



Heat Networks (Scotland) Act 2021

2021 asp 9

PART 2

HEAT NETWORK CONSENT

Introductory

PROSPECTIVE

18 Requirement for heat network consent

- (1) A heat network must not be constructed or operated except in accordance with a heat network consent relating to—
 - (a) the construction of the heat network, or (as the case may be)
 - (b) the operation of the heat network.
- (2) References in this Act to the construction of a heat network include references to the construction of an extension to an existing heat network.
- (3) In this Act, a “heat network consent” means—
 - (a) a consent granted—
 - (i) under section 23(1)(a), or
 - (ii) pursuant to an appeal under section 31(2), or
 - (b) such a consent that is transferred under section 25(1).

19 Exemptions from requirement for heat network consent

- (1) The Scottish Ministers may by regulations provide that the requirement imposed by section 18(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) Regulations under subsection (1) may grant an exemption—
 - (a) either—

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 2. (See end of Document for details)

- (i) indefinitely, or
- (ii) for a period specified in the regulations,
- (b) either—
 - (i) unconditionally, or
 - (ii) subject to conditions specified in the regulations.
- (3) Regulations under subsection (1) may make different provision for different areas.

Commencement Information

II S. 19 in force at 16.1.2023 by S.S.I. 2022/376, reg. 2, sch.

PROSPECTIVE

20 Designation of local authority as consent authority for the area of the local authority

- (1) The Scottish Ministers may by regulations designate a local authority as the consent authority for the area of the local authority for the purposes of this Part.
- (2) Where a local authority makes a written request to the Scottish Ministers that it be designated under subsection (1) as the consent authority for its area, the Scottish Ministers must make regulations under subsection (1) so designating the local authority before the expiry of the period of 6 months beginning with the day on which the request was made unless the local authority has withdrawn the request in writing.
- (3) Regulations under subsection (1) may make provision modifying this Part and Part 7 in consequence of the designation made by the regulations.
- (4) Before making regulations under subsection (1), the Scottish Ministers must consult—
 - (a) the local authority whom the regulations would (if made) designate as the consent authority for its area, and
 - (b) such other persons as the Scottish Ministers consider appropriate.
- (5) Where regulations under subsection (1) are subject to the affirmative procedure, the references in subsections (2) and (4) to making regulations under subsection (1) are to be read as references to laying a draft of a Scottish statutory instrument containing regulations under subsection (1) before the Scottish Parliament.

PROSPECTIVE

21 Meaning of “appropriate consent authority”

In this Part, the “appropriate consent authority”, in relation to an application made or a consent granted under this Part in relation to a heat network, means—

- (a) where the heat network is (or is to be) situated in the area of a local authority that has been designated as the consent authority for the area under section 20(1), that local authority,
- (b) otherwise, the Scottish Ministers.

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PROSPECTIVE

Heat network consent applications

22 Heat network consent applications

- (1) A person may apply to the appropriate consent authority for a heat network consent.
- (2) An application under subsection (1) is referred to in this Act as a “heat network consent application”.
- (3) A person may make a heat network consent application in relation to—
 - (a) the construction of a heat network,
 - (b) the operation of a heat network, or
 - (c) both.

23 Determining heat network consent applications

- (1) The appropriate consent authority may—
 - (a) agree to a heat network consent application and grant a heat network consent, or
 - (b) refuse the application.
- (2) Subsection (3) applies to a heat network consent application relating to—
 - (a) the construction and operation of a heat network, or
 - (b) the operation of a heat network.
- (3) Before agreeing to the application and granting a heat network consent for a heat network, the appropriate consent authority 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.
- (4) Where the appropriate consent authority proposes to refuse a heat network consent 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
 - (c) specifying the date by which the applicant may make representations about the proposed refusal to the appropriate consent authority.
- (5) In subsection (3), “listed asset”, in relation to a heat network, has the meaning given in section 91.

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Changes to legislation: There are currently no known outstanding effects for the Heat Networks (Scotland) Act 2021, PART 2. (See end of Document for details)

PROSPECTIVE

Heat network consent conditions or limitations

24 Heat network consent conditions or limitations

The appropriate consent authority may grant a heat network consent subject to any conditions or limitations it considers appropriate.

