



Heat Networks (Scotland) Act 2021

2021 asp 9

PART 6

POWERS OF LICENCE HOLDERS

Wayleave rights

PROSPECTIVE

69 Network wayleave right

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

Status: This version of this provision is prospective.

Changes to legislation: There are currently no known outstanding effects for the Heat Networks (Scotland) Act 2021, Section 69. (See end of Document for details)

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

Status:

This version of this provision is prospective.

Changes to legislation:

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