



Heat Networks (Scotland) Act 2021

2021 asp 9

PART 6

POWERS OF LICENCE HOLDERS

PROSPECTIVE

Wayleave rights

69 Network wayleave right

- (1) In this Part, a “network wayleave right” is a right for a licence holder to convey steam or liquids in land for a purpose connected with the supply of thermal energy by means of a heat network by the licence holder.
- (2) A network wayleave right in respect of land includes a power—
 - (a) to install and keep installed heat network apparatus in the land,
 - (b) to enter upon the land to install, inspect, maintain, adjust, alter, repair, replace, upgrade, operate or remove the heat network apparatus, and
 - (c) to carry out any works in respect of the land that are reasonably necessary or incidental to the exercise of the network wayleave right.
- (3) A network wayleave right in respect of land may be conferred on a licence holder—
 - (a) by the owner of the land, either—
 - (i) by agreement with the licence holder, or
 - (ii) unilaterally,
 - (b) by a necessary wayleave, or
 - (c) by positive prescription (see subsection (8)).
- (4) A wayleave document may include a development condition.
- (5) A “development condition” 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.

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- (6) A development condition may in particular include a condition—
- (a) requiring such operations or activities as may be specified in the wayleave document to be carried out on, under or over the land,
 - (b) requiring the land to be used in such way as may be so specified.
- (7) In subsection (5), a “relevant person” means—
- (a) the owner or tenant of the land,
 - (b) any other person (other than the licence holder) who has a right to use the land.
- (8) Subsection (2) of section 3 of the Prescription and Limitation (Scotland) Act 1973 (positive servitudes and public rights of way) applies to a network wayleave right in respect of land as it applies to a positive servitude over land but as if—
- (a) in that subsection—
 - (i) a reference to a positive servitude were a reference to a network wayleave right, and
 - (ii) a reference to possession of a servitude were a reference to possession by a licence holder of a network wayleave right, and
 - (b) subsection (4) of that section does not apply to the application of subsection (2) of that section by this subsection.
- (9) A network wayleave right constitutes a real right.
- (10) The installation of heat network apparatus in land by a licence holder in the exercise of a network wayleave right does not confer ownership of the heat network apparatus on the owner of the land.
- (11) In this Part—
- “heat network apparatus” means apparatus designed or adapted for use in connection with a heat network and includes any structure for housing, or for providing access to, such apparatus,
- “land” does not include a road within the meaning of section 107 of the New Roads and Street Works Act 1991,
- “necessary wayleave” means a necessary wayleave granted by the Scottish Ministers under section 70(1),
- “owner”, in relation to land, means a person who has a right to the land whether or not that person has completed title; but if, in relation to the land (or, if the land is held pro indiviso, in relation to any pro indiviso share in it) more than one person falls within that description of owner, then “owner” means such person who has most recently acquired such right,
- “wayleave document” means a written document conferring a network wayleave right on a licence holder under subsection (3)(a).
- (12) In this Part, a reference to heat network apparatus in land includes a reference to heat network apparatus under, over, across, along or on the land.

70 Acquisition of necessary wayleave

- (1) The Scottish Ministers may, on an application by a licence holder, grant a necessary wayleave to a licence holder conferring a network wayleave right on the licence holder in respect of land if they consider that it is necessary or expedient for the licence holder to exercise the right for a purpose connected with the supply of thermal energy by means of a heat network by the licence holder.

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- (2) A necessary wayleave—
 - (a) has effect for the period specified in the necessary wayleave,
 - (b) is subject to such terms and conditions as the Scottish Ministers consider appropriate.
- (3) A necessary wayleave may in particular include a development condition.
- (4) “Development condition” is to be construed in accordance with section 69(5) to (7) except that the references in subsections (5) and (6) of that section to a wayleave document are to be read as if they were references to a necessary wayleave.
- (5) A licence holder may apply to the Scottish Ministers for a necessary wayleave in respect of land under this section only if—
 - (a) either—
 - (i) the licence holder has given notice to the owner of the land setting out the licence holder's request to acquire a network wayleave right under section 69(3)(a), or
 - (ii) where the licence holder cannot ascertain the name or address of the owner of the land after reasonable enquiry, the licence holder has given notice in such form and manner as may be specified by the Scottish Ministers by regulations, and
 - (b) one of the conditions mentioned in subsection (6) applies.
- (6) The conditions are that the owner of the land—
 - (a) has given the licence holder notice in writing that the owner will not enter into or grant a wayleave document,
 - (b) has agreed to enter into or grant a wayleave document but (either or both)—
 - (i) subject to terms and conditions to which the licence holder objects,
 - (ii) a person with an interest in the land (other than the owner) will not enter into, or consent to, the wayleave document, or
 - (c) has not agreed to enter into or grant a wayleave document before the end of the period specified by the licence holder in the notice given under subsection (5) (a)(i) or (ii).
- (7) A notice under subsection (5)(a)(i) must—
 - (a) state the reasons why the conferral of a network wayleave right is sought, and
 - (b) specify the period (which is to be not less than 28 days from the date on which the notice is given) within which the owner of the land must agree to enter into or grant a wayleave document.
- (8) Before granting a necessary wayleave in respect of land, the Scottish Ministers must give the following persons the opportunity to make representations—
 - (a) the owner of the land, and
 - (b) where sub-paragraph (ii) of subsection (6)(b) applies, the person referred to in that sub-paragraph.
- (9) Subsection (1) does not apply in relation to land held or used by or on behalf of a Minister of the Crown or a department of the Government of the United Kingdom.