Transfer, modification and revocation of heat network consent

PROSPECTIVE

25 Transfer of heat network consent

- (1) The person holding a heat network consent may transfer the consent to another person with the agreement of the appropriate consent authority.
- (2) The appropriate consent authority may agree to a transfer of a heat network consent under subsection (1) subject to any—
 - (a) modification of any condition or limitation of the consent, or
 - (b) additional condition or limitation of the consent,
 as it considers appropriate.

PROSPECTIVE

26 Modification of heat network consent

- (1) The appropriate consent authority may make any modification of a heat network consent it considers appropriate.
- (2) The appropriate consent authority may modify a heat network consent under subsection (1)—
 - (a) following an application by the person holding the heat network consent, or
 - (b) on the appropriate consent authority's own initiative.
- (3) An application mentioned in subsection (2)(a) is referred to in this Act as a “heat network consent modification application”.
- (4) Where the appropriate consent authority modifies a heat network consent under subsection (1), it must give a copy of the consent as modified to the person holding the consent.

27 Revocation of heat network consent

- (1) The appropriate consent authority may revoke a heat network consent in such circumstances as may be specified by the Scottish Ministers by regulations.

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- (2) Before revoking a heat network consent under subsection (1), the appropriate consent authority must give notice of the proposed revocation to the person holding the consent.
- (3) 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 consent may make representations about the proposed revocation to the appropriate consent authority.
- (4) The appropriate consent authority may revoke a heat network consent under subsection (1) by giving notice of revocation to the person holding the consent.
- (5) A notice of revocation must specify—
 - (a) the reasons for the revocation, and
 - (b) the date from which the revocation is to have effect (subject to section 28(2)).
- (6) The date referred to in subsection (5)(b) must be specified in accordance with any minimum period of notice to be given by a notice of revocation as may be specified in regulations under subsection (7).
- (7) The Scottish Ministers may by regulations make further provision about the procedure to be followed in connection with the revocation of a heat network consent under subsection (1).

Commencement Information

I2 [S. 27](#) in force at 16.1.2023 for specified purposes by [S.S.I. 2022/376, reg. 2, sch.](#)

PROSPECTIVE

28 Appeals against notice of revocation given by local authority

- (1) Where a local authority gives a notice of revocation to a person under section 27(4), the person may appeal to the Scottish Ministers against the notice.
- (2) Where an appeal is made under subsection (1) against a revocation notice, the notice has no effect pending the final determination or withdrawal of the appeal.
- (3) The Scottish Ministers may by regulations make further provision about appeals under subsection (1).
- (4) Regulations under subsection (3) may in particular include provision about—
 - (a) the way in which appeals are to be made, including time limits for making appeals,
 - (b) matters that may be raised in appeals,
 - (c) the information to be provided when making appeals,
 - (d) the procedure in connection with determining appeals,
 - (e) the manner in which appeals are to be conducted,
 - (f) decisions that may be taken on appeal,

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- (g) how the determination of appeals is to be notified.
- (5) The provision that may be made by virtue of subsection (4)(e) includes provision about the holding of an inquiry or hearing for the purpose of determining an appeal, including—
- (a) the hearing of evidence at an inquiry or hearing in public or otherwise including any procedure to apply where evidence is not to be heard in public or documentary evidence is not to be open to public inspection,
 - (b) the appointment of persons to hold an inquiry or hearing,
 - (c) the role of such persons,
 - (d) the timing of an inquiry or hearing,
 - (e) notification of an inquiry or hearing,
 - (f) attendance of required persons at an inquiry or hearing,
 - (g) giving of evidence of persons required to attend an inquiry or hearing,
 - (h) consequences of persons failing to attend an inquiry or hearing or to provide information required by an inquiry or hearing, including the creation of offences,
 - (i) the payment of expenses by parties to the inquiry or hearing.
- (6) The maximum penalty that may be provided for in regulations under subsection (3) creating an offence is, on summary conviction, a fine not exceeding level 1 on the standard scale or imprisonment for a period not exceeding 3 months.
- (7) Regulations under subsection (3) may modify any enactment (including this Act).

