

Heat Networks (Scotland) Bill

[As Amended At Stage 2]

Revised Explanatory Notes

Introduction

1. As required under Rule 9.7.8A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Heat Networks (Scotland) Bill (which was introduced in the Scottish Parliament on 2 March 2020) as amended at Stage 2. Text has been added or amended as necessary to reflect amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.
2. 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.
3. 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

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

5. 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)).

6. 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.

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

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

Section 2: Requirement for heat networks licence

9. 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 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

10. 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.

11. 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)).

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

Section 4: Meaning of “licensing authority”

13. 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

14. 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.

15. 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 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, the applicant’s ability to operate a heat network in a

manner which contributes to Scotland's fuel poverty targets, and such other matters as may be specified by the Scottish Ministers by regulations.

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

17. 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.

18. 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

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

20. 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.

21. 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 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)).

22. 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

23. 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)).

24. 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

25. 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.

Section 9: Period of effect of heat networks licence

26. 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

27. 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)).

28. 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

29. 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.

30. 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, the applicant's ability to operate a heat network in a manner that contributes to meeting Scotland's fuel poverty targets, 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.

31. 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)).

32. 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)).

33. Subsection (8) enables the Scottish Ministers by regulations to make further procedural provision in connection with revocation of a heat networks licence.

Section 11A: Appeals against revocation of heat networks licence

34. Section 11A enables the Scottish Ministers, by regulations, to set out an appeals process for appeals against revocation of heat networks licences.

35. Subsection (2) specifies a number of matters that such regulations may make provision for: who may appeal; grounds of appeal; how appeals are to be made; the information to be provided when making an appeal; the procedure for determining appeals; who is to determine appeals; the manner in which appeals are to be conducted; decisions that may be taken on appeal; and how the outcome of an appeal is to be notified.

36. Subsection (3) enables regulations under section 11A(1) to modify an enactment.

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

37. 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

38. 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

39. 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 advice in relation to the new provisions and regulations, and subsection (2A) requires the licensing authority to have regard to any such advice in exercising its functions. Any such guidance must be published by the Scottish Ministers in a manner they consider appropriate.

Section 15: Register of heat networks licences

40. 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

41. 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

42. A heat network may not be constructed or operated without a heat network consent (subsection (1)).

43. 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

44. 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.

45. 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 18A: Designation of local authority as consent authority for the area of the local authority

46. Section 18A enables the Scottish Ministers, by regulations, to designate a local authority as the consent authority for the area of the local authority. Where a local authority is designated as a consent authority for its area, it becomes responsible for the functions set out in Part 2, in relation to its area.

47. Subsection (2) allows any regulations made under section 18A(1) to modify Parts 2 or 7 of the Bill, as may be necessary as a result of designating a local authority as the consent authority for its area.

48. Subsection (3) requires the Scottish Ministers to consult the local authority, and any other persons considered appropriate, before laying regulations under section 18A.

Section 18B: Meaning of “appropriate consent authority”

49. Section 18B provides that for the purposes of Part 2, an “appropriate consent authority” is either: a local authority which has been designated as consent authority for its area by regulations under section 18A; or the Scottish Ministers in those areas where the local authority has not been designated as a consent authority for its area by regulations under section 18A.

Section 19: Heat network consent applications

50. A person may apply to the appropriate consent authority 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

51. The appropriate consent authority 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 appropriate consent authority 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 (defined in section 76) for the purpose of operating it (subsection (3)). Where the appropriate consent authority proposes to refuse an application, it 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 appropriate consent authority (subsection (4)).

Section 21: Heat network consent conditions or limitation

52. Section 21 makes provision for the appropriate consent authority to grant a heat network consent, subject to certain conditions or limitations it considers appropriate.

Section 22: Transfer of heat network consent

53. The transfer of a heat network consent is permitted with the agreement of the appropriate consent authority (subsection (1)). The appropriate consent authority 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)).

Section 23: Modification of heat network consent

54. The appropriate consent authority may modify a heat network consent (subsection (1)) either following the application of the consent holder or on its 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 appropriate consent authority decides 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

55. Section 24 enables the Scottish Ministers, by regulations, to set out the circumstances in which the appropriate consent authority may revoke a heat network consent.

