



Heat Networks (Scotland) Act 2021

2021 asp 9

PART 6

POWERS OF LICENCE HOLDERS

Compulsory acquisition of land

68 Compulsory acquisition of land by licence holder

- (1) A licence holder may, with the authorisation of the Scottish Ministers, compulsorily acquire land that is required for the construction or operation of a heat network.
- (2) Subsection (1) includes in particular the power to acquire—
 - (a) any right or interest in or over land,
 - (b) a servitude or other right in or over land by the creation of a new right.
- (3) The Scottish Ministers must not authorise under subsection (1) any acquisition in relation to land which belongs to Her Majesty in right of Her private estates unless the appropriate authority consents to the acquisition.
- (4) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 applies in relation to an acquisition under subsection (1) as if—
 - (a) this section were contained in an Act in force immediately before the commencement of that Act, and
 - (b) the licence holder were a local authority.
- (5) Subsection (1) does not apply in relation 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.
- (6) In subsection (3)—
 - (a) the reference to Her Majesty’s private estates is to be construed in accordance with section 1 of the Crown Private Estates Act 1862,
 - (b) the “appropriate authority” means the person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers.
- (7) In this Part, a “licence holder” means a person holding a heat networks licence.

Wayleave rights

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.
- (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.

70 Acquisition of necessary wayleave

- (1) The Scottish Ministers may, on an application by a licence holder, grant a necessary wayleave to a licence holder conferring a network wayleave right on the licence holder in respect of land if they consider that it is necessary or expedient for the licence holder to exercise the right for a purpose connected with the supply of thermal energy by means of a heat network by the licence holder.
- (2) A necessary wayleave—
- (a) has effect for the period specified in the necessary wayleave,
 - (b) is subject to such terms and conditions as the Scottish Ministers consider appropriate.
- (3) A necessary wayleave may in particular include a development condition.
- (4) “Development condition” is to be construed in accordance with section 69(5) to (7) except that the references in subsections (5) and (6) of that section to a wayleave document are to be read as if they were references to a necessary wayleave.
- (5) A licence holder may apply to the Scottish Ministers for a necessary wayleave in respect of land under this section only if—
- (a) either—
 - (i) 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 69(3)(a), or
 - (ii) 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, and

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- (b) one of the conditions mentioned in subsection (6) applies.
- (6) The conditions are 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,
 - (b) has agreed to enter into or grant a wayleave document but (either or both)—
 - (i) subject to terms and conditions to which the licence holder objects,
 - (ii) a person with an interest in the land (other than the owner) will not enter into, or consent to, the wayleave document, or
 - (c) 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 (5) (a)(i) or (ii).
- (7) A notice under subsection (5)(a)(i) must—
 - (a) state the reasons why the conferral of a network wayleave right is sought, and
 - (b) specify the period (which is to be not less than 28 days from the date on which the notice is given) within which the owner of the land must agree to enter into or grant a wayleave document.
- (8) Before granting a necessary wayleave in respect of land, the Scottish Ministers must give the following persons the opportunity to make representations—
 - (a) the owner of the land, and
 - (b) where sub-paragraph (ii) of subsection (6)(b) applies, the person referred to in that sub-paragraph.
- (9) Subsection (1) does not apply in relation 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.

71 Assignment of network wayleave rights

- (1) A network wayleave right may be assigned by a licence holder to another licence holder.
- (2) But a network wayleave right in respect of land that is conferred by a necessary wayleave may be assigned to another licence holder only with the consent of the Scottish Ministers.
- (3) A wayleave document is void to the extent that—
 - (a) it prevents or limits the assignation of the network wayleave right to another licence holder,
 - (b) it makes the assignation of the network wayleave right to another licence holder subject to a condition (including a condition requiring the payment of money).

72 Variation of network wayleave right

- (1) A network wayleave right in respect of land (however conferred) may only be varied—
 - (a) by agreement between the owner of the land and the licence holder entitled to the benefit of the network wayleave right (a “variation agreement”), or
 - (b) in accordance with this section.

