



Heat Networks (Scotland) Act 2021

2021 asp 9

PART 2

HEAT NETWORK CONSENT

PROSPECTIVE

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

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

- (1) The Scottish Ministers may give directions requiring an application of a type mentioned in subsection (2) to be referred to them instead of being dealt with by a local authority as the appropriate consent authority.
- (2) The types of applications are—
 - (a) a heat network consent application,
 - (b) a heat network consent modification application,
 - (c) an application for a consent, agreement or approval required by a condition to which a heat network consent is subject.
- (3) A direction under subsection (1)—
 - (a) must be set out in writing,
 - (b) may be withdrawn or modified by a subsequent direction,
 - (c) may be given to a particular local authority acting as the appropriate consent authority or to local authorities acting in that capacity generally,
 - (d) may relate either to a particular application or to applications of such description as may be specified in the direction.
- (4) Any application in respect of which a direction has effect under subsection (1) must be referred to the Scottish Ministers.
- (5) Where an application is referred to the Scottish Ministers under this section (a “called-in application”), sections 23, 24, 26 and 33(5) apply to the called-in application as they apply to an application that is to be determined by a local authority as the appropriate

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consent authority except that the references in those sections to “the appropriate consent authority” are to be read as references to “the Scottish Ministers”.

- (6) The Scottish Ministers may by regulations make further provision about directions under subsection (1) and the determination of called-in applications pursuant to such a direction.
- (7) Regulations under subsection (6) may in particular include provision about—
 - (a) the notification and publication of directions—
 - (i) given under subsection (1), or
 - (ii) withdrawn or modified under subsection (3)(b),
 - (b) the procedure for determining called-in applications.
- (8) Regulations under subsection (6) may modify any enactment (including this Act).

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

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

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

- (1) Subsection (2) applies where a local authority as the appropriate consent authority—
 - (a) refuses a heat network consent application,
 - (b) grants a heat network consent, but subject to a condition or limitation,
 - (c) refuses an application for a consent, agreement or approval required by a condition to which a heat network consent is subject,
 - (d) grants an application for a consent, agreement or approval required by a condition to which a heat network consent is subject, but subject to a condition,
 - (e) modifies a heat network consent under section 26(1) (whether following a heat network consent modification application or on its own initiative),
 - (f) refuses a heat network consent modification application,
 - (g) fails to give notice, within the relevant period, of its decision to the applicant in relation to—
 - (i) a heat network consent application,
 - (ii) a heat network consent modification application,
 - (iii) an application for a consent, agreement or approval to which a heat network consent application is subject.
- (2) The applicant may appeal to the Scottish Ministers against the decision or failure (as the case may be) of the local authority.
- (3) In subsection (1)(g), “relevant period” means—
 - (a) such period as may be specified in regulations under section 35(1), or
 - (b) such other period as may be agreed in writing between the applicant and the local authority in relation to the application (before or after it is made).
- (4) The Scottish Ministers may by regulations make further provision about appeals under subsection (2).
- (5) Regulations under subsection (4) may in particular include provision about—
 - (a) the way in which appeals are to be made, including time limits for making appeals,
 - (b) matters that may be raised in appeals,
 - (c) the information to be provided when making appeals,
 - (d) the procedure in connection with determining appeals,
 - (e) the manner in which appeals are to be conducted,
 - (f) decisions that may be taken on appeal,
 - (g) how the determination of appeals is to be notified.
- (6) The provision that may be made by virtue of subsection (5)(e) includes provision about the holding of an inquiry or hearing for the purpose of determining an appeal, including—
 - (a) the hearing of evidence at an inquiry or hearing in public or otherwise including any procedure to apply where evidence is not to be heard in public or documentary evidence is not to be open to public inspection,
 - (b) the appointment of persons to hold an inquiry or hearing,
 - (c) the role of such persons,
 - (d) the timing of an inquiry or hearing,

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- (e) notification of an inquiry or hearing,
 - (f) attendance of required persons at an inquiry or hearing,
 - (g) giving of evidence of persons required to attend an inquiry or hearing,
 - (h) consequences of persons failing to attend an inquiry or hearing or to provide information required by an inquiry or hearing, including the creation of offences,
 - (i) the payment of expenses by parties to the inquiry or hearing.
- (7) The maximum penalty that may be provided for in regulations under subsection (4) creating an offence is, on summary conviction, a fine not exceeding level 1 on the standard scale or imprisonment for a period not exceeding 3 months.
- (8) Regulations under subsection (4) may modify any enactment (including this Act).

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