56. Subsection (2) requires the appropriate consent authority to give notice to the consent holder of its intention to revoke a heat network consent prior to doing so. Subsection (3) then specifies that in notifying a consent holder, such a notice must include: the reasons for the proposed revocation; and the period in which consent holders will have to make representations against the proposed revocation.

57. Where an appropriate consent authority proceeds to revoke a consent, it may do so by notifying the consent holder (subsection (4)). Subsection (5) requires that where doing so, the consent authority must specify in its notice: the reason(s) for revocation; and the date from which revocation will take effect.

58. Subsection (7) enables the Scottish Ministers, by regulations, to make further procedural provision in relation to the revocation of heat network consent.

Section 24A: Appeals against notice of revocation given by local authority

59. Section 24A enables consent holders to appeal to the Scottish Ministers in the event that a local authority, in its capacity as the appropriate consent authority, proposes to revoke a heat network consent.

60. Where such an appeal is made, subsection (2) prevents a notice of revocation issued by a local authority (under section 24) from taking effect pending the final determination or withdrawal of the appeal.

61. Subsection (3) allows the Scottish Ministers, by regulations, to make provision about appeals under section 24A. Subsection (4) specifies that any such regulations may provide for: how appeals are to be made; matters that may be raised in appeals; the information to be provided when making appeals; the manner in which appeals are to be conducted and determined; the decisions that may be taken on appeal; and how the outcome of an appeal is to be notified.

62. Subsection (5) specifies that the reference in subsection (4)(e) to regulations under subsection (3) making provision about the manner in which appeals are to be conducted includes provision about the holding of inquiries or hearings. Subsection (6) specifies that the maximum penalty that may be applied to a person, by regulations under section 24A, is not to exceed a fine not more than level 1 on the standard scale or imprisonment for 3 months.

63. Subsection (7) enables regulations under section 24A to modify an enactment.

Section 24B: Call-in of heat network consent applications etc. by the Scottish Ministers

64. Section 24B provides that the Scottish Ministers may give directions requiring the heat network consent application, heat network consent modification application, or an application or consent etc. required by a heat network consent condition, be considered by them rather than a local authority as the appropriate consent authority. That is to say, the Scottish Ministers may require the “call-in” of such an application.

65. Subsection (3) specifies that a direction must be made in writing; may be withdrawn or modified by a subsequent direction; may be made to an individual local authority acting as appropriate consent authority, or to those acting as consent authorities generally; and can relate to specific applications or to applications of a particular type as set out in the direction.

66. Under subsection (4), local authorities must comply with any direction by referring an application, or applications to the Scottish Ministers. The Scottish Ministers may then determine the heat network consent application, apply conditions or limitations to a heat network consent, modify a heat network consent, or not consider the heat network consent application that does not comply with the requirements of an application under section 26 (subsection (5)).

67. Subsection (6) enables the Scottish Ministers, by regulations, to make further provision about directions and the determination of called-in applications. Subsection (7) specifies that any such regulations may provide for the notification and publication of notices to local authorities and the procedure for determining called-in applications.

68. Subsection (8) enables regulations under section 24B to modify an enactment.

Section 24C: Directions as to method of dealing with heat network consent applications etc. by local authorities

69. Section 24C enables the Scottish Ministers, by regulations, to make provision about how local authorities as appropriate consent authorities are to deal with heat network consent applications, heat network consent modification applications, and applications relating to conditions etc. required by a heat network consent condition, that they receive.

70. Subsection (3) specifies that any such regulations may include provision about: restricting the ability of local authorities to determine applications; requiring local authorities to advise the Scottish Ministers of any minded to position regarding an application; providing information to the Scottish Ministers about applications.

Section 24D: Appeals regarding applications for heat network consent etc. to local authorities

71. Section 24D enables appeals to be made to the Scottish Ministers about certain decisions or failures of a local authority as the appropriate consent authority. Subsection (1) specifies the decisions or failures that may be appealed to the Scottish Ministers.

