



Heat Networks (Scotland) Act 2021

2021 asp 9

PROSPECTIVE

PART 1

HEAT NETWORKS LICENCES

Introductory

1 Meaning of “heat network”

- (1) In this Act, a “heat network” means—
 - (a) a district heat network, or
 - (b) a communal heating system.
- (2) 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.
- (3) 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.
- (4) For the purposes of subsection (2) or (3), where the main purpose of a source of production is to provide thermal energy to a district heat network or (as the case may be) a communal heating system, the source of production forms part of the district heat network or (as the case may be) the communal heating system.
- (5) In this Act, “thermal energy” means heating, cooling or hot water.
- (6) In subsection (3), “building unit” means part of a building that is designed or altered to be used separately.
- (7) The Scottish Ministers may by regulations—
 - (a) modify the meaning in this section of “heat network”, “district heat network”, “communal heating system” or “thermal energy”,
 - (b) further define the meaning of any of those terms.

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Heat Networks (Scotland) Act 2021, PART 1. (See end of Document for details)

2 Requirement for heat networks licence

- (1) A person must not supply thermal energy by means of a heat network unless the person holds a heat networks licence.
- (2) A person who contravenes subsection (1) commits an offence.
- (3) It is a defence for a person charged with an offence under subsection (2) to show that the person had a reasonable excuse for contravening subsection (1).
- (4) A person who commits an offence under subsection (2) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum,
 - (b) on conviction on indictment, to a fine.
- (5) In this Act, “heat networks licence” means a heat networks licence issued under section 5(5).

3 Exemptions from requirement for heat networks licence

- (1) The Scottish Ministers may by regulations provide that the requirement imposed by section 2(1) does not apply—
 - (a) in circumstances specified in the regulations,
 - (b) in relation to heat networks of a description specified in the regulations.
- (2) The Scottish Ministers may direct that the requirement imposed by section 2(1) does not apply—
 - (a) to—
 - (i) a person specified by name in the direction,
 - (ii) persons of a description specified in the direction,
 - (b) in relation to heat networks of a description specified in the direction.
- (3) Where the Scottish Ministers issue a direction under subsection (2), they must—
 - (a) do so in writing, and
 - (b) publish the direction in such manner as they consider appropriate.
- (4) The Scottish Ministers may grant an exemption by regulations under subsection (1) or by a direction under subsection (2)—
 - (a) either—
 - (i) indefinitely, or
 - (ii) for a period specified in the regulations or the direction,
 - (b) either—
 - (i) unconditionally, or
 - (ii) subject to conditions specified in the regulations or the direction.
- (5) The Scottish Ministers may revise or revoke a direction under subsection (2).
- (6) Subsection (3) applies to the revision or revocation of a direction under subsection (2) as it applies to such a direction.
- (7) Regulations under subsection (1), or a direction under subsection (2), may make different provision for different areas.

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4 Meaning of “licensing authority”

[^{F1}(1)] In this Act, the “licensing authority” means—

- (a) the Scottish Ministers, or
- (b) such other person as the Scottish Ministers by regulations designate as the licensing authority for the purposes of this Act.

[^{F2}(2) Subsection (1) is subject to subsection (3).

- (3) If the Secretary of State designates the Gas and Electricity Markets Authority as the licensing authority for the purposes of this Act by regulations under section 223(1) of the Energy Act 2023, references in this Act to the licensing authority are references to the Gas and Electricity Markets Authority.]

Textual Amendments

- F1** S. 4 renumbered as s. 4(1) (26.10.2023) by [Energy Act 2023 \(c. 52\), ss. 223\(3\)\(a\), 334\(2\)\(l\)](#)
- F2** S. 4(2)(3) inserted (26.10.2023) by [Energy Act 2023 \(c. 52\), ss. 223\(3\)\(b\), 334\(2\)\(l\)](#)

Heat networks licence applications

5 Heat networks licence applications

- (1) A person may apply to the licensing authority for a heat networks licence.
- (2) An application under subsection (1) is referred to in this Part as a “heat networks licence application”.
- (3) The licensing authority may grant a heat networks licence application only if it is satisfied that the applicant has the ability to perform the activities that would be authorised by the licence.
- (4) In assessing an applicant's ability to perform those activities, the licensing authority must have regard to the following matters (in so far as relevant to the performance of those activities)—
 - (a) the applicant's knowledge, expertise and experience,
 - (b) the applicant's ability to operate a heat network in a manner that—
 - (i) minimises greenhouse gas emissions (within the meaning of the Climate Change (Scotland) Act 2009) from the heat network,
 - (ii) takes account of the just transition principles (within the meaning of section 35C of that Act), and
 - (iii) contributes to meeting the fuel poverty targets, and
 - (c) such other matter as the Scottish Ministers may by regulations specify.
- (5) As soon as practicable after granting a heat networks licence application, the licensing authority must issue the licence to the applicant.
- (6) Where the licensing authority proposes to refuse a heat networks licence application, it must give the applicant notice—
 - (a) stating that it proposes to refuse the application,
 - (b) stating the reasons why it proposes to refuse the application, and

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- (c) specifying the period (which is to be not less than 28 days from the date on which the notice is given) within which the applicant may make representations about the proposed refusal to the licensing authority.
- (7) As soon as practicable after refusing a heat networks licence application, the licensing authority must notify the applicant of the refusal.

