

This document relates to the Heat Networks (Scotland) Bill (SP Bill 64) as introduced in the Scottish Parliament on 2 March 2020

# Heat Networks (Scotland) Bill

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## Explanatory Notes

### Introduction

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Heat Networks (Scotland) Bill (Scotland) Bill, introduced in the Scottish Parliament on 2 March 2020.
2. The following other accompanying documents are published separately:
  - a Financial Memorandum (SP Bill 64–FM);
  - a Policy Memorandum (SP Bill 64–PM);
  - Statements on Legislative Competence made by the Presiding Officer and the Scottish Government (SP Bill 64–LC).
3. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### The Bill

5. The Bill is comprised of 85 sections in eight Parts. In summary, these are:

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- Part 1: Heat Networks Licences;
- Part 2: Heat Network Consent;
- Part 3: Heat Network Zones;
- Part 4: Heat Network Zone Permits;
- Part 5: Building Assessment Reports;
- Part 6: Powers of Licence Holders;
- Part 7: Key Heat Network Assets; and
- Part 8: Miscellaneous and General.

## Part 1 – Heat networks licences

### Section 1: Meaning of “heat network”

6. Subsection (1) defines a “heat network” for the purposes of this Bill as a district heat network or a communal heating system and makes clear that the source of production of thermal energy forms part of the heat network (subsection (4)).

7. Subsection (2) provides that district heat network is a network by which thermal energy is distributed from one or more sources of production to more than one building. Subsection (3) provides that 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.

8. Subsections (5) and (6) provide definitions of “thermal energy” and “building unit”.

9. Subsection (7) allows the Scottish Ministers by regulations to modify or further define the meaning of “heat network”, “district heat network” or “communal heating system”.

### Section 2: Requirement for heat networks licence

10. Section 2(1) prohibits any person from supplying thermal energy to a building through a heat network unless the person holds a “heat networks licence” (defined in subsection (4)). A person who contravenes subsection (1) commits an offence (subsection (2)). Subsection (3) provides that a

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person who commits such an offence can be prosecuted either on summary complaint or on indictment and is liable to a fine, which on summary conviction may not exceed the statutory maximum. The statutory maximum' is set out in the Criminal Procedure (Scotland) Act 1995, as amended, and is currently set at £10,000 (see section 225(8) of that Act, as read with the definition of "statutory maximum" in schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010).

### Section 3: Exemptions from requirement for heat networks licence

11. Subsection (1) allows the Scottish Ministers by regulations to make exemptions from the requirement to hold a heat networks licence in certain circumstances or in relation to heat networks of a certain description.

12. Under subsection (2) the Scottish Ministers can direct that the requirement to hold a heat networks licence does not apply to a particular person, to persons of a specified description, or to heat networks of a specified description. A direction made by the Scottish Ministers must be issued in writing, published in such manner as they consider appropriate (subsection (3)) and may be revised or revoked (subsection (5)). An exemption may be granted (by regulations or by a direction) either indefinitely, or for a specified period, and either unconditionally, or subject to conditions (subsection (4)).

13. Regulations or a direction granted under this section may make different provision for different areas (subsection (7)).

### **Section 4: Meaning of "licensing authority"**

14. This section defines "licensing authority" as the Scottish Ministers or such other persons as the Scottish Ministers may designate as the licensing authority by regulations.

### **Section 5: Heat networks licence applications**

15. Any person may apply for a heat networks licence (subsection (1)). It is envisaged that applicants will be prospective heat network operators intending to supply thermal energy by means of a heat network.

16. Subsection (3) provides that the licensing authority may grant an application only if it is satisfied that the applicant has the ability to perform the activities authorised by the licence and, when making such an

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assessment, it must have regard to the matters set out in subsection (4), namely the applicant's knowledge, expertise and experience, the applicant's ability to operate a heat network in a manner that minimises greenhouse gases and such other matters as may be specified by the Scottish Ministers by regulations.

17. The licensing authority must issue the licence to the applicant as soon as practicable after it is granted (subsection (5)).

18. Subsection (6) provides that in the event that the authority proposes to refuse a licence application, it must notify the applicant of its intention and state the reasons why it proposes to refuse the application. The notice must specify the period within which the applicant may make representations to the licensing authority regarding the proposed refusal and such period must be no less than 28 days from the date on which notice was given.

19. The authority must also notify the applicant of its decision to refuse an application as soon as is practicable (subsection (7)).

## **Section 6: Heat networks licence standard conditions**

20. Subsection (1) allows the licensing authority to determine the conditions of a licence, which are referred to as the "standard conditions" (subsection (2)).

21. Subsection (3) provides that the standard conditions may include conditions that apply to all licences or to licences of a particular description. Standard conditions may include conditions that do not apply to a particular heat networks licence or a heat networks licence of a particular description and may provide for the coming into effect and suspension of the standard conditions in such manner and in such circumstances as specified in the standard conditions.

22. Each heat networks licence incorporates the standard conditions that are relevant to it (subsection (4)). However, the licensing authority may exclude or modify any of the standard conditions on a case by case basis (subsection (5)). Before making any modification, notice of the proposed modification must be given to the applicant stating the reasons why the modification is proposed. The notice must also specify the period, being no

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less than 28 days from the date on which the notice was given, within which the applicant may make representations to the licensing authority (subsections (6) and (7)).

23. The licensing authority must have regard to the matters set out in subsection (8) when determining the standard conditions namely, the interests of users of thermal energy supplied by means of a heat network, the reduction of greenhouse gas emissions from the operation of heat networks, the use by heat networks of thermal energy generated from renewable sources and waste heat or cold (defined under subsection (9)).