72. Subsection (4) enables the Scottish Ministers, by regulations, to make further provision in connection with appeals. Subsection (5) specifies that any such regulations may provide for: how appeals are to be made; matters that may be raised in appeals; the information to be provided when making appeals; how appeals are to be conducted; procedure in connection with the determination of appeals; the decisions that may be taken on appeal; and how the outcome of an appeal is to be notified.

73. Subsection (6) specifies that the reference in subsection (5)(e) to regulations under subsection (4) making provision about the manner in which appeals are to be conducted includes provision about the holding of inquiries or hearings.

74. Subsection (7) specifies that the maximum penalty that may be provided for in regulations under section 24D shall not exceed a fine not more than level 1 on the standard scale or imprisonment for 3 months.

75. Subsection (8) enables regulations under section 24D to modify an enactment.

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

76. 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)).

77. Subsection (3) requires the Scottish Ministers to consult local authorities and any other persons they consider appropriate, prior to making regulations under section 25(1).

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

78. 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 the appropriate consent authority.

79. Subsection (1A) specifies that, in determining the information that is to be included in a relevant application, the Scottish Ministers can require certain types of application to include a “community engagement report”. Subsection (1B) clarifies that a “community engagement report” must set out the engagement that an applicant has undertaken with the relevant community, and how the views it has received have been accounted for.

80. Subsection (3A) requires the Scottish Ministers to consult local authorities and any other persons they consider appropriate, prior to making any determination under subsection (1).

Section 26A: Effective community engagement: guidance

81. Section 26A enables the Scottish Ministers to issue guidance about undertaking effective community engagement for the purpose of preparing a community engagement report (as defined in section 16(1B) where that is required in a heat network consent application, a heat network consent modification application or an application for consent etc. that is required by a heat network consent condition.

82. Subsection (2) specifies that any such guidance may include guidance on the persons considered to form a “community” (and who as such, must be engaged with). Subsection (2) also specifies that any such

guidance may also include provision as to what constitutes effective community engagement, which may include, but is not limited to, public consultation.

83. Subsection (3) requires the Scottish Ministers to consult those persons whom they consider to be appropriate before issuing any guidance under section 26A.

84. Subsection (4) requires the Scottish Ministers to publish any guidance developed under section 26A, while subsection (5) requires any affected applicants (determined under section 26(1)(b)) to have regard to the guidance issued.

85. Subsection (6) clarifies that the meaning of “community engagement report” under section 26A is the same as that used in section 26.

Section 27: Regulations about determining applications under Part 2

86. Subsection (1) provides that the Scottish Ministers may by regulations make provision about the procedure to be followed:

- in determining a heat network consent application, in determining a heat network consent modification application,
- in determining an application for consent, agreement or approval required by a condition of a heat network consent, or
- deciding whether to modify a heat network consent on the Scottish Ministers’ own initiative.

87. Subsection (1) also provides that those regulations may also make provision about the publication and notification of these applications and determinations made in relation to them and also in relation to the publication and notification of the decisions of the Scottish Ministers to modify a heat network consent on their own initiative. Regulations may also make provision regarding the consideration that the appropriate consent authority must give, before agreeing to these applications or deciding whether to modify a heat network consent, to the likely effect of the construction or the operation of the heat network concerned on the environment general and, in particular, the contribution towards Scotland’s climate change, and in contributing to meeting the fuel poverty targets (subsection (2)).

88. Subsection (3) requires the Scottish Ministers to consult local authorities, the Scottish Fuel Poverty Advisory Panel, and any other persons they consider appropriate, prior to laying regulations under section 27(1).

Section 27A: Applications and decisions under Part 2 where there is more than one appropriate consent authority

89. Section 27A enables the Scottish Ministers to make provision about how applications and decisions are to be made under Part 2, in the event that there is more than one appropriate consent authority in relation to an application or decision. Subsection (2) enables such regulations to modify the Bill and any regulations made under it.

Section 28: Meaning of “enforcement authority”

90. 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

91. 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)).

92. 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

93. 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)).

94. 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 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

95. 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

96. Section 32 allows the Scottish Ministers by regulations to make provision for, or in connection with, appeals against enforcement notices. The regulations may include provision on matters including who may appeal, the grounds of appeal, how the appeals process is to be conducted, the decisions which may be reached following appeal, and how the determination of appeals is to be notified.