PROSPECTIVE

Applications to local authorities: Ministerial powers of call-in, direction and appeal

29 Call-in of heat network consent applications etc. by the Scottish Ministers

- (1) The Scottish Ministers may give directions requiring an application of a type mentioned in subsection (2) to be referred to them instead of being dealt with by a local authority as the appropriate consent authority.
- (2) The types of applications are—
- (a) a heat network consent application,
 - (b) a heat network consent modification application,
 - (c) an application for a consent, agreement or approval required by a condition to which a heat network consent is subject.
- (3) A direction under subsection (1)—
- (a) must be set out in writing,
 - (b) may be withdrawn or modified by a subsequent direction,
 - (c) may be given to a particular local authority acting as the appropriate consent authority or to local authorities acting in that capacity generally,
 - (d) may relate either to a particular application or to applications of such description as may be specified in the direction.

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- (4) Any application in respect of which a direction has effect under subsection (1) must be referred to the Scottish Ministers.
- (5) Where an application is referred to the Scottish Ministers under this section (a “called-in application”), sections 23, 24, 26 and 33(5) apply to the called-in application as they apply to an application that is to be determined by a local authority as the appropriate consent authority except that the references in those sections to “the appropriate consent authority” are to be read as references to “the Scottish Ministers”.
- (6) The Scottish Ministers may by regulations make further provision about directions under subsection (1) and the determination of called-in applications pursuant to such a direction.
- (7) Regulations under subsection (6) may in particular include provision about—
 - (a) the notification and publication of directions—
 - (i) given under subsection (1), or
 - (ii) withdrawn or modified under subsection (3)(b),
 - (b) the procedure for determining called-in applications.
- (8) Regulations under subsection (6) may modify any enactment (including this Act).

30 Directions as to method of dealing with heat network consent applications etc. by local authorities

- (1) The Scottish Ministers may by regulations make provision for or about regulating the manner in which applications mentioned in subsection (2) are to be dealt with by local authorities as appropriate consent authorities.
- (2) The applications are—
 - (a) a heat network consent application,
 - (b) a heat network consent modification application,
 - (c) an application for a consent, agreement or approval required by a condition to which a heat network consent is subject.
- (3) Regulations under subsection (1) may in particular make provision—
 - (a) for enabling the Scottish Ministers to give directions restricting the grant of an application mentioned in subsection (2), either indefinitely or during such period as may be specified in the directions, in respect of any such heat network, or in respect of a heat network of any such description, as may be so specified,
 - (b) for enabling the Scottish Ministers to give directions to a local authority as the appropriate consent authority requiring it, in respect of any such heat network, or in respect of a heat network of any such description, as may be specified in the directions—
 - (i) to consider, where the local authority is minded to grant a heat network consent, imposing a condition specified in, or of a nature indicated in, the directions, and
 - (ii) (unless the directions are withdrawn) not to grant the heat network consent without first satisfying the Scottish Ministers that such consideration has been given and that such a condition either will be imposed or need not be imposed,

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- (c) for requiring, or enabling directions to be made requiring, a local authority as the appropriate consent authority to give to the Scottish Ministers and to such other persons as may be specified in the regulations (or in directions given by the Scottish Ministers under the regulations) such information as may be so specified with respect to applications for heat network consent made to the local authority, including information as to the manner in which any such application has been dealt with.

31 Appeals regarding applications for heat network consent etc. to local authorities

- (1) Subsection (2) applies where a local authority as the appropriate consent authority—
 - (a) refuses a heat network consent application,
 - (b) grants a heat network consent, but subject to a condition or limitation,
 - (c) refuses an application for a consent, agreement or approval required by a condition to which a heat network consent is subject,
 - (d) grants an application for a consent, agreement or approval required by a condition to which a heat network consent is subject, but subject to a condition,
 - (e) modifies a heat network consent under section 26(1) (whether following a heat network consent modification application or on its own initiative),
 - (f) refuses a heat network consent modification application,
 - (g) fails to give notice, within the relevant period, of its decision to the applicant in relation to—
 - (i) a heat network consent application,
 - (ii) a heat network consent modification application,
 - (iii) an application for a consent, agreement or approval to which a heat network consent application is subject.
- (2) The applicant may appeal to the Scottish Ministers against the decision or failure (as the case may be) of the local authority.
- (3) In subsection (1)(g), “relevant period” means—
 - (a) such period as may be specified in regulations under section 35(1), or
 - (b) such other period as may be agreed in writing between the applicant and the local authority in relation to the application (before or after it is made).
- (4) The Scottish Ministers may by regulations make further provision about appeals under subsection (2).
- (5) Regulations under subsection (4) may in particular include provision about—
 - (a) the way in which appeals are to be made, including time limits for making appeals,
 - (b) matters that may be raised in appeals,
 - (c) the information to be provided when making appeals,
 - (d) the procedure in connection with determining appeals,
 - (e) the manner in which appeals are to be conducted,
 - (f) decisions that may be taken on appeal,
 - (g) how the determination of appeals is to be notified.