### **Section 7: Heat networks licence standard conditions: supplementary**

24. The licensing authority must publish the standard conditions (subsection (1)). The licensing authority must review the standard conditions from time to time and may modify the standard conditions and make modifications to the conditions of any heat network licence the licensing authority considers appropriate as a result of the modification of the standard conditions (subsection (2)).

25. Before the licensing authority makes any modifications to the standard conditions or the conditions of a heat networks licence, it must give notice of the proposed modification to every licence holder that would be affected by the modification and publish the notice. The notice must state the reasons why the modification is proposed. The notice must also specify the period, being no less than 28 days from the date on which the notice was given, within which the applicant may make representations to the licensing authority (subsection (4)). Where the standard conditions are modified, the licensing authority must publish the standard conditions as modified (subsection (5)).

### **Section 8: Heat networks licence special conditions**

26. The licensing authority may include in a heat networks licence any special conditions, in addition to the standard conditions, it considers appropriate. The licensing authority may provide in a licence that a special condition has effect, ceases to have effect or may be modified, as it considers appropriate.

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### Section 9: Period of effect of heat networks licence

27. Section 9 provides that a heat networks licence has effect on the date specified in the licence and will continue to have effect until the licence is revoked by the licensing authority or is surrendered by the person holding the licence in accordance with the conditions of the licence.

### **Section 10: Modification of heat networks licence**

28. The licensing authority may modify a heat networks licence following an application by a licence holder, or on the licensing authority's own initiative (subsections (1) and (2)). Before modifying a heat networks licence, the licensing authority must give notice to the licence holder of the proposed modification (subsection (4)). The notice must state the reasons why the modification is proposed. The notice must also specify the period, being no less than 28 days from the date on which the notice was given, within which the applicant may make representations to the licensing authority (subsection (5)). Where a licence is modified, a copy of the modified licence should be sent to the licence holder (subsection (6)).

29. Under section 7, the licensing authority are able to modify the conditions of a heat networks licence that it considers appropriate in consequence of any changes to the standard conditions. Section 10 does not apply to such modifications.

### **Section 11: Revocation of heat networks licence**

30. Subsection (1) provides that the licensing authority may revoke a licence issued by it if the licence holder no longer has the ability to perform the activities authorised by the licence, or has failed to comply with a condition of the licence.

31. Subsection (2) provides that in deciding whether a licence holder no longer has the ability to perform the activities authorised by the licence, the licensing authority must have regard to the applicant's knowledge, expertise and experience, the applicant's ability to operate a heat network in a manner that minimises greenhouse gases and such other matters as may be specified by the Scottish Ministers by regulations. It does not matter whether or not the licence holder has failed to comply with a terms of the licence.

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32. The licensing authority may not revoke a licence unless satisfied it is reasonable to do so having regard to the terms of the licence, the responsibilities of the licence holder to final customers and any other matters the authority considers relevant (subsection (3)). Before revoking a heat networks licence, the licensing authority must give notice to the licence holder of the proposed revocation (subsection (4)). The notice must state the reasons why the revocation is proposed. The notice must also specify the period, being no less than 28 days from the date on which the notice was given, within which the applicant may make representations to the licensing authority (subsection (5)).

33. The licensing authority may revoke a heat networks licence by giving notice of revocation to the licence holder specifying the reasons for revocation and the date from which the revocation is to have effect (subsections (6) and (7)).

## **Section 12: Form and manner etc. of applications under Part 1**

34. The Scottish Ministers may determine the form and manner in which a heat networks licence application and a heat networks modification application must be made as well as the information that must be included with these applications (subsection (1)). Any determination must be published (subsection (2)). The licensing authority does not have to consider a heat networks licence application (or licence modification application) that does not comply with a requirement determined by the Scottish Ministers (subsection (3)).

### Section 13: Regulations about determining applications under Part 1

35. The Scottish Ministers may by regulations make provision about the procedure to be followed by the licensing authority in determining a heat networks licence application (or licence application modification) as well as the notification and publication of applications and determinations made in relation to it.

## **Section 14: Guidance for licensing authority**

36. The Scottish Ministers may issue guidance to the licensing authority about the exercise of its functions under Part 1 of the Bill, including guidance on how it may assess a licence holder's ability to perform the activities authorised by the licence. This is intended to provide best practice

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advice in relation to the new provisions and regulations. Any such guidance must be published by the Scottish Ministers in a manner they consider appropriate.

#### Section 15: Register of heat networks licences

37. Subsection (1) provides that the licensing authority must prepare and maintain a register of heat network licences. The register must contain prescribed information (specified in subsection (2)) relating to heat networks licences, including the name and address of the licence holder, the terms of the licence, the date on which the licence took effect, the date on which the licence ceased to have effect (if revoked or surrendered) and such other information as the Scottish Ministers may specify by regulations (subsection (3)). The licensing authority must make arrangements to enable members of the public to inspect the register free of charge (subsection (4)).

#### **Section 16: Interpretation of Part 1**

38. Section 16 provides various definitions for terms used in Part 1 of the Bill.

### Part 2 – Heat network consent

#### **Section 17: Requirement for heat network consent**

39. A person must not construct or operate a heat network without a heat network consent (subsection (1)).

40. References to the construction of a heat network in Part 2 include references to the construction of an extension to an existing heat network (subsection (2)(a)). The term “heat network consent” is defined in subsection (2)(b).

#### **Section 18: Exemptions from requirement for heat network consent**

41. Subsection (1) enables the Scottish Ministers by regulations to create exemptions to the requirement for a heat network consent in specified circumstances and in relation to heat networks of a specified description.

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42. The Scottish Ministers may grant exemptions either indefinitely, or for a specified period, and either unconditionally, or subject to conditions (subsection (2)) and may make different provision for different areas (subsection (3)).