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- (2) A licence holder may apply to the Scottish Ministers to vary a network wayleave right in respect of land under this section only if—
 - (a) either—
 - (i) the licence holder has given notice to the owner of the land setting out the licence holder's request to vary the network wayleave right, or
 - (ii) 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, and
 - (b) one of the conditions mentioned in subsection (3) applies.
- (3) The conditions 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,
 - (b) has agreed to enter into a variation agreement but (either or both)—
 - (i) subject to terms and conditions to which the licence holder objects,
 - (ii) a person with an interest in the land (other than the owner) will not enter into, or consent to, the variation agreement,
 - (c) 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).
- (4) An owner of land may apply to the Scottish Ministers to vary a network wayleave right in respect of land under this section only if—
 - (a) the owner has given notice to the licence holder setting out the owner's request to vary the network wayleave right, and
 - (b) one of the conditions mentioned in subsection (5) applies.
- (5) The conditions are that the licence holder—
 - (a) has given the owner of the land notice in writing that the licence holder will not enter into a variation agreement,
 - (b) has agreed to enter into a variation agreement but subject to terms and conditions to which the owner of the land objects,
 - (c) 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).
- (6) A notice under subsection (2)(a)(i) or (4)(a) must—
 - (a) state the reasons why the variation agreement is proposed, and
 - (b) specify the period (which is to be not less than 28 days from the date on which the notice is given) after which, if agreement is not reached, the person giving the notice may apply to the Scottish Ministers for the grant of a variation.
- (7) The Scottish Ministers may—
 - (a) 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,
 - (b) 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.

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- (8) In considering for the purposes of subsection (7)(b) whether it is appropriate to grant a variation of a network wayleave right, the Scottish Ministers may in particular consider whether—
- (a) the exercise of the network wayleave right appears to them to materially prejudice the owner’s enjoyment or use of the land,
 - (b) 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
 - (c) any variation would not result in the licence holder incurring substantial additional expenditure.
- (9) Before granting a variation of a network wayleave right, the Scottish Ministers must—
- (a) where an application is made by the licence holder, give the following persons the opportunity to make representations—
 - (i) the owner of the land,
 - (ii) where sub-paragraph (ii) of subsection (3)(b) applies, the person referred to in that sub-paragraph,
 - (b) where an application is made by the owner of the land, give the licence holder the opportunity to make representations.

73 Compensation on variation of a network wayleave right

- (1) Where a network wayleave right is varied under section 72(7)(a) so as to place or increase a burden on—
- (a) an occupier of the land, or
 - (b) 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.
- (2) Any dispute about compensation under this section is to be referred to and determined by the Lands Tribunal for Scotland.
- (3) Sections 9 and 11 of the Land Compensation (Scotland) Act 1963 apply in relation to any determination under subsection (1) as if—
- (a) this section were referred to in section 9(1) of that Act, and
 - (b) references in section 11 of that Act to the acquiring authority were references to the licence holder concerned.
- (4) The Scottish Ministers may by regulations make further provision about compensation payable under this section.

74 Discharge of network wayleave right

- (1) 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—
- (a) by agreement with the owner of the land, or
 - (b) unilaterally.

- (2) A licence holder must discharge a network wayleave right under subsection (1)(a) 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.

75 Registration of network wayleave rights

- (1) The Scottish Ministers may by regulations make provision for or about the registration of network wayleave rights.
- (2) Regulations under subsection (1) may in particular include provision about—
- (a) how a network wayleave right is to be registered,
 - (b) the information (including information in the form of a document) that must be included as part of any entry in the register,
 - (c) who is required to establish and maintain a register of network wayleave rights,
 - (d) fees payable in connection with the registration of a network wayleave right,
 - (e) the form and manner of any register of network wayleave rights,
 - (f) how the register is to be made available for inspection by members of the public,
 - (g) what payment (if any) the licence holder is entitled to charge for supplying documents relating to network wayleave rights to members of the public,
 - (h) the consequences of failure to comply with the requirements of the registration.
- (3) Regulations under subsection (1) may modify any enactment (including this Act).

76 Requirement to remove apparatus when notified

- (1) This section applies where—
- (a) 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
 - (b) the right holder seeks the removal of all or part of the heat network apparatus.
- (2) The right holder must give written notice to the licence holder who is operating (or who has most recently operated) the heat network of which the heat network apparatus forms part requiring the licence holder to remove such part of the heat network apparatus as may be specified in the notice.
- (3) The licence holder must comply with the notice given under subsection (2) by no later than the end of the period of 3 months beginning with the day on which the notice is given unless subsection (4) applies.
- (4) This subsection applies if, before the end of the period of 3 months mentioned in subsection (3), the licence holder—
- (a) applies to the Scottish Ministers for the grant of a necessary wayleave, or
 - (b) by virtue of section 68(1), submits a compulsory purchase order in respect of the land to the Scottish Ministers for confirmation by them.
- (5) If subsection (4) applies and the Scottish Ministers—
- (a) refuse the application for the grant of a necessary wayleave, or (as the case may be)

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(b) decide not to confirm the compulsory purchase order, the licence holder must comply with the notice given under subsection (2) by no later than the end of the period of 3 months beginning with the day on which the licence holder receives notice of the Scottish Ministers' decision.