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- (6) The provision that may be made by virtue of subsection (5)(e) includes provision about the holding of an inquiry or hearing for the purpose of determining an appeal, including—
- (a) the hearing of evidence at an inquiry or hearing in public or otherwise including any procedure to apply where evidence is not to be heard in public or documentary evidence is not to be open to public inspection,
 - (b) the appointment of persons to hold an inquiry or hearing,
 - (c) the role of such persons,
 - (d) the timing of an inquiry or hearing,
 - (e) notification of an inquiry or hearing,
 - (f) attendance of required persons at an inquiry or hearing,
 - (g) giving of evidence of persons required to attend an inquiry or hearing,
 - (h) consequences of persons failing to attend an inquiry or hearing or to provide information required by an inquiry or hearing, including the creation of offences,
 - (i) the payment of expenses by parties to the inquiry or hearing.
- (7) The maximum penalty that may be provided for in regulations under subsection (4) creating an offence is, on summary conviction, a fine not exceeding level 1 on the standard scale or imprisonment for a period not exceeding 3 months.
- (8) Regulations under subsection (4) may modify any enactment (including this Act).

Compensation

32 Compensation on modification or revocation of heat network consent

- (1) The Scottish Ministers may by regulations make provision for or about the payment of compensation to the person holding a heat network consent in consequence of—
- (a) the modification of a heat network consent as mentioned in section 26(2)(b),
 - (b) the revocation of a heat network consent in accordance with regulations under section 27.
- (2) Regulations under subsection (1) may in particular make provision about—
- (a) the circumstances in which compensation is payable,
 - (b) the calculation of compensation,
 - (c) the procedure to be followed in connection with claiming compensation,
 - (d) the review of decisions made under the regulations,
 - (e) appeals against decisions made under the regulations.
- (3) Before making regulations under subsection (1), the Scottish Ministers must consult local authorities and such other persons as they consider appropriate.

Commencement Information

I3 S. 32 in force at 16.1.2023 by S.S.I. 2022/376, reg. 2, sch.

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 2. (See end of Document for details)

Miscellaneous

PROSPECTIVE

33 Form and manner etc. of applications under Part 2

- (1) The Scottish Ministers may determine—
 - (a) the form and manner in which a relevant application is to be made,
 - (b) the information (including the information in the form of a document) that is to be included in a relevant application.
- (2) In determining under subsection (1)(b) the information that is to be included in a relevant application, the Scottish Ministers may determine that a relevant application of such description as may be specified in the determination must include a community engagement report.
- (3) A “community engagement report”, in relation to a relevant application, is a report describing—
 - (a) the community engagement undertaken by the applicant in relation to the proposed application before making the application in accordance with any guidance issued under section 34(1), and
 - (b) how the applicant has taken account of any representations received by virtue of the community engagement before making the application.
- (4) The Scottish Ministers must arrange for any determination under subsection (1) to be published in such manner as they consider appropriate.
- (5) The appropriate consent authority need not consider a relevant application that does not comply with a requirement determined under subsection (1).
- (6) Before making a determination under subsection (1), the Scottish Ministers must consult local authorities and such other persons as they consider appropriate.
- (7) In this section and sections 34 and 35, a “relevant application” means—
 - (a) a heat network consent application,
 - (b) a heat network consent modification application,
 - (c) an application for a consent, agreement or approval required by a condition to which a heat network consent is subject.