### **Section 19: Heat network consent applications**

43. A person may apply to the Scottish Ministers for a heat network consent (subsection (1)). It is envisaged that not all persons responsible for the construction of a heat network will go on to operate the network and conversely, not all heat network operators will be involved in heat network construction. Subsection (3) recognises this and allows for some heat network consent applications to be made either in relation to the construction of a heat network, the operation of a heat network, or both.

#### Section 20: Determining heat network consent applications

44. The Scottish Ministers may agree to a heat networks consent application and grant a heat network consent, or refuse the application (subsection (1)). Before granting the consent, the Scottish Ministers must be satisfied that each person the consent is granted to has, or will have, a right to use each listed asset of the heat network for the purpose of operating it (subsection (3)). Where the Scottish Ministers propose to refuse an application they must give the applicant notice of the proposed refusal. The notice must set out the reasons for the proposed refusal and specify a date by which the applicant may make representations to the Scottish Ministers (subsection (4)).

### **Section 21: Heat network consent conditions or limitation**

45. Section 21 makes provision for the Scottish Ministers to grant a heat network consent, subject to certain conditions or limitations as they consider appropriate.

#### Section 22: Transfer of heat network consent

46. The transfer of a heat network consent is permitted with the agreement of the Scottish Ministers (subsection (1)). The Scottish Ministers may agree to the transfer of the consent, subject to the modification of any condition or limitation of the consent, or may require additional conditions or limitations to be included in the terms of the consent (subsection (2)).

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### **Section 23: Modification of heat network consent**

47. The Scottish Ministers may modify a heat network consent (subsection (1)) either following the application of the consent holder or on their own initiative (subsection (2)). An application by a consent holder is to be referred to as a “heat network consent modification application” (subsection (3)). If the Scottish Ministers decide to modify a heat network consent a copy of the modified consent must be given to the consent holder (subsection (4)).

### **Section 24: Revocation of heat network consent**

48. The Scottish Ministers may revoke a heat network consent in such circumstances and manner as may be provided for by them in regulations.

### **Section 25: Compensation on modification or revocation of heat network consent**

49. Subsection (1) provides that the Scottish Ministers may by regulations make provision for the payment of compensation to the holder of a heat network consent if a consent is modified or revoked. The regulation making power allows the Scottish Ministers to make provision for the circumstances in which compensation is payable, the calculation of compensation, the procedure for claiming compensation, and the review and appeal of decisions made under the regulations (subsection (2)).

### **Section 26: Form and manner etc. of applications under Part 2**

50. The Scottish Ministers can determine the form and manner in which a “relevant application” can be made as well as the information that is to be included in the application (subsection (1)) and must publish the determination in such manner as they consider appropriate (subsection (2)). “Relevant applications” means a heat network consent application, a heat network consent modification application, or an application for a consent, agreement or approval required by a condition of a heat network consent. A relevant application that does not conform to the requirements determined by the Scottish Ministers does not need to be considered by them.

### **Section 27: Regulations about determining applications under Part 2**

51. The Scottish Ministers may by regulations make provision about the procedure to be followed in determining a relevant application and the

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publication and notification of the application and the determination made in relation to it (subsection (1)). Regulations may also make provision regarding the consideration the Scottish Ministers must give, before agreeing to a relevant application, to the likely environmental effects of the construction or the operation of the heat network to which the application relates (subsection (2)).

### **Section 28: Meaning of “enforcement authority”**

52. This section defines “enforcement authority” as the Scottish Ministers or such other person as the Scottish Ministers designate by regulations. 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.

### **Section 29: Power to require information about activities on land**

53. If it appears to the enforcement authority that a heat network is being, or has been constructed or operated on land without a heat network consent, or there has been a failure to comply with a condition or limitation of a consent, the enforcement authority may issue a contravention notice to the owner or occupier of the land or to other specified persons (subsections (1) and (2)).

54. A contravention notice may require the person to provide information in relation to operations or activities being carried out on the land, the use of the land and any matter relating to conditions to which a heat network consent is subject to (subsection (3)).

### **Section 30: Enforcement notice**

55. If it appears to the enforcement authority that a person (or another person acting on behalf of that person), is constructing (or has constructed) or is operating (or has operated) a heat network without a heat network consent, or there has been a failure to comply with a condition of a heat network consent, then the enforcement authority may give an enforcement notice to that person (subsections (1) and (2)).

56. An enforcement notice must specify the date on which it is to take effect (being no less than 28 days after the date on which the notice is

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given), set out the reasons why it has been issued, and specify the steps the person is required to take and/or the activities the enforcement authority requires to cease (subsections (3) and (4)). The enforcement notice may require the alteration or removal of buildings or works, the carrying out of building or other operations, or prohibit certain activities (subsection (6)). It should specify the period for compliance and may require different steps to be taken over different periods (subsection (7)).

### **Section 31: Withdrawal or variation of enforcement notice**

57. This section makes provision for the enforcement authority to withdraw an enforcement notice, or waive or relax any requirement of such a notice, whether or not the notice has taken effect (subsections (1) and (2)). If the enforcement authority decides to withdraw, waive or relax a requirement of notice, it must immediately inform each person to whom notice was given (subsection (3)). The withdrawal of an enforcement notice will not prevent the authority from issuing another one (subsection (4)).

### **Section 32: Appeals against enforcement notice**

58. Section 32 allows the Scottish Ministers by regulations to make provision for, or in connection with, appeals against enforcement notices. The regulations may provide detail on matters including who may appeal, the grounds of appeal, the appeal process and how the determination of appeals is to be notified.