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71 Assignment of network wayleave rights

- (1) A network wayleave right may be assigned by a licence holder to another licence holder.
- (2) But a network wayleave right in respect of land that is conferred by a necessary wayleave may be assigned to another licence holder only with the consent of the Scottish Ministers.
- (3) A wayleave document is void to the extent that—
 - (a) it prevents or limits the assignment of the network wayleave right to another licence holder,
 - (b) it makes the assignment of the network wayleave right to another licence holder subject to a condition (including a condition requiring the payment of money).

72 Variation of network wayleave right

- (1) A network wayleave right in respect of land (however conferred) may only be varied—
 - (a) by agreement between the owner of the land and the licence holder entitled to the benefit of the network wayleave right (a “variation agreement”), or
 - (b) in accordance with this section.
- (2) A licence holder may apply to the Scottish Ministers to vary a network wayleave right in respect of land under this section only if—
 - (a) either—
 - (i) the licence holder has given notice to the owner of the land setting out the licence holder's request to vary the network wayleave right, or
 - (ii) where the licence holder cannot ascertain the name or address of the owner of the land after reasonable enquiry, the licence holder has given notice in such form and manner as may be specified by the Scottish Ministers by regulations, and
 - (b) one of the conditions mentioned in subsection (3) applies.
- (3) The conditions are that the owner of the land—
 - (a) has given the licence holder notice in writing that the owner will not enter into a variation agreement,
 - (b) has agreed to enter into a variation agreement but (either or both)—
 - (i) subject to terms and conditions to which the licence holder objects,
 - (ii) a person with an interest in the land (other than the owner) will not enter into, or consent to, the variation agreement,
 - (c) has not agreed to enter into a variation agreement before the end of the period specified by the licence holder in the notice given under subsection (2)(a)(i) or (ii).
- (4) An owner of land may apply to the Scottish Ministers to vary a network wayleave right in respect of land under this section only if—
 - (a) the owner has given notice to the licence holder setting out the owner's request to vary the network wayleave right, and
 - (b) one of the conditions mentioned in subsection (5) applies.
- (5) The conditions are that the licence holder—

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- (a) has given the owner of the land notice in writing that the licence holder will not enter into a variation agreement,
 - (b) has agreed to enter into a variation agreement but subject to terms and conditions to which the owner of the land objects,
 - (c) has not agreed to enter into a variation agreement before the end of the period specified by the owner of the land in the notice given under subsection (4)(a).
- (6) A notice under subsection (2)(a)(i) or (4)(a) must—
- (a) state the reasons why the variation agreement is proposed, and
 - (b) specify the period (which is to be not less than 28 days from the date on which the notice is given) after which, if agreement is not reached, the person giving the notice may apply to the Scottish Ministers for the grant of a variation.
- (7) The Scottish Ministers may—
- (a) following an application by a licence holder entitled to the benefit of a network wayleave right, grant a variation of the network wayleave right if they consider that it is necessary or expedient for the licence holder to exercise the right as varied for a purpose connected with the supply of thermal energy by means of a heat network by the licence holder,
 - (b) following an application by the owner of land in respect of which a network wayleave right is exercisable, grant a variation of the network wayleave right if they consider it is appropriate to do so.
- (8) In considering for the purposes of subsection (7)(b) whether it is appropriate to grant a variation of a network wayleave right, the Scottish Ministers may in particular consider whether—
- (a) the exercise of the network wayleave right appears to them to materially prejudice the owner's enjoyment or use of the land,
 - (b) any variation would not substantially increase the cost or diminish the quality of the supply provided by the licence holder's heat network to persons who rely (or may in the future rely) on the supply of thermal energy by means of the heat network concerned, and
 - (c) any variation would not result in the licence holder incurring substantial additional expenditure.
- (9) Before granting a variation of a network wayleave right, the Scottish Ministers must—
- (a) where an application is made by the licence holder, give the following persons the opportunity to make representations—
 - (i) the owner of the land,
 - (ii) where sub-paragraph (ii) of subsection (3)(b) applies, the person referred to in that sub-paragraph,
 - (b) where an application is made by the owner of the land, give the licence holder the opportunity to make representations.