Conditions of heat networks licence

6 Heat networks licence standard conditions

- (1) The licensing authority must determine conditions relating to the obligations of persons holding heat networks licences.
- (2) In this Part, the conditions determined under subsection (1) are referred to as the “standard conditions”; and references to the standard conditions include those conditions as they may be modified from time to time under section 7(2)(b)(i).
- (3) The standard conditions may in particular—
 - (a) include standard conditions that are to apply to—
 - (i) all heat networks licences,
 - (ii) heat networks licences of a particular description,
 - (b) make provision for—
 - (i) the standard conditions (or any of them) not to apply to a particular heat networks licence or heat networks licences of a particular description in such circumstances as may be specified in the standard conditions,
 - (ii) the coming into effect and suspension of the standard conditions (or any of them) in such manner and in such circumstances as may be specified in the standard conditions,
 - (c) include conditions relating to the standards of service to be provided by the person holding a heat networks licence.
- (4) Subject to subsection (5), each heat networks licence has incorporated in it by reference such of the standard conditions as are applicable to it.
- (5) The licensing authority may, in granting a particular heat networks licence application, exclude or modify any of the standard conditions to such extent as it considers appropriate in the circumstances of the case.
- (6) Before making any modification under subsection (5), the licensing authority must give notice of the proposed modification to the applicant of the particular heat networks licence application.
- (7) The notice must—
 - (a) state the reasons why the modification 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) within which the applicant may make representations about the proposed modification to the licensing authority.
- (8) In determining the standard conditions under subsection (1), the licensing authority must have regard in particular to—
 - (a) the interests of users of thermal energy supplied by means of a heat network,

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- (b) the desirability of furthering or promoting the reduction of greenhouse gas emissions (within the meaning of the Climate Change (Scotland) Act 2009) from the operation of heat networks,
 - (c) the desirability of furthering or promoting the use by heat networks of—
 - (i) thermal energy generated from renewable sources,
 - (ii) waste heat or cold.
- (9) In subsection (8)(c)(ii), “waste heat or cold” means heat or cold generated as a result of a use of (or process affecting) land, which would disperse unused if released into air or water.

7 Heat networks licence standard conditions: supplementary

- (1) The licensing authority must publish the standard conditions.
- (2) The licensing authority—
 - (a) must from time to time review the standard conditions, and
 - (b) may—
 - (i) modify the standard conditions, and
 - (ii) make any modification of the conditions of any heat networks licence it considers appropriate as a consequence of any modification of the standard conditions.
- (3) Before making any modification under subsection (2)(b), the licensing authority must—
 - (a) give notice of the proposed modification to every person who holds a heat networks licence whose licence would be affected by the modification, and
 - (b) publish the notice.
- (4) The notice must—
 - (a) state the reasons why the modification is proposed, and
 - (b) specify the period (which is to be not less than 28 days from the date of publication of the notice) within which representations about the proposed modification may be made to the licensing authority.
- (5) Where the licensing authority modifies the standard conditions, it must publish the standard conditions as modified.

8 Heat networks licence special conditions

- (1) In addition to the standard conditions, the licensing authority may include in a heat networks licence any special conditions (whether or not relating to the activities to be authorised by the licence) it considers appropriate.
- (2) The licensing authority may provide in a heat networks licence that a special condition of the licence—
 - (a) has effect or ceases to have effect, or
 - (b) may be modified,at such time, in such manner and in such circumstances as the licensing authority considers appropriate.

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Duration of heat networks licence

9 Period of effect of heat networks licence

A heat networks licence—

- (a) has effect on the date specified in the licence, and
- (b) continues to have effect unless the licence is—
 - (i) revoked by the licensing authority in accordance with section 11, or
 - (ii) surrendered by the person holding the licence in accordance with the conditions of the licence.

Modification of heat networks licence

10 Modification of heat networks licence

- (1) The licensing authority may make any modification of a heat networks licence it considers appropriate.
- (2) The licensing authority may modify a heat networks licence under subsection (1)—
 - (a) following an application by the person holding the licence, or
 - (b) on the licensing authority's own initiative.
- (3) An application mentioned in subsection (2)(a) is referred to in this Part as a “heat networks licence modification application”.
- (4) Before modifying a heat networks licence under subsection (1), the licensing authority must give notice of the proposed modification to the person holding the licence.
- (5) The notice must—
 - (a) state the reasons why the modification 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) within which the person holding the licence may make representations about the proposed modification to the licensing authority.
- (6) Where the licensing authority modifies a heat networks licence under subsection (1), it must give a copy of the licence as modified to the person holding the licence.
- (7) This section does not apply in relation to the modification of the conditions of a heat networks licence by the licensing authority in consequence of any modification of the standard conditions (see section 7(2)(b)(ii)).