### **Section 33: Offence of failing to comply with enforcement notice**

59. Failure to comply with an enforcement notice within the period of compliance is an offence (subsection (1)). A person who commits an offence under subsection (1) can be prosecuted either on summary complaint or on indictment and is liable to a fine, which on summary conviction may not exceed the statutory maximum (£10,000), but it is a defence for a person charged with such an offence to show that they did everything they could reasonably be expected to do to comply (subsection (3)). The period of compliance is the period specified in the notice in accordance with section 30(7), or such other extended period as the enforcement authority may allow (subsection (4)).

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**Section 34: Execution and cost of works required by enforcement notice**

60. If at any time after the end of a period for compliance of an enforcement notice, any step required by the notice has not been taken, the enforcement authority may enter the land to take the necessary steps and may recover the expenses reasonably incurred by them in doing so from the person to whom the notice was given (subsections (1) and (2)). Subsection (3) provides that any expenses recovered under subsection (2) may include appropriate administrative expenses.

61. When taking steps under subsection (2), the enforcement authority may sell any materials removed from the land unless they are claimed by the owner within 3 days of removal (subsection (4)). The enforcement authority must pay the proceeds of any sale, less recoverable expenses, to the owner (subsection (5)).

62. Subsection (6) creates an offence if a person, without reasonable excuse, intentionally obstructs the enforcement authority in exercising its powers under subsection (2). A person who commits such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Section 35: Deemed planning permission on granting or modifying heat network consent**

63. Section 35 of the Bill amends section 57 of the Town and Country Planning (Scotland) Act 1997 and inserts new sections (2C) and (2D). 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.

64. Subsection (2D) provides that on modifying a heat network consent under section 23(1) of the 2021 Act, Scottish Ministers may give a direction(s) (instead of, or as well as a direction under subsection (2C)) to vary an existing planning permission deemed to be granted under

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

## **Section 36: Interpretation of Part 2**

65. Section 36 defines “enforcement notice” for the purpose of Part 2 of the Bill.

## **Part 3 – Heat network zones**

### **Section 37: Power to designate heat network zone**

66. Section 37 provides that a local authority (within its area) may designate a “heat network zone” being an area that is particularly suitable for the construction and operation of a heat network, in accordance with section 39, or pursuant to a direction by the Scottish Ministers under section 44(1)(a) or (2). The Scottish Ministers may designate an area in accordance with section 40 (subsection (2)). Subsection (3) defines a “heat network zone” as an area designated by a local authority or the Scottish Ministers.

### **Section 38: Duty on local authority to review heat network zoning in area**

67. 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 (subsection (1)). Subsection (2) provides that the first review must be carried out as soon as practicable after the day on which section 38 comes into force and each subsequent review by no later than 5 years after the local authority last published a statement setting out its decision under subsection (5).

68. Following a review, the local authority must decide either to proceed to considering whether to designate the area as a heat network zone, not to so proceed, or to request that the Scottish Ministers consider whether to designate the area (subsection (3)).

69. A local authority may not make a request to the Scottish Ministers to designate an area as a heat network zone if the area is subject to a direction under section 44. Under section 44, the Scottish Ministers may direct a local authority to designate or vary a heat network zone in its area.

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70. A local authority must, after each review, publish a statement setting out its decision (and its reasons) in relation to each review (subsection (5)). The Scottish Ministers may by regulations specify the information that must be included in a statement, how it is to be published, the persons to whom copies are to be sent and such other requirements as they consider appropriate (subsection (6)).

### **Section 39: Designation of heat network zone by local authority**

71. Subsection (1) sets out the list of matters that a local authority must have regard to when considering whether to designate an area as a heat network zone. These are: the potential for a heat network to use thermal energy from renewable sources or waste heat, buildings that could act as anchor loads, existing infrastructure in the area that could assist in the development of a heat network and any building assessment report received under section 54. The Scottish Ministers may also specify further matters by regulations.

72. Prior to designating a heat network zone, subsection (2) imposes a duty on local authorities to consult such persons and in such manner as the Scottish Ministers may specify by regulations.

73. Having regard to the matters set out in subsection (1) and having complied with the requirements under subsection (2), a local authority may designate an area as a heat network zone or decide not to (subsection (3)).

74. If a local authority chooses to designate an area as a heat network zone, subsection (4) requires the local authority to identify the area in a document with reference to a map, specify in the document the day on which the designation comes into effect and publish the document in a manner as the Scottish Ministers may specify by regulations.

### **Section 40: Designation of heat network zone by Scottish Ministers**

75. Where the Scottish Ministers are considering whether to designate an area within a local authority area as a heat network zone following a request made by a local authority or on the Scottish Ministers own initiative, they must have regard to the matters referred to in section 39(1) and must consult with each local authority in whose area the proposed zone would

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be situated as well as such other persons as they consider appropriate (subsection (3)).

76. Subsection (4) provides that the Scottish Ministers may designate the area as a heat network zone or decide not to. The Scottish Ministers must identify the area in a document with reference to a map, specify in the document the day on which the designation comes into effect and publish the document in a manner they consider appropriate (subsection (5)).

### **Section 41: Variation of heat network zone by local authority**

77. Subsection (1) enables a local authority to vary a heat network zone designated by them. The local authority must have regard to the matters referred to in section 39(1) and consult such persons in such manner as the Scottish Ministers specify by regulations (subsections (2) and (3)). A local authority may decide to vary the heat network zone, or decide not to (subsection (4)). If the local authority varies the heat network zone, it must specify in a document the day on which the variation takes effect, identify the varied zone on a map and publish the document (subsection (5)).

### **Section 42: Variation of heat network zone by Scottish Ministers**

78. Subsection (1) provides that the Scottish Ministers may vary a heat network zone following a request by a local authority or on the Scottish Ministers' own initiative, whether or not the heat network zone was designated by a local authority or the Scottish Ministers (subsection (2)).