34 Effective community engagement: guidance

- (1) The Scottish Ministers may issue guidance about undertaking effective community engagement in relation to a relevant application for the purpose of preparing a community engagement report.
- (2) Guidance under subsection (1) may in particular include guidance on—
 - (a) persons, or persons of a particular description, to be considered as forming part of a community for the purpose of undertaking effective community engagement in relation to a relevant application,
 - (b) how applicants are to undertake effective community engagement before making a relevant application including ways in which applicants should—
 - (i) consult communities, and

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- (ii) encourage participation by communities in the consultation.
- (3) Before issuing guidance under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate.
- (4) The Scottish Ministers must publish guidance issued under subsection (1) in such manner as they consider appropriate.
- (5) A person whose relevant application must include a community engagement report in accordance with a determination under section 33(1)(b) must have regard to any guidance issued under subsection (1) in connection with the application.
- (6) In this section, “community engagement report” has the meaning given in section 33(3).

Commencement Information

I4 S. 34 in force at 16.1.2023 for specified purposes by [S.S.I. 2022/376, reg. 2, sch.](#)

35 Regulations about decisions under Part 2

- (1) The Scottish Ministers may by regulations make provision about—
 - (a) the procedure to be followed in—
 - (i) determining a relevant application, or
 - (ii) deciding whether to modify a heat network consent as mentioned in section 26(2)(b),
 - (b) publication and notification of—
 - (i) a relevant application,
 - (ii) determinations made in relation to it,
 - (c) publication and notification of a decision to modify a heat network consent as mentioned in section 26(2)(b).
- (2) Regulations under subsection (1) may in particular make provision in connection with the consideration to be given, before determining a relevant application or deciding whether to modify a heat network consent as mentioned in section 26(2)(b), to the likely effect of the construction or operation (as the case may be) of the heat network concerned—
 - (a) on the environment generally and, in particular, in contributing to the reduction of greenhouse gas emissions (within the meaning of the Climate Change (Scotland) Act 2009), and
 - (b) in contributing to meeting the fuel poverty targets.
- (3) Before making regulations under subsection (1), the Scottish Ministers must consult—
 - (a) local authorities,
 - (b) the Scottish Fuel Poverty Advisory Panel, and
 - (c) such other persons as they consider appropriate.

Commencement Information

I5 S. 35 in force at 16.1.2023 by [S.S.I. 2022/376, reg. 2, sch.](#)

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 2. (See end of Document for details)

PROSPECTIVE

36 Applications and decisions under Part 2 where there is more than one appropriate consent authority

- (1) The Scottish Ministers may by regulations make provision about the making of any application or decision under this Part in circumstances where there is more than one appropriate consent authority in relation to an application or decision.
- (2) Regulations under subsection (1) may modify this Act and any regulations made under it.

Enforcement of requirement for heat network consent

37 Meaning of “enforcement authority”

In this Part, the “enforcement authority” means—

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

Commencement Information

16 S. 37 in force at 16.1.2023 for specified purposes by S.S.I. 2022/376, reg. 2, sch.

PROSPECTIVE

38 Power to require information about activities on land

- (1) This section applies where—
 - (a) section 18(1) applies in relation to a heat network and it appears to the enforcement authority that the heat network—
 - (i) is being constructed (or has been constructed) on land without a heat network consent in relation to the heat network,
 - (ii) is being operated (or has been operated) on land without a heat network consent in relation to the heat network, or
 - (b) it appears to the enforcement authority that there has been a failure to comply with a condition or limitation to which a heat network consent in relation to a heat network situated on land is subject.
- (2) The enforcement authority may give notice outlining its concerns (a “contravention notice”) to any person who—
 - (a) is the owner or occupier of the land or has any other interest in it, or
 - (b) is carrying out operations on the land or is using it for any purpose.
- (3) A contravention notice may require the person to whom it is given to give such information as may be specified in the notice in relation to—

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- (a) any operations being carried out on the land, any use of the land and any other activities being carried out on the land,
 - (b) any matter relating to conditions or limitations to which a heat network consent in relation to a heat network situated on the land is subject.
- (4) In this section, references to—
- (a) the construction or operation of a heat network on land include references to the construction or operation of a heat network under or over the land,
 - (b) a heat network situated on land include references to a heat network situated under or over the land,
 - (c) operations or activities on land include references to operations or activities under or over the land.