77 Compensation in connection with network wayleave rights

- (1) Where a necessary wayleave is granted to a licence holder under section 70(1)—
 - (a) the occupier of the land, and
 - (b) where the occupier is not also the owner of the land, the owner,
 may recover from the licence holder compensation in respect of the grant.
- (2) Where the exercise of a network wayleave right by or on behalf of a licence holder in relation to land—
 - (a) causes damage to the land or a thing situated on the land, the licence holder is liable to pay compensation to a person with an interest in the land or thing,
 - (b) disturbs a person's enjoyment of the land or a thing situated on the land, the licence holder is liable to pay compensation to the person in respect of the disturbance.
- (3) Any dispute about compensation under this section is to be referred to and determined by the Lands Tribunal for Scotland.
- (4) Sections 9 and 11 of the Land Compensation (Scotland) Act 1963 apply in relation to any determination under subsection (3) as if—
 - (a) this section were referred to in section 9(1) of that Act, and
 - (b) references in section 11 of that Act to the acquiring authority were references to the licence holder concerned.
- (5) The Scottish Ministers may by regulations make further provision about compensation payable under this section.

Other powers over land

78 Power to carry out survey

- (1) A licence holder may carry out a survey of land for the purpose of determining whether the land is suitable for a purpose connected with the construction or operation of a heat network.
- (2) Before carrying out a survey of land under subsection (1), the licence holder must give the occupier of the land at least 14 days' notice of the intention to carry out the survey.
- (3) If subsection (4) applies, a right to carry out a survey of any land under subsection (1) includes the right to search and bore the land for the purposes of ascertaining—
 - (a) the nature of the subsoil of the land,
 - (b) the presence of minerals or other matter in the land.
- (4) This subsection applies if notice given under subsection (2) includes notice of the intention to carry out the work mentioned in subsection (3).
- (5) A person carrying out a survey of land under subsection (1) has a right of entry to the land at all reasonable times to carry out the survey but must—

- (a) when seeking to enter the land in order to carry out the survey, provide evidence of the person’s authority to so act on request by an occupier or the owner of the land,
 - (b) carry out the survey in a manner that ensures as little disruption as possible is caused to any occupier or owner of the land,
 - (c) endeavour—
 - (i) to ensure that as little damage as possible is caused by the exercise of the person’s powers under this section, and
 - (ii) if any damage is caused, take reasonable steps to remedy the damage.
- (6) A person commits an offence if the person, without reasonable excuse, intentionally obstructs another person (a “relevant person”) in the exercise of the relevant person’s power to enter upon and survey the land under this section.
- (7) A person who commits an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

79 Power to enter land to replace or repair apparatus

- (1) 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.
- (2) In this Part, a “network land right” is a power—
- (a) to install heat network apparatus in replacement for, or in addition to, existing heat network apparatus that is lawfully situated in land,
 - (b) to inspect, maintain, adjust, alter, repair, replace, upgrade, operate, remove or add to any existing heat network apparatus that is situated in land,
 - (c) to carry out any works to the land that are necessary for or incidental to the powers mentioned in paragraph (a) or (b).
- (3) The works mentioned in subsection (2)(c) include felling, lopping or cutting back the roots of any tree or shrub on, under or over the land that is in close proximity to heat network apparatus that is, is being or is to be installed by or on behalf of the licence holder, in order to prevent the tree or shrub—
- (a) from obstructing or interfering with the installation, maintenance or operation of the heat network apparatus, or
 - (b) from constituting a danger to persons.
- (4) The licence holder must give the owner and any occupier of the land concerned at least 7 days’ notice of the intention by or on behalf of the licence holder to enter onto the land for the purpose of exercising the network land rights specified in the notice.
- (5) Subsection (4) does not apply if the network land rights that the licence holder proposes to exercise are to be exercised in order to carry out emergency works.
- (6) Where the licence holder exercises a network land right to carry out emergency works, the licence holder must notify the owner and any occupier of the land of the works carried out as soon as possible after the carrying out of those works.
- (7) A person exercising a network land right in relation to any land has a right of entry to the land at all reasonable times to exercise the network land right but must—

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- (a) when seeking to enter the land in order to exercise a network land right, provide evidence of the person’s authority to so act on request by an owner or (as the case may be) an occupier of the land,
 - (b) exercise the network land right in a manner that ensures as little disruption as possible is caused to the owner and any occupier of the land,
 - (c) endeavour—
 - (i) to ensure that as little damage as possible is caused by the exercise of the person’s powers under this section, and
 - (ii) if any damage is caused, take reasonable steps to remedy the damage.
- (8) A person commits an offence if that person, without reasonable excuse, intentionally obstructs another person (a “relevant person”) in the exercise of the relevant person’s power to enter upon the land and exercise a network land right under this section.
- (9) 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.
- (10) In this section, “emergency works” means works carried out by virtue of a network land right for the purpose of—
- (a) stopping anything already occurring, or
 - (b) preventing anything imminent from occurring that is likely to cause—
 - (i) danger to persons or property,
 - (ii) the interruption of any supply provided by the licence holder,
- and any other works that are reasonable (in all circumstances) to carry out with those works.