79. In deciding whether to vary a heat network zone, the Scottish Ministers must have regard to the matters referred to in section 39(1) and consult with each local authority in whose area the proposed zone would be situated as well as such other persons as they consider appropriate (subsections (3) and (4)). The Scottish Ministers may decide to vary the heat network zone, or decide not to (subsection (5)). If they decide to vary the zone, they must identify the area as varied in a document with reference to a map, specify in the document the day on which the variation comes into effect and publish the document in a manner they consider appropriate (subsection (6)).

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### **Section 43: Two or more local authorities acting jointly in relation to heat network zone**

80. Subsection (1) provides that where an area falls within the area of more than one local authority and has the potential to be designated as a heat network zone, each of the local authorities in whose area the heat network zone would be situated may act jointly to consider whether to designate the area, or can request that the Scottish Ministers consider whether to designate the area as a heat network zone.

81. Subsection (2) provides that where two or more local authorities have acted jointly to designate a heat network zone, they may act jointly to vary the zone.

82. Where two or more authorities act jointly under this section the references (in the sections noted below) 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: sections 37 (power to designate heat network zone), 39 (designation of a heat network zone by local authority), 40 (designation of heat network zone by Scottish Ministers), 41 (variation of heat network zone by local authority) and 42 (variation of heat network zone by Scottish Ministers).

### **Section 44: Ministerial power of direction to designate or vary heat network zone**

83. Subsection (1) allows the Scottish Ministers to direct a local authority to designate or vary a heat network zone in its area. The Scottish Ministers may direct two or more local authorities to jointly designate or vary a heat network zone (subsections (2) to (4)). Before issuing a direction, the Scottish Ministers must have regard to the matters referred to in section 39(1) and consult with each local authority in whose area the proposed zone would be situated and such other persons as they consider appropriate (subsection (5)).

84. Where a local authority (or two or more local authorities) act jointly to designate or vary a heat network zone by a direction under this section the local authority (or local authorities) must identify the area as designated/varied in a document with reference to a map, specify in the document the day on which the designation/variation comes into effect and

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publish the document in a manner they consider appropriate (subsections (6) to (9)).

85. The Scottish Ministers may revise or revoke a direction under section 44.

### **Section 45: Guidance**

86. Subsection (1) provides that the Scottish Ministers may issue guidance about the designation and variation of heat network zones by local authorities. Local authorities must have regard to such guidance when exercising their functions under Part 3 (subsection (2)). The guidance may be addressed to one or more local authorities or to all local authorities and must be published in a manner the Scottish Ministers consider appropriate (subsections (3) and (4)).

## **Part 4 – Heat network zone permits**

### **Section 46: Meaning of “permit authority”**

87. This section defines “permit authority” as the Scottish Ministers or such other person as the Scottish Ministers may by regulations designate.

### **Section 47: Requirement for heat network zone permit**

88. Subsection (1) provides that the permit authority may by notice provide that a person may only operate a heat network in a heat network zone if the person holds a heat network zone permit. A permit authority may also revoke a notice (subsection (3)). The permit authority may not issue or revoke a notice except in certain circumstances, or when certain procedures have not been complied with. These procedures and circumstances may be specified in regulations made by the Scottish Ministers (subsections (4) and (6)). The permit authority must publish a notice and give notice of the revocation in such form and manner as may be specified (subsection (5)).

### **Section 48: Applications for heat network zone permit**

89. Subsection (1) allows the Scottish Ministers by regulations to make provision for inviting, making and determining applications for a heat network zone permit. Subsection (2) sets out what regulations under subsection (1) may make provision for, including how the permit authority is to invite applications for permits, the persons who may apply for a permit

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and the form and manner of making an application. The regulations may make different provision for different heat network zones (subsection (3)).

Section 49: Heat network zone permit: duration

90. Section 49 provides that a heat network zone permit continues to have effect for the period specified in it unless it is revoked, in accordance with section 50.

### **Section 50: Heat network zone permit: revocation**

91. Subsection (1) allows the permit authority to revoke a heat network zone permit if the heat networks licence held by the person is revoked, or a heat network consent in relation to the operation of a heat network situated in the heat network zone to which the permit relates, is revoked.

92. Before revoking a heat network zone permit the licensing authority must give notice to the person holding the permit (subsection (2)). The notice must state the reasons why the revocation is proposed and specify the period (to be no less than 28 days from the date from the date on which the notice was given) within which the person may make representations to the permit authority (subsection (3)).

### **Section 51: Enforcement of requirement for heat network zone permit**

93. Subsection (1) provides that a person who operates a heat network in a heat network zone, without a heat network zone permit, commits an offence. Subsection (2) provides that this offence does not apply to a person operating a heat network in a heat network zone if the person is entitled to operate the zone immediately before the day on which the notice relating to the designated heat network zone takes effect. Subsection (4) sets out the criminal penalties applicable if an offence is committed under this section. Subsection (5) defines “designated heat network zone” for the purposes of the section.

## **Part 5 – Building assessment reports**

### **Section 52: Building assessment reports**

94. Subsection (1) requires that a “relevant person” must prepare building assessment reports in relation to each non-domestic building in which it has an interest. Section 56 defines “relevant person” for Part 5 of the Bill as

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Scottish public authorities and any other person the Scottish Ministers may specify by regulations. Subsection (4) provides that a relevant person with an interest in a building is a person with a right of ownership in the building or such other interest as the Scottish Ministers may specify by regulations.

95. In relation to each building covered by the report, the report must set out the potential for the non-domestic building to be supported by a heat network and the expected operational life span of the building's existing thermal energy system (subsection (2)).