Section 33: Offence of failing to comply with enforcement notice

97. 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)).

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

98. 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.

99. 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)).

100. 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

101. 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), 23(1) or on appeal under section 24D(2) 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.

102. Subsection (2D) provides that on modifying a heat network consent under section 23(1) or on appeal under section 24D(2) of the 2021 Act, Scottish Ministers may give directions (instead of, or as well as a direction under subsection (2C)) to vary an existing planning permission deemed to be granted under subsection (2C) and/or to vary conditions attached to an existing planning permission deemed to be granted.

Section 35A: Combining applications to local authorities for heat network consent and planning permission

103. Section 35A applies in the event that a person is applying to develop a heat network and must make application for planning permission and heat network consent to a local authority (in its capacity as a planning authority and appropriate consent authority, respectively).

104. Subsection (3) enables the Scottish Ministers, by regulations, to: dis-apply procedural provisions of the Heat Networks (Scotland) Act 2021 and/or the Town and Country Planning (Scotland) Act 1997; and modify the provisions of the 1997 Act as they relate to heat network consent applications. The purpose of these regulations is to streamline the application process under subsection (2) to minimise the administrative burden placed on applicants and local authorities.

Section 36: Interpretation of Part 2

105. 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

106. 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

107. 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).

108. 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)).

109. 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.

110. 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

111. 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, the potential for a heat network to contribute to Scotland's fuel poverty targets and any targets set by regulations under section 76B(1), and any building assessment report received under section 54. The Scottish Ministers may also specify further matters by regulations.

112. 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.

113. 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)).

114. 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

115. 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

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

116. 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

117. 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

118. 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)).

119. 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)).

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

120. 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.

121. 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.

122. 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

123. 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)).

124. 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

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

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

Section 45: Guidance

126. 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 (3B)). 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)).

127. Before issuing any guidance under section 45, the Scottish Ministers must first consult local authorities to whom the guidance is to be addressed, the Scottish Fuel Poverty Advisory Panel and any other persons they consider appropriate.

Part 4 – Heat Network Zone Permits

Section 46: Meaning of “permit authority”

128. 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

129. 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

130. 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 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

131. 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

132. Subsection (1) allows the permit authority to revoke a heat network zone permit if: the heat networks licence held by the person is revoked; 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; or in other circumstances which the Scottish Ministers may specify by regulations.

133. 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)).

134. Subsection (4) enables the Scottish Ministers, by regulations, to make further procedural provision in connection with revocation of a heat networks licence.

Section 50A: Appeals against revocation of heat network zone permit

135. Section 50A enables the Scottish Ministers, by regulations, to set out an appeals process for appeals against the revocation of heat networks zone permits.

136. Subsection (2) specifies a number of matters that such regulations may make provision for: who can appeal; the grounds of appeal; the way appeals are to be made; the information to be provided when making an appeal; procedure for determining appeals; who may determine appeals; and how the outcome of an appeal is to be notified.

137. Subsection (3) enables regulations under section 50A to modify an enactment.

Section 50B: Compensation on revocation of heat network zone permit

138. Subsection (1) provides that the Scottish Ministers may by regulations make provision for the payment of compensation to the holder of a heat network zone permit if a permit is 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 51: Enforcement of requirement for heat network zone permit

139. 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

140. 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 Scottish public authorities and any other person the Scottish Ministers may

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

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.

141. 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)).

142. 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

143. 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

144. 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

145. 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

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

Part 6 – Powers Of Licence Holders

Compulsory acquisition of land

Section 57: Compulsory acquisition of land by licence holder

147. Subsection (1) allows a licence holder, with the authorisation of the Scottish Ministers, to compulsorily acquire land required for 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)).

148. 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.

149. 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

150. A “network wayleave right” is defined in subsection (1) as the right for a licence holder to convey steam or liquids in land for a purpose connected with the supply of thermal energy by means of a heat network by the licence holder.