Revocation of heat networks licence

11 Revocation of heat networks licence

- (1) The licensing authority may revoke a heat networks licence if it considers that the person holding the licence—
 - (a) no longer has the ability to perform the activities authorised by the licence, or
 - (b) has failed to comply with a condition of the licence.
- (2) For the purposes of subsection (1)(a)—

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- (a) in deciding whether the person holding a heat networks licence no longer has the ability to perform the activities authorised by the licence, the licensing authority is to have regard to the matters mentioned in section 5(4), and
 - (b) it does not matter whether or not the person holding the heat networks licence has failed to comply with a term of the licence.
- (3) The licensing authority may not revoke a heat networks licence under subsection (1) unless it is satisfied that revocation is reasonable having regard to—
- (a) the terms of the licence,
 - (b) the responsibilities of the person holding the licence to the person's customers, and
 - (c) any other matters the licensing authority considers to be relevant.
- (4) Before revoking a heat networks licence under subsection (1), the licensing authority must give notice of the proposed revocation to the person holding the licence.
- (5) The notice must—
- (a) state the reasons why the revocation 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) within which the person holding the licence may make representations about the proposed revocation to the licensing authority.
- (6) The licensing authority may revoke a heat networks licence under subsection (1) by giving notice of revocation to the person holding the licence.
- (7) A notice of revocation must specify—
- (a) the reasons for the revocation, and
 - (b) the date from which the revocation is to have effect.
- (8) The Scottish Ministers may by regulations make further provision about the procedure to be followed in connection with the revocation of a heat networks licence under subsection (1).

12 Appeals against revocation of heat networks licence

- (1) The Scottish Ministers may by regulations make provision for or about appeals against revocation of heat networks licences.
- (2) Regulations under subsection (1) may in particular make provision about—
- (a) who may appeal,
 - (b) grounds of appeal,
 - (c) the way in which appeals are to be made,
 - (d) the information to be provided when making appeals,
 - (e) the procedure for determining appeals,
 - (f) who may determine appeals,
 - (g) the manner in which appeals are to be conducted,
 - (h) decisions that may be taken on appeal,
 - (i) how the determination of appeals is to be notified.
- (3) Regulations under subsection (1) may modify any enactment (including this Act).

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Miscellaneous

13 Form and manner etc. of applications under Part 1

- (1) The Scottish Ministers may determine—
 - (a) the form and manner in which—
 - (i) a heat networks licence application is to be made,
 - (ii) a heat networks licence modification application is to be made,
 - (b) the information (including the information in the form of a document) that must be included in—
 - (i) a heat networks licence application,
 - (ii) a heat networks licence modification application.
- (2) The Scottish Ministers must arrange for any determination under subsection (1) to be published in such manner as they consider appropriate.
- (3) The licensing authority need not consider—
 - (a) a heat networks licence application, or
 - (b) a heat networks licence modification application,that does not comply with a requirement determined under subsection (1).

14 Regulations about determining applications under Part 1

- The Scottish Ministers may by regulations make provision about—
- (a) the procedure to be followed by the licensing authority in determining—
 - (i) a heat networks licence application,
 - (ii) a heat networks licence modification application,
 - (b) the notification and publication of—
 - (i) such an application,
 - (ii) determinations made in relation to it.

15 Guidance for licensing authority

- (1) The Scottish Ministers may issue guidance to the licensing authority about the exercise of its functions under this Part.
- (2) Guidance under subsection (1) may in particular include guidance relating to—
 - (a) the matters mentioned in section 5(4) (either generally or in a particular case or category of case),
 - (b) the exercise of the licensing authority's functions under this Part as they apply in relation to the supply of thermal energy by means of an existing heat network,
 - (c) decision-making protocols,
 - (d) methods of communication with persons applying for, and persons holding, a heat networks licence.
- (3) The licensing authority must have regard to any guidance issued under subsection (1).
- (4) The Scottish Ministers must publish guidance issued under subsection (1) in such manner as they consider appropriate.

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16 Register of heat networks licences

- (1) The licensing authority must prepare and maintain a register of heat networks licences.
- (2) The register must contain the following information about each heat networks licence—
 - (a) the name and address of the person to whom the licence was issued,
 - (b) the terms of the licence,
 - (c) the date on which the licence took effect,
 - (d) if the licence is not continuing in effect, the date on which the licence ceased to have effect.
- (3) The register must also contain such other information as the Scottish Ministers may by regulations specify.
- (4) The licensing authority must make arrangements to enable members of the public to inspect the register free of charge.

17 Interpretation of Part 1

- (1) In this Part—
 - “heat networks licence application” has the meaning given in section 5(2),
 - “heat networks licence modification application” has the meaning given in section 10(3),
 - “standard conditions” has the meaning given in section 6(2).
- (2) In this Part, references to the activities authorised (or to be, or would be, authorised) by a heat networks licence means the supply of thermal energy by means of a heat network by the person holding the licence.

Status:

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Changes to legislation:

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