96. The Scottish Ministers will specify by regulations the manner in which a building assessment report must be prepared and the intervals at which the report should be prepared (subsections (3)).

### **Section 53: Exemptions from duty to prepare building assessment reports**

97. Section 53 enables the Scottish Ministers by regulations to provide exemptions from the duty to prepare building assessment reports to specified relevant persons, persons of a specified description, for specified non-domestic buildings and non-domestic buildings of a specified description.

### **Section 54: Notification of building assessment reports**

98. Section 54 provides that a relevant person must send a copy of the building assessment report to each local authority in whose area the building to which the report relates is located and a copy to the Scottish Ministers, as soon as is reasonably practicable after the report has been prepared.

### **Section 55: Guidance about building assessment reports**

99. Subsection (1) provides that the Scottish Ministers must issue guidance about the preparation of building assessment reports. The guidance is to be published in a manner that the Scottish Ministers consider appropriate (subsection (3)) and relevant persons are to have regard to any guidance issued (subsection (2)).

### **Section 56: Interpretation of Part 5**

100. Section 56 provides definitions of various terms for the purposes of Part 5.

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## Part 6 – Powers of licence holders

### Compulsory acquisition of land

#### Section 57: Compulsory acquisition of land by licence holder

101. Subsection (1) allows a licence holder, with the authorisation of the Scottish Ministers, to compulsorily acquire land required in connection with the construction or operation of a heat network. This includes the power to acquire any interest or rights (including new rights) over land (subsection (2)).

102. Subsection (3) applies the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (the “1947 Act”) to the process of compulsory acquisition of land under this section. This means that licence holders will be able to compulsorily acquire land by way of a compulsory purchase order under procedures that currently exist under the 1947 Act.

103. Subsection (4) provides that the power to compulsorily acquire land does not apply 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.

### Wayleave rights

#### Section 58: Network wayleave right

104. A “network wayleave right” is defined in subsection (1) as the right for a licence holder to install and keep installed heat network apparatus on, under or over land and to enter on to the land to install, inspect, maintain, adjust, alter, repair, replace, upgrade, operate or remove the apparatus, for a purpose connected with the supply of thermal energy by means of a heat network by the licence holder.

105. A network wayleave right may be conferred on a licence holder by agreement or by a necessary wayleave (subsection (2)). Subsection (3) provides definitions of “heat network apparatus” and “necessary wayleave”.

#### Section 59: Acquisition of necessary wayleave

106. On an application by a licence holder, the Scottish Ministers may grant a necessary wayleave conferring a network wayleave right on a

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licence holder if it is considered necessary or expedient for a purpose connected with the supply of thermal energy by means of a heat network by the licence holder (subsection (1)).

107. A necessary wayleave has effect for the period specified in the necessary wayleave and is subject to terms and conditions considered by the Scottish Ministers to be appropriate (subsection (2)).

108. A licence holder may apply for a necessary wayleave only if notice has been given to the landowner setting out the request to enter into a wayleave agreement and one of the conditions set out in subsection (4) apply. The conditions are that the landowner refuses the request in writing, or agrees to enter into such an agreement but subject to terms and conditions to which the licence holder objects, or fails to agree before the end of the period of 28 days beginning with the day of the notice. There is a further condition where a person with an interest in land (other than the owner) does not agree to enter into or consent to the wayleave agreement. The notice must state the reasons for the proposed wayleave agreement and specify the period (which must not be less than 28 days from the date on which notice is given) within which the landowner must agree to enter into a wayleave agreement (subsection (5)).

109. The Scottish Ministers must allow representations to be made by the persons referred to in subsection (6) before granting a necessary wayleave.

110. The power conferred by subsection (1) does not apply in relation to land held (or used by, or on behalf of) a Minister of the Crown or department of the Government of the United Kingdom (subsection (7)).

## **Section 60: Persons bound by network wayleave rights**

111. Subsection (1) provides that where a network wayleave right is conferred on a licence holder by a necessary wayleave the network wayleave right binds any person who at any time is the owner or the occupier of the land.

112. Where a network wayleave right is conferred by a wayleave agreement it binds the owner of the land and will bind the occupier where the occupier is a party to the wayleave agreement, or agrees to be bound

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by it, or has acquired the right to occupy the land after the wayleave agreement was entered into from the owner of the land or another person bound by the network wayleave right (subsections (2) and (3)).

### **Section 61: Assignment of network wayleave rights**

113. Section 61 provides that a network wayleave right may be assigned by one licence holder to another, but a network wayleave right conferred by a necessary wayleave may only be assigned with the consent of the Scottish Ministers (subsections (1) and (2)).

114. A wayleave agreement is void to the extent it prevents or limits the assignment of the network wayleave right to another licence holder or makes the assignment of the network wayleave right to another licence holder subject to a condition (including a condition requiring the payment of money) (subsection (3)).

### **Section 62: Requirement to remove apparatus when notified**

115. If a network wayleave right expires, is terminated by the owner, or relates to heat network apparatus that ceases to be used for the purposes of a heat network, then the landowner may give written notice to the licence holder requesting that the apparatus be removed (subsections (1) and (2)). Subsections (3) to (5) set out the notice requirements under this section. Subsections (6) to (8) provide that the licence holder must comply with the notice given by no later than the period of 3 months beginning on the day notice is given, unless the licence holder applies for the grant of a necessary wayleave or compulsory purchaser order. If the application for the grant of a necessary wayleave is refused, or the compulsory purchase order is not confirmed, the licence holder must comply with the notice given within 3 months of the Scottish Ministers' decision.