73 Compensation on variation of a network wayleave right

- (1) Where a network wayleave right is varied under section 72(7)(a) so as to place or increase a burden on—
- (a) an occupier of the land, or
 - (b) where the occupier is not also the owner of the land, the owner,

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either or both of those persons may recover from the licence holder compensation in respect of the variation of the network wayleave right.

- (2) Any dispute about compensation under this section is to be referred to and determined by the Lands Tribunal for Scotland.
- (3) Sections 9 and 11 of the Land Compensation (Scotland) Act 1963 apply in relation to any determination under subsection (1) as if—
 - (a) this section were referred to in section 9(1) of that Act, and
 - (b) references in section 11 of that Act to the acquiring authority were references to the licence holder concerned.
- (4) The Scottish Ministers may by regulations make further provision about compensation payable under this section.

74 Discharge of network wayleave right

- (1) A network wayleave right in respect of land (however conferred) may only be discharged by the licence holder entitled to the benefit of the network wayleave right, either—
 - (a) by agreement with the owner of the land, or
 - (b) unilaterally.
- (2) A licence holder must discharge a network wayleave right under subsection (1)(a) if (and to the extent that) the right relates to heat network apparatus that has ceased to be used for the purposes of a heat network.

75 Registration of network wayleave rights

- (1) The Scottish Ministers may by regulations make provision for or about the registration of network wayleave rights.
- (2) Regulations under subsection (1) may in particular include provision about—
 - (a) how a network wayleave right is to be registered,
 - (b) the information (including information in the form of a document) that must be included as part of any entry in the register,
 - (c) who is required to establish and maintain a register of network wayleave rights,
 - (d) fees payable in connection with the registration of a network wayleave right,
 - (e) the form and manner of any register of network wayleave rights,
 - (f) how the register is to be made available for inspection by members of the public,
 - (g) what payment (if any) the licence holder is entitled to charge for supplying documents relating to network wayleave rights to members of the public,
 - (h) the consequences of failure to comply with the requirements of the registration.
- (3) Regulations under subsection (1) may modify any enactment (including this Act).

76 Requirement to remove apparatus when notified

- (1) This section applies where—

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- (a) a person (the “right holder”) has a right to remove (or require the removal of) any heat network apparatus installed in the land by a licence holder, and
 - (b) the right holder seeks the removal of all or part of the heat network apparatus.
- (2) The right holder must give written notice to the licence holder who is operating (or who has most recently operated) the heat network of which the heat network apparatus forms part requiring the licence holder to remove such part of the heat network apparatus as may be specified in the notice.
- (3) The licence holder must comply with the notice given under subsection (2) by no later than the end of the period of 3 months beginning with the day on which the notice is given unless subsection (4) applies.
- (4) This subsection applies if, before the end of the period of 3 months mentioned in subsection (3), the licence holder—
- (a) applies to the Scottish Ministers for the grant of a necessary wayleave, or
 - (b) by virtue of section 68(1), submits a compulsory purchase order in respect of the land to the Scottish Ministers for confirmation by them.
- (5) If subsection (4) applies and the Scottish Ministers—
- (a) refuse the application for the grant of a necessary wayleave, or (as the case may be)
 - (b) decide not to confirm the compulsory purchase order,
- the licence holder must comply with the notice given under subsection (2) by no later than the end of the period of 3 months beginning with the day on which the licence holder receives notice of the Scottish Ministers' decision.

77 Compensation in connection with network wayleave rights

- (1) Where a necessary wayleave is granted to a licence holder under section 70(1)—
- (a) the occupier of the land, and
 - (b) where the occupier is not also the owner of the land, the owner,
- may recover from the licence holder compensation in respect of the grant.
- (2) Where the exercise of a network wayleave right by or on behalf of a licence holder in relation to land—
- (a) causes damage to the land or a thing situated on the land, the licence holder is liable to pay compensation to a person with an interest in the land or thing,
 - (b) disturbs a person's enjoyment of the land or a thing situated on the land, the licence holder is liable to pay compensation to the person in respect of the disturbance.
- (3) Any dispute about compensation under this section is to be referred to and determined by the Lands Tribunal for Scotland.
- (4) Sections 9 and 11 of the Land Compensation (Scotland) Act 1963 apply in relation to any determination under subsection (3) as if—
- (a) this section were referred to in section 9(1) of that Act, and
 - (b) references in section 11 of that Act to the acquiring authority were references to the licence holder concerned.

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- (5) The Scottish Ministers may by regulations make further provision about compensation payable under this section.

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