151. A “network wayleave right” in respect of land includes a power to do the following: to install and keep installed heat network apparatus in the land; to enter upon the land to install, inspect, maintain, adjust, alter, repair, replace, upgrade, operate or remove the heat network apparatus; and to

carry out any works in respect of the land that are reasonably necessary or incidental to the exercise of the network wayleave right (subsection 1A).

152. A network wayleave right in respect of the land may be conferred on a licence holder in four ways: by the owner of the land either by agreement with the licence holder, or unilaterally; by a necessary wayleave ; or by positive prescription.

153. A wayleave document (being a written document conferring a network wayleave right on a licence holder) may include a development condition (subsection 2A). This, as defined in subsection (2B), is a condition in a wayleave document restricting or regulating the development or use of the land to which the wayleave document relates by a relevant person as may be required to prevent interference with the exercise of the network wayleave right conferred by the wayleave document. In terms of section (2C) a development condition may in particular include a condition either requiring such operations or activities as may be specified in the wayleave document to be carried out on, under or over the land; or requiring the land to be used in such way as may be so specified.

154. Subsection (2D) provides the definition of a “relevant person” that means either the owner or tenant of the land or any other person (other than the licence holder) who has right to use the land.

155. Subsection (2E) provides for the creation of a network wayleave right by positive prescription (the process of acquiring rights by the passage of time) if it has been possessed for a continuous period of 20 years openly, peaceably and without judicial interruption. It does so by applying section 3(2) of the Prescription and Limitation (Scotland) Act 1973 (positive servitudes and public rights of way) to a network wayleave right in respect of land as it applies to a positive servitude over land but as if in that subsection— (i) a reference to a positive servitude were a reference to a network wayleave right, and (ii) a reference to possession of a servitude were a reference to possession by a licence holder of a network wayleave right as, unlike a servitude, there is no dominant tenement in respect of a network wayleave right. A network wayleave right may also only be possessed by a licence holder.

156. Subsection (2F) provides that a network wayleave right constitutes a real right. A real right in land is a right directly in the land. A subordinate real right (i.e. a right other than ownership) continues to exist regardless of

who owns the land. In other words it is said to ‘run with the land’. It is also enforceable against third parties. This differs from a personal right which is a right against a person only, for example as a result of a contract.

157. Subsection 2G provides that the installation of heat network apparatus in land by a licence holder that exercises that network wayleave right does not confer ownership of the heat network apparatus on the owner of the land.

158. Subsection (3) provides definitions of “heat networks apparatus”, “land”, “necessary wayleave”, “owner” and “wayleave document”. Subsection (4) provides that in Part 6 of the Bill a reference to a heat network apparatus in land includes a reference to heat network apparatus under, over, across, along or on the land.

Section 59: Acquisition of necessary wayleave

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

160. 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)).

161. A necessary wayleave may include a development condition (subsection 2A) which is defined in subsection (2B) by reference to the definition in section 58(2B to (2D) with necessary modifications to terminology.

162. A licence holder may apply for a necessary wayleave in respect of land only if either: the licence holder has given notice to the owner of the land setting out the licence holder’s request to acquire a network wayleave right under section 58(2)(a) (subsection (3)(a)(i)), or where the licence holder cannot ascertain the name or address of the owner of the land after reasonable enquiry, the licence holder has given notice in such form and manner as may be specified by the Scottish Ministers by regulations (subsection (3)(a)(ii)), and one of the conditions set out in subsection (4) apply. In terms of subsection (5) a notice referred in subsection (3)(a)(i)

must state the reasons why the conferral of a network wayleave right is sought and specify the period (which is to be not less than 28 days from the date on which the notice is given) within which the owner of the land must agree to enter into or grant a wayleave document.

163. One of the conditions in subsection (4) must be met. This means that the owner of the land (a) has given the licence holder notice in writing that the owner will not enter into or grant a wayleave document or (b) has agreed to enter into or grant a wayleave document but subject to terms and conditions to which the licence holder objects (c) has agreed to enter into or grant a wayleave document but a person with an interest in the land (other than the owner) will not enter into, or consent to, the wayleave document or (d) has not agreed to enter into or grant a wayleave document before the end of the period specified by the licence holder in the notice given under subsection (3)(a)(i) or (ii).