### **Section 63: Compensation in connection with network wayleave rights**

116. Where a necessary wayleave is granted to a licence holder, the occupier and (where the occupier is not also the owner) the owner may recover compensation from the licence holder (subsection (1)) in respect of the grant. The licence holder is also liable to pay compensation in the event that the licence holder causes damage to the land (or something on the land), or disturbs a person's enjoyment of the land (subsection (2)), to the person affected.

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117. Subsection (3) provides that disputes about compensation are to be referred to and determined by the Lands Tribunal for Scotland. Subsection (4) sets out how sections of the Land Compensation (Scotland) Act 1963 apply.

118. The Scottish Ministers may make further provision about compensation by regulations (subsection (5)).

## **Other powers over land**

### **Section 64: Power to carry out survey**

119. Subsection (1) provides that a licence holder (or a person authorised by the licence holder) may carry out a survey for the purpose of determining whether the land is suitable for a purpose connected with the construction or operation of a heat network.

120. Before carrying out a survey the licence holder, or authorised person, must give the occupier of the land at least 14 days' notice (subsection (2)). A right to carry out a survey includes the right to search and bore the land in order to ascertain the nature of the subsoil and the presence of minerals or other matter (subsection (3)) provided the required notice is given.

121. Subsection (5) provides that a person carrying out a survey has a right of entry at all reasonable times and, at the request of the occupier or owner, must provide evidence of their authority to carry out the survey. The person must also ensure that as little disruption and damage is caused as possible and if damage is caused take reasonable steps to remedy the damage.

122. Subsection (6) makes it an offence to intentionally obstruct, without reasonable excuse, a licence holder (or person authorised by the licence holder) from exercising the power conferred under this section. 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 (subsection (7)).

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## **Section 65: Power to enter land to replace or repair apparatus**

123. Subsection (1) provides that a licence holder (or a person authorised by them) may exercise a network land right for a purpose connected with the supply of thermal energy by means of a heat network by the licence holder. A “network land right” is defined in subsection (2) and includes the right to install and repair existing apparatus situated on, under or over any land and carry out any works to the land that are necessary for or incidental to those works.

124. Subsection (3) provides that a network land right includes the power to fell, lop, or cut back the roots of any tree or shrub that is in close proximity to heat network apparatus that is being, or is to be installed in order to prevent the tree or shrub from obstructing or interfering with the installation, maintenance or operation of the apparatus or from constituting a danger to persons.

125. Subsection (4) sets out the requirements for notification of the intention to carry out a network land right, but does not apply in respect of emergency works (subsection (5)). Subsection (10) provides a definition of “emergency works” as works carried out by virtue of a network land right for the purposes of stopping anything already occurring, or preventing anything imminent from occurring that is likely to cause danger to persons or property and/or the interruption of supply provided by the licence holder, and includes any other works that are reasonable to carry out with those works. The requirements for notification of emergency works are provided for in subsection (6).

126. Subsection (7) provides that a person exercising a network land right has a right of entry to the land at all reasonable times and, at the request of the occupier or owner, must provide evidence of their authority to act. The person must also ensure that as little disruption and damage is caused as possible and if damage is caused take reasonable steps to remedy the damage.

127. Subsection (8) makes it an offence to intentionally obstruct, without reasonable excuse, a licence holder (or person authorised by the licence holder) from exercising the power conferred by subsection (1). A person who commits an offence under subsection (8) is liable on summary

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conviction to a fine not exceeding level 3 on the standard scale (subsection (9)).

### **Section 66: Restrictions on powers of licence holders**

128. If the carrying out of a survey or the exercise of a network land right is likely to obstruct or interfere with a statutory undertaker's undertaking, a licence holder may only exercise the powers conferred under this section with the consent of the statutory undertaker concerned, unless consent is unreasonably withheld. The Scottish Ministers will determine whether consent has been unreasonably withheld. Subsection (5) defines "statutory undertaker".

### **Section 67: Compensation for damage or disturbance**

129. Section 67 makes provisions in respect of compensation payable for damage or disturbance caused by a licence holder (or person authorised by the licence holder) in exercise of their power to enter on to land to carry out a survey or to replace or repair apparatus.

130. Subsection (2) provides that disputes about compensation are to be referred to and determined by the Lands Tribunal for Scotland. Subsection (3) sets out how sections of the Land Compensation (Scotland) Act 1963 apply.

131. The Scottish Ministers may make further provision about compensation by regulations (subsection (4)).

## **Interpretation**

### **Section 68: Interpretation of Part 6**

132. Section 68 provides various definitions for the terms used in Part 6.

## **Part 7 – key heat network assets**

### **Section 69: Identifying key heat network assets**

133. Section 69 applies to a heat network consent application or a heat network consent modification application relating to the construction and operation of a heat network, or the operation of a heat network.

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134. Subsection (2) provides that the application must include required information about the key assets of the heat network and required information about each person with an interest in the key assets. Determination of whether information is “required” is made in accordance with section 26(1).

135. Subsection (4) defines “key asset” for the purposes of Part 7 of the Bill, being any property that forms part of the heat network and is necessary to the operation of the heat network. It is for the Scottish Ministers to determine any question as to whether property forming part of a heat network is necessary to the operation of the heat network (subsection (6)).

136. The types of property that could constitute a key asset are land, building, apparatus and such other type of property as may be specified by the Scottish Ministers by regulations (subsection (5)).

## **Section 70: Preparing schedule of key heat network assets**

137. Following receipt of a heat network consent application, the Scottish Ministers must prepare a schedule of key assets (subsection (1)).

138. Where property relating to a heat network appears to the Scottish Ministers to be a key asset and the Scottish Ministers propose to include the details of the property in the schedule of key assets, before doing so they must give notice of the proposal to each person with an interest in the property and to such other persons that they consider appropriate (subsections (2) and (3)).