PROSPECTIVE

39 Enforcement notice

- (1) Where section 18(1) applies in relation to a heat network and it appears to the enforcement authority that the heat network is being (or has been) constructed or operated—
- (a) by a person on their own behalf without the person holding a heat network consent in relation to the construction or (as the case may be) operation of the heat network, the enforcement authority may give a written notice to the person,
 - (b) by a person on behalf of another person without the other person holding a heat network consent in relation to the construction or (as the case may be) operation of the heat network, the enforcement authority may give a written notice to the person or to the other person.
- (2) Where it appears to the enforcement authority that there has been a failure by the person holding a heat network consent to comply (or to secure compliance) with a condition or limitation to which the consent is subject, the enforcement authority may give a written notice to the person.
- (3) An enforcement notice must specify the date on which it is to take effect which must be no less than 28 days after the date on which the notice is given.
- (4) An enforcement notice must—
- (a) specify the reasons why the notice has been given, and
 - (b) specify (either or both)—
 - (i) the steps that the enforcement authority requires the person to whom the notice is given (or another person acting on behalf of that person) to take,
 - (ii) the activities that the enforcement authority requires to cease, in order to achieve (wholly or partly) either of the purposes mentioned in subsection (5).
- (5) The purposes are—
- (a) the person's compliance with section 18(1), or
 - (b) where the person's failure to comply with section 18(1) has affected the condition of any land, restoring the land to its condition before the failure.

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- (6) An enforcement notice may require in particular—
- (a) the alteration or removal of any buildings or works,
 - (b) the carrying out of any building or other operations,
 - (c) any activity on the land concerned not to be carried out except to the extent specified in the notice.
- (7) An enforcement notice must specify the period for compliance with the notice, and may specify different periods within which different steps are required to be taken or (as the case may be) different activities are required to cease.
- (8) In this Part, an “enforcement notice” means a written notice given by the enforcement authority under subsection (1) or (2).

PROSPECTIVE

40 Withdrawal or variation of enforcement notice

- (1) The enforcement authority may—
- (a) withdraw an enforcement notice given by it, or
 - (b) waive or relax any requirement of such a notice.
- (2) The enforcement authority may exercise the power under subsection (1) in relation to an enforcement notice regardless of whether the notice has taken effect.
- (3) Immediately after exercising a power under subsection (1) in relation to an enforcement notice, the enforcement authority must give notice of—
- (a) the withdrawal of the notice, or (as the case may be)
 - (b) the waiver or relaxation of any requirement of the notice,
- to each person to whom the notice was given.
- (4) The withdrawal of an enforcement notice by the enforcement authority under subsection (1) does not affect the power of the enforcement authority to issue a further enforcement notice.

41 Appeals against enforcement notice

- (1) The Scottish Ministers may by regulations make provision for or about appeals against enforcement notices.
- (2) Regulations under subsection (1) may in particular include 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.

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(3) Regulations under subsection (1) may modify any enactment (including this Act).

Commencement Information

I7 S. 41 in force at 16.1.2023 by S.S.I. 2022/376, reg. 2, sch.

PROSPECTIVE

42 Offence of failing to comply with enforcement notice

- (1) If at any time after the end of the period for compliance with an enforcement notice—
 - (a) any step required by the notice has not been taken, or
 - (b) any activity required by the notice to cease is being carried on,the person to whom the notice was given commits an offence.
- (2) A person who commits an offence under subsection (1) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum,
 - (b) on conviction on indictment, to a fine.
- (3) It is a defence for a person charged with an offence under subsection (1) to show that—
 - (a) the person did everything that the person could reasonably be expected to do to secure compliance with the enforcement notice,
 - (b) the person had a reasonable excuse for failing to ensure that the step concerned was taken or (as the case may be) for failing to ensure the cessation of the carrying on of the activity concerned.
- (4) In this Part, references to the period for compliance with an enforcement notice are references to—
 - (a) the period specified in the notice for compliance with it in accordance with section 39(7), or
 - (b) such extended period as the enforcement authority may allow for compliance with the notice.
- (5) For the purposes of subsection (4)(a), where an enforcement notice specifies that different periods apply to different steps or activities, references to the period for compliance with an enforcement notice, in relation to any step or activity, are references to the period at the end of which the step is required to have been taken or the activity is required to have ceased.