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

165. 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 61: Assignment of network wayleave rights

166. 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)).

167. A wayleave document 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 61A Variation of network wayleave right

168. A network wayleave right in respect of land (however conferred) may only be varied either by a “variation agreement” or in accordance with this

section (subsection 1). A variation agreement is an agreement between the owner of the land and the licence holder entitled to the benefit of the network wayleave right to vary the network wayleave right.

169. In terms of subsection (2) a licence holder may apply to the Scottish Ministers to vary a network wayleave right in respect of land under this section only the appropriate notice has been given and one of the conditions in subsection (3) has been met. Notice is to be given either by the licence holder giving notice to the owner of the land setting out the licence holder's request to vary the network wayleave right, or, where the licence holder cannot ascertain the name or address of the owner of the land after reasonable enquiry, the licence holder giving notice in such form and manner as may be specified by the Scottish Ministers by regulations. The conditions in subsection (3) are that the owner of the land (a) has given the licence holder notice in writing that the owner will not enter into a variation agreement or (b) has agreed to enter into a variation agreement but subject to terms and conditions to which the licence holder objects or (c) has agreed to enter into a variation agreement but a person with an interest in the land (other than the owner) will not enter into, or consent to, the variation agreement or (d) has not agreed to enter into a variation agreement before the end of the period specified by the licence holder in the notice given under subsection (2)(a)(i) or (ii).

170. Subsection (4) specifies circumstances where the owner of the land may apply to the Scottish Ministers to vary a network wayleave right in respect of land under section (61A). This can occur only if the owner has given notice to the licence holder setting out the owner's request to vary the network wayleave right, and one of the conditions mentioned in subsection (5) applies. These conditions are that the licence holder has given the owner of the land notice in writing that the licence holder will not enter into a variation agreement; has agreed to enter into a variation agreement but subject to terms and conditions to which the owner of the land objects, has not agreed to enter into a variation agreement before the end of the period specified by the owner of the land in the notice given under subsection (4)(a).

171. Notice to be given by the licence holder under subsections (2)(a)(i) or by the owner of the land under (4)(a) must state the reasons why the variation agreement is proposed, and specify the period (which is to be not less than 28 days from the date on which the notice is given) after which, if

agreement is not reached, the person giving the notice may apply to the Scottish Ministers for the grant of a variation.

172. Subsection (7) specifies that the Scottish Ministers may following an application by a licence holder entitled to the benefit of a network wayleave right, grant a variation of the network wayleave right if they consider that it is necessary or expedient for the licence holder to exercise the right as varied for a purpose connected with the supply of thermal energy by means of a heat network by the licence holder. In addition the Scottish Ministers may following an application by the owner of land in respect of which a network wayleave right is exercisable, grant a variation of the network wayleave right if they consider it is appropriate to do so. In considering whether it is appropriate to grant a variation of a network wayleave right in the second circumstance, the Scottish Ministers may in particular consider whether: the exercise of the network wayleave right appears to them to materially prejudice the owner's enjoyment or use of the land, any variation would not substantially increase the cost or diminish the quality of the supply provided by the licence holder's heat network to persons who rely (or may in the future rely) on the supply of thermal energy by means of the heat network concerned, and any variation would not result in the licence holder incurring substantial additional expenditure.

173. Before granting a variation of a network wayleave right, the Scottish Ministers must allow an opportunity for representations to be made. Where an application is made by the licence holder this opportunity must be given to the owner of the land and (if applicable), to a person other than the owner who has not agreed or given consent to the variation. Where an application is made by the owner of the land, the Scottish Ministers must give the licence holder the opportunity to make representations.

Section 61B Compensation on variation of a network wayleave right

174. Where a network wayleave right is varied under section 61A(7)(a) so as to place or increase a burden on an occupier of the land, or where the occupier is not also the owner of the land, the owner, either or both of those persons may recover from the licence holder compensation in respect of the variation of the network wayleave right (subsection (1)).