139. The notice must give reasons why the property appears to the Scottish Ministers to be a key asset, explain the consequences of the property becoming a listed asset and specify the period being no less than 28 days from the date on which the notice was given, within which the person may make representations to the Scottish Ministers (subsection (4)).

140. If the Scottish Ministers include details of a key asset in the schedule they must give notice of that fact to every person with an interest in a key asset (subsection (5)). When giving notice under subsection (3) or (5) the

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Scottish Ministers must do so in such form and manner as they may specify in regulations (subsection (6)).

## **Section 71: Notifying Scottish Ministers of changes in key network assets**

141. Subsection (1) provides that the operator of a heat network must notify the Scottish 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. Notice must include such information as the Scottish Ministers determine and such determination must be published (subsections (2) and (3)).

## **Section 72: Modifying schedule of key heat network assets**

142. If the Scottish Ministers consider that a listed asset ceases to be a key asset they must remove the details of the listed asset from the schedule of key assets. If the Scottish Ministers consider that the property that is not a listed asset has become a key asset, they must include details of the property in the schedule of key assets (subsections (1) and (2)).

143. Before including details of property in the schedule of heat network assets, the Scottish Ministers must give notice of the proposal to each person with an interest in the property and such other persons as the Scottish Ministers consider appropriate (subsection (3)). The notice must give reasons why the property appears to the Scottish Ministers to be a key asset, explain the consequences of the property becoming a listed asset and specify the period being no less than 28 days from the date on which the notice was given, within which the person may make representations to the Scottish Ministers (subsection (4)).

144. When giving notice under subsection (4) the Scottish Ministers must do so in such form and manner as they may specify in regulations (subsection (5)).

145. For the purposes of modifying the schedule of key heat network assets it does not matter whether the Scottish Ministers form the view that a modification is needed following receipt of a heat network consent modification application, following notification by an operator of a heat network or on their own initiative (subsection (7)).

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### **Section 73: Preparation and maintenance of schedule of key network assets: further provision**

146. Section 73 enables the Scottish Ministers by regulations to make further provision about the procedure to be followed in connection with the preparation and maintenance of the schedules of key network assets.

#### Section 74: Transfer schemes

147. Subsection (1) provides that where the former operator ceases (or is to cease) operating a heat network, the Scottish Ministers may make a transfer scheme. “Transfer scheme” is defined in subsection (2) as a transfer of the former operator’s rights relating to the use of the listed assets of the heat network, or conferral of other rights relating to the use of listed assets, to one or more relevant person. A transfer scheme may make incidental, supplementary, consequential or transitional provision in connection with the transfer or conferral of rights by the transfer scheme as the Scottish Ministers consider appropriate (subsection (3)).

148. By regulations, the Scottish Ministers may make further provision for, or in connection with, a transfer scheme (subsection (4)). Subsection (5) sets out what the regulations under subsection (4) may make provision for including the rights that may be transferred or conferred by the transfer scheme, the procedure applying in connection with the making of a transfer scheme and the effect of transfers or conferrals of rights.

149. Subsections (6) and (7) provides definitions of “relevant person” and “transferee” for this section.

### **Section 75: Compensation in connection with transfer schemes**

150. The Scottish Ministers may by regulations make provision about the payment of compensation in connection with a transfer scheme under section 74(1). Subsection (2) sets out what the regulations under subsection (1) may make provision for.

#### Section 76: Interpretation of Part 7

151. Section 76 provides various definitions for the terms used in Part 7 of the Bill.

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## Part 8 – Miscellaneous and general

### Fees

#### **Section 77: Fees for applications etc.**

152. Subsection (1) allows the Scottish Ministers by regulations to make provision for the payment of a charge or fee to specified persons in respect of matters set out in subsection (2) in relation to the performance of that person's function.

### General

#### **Section 78: Individual culpability where organisation commits offence**

153. Section 78 provides that where an offence is committed by a relevant organisation and the commission of the offence involves the consent or connivance or is attributable to neglect on the part of the responsible individual, the responsible individual also commits the offence. Subsections (3) and (4) provides definitions of "relevant person" and "responsible individual".

#### **Section 79: Crown application: general**

154. Subsection (1) provides that nothing in this Bill makes the Crown criminally liable, although this does not affect the criminal liability of persons in service of the Crown (subsection (3)).

#### **Section 80: Crown application: powers of entry**

155. Section 80 provides that a power of entry conferred under this Bill is exercisable in relation to Crown land specified in column 1 of the table only with the consent of the appropriate authority listed in column 2.

#### **Section 81: Regulations**

156. Subsection (1) provides that the powers of the Scottish Ministers to make regulations under this Bill includes the power to make different provision for different purposes. Subsections (2) and (3) specify the regulation making powers under the Bill that are subject to the affirmative parliamentary procedure, with all other regulation making powers subject to

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the negative procedure (save for regulations to commence provisions under section 84(2)).

#### Section 82: Ancillary provisions

157. Section 82 provides the Scottish Ministers with a regulation making power to make any incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purposes of, in connection with, or for giving full effect to this Bill or any provision made under it.

#### **Section 83: General Interpretation**

158. Section 83 sets out various definitions for terms used throughout the Bill.

#### Section 84: Commencement

159. Section 84 provides that this section and sections 79 to 83 and 85 come into force on the day after Royal Assent and that other provisions of the Act come into force on such day as the Scottish Ministers may by regulations appoint.

#### **Section 85: Short title**

160. Section 85 provides that the Bill, once enacted, will be known as the Heat Networks (Scotland) Act 2021.

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# Heat Networks (Scotland) Bill

## Explanatory Notes

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