permit); and ”
- Secondly, when a Heat Network Zone Permit comes to the end of its term and a competition for the next permit holder is to be held”

### Identifying Key Assets

The PM<sup>3</sup> states:

“ In order to comply with competition law, and in the interests of fairness, Heat Network Zone Permits will not last in perpetuity and there will be an opportunity for others to apply to operate the network in future, once the capital costs of the infrastructure have been recovered. To ensure that this is done on a competitive basis, it may be necessary to invoke a transfer scheme in order that the incoming operator has rights to use the heat network assets. This is to ensure that an incumbent operator is not in an unfairly advantageous position. In order to ensure that this process works in practice, the Bill requires that each heat network has an up-to-date schedule of assets – i.e. the land and buildings and apparatus, plant and equipment etc. which are integral to the operation of the heat network. ”

**Section 69** applies to a heat network consent application or a heat network consent modification application, and requires that "information about each key asset", as well as "information about each person with an interest in such an asset" is included. Key asset is defined as any property that forms part of the network and is necessary to the operation of that network, including land, buildings, apparatus, or any other type of property as specified by Ministers by regulations.

**Section 70** requires Ministers, following receipt of a relevant application, to prepare a schedule "that includes details of each key asset of the heat network". Before including a property on this schedule, Ministers must notify each person with an interest in the property and other persons considered to be appropriate. This notice must justify why the property is included, explain the consequences of becoming a listed asset, and specify the allowable period for representations to be made (no less than 28 days).

The operator of a heat network must notify Ministers if property that is not a listed asset becomes a key asset and if property that is a listed asset ceases to be a key asset under **Section 71**.

Modifying a schedule of key heat network assets is allowed for under **Section 72**. It requires Ministers, if they consider that a listed asset ceases to be a key asset, to remove its details from the schedule, and vice-versa. Ministers must notify each person with an interest in the key asset and other persons considered to be appropriate. This notice must justify why the property is included, explain the consequences of becoming a listed asset, and specify the allowable period for representations to be made (no less than 28 days).

**Section 73** allows Ministers, by regulations, to make further provision about the required procedure for preparing and maintaining the schedules of key network assets.

## Transfer Schemes

Sections 74 - 76 relate to the transfer of schemes. The PM <sup>3</sup> states:

“ The creation of Transfer Schemes provides a means through which a robust process can be put in place to ensure the continued operation of the infrastructure in the event of insolvency (or another failure of supply) on the part of the operator – i.e. a ‘Supplier of last resort’ (SoLR). The Scottish Government views such a provision as a key outcome of the Bill, given the essential nature of the service and given that it has witnessed SoLR events with increasing regularity in the gas and electricity markets. ”

**Section 74** allows for where a former operator ceases (or is to cease) operating a network, Ministers may make a transfer scheme. A "transfer scheme" is a scheme making provision for the:

- Transfer to one or more relevant persons of the former operator’s rights relating to the use of listed assets
- Conferral on one or more relevant persons of other rights relating to the use of listed assets

Further regulations are allowed for, which may make provision in relation to:

- Rights that may be transferred or conferred
- Procedure in connection with the making of a transfer scheme
- The effect of transfers or conferrals of relevant rights
- Requirements that may be imposed on the former operator or a transferee in connection with the transfer or conferral of rights
- The circumstances in which a right transferred or conferred by a transfer scheme is or may be extinguished
- The modification of a transfer scheme

Definitions of relevant person (Ministers, appropriate local authority, person to whom a new consent is granted) and transferee (person to whom rights are transferred/conferred) are given.

Compensation in connection with transfer schemes if allowed for in **Section 75**. Ministers may, by regulations, make provision about:

- The circumstances in which compensation is payable
- The persons to whom compensation is payable
- The persons liable to pay compensation
- What compensation is payable in respect of
- How the amount of compensation is to be calculated
- How a claim for compensation should be made
- Dispute resolution in relevant cases



## **Part 8 - Miscellaneous and General**

Part 8 which makes miscellaneous provisions, including provision for Crown application and the commencement of the Bill.

Part 8 enables Ministers to set fees for the various relevant licenses, consents and permits. It identifies individual culpability where an organisation commits an offence, and provides for general and miscellaneous matters.

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