175. Any dispute about compensation under section 61B is to be referred to and determined by the Lands Tribunal for Scotland. Sections 9 and 11 of

the Land Compensation (Scotland) Act 1963 apply in relation to any determination under subsection (1) as if this section were referred to in section 9(1) of that Act, and references in section 11 of that Act to the acquiring authority were references to the licence holder concerned.

176. The Scottish Ministers may by regulations make further provision about compensation payable under this section (subsection 4).

Section 61C Discharge of network wayleave right

177. Subsection (1) provides that a network wayleave right in respect of land (however conferred) may only be discharged by the licence holder entitled to the benefit of the network wayleave right, either by agreement with the owner of the land (subsection (1)(a)), or unilaterally (subsection (1)(b)).

178. Subsection (2) requires that a licence holder must discharge a network wayleave right if (and to the extent that) the right relates to heat network apparatus that has ceased to be used for the purposes of a heat network.

Section 61D Registration of network wayleave rights

179. The Scottish Ministers may by regulations make provision for or about the registration of network wayleave rights. These regulations may in particular include provisions about: how a network wayleave right is to be registered, the information (including information in the form of a document) that must be included as part of any entry in the register, who is required to establish and maintain a register of network wayleave rights, fees payable in connection with the registration of a network wayleave right, the form and manner of any register of network wayleave rights, how the register is to be made available for inspection by members of the public, what payment (if any) the licence holder is entitled to charge for supplying documents relating to network wayleave rights to members of the public, the consequences of failure to comply with the requirements of the registration.

180. Subsection (3) provides that the regulations under section 61D may modify any enactment (including this Act).

Section 62: Requirement to remove apparatus when notified

181. Subsection (A1) specifies the circumstances in which section 62 applies. It is where a person (the “right holder”) has a right to remove (or require the removal of) any heat network apparatus installed in the land by a licence holder, and the right holder seeks the removal of all or part of the heat network apparatus.

182. In such a case then in order to have the apparatus removed the right holder has to give written notice to the licence holder requesting that the apparatus be removed (subsection (1)). In terms of subsection (6) and (7) 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 submits compulsory purchaser order for confirmation. 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 (subsection 8).

Section 63: Compensation in connection with network wayleave rights

183. 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. Where the exercise of a network wayleave right by or on behalf of a licence holder in relation to land causes damage to the land (or something on the land), or disturbs a person’s enjoyment of the land (subsection (2)), the licence holder is also liable to pay compensation to the person affected.

184. 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.

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

Other powers over land

Section 64: Power to carry out survey

186. Subsection (1) provides that a 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.

187. Before carrying out a survey the licence holder, 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.

188. 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.

189. 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)).

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

190. Subsection (1) provides that a licence holder 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 in land and carry out any works to the land that are necessary for or incidental to those works.

191. 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.

192. 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).

193. 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.

194. Subsection (8) makes it an offence to intentionally obstruct, without reasonable excuse, a licence holder from exercising the power conferred by subsection (1). A person who commits an offence under subsection (8) is liable on summary conviction to a fine not exceeding level 3 on the standard scale (subsection (9)).

Section 66: Restrictions on powers of licence holders

195. 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

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

197. 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.

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

Road Works

Section 67A Power to carry out road works

199. Subsection (1) provides that a licence holder, for a purpose connected with the supply of thermal energy by means of a heat network, carry out road works if the heat networks licence held by the licence holder provides that the licence holder may do so. Subsection (2) specifies the kinds of works that are referred in subsection (1). Subsection (3) clarifies that the power of a licence holder to place on, over or along a road a structure for housing any other heat network apparatus; or inspecting, maintain, adjusting, repairing, altering or renewing any such structure, may be exercised only with the consent of the road works authority.

200. The consent is not required under subsection (3) if it is withheld unreasonably by the road works authority.

201. The power of a licence holder under subsection (1) to open or break up a road which is not a public road may be exercised only with the consent of the road works authority (subsection 5). But consent is not required under subsection (5) if the opening or breaking up of the road constitutes emergency works, or consent is withheld unreasonably by the road works authority.

202. Subsection (7) clarifies that it is for the Scottish Ministers to determine any question which arises as to whether consent has been

withheld unreasonably for the purposes of subsections (4) or (6)(b), and their decision is final.