PROSPECTIVE

43 Execution and cost of works required by enforcement notice

- (1) This section applies if at any time after the end of the period for compliance with an enforcement notice any step required by the notice has not been taken.
- (2) The enforcement authority may—

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 2. (See end of Document for details)

- (a) enter the land in relation to which the steps were required to be taken and take those steps, and
 - (b) recover from the person to whom the enforcement notice was given any expenses reasonably incurred by the enforcement authority in doing so.
- (3) In determining the amount of expenses that may be recovered by it under subsection (2), the enforcement authority may include in that amount such proportion of its administrative expenses as it considers appropriate.
- (4) When taking steps under subsection (2), the enforcement authority may sell any materials removed by it from the land unless those materials are claimed by the owner of the materials within 3 days of their removal.
- (5) After any such sale the enforcement authority must pay the proceeds to the owner of the materials less the expenses recoverable by it from the owner of the materials.
- (6) A person commits an offence if the person, without reasonable excuse, intentionally obstructs the enforcement authority in exercising its powers under subsection (2).
- (7) A person who commits an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

PROSPECTIVE

Heat network consent and planning permission

44 Deemed planning permission on Scottish Ministers granting or modifying heat network consent

- (1) Section 57 of the Town and Country Planning (Scotland) Act 1997 (development with government authorisation) is amended as follows.
- (2) After subsection (2B) insert—
- “(2C) On granting or modifying a heat network consent under section 23(1)(a) or 26(1), or pursuant to an appeal under section 31(2), of the Heat Networks (Scotland) Act 2021, the Scottish Ministers may give a direction for planning permission to be deemed to be granted, subject to such conditions (if any) as may be specified in the direction, for—
- (a) so much of the operation or change of use to which the consent relates as constitutes development,
 - (b) any development ancillary to the operation or change of use to which the consent relates.
- (2D) On modifying a heat network consent under section 26(1), or pursuant to an appeal under section 31(2), of the Heat Networks (Scotland) Act 2021, the Scottish Ministers may give one or more of the following directions (instead of, or as well as, a direction under subsection (2C))—
- (a) a direction for an existing planning permission deemed to be granted by virtue of a direction under subsection (2C) (whenever made) to be varied as specified in the direction,

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 2. (See end of Document for details)*

- (b) a direction for any conditions subject to which any such existing planning permission was deemed to be granted to be varied as specified in the direction,
- (c) a direction for any consent, agreement or approval given in respect of a condition subject to which any such existing planning permission was deemed to be granted to be treated as given in respect of a condition subject to which a new or varied planning permission is deemed to be granted.”.

45 Combining applications to local authorities for heat network consent and planning permission

- (1) This section applies where—
 - (a) a person who proposes to construct a heat network must first make both—
 - (i) a heat network consent application in relation the construction of the heat network, and
 - (ii) an application for planning permission in respect of the construction of the heat network, and
 - (b) both applications must be made to a local authority as the appropriate consent authority (in relation to heat network consent application) and the planning authority (in relation to the application for planning permission).
- (2) Both of the applications are to be considered by the local authority together but this is subject to any provision made in any regulations under subsection (3).
- (3) The Scottish Ministers may by regulations—
 - (a) provide that such procedural provisions of this Act as are specified in the regulations are not to apply to the person's heat network consent application,
 - (b) provide that such procedural provisions of, or made under, the Town and Country Planning (Scotland) Act 1997 as are specified in the regulations are to apply to the heat network consent application instead,
 - (c) modify provisions of, or made under, the Town and Country Planning (Scotland) Act 1997 as they apply to the heat network consent application by virtue of paragraph (b).
- (4) In this section—
 - “planning authority” has the meaning given in section 1 of the Town and Country Planning (Scotland) Act 1997,
 - “planning permission” means planning permission under Part 3 of that Act,
 - “procedural provisions” means any provisions for or in connection with the procedure for determining an application.

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 2.