203. Subsection (8) defines “emergency works”, “public road”, “road”, “road works authority”, “roads authority”

204. Subsection (9) specifies that under section 67A, a reference to heat network apparatus in a road includes a reference to heat network apparatus under, over, across, along or on the road.

Interpretation

Section 68: Interpretation of Part 6

205. 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

206. 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.

207. 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).

208. 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)).

209. 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

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

211. 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)).

212. 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)).

213. 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 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

214. 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

215. 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)).

216. 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)).

217. 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)).

218. 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)).

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

219. 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

220. 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)).

221. By regulations, the Scottish Ministers may make further provision for, or in connection with, a transfer scheme (subsection (4)). Subsection (5)

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

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.

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

Section 75: Compensation in connection with transfer schemes

223. 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

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

PART 7A – HEAT NETWORKS DELIVERY PLAN

Section 76A: Heat networks delivery plan

225. Section 76A requires the Scottish Ministers must prepare a “Heat Networks Delivery Plan”. Subsection (1) specifies that the Plan must detail how the provisions of the Act – and supporting policies – will result in the greater use of heat networks in Scotland.

226. Subsection (2) specifies that the Plan must also detail: how the Scottish Ministers intend to increase the use of heat networks in Scotland; how the combined supply of thermal energy from Scotland’s heat networks will be measured; and how the deployment of heat networks will contribute to Scotland’s climate change targets.

227. Subsection (3) places a requirement on the Scottish Ministers to consult when developing the Plan. Subsection (4) requires the Scottish Ministers to publish and lay the Plan in Parliament by 1 April 2022.

228. Subsection (5) obliges the Scottish Ministers to keep the Plan under review. Subsections (6), (7) and (8) combine to require the Scottish Ministers to submit a report to the Scottish Parliament (two years from the day on which the initial Plan was published, and every two years thereafter) which considers: how this Act and any other relevant actions have increased the use of heat networks in Scotland; what progress has been made in terms of the combined supply of thermal energy from Scotland's heat networks at that time; and how the deployment of heat networks has contributed to Scotland's climate change targets.

PART 8 – MISCELLANEOUS AND GENERAL

Heat network supply targets

Section 76B: Heat network supply targets

229. Section 76B requires the Scottish Ministers to make regulations setting one or more targets about the supply of heat by heat networks.

230. Subsection (2) enables the Scottish Ministers to make regulations about targets, and subsection (3) clarifies that such regulations might include: the matters to be taken into account in setting targets, the criteria to be applied in setting targets; and the review of any targets.

Heat network supply targets

Section 76C: Heat network supply targets

231. Section 76C places an obligation on the Scottish Ministers to ensure that 2 terawatt hours and 6 terawatt hours of thermal energy is supplied through heat networks in Scotland by 2025 and 2030, respectively.

232. Subsection (2) requires the Scottish Ministers to specify how they intend to meet this obligation as part of the Heat Networks Delivery Plan to be published under section 76A.

233. Subsections (3) and (4) combine to require the Scottish Ministers to notify the Scottish Parliament on their progress towards meeting the obligations specified under subsection (1). The initial notification must

occur two years from the date on which the original Heat Networks Delivery Plan is published, and every two years thereafter until 2030.

Fees

Section 77: Fees for applications etc.

234. 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.

Section 77A: Strategy: local authority costs

235. Section 77A requires the Scottish Ministers to publish a strategy which specifies the costs that local authorities will incur as a result of performing their functions under this Act.

236. Subsection (2) specifies that, as a minimum, the strategy must specify: the costs that local authorities will incur in meeting their duties under the Act; how the Scottish Ministers intend to fund local authorities to perform these duties; how the Scottish Ministers will ensure that local authorities have sufficient capacity to perform these duties; as well as any other matters that the Scottish Ministers consider relevant.

General

Section 78: Individual culpability where organisation commits offence

237. 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

238. 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

239. 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

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

Section 82: Ancillary provisions

241. 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

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

Section 84: Commencement

243. 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

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

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

Heat Networks (Scotland) Bill

[As Amended At Stage 2]

Revised Explanatory Notes

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