80 Restrictions on powers of licence holders

- (1) This section applies where—
- (a) land is occupied by a statutory undertaker and the carrying out of a survey of the land under section 78(1) is likely to obstruct or interfere with the statutory undertaker’s undertaking, or
 - (b) land is occupied by a statutory undertaker and the exercise of a network land right in relation to the land under section 79(1) is likely to obstruct or interfere with the statutory undertaker’s undertaking.
- (2) Where this section applies, a licence holder may exercise the power mentioned in section 78(1) or 79(1) only with the consent of the statutory undertaker concerned.
- (3) But consent is not required under subsection (2) if it is withheld unreasonably by the statutory undertaker.
- (4) It is for the Scottish Ministers to determine any question which arises as to whether consent has been withheld unreasonably for the purposes of subsection (3), and their decision is final.
- (5) In this section—
- “statutory undertaker” means—
- (a) the holder of a licence under section 6(1) of the Electricity Act 1989,
 - (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986,
 - (c) the Civil Aviation Authority,
 - (d) a holder of a licence under Chapter 1 of the Transport Act 2000,

- (e) the operator of an electronic communications code network within the meaning of paragraph 1(1) of schedule 17 of the Communications Act 2003,
- (f) any other person who is a statutory undertaker within the meaning of section 214(1) of the Town and Country Planning (Scotland) Act 1997, “undertaking”—
 - (a) means, in relation to a person mentioned in paragraphs (a) to (e) in the definition of “statutory undertaker”, the person’s undertaking,
 - (b) means, in relation to Scottish Water, its core functions within the meaning of section 70(2) of the Water Industry (Scotland) Act 2002,
 - (c) otherwise has the meaning given in the Town and Country Planning (Scotland) Act 1997.

81 Compensation for damage or disturbance

- (1) Where the exercise of a power under section 78(1) or 79(1) by or on behalf of a licence holder in relation to land—
 - (a) causes damage to the land or a thing situated on the land, the licence holder is liable to pay compensation to a person with an interest in or over the land or the thing,
 - (b) disturbs a person’s enjoyment of the land or a thing situated on the land, the licence holder is liable to pay compensation to the person in respect of the disturbance.
- (2) Any dispute about compensation under this section is to be referred to and determined by the Lands Tribunal for Scotland.
- (3) Sections 9 and 11 of the Land Compensation (Scotland) Act 1963 apply in relation to any determination under subsection (2) as if—
 - (a) this section were referred to in section 9(1) of that Act, and
 - (b) references in section 11 of that Act to the acquiring authority were references to the licence holder concerned.
- (4) The Scottish Ministers may by regulations make further provision about compensation payable under this section.

Road works

82 Power to carry out road works

- (1) A licence holder may, for a purpose connected with the supply of thermal energy by means of a heat network, carry out the works mentioned in subsection (2) if the heat networks licence held by the licence holder provides that the licence holder may carry out such works.
- (2) The works referred to in subsection (1) are—
 - (a) installing heat network apparatus in a road,
 - (b) inspecting, maintaining, adjusting, repairing, altering or renewing heat network apparatus installed in a road,
 - (c) changing the position of heat network apparatus in a road,
 - (d) removing heat network apparatus from a road,

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- (e) works required for or incidental to works mentioned in any of paragraphs (a) to (d), including in particular—
 - (i) opening or breaking up a road,
 - (ii) opening or breaking up a sewer, drain or tunnel under a road,
 - (iii) tunnelling or boring under a road, and
 - (iv) removing or using all earth and materials in or under a road.
- (3) The power of a licence holder under subsection (1) to—
 - (a) place on, over or along a road a structure for housing any other heat network apparatus, or
 - (b) inspect, maintain, adjust, repair, alter or renew any such structure,
 may be exercised only with the consent of the road works authority.
- (4) But consent is not required under subsection (3) if it is withheld unreasonably by the road works authority.
- (5) 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.
- (6) But consent is not required under subsection (5) if—
 - (a) the opening or breaking up of the road constitutes emergency works, or
 - (b) consent is withheld unreasonably by the road works authority.
- (7) It is for the Scottish Ministers to determine any question which arises as to whether consent has been withheld unreasonably for the purposes of subsection (4) or (6)(b), and their decision is final.
- (8) In this section—
 - “emergency works” has the same meaning as in Part 4 of the New Roads and Street Works Act 1991 (see section 111 of that Act),
 - “public road” means a road which a roads authority has a duty to maintain,
 - “road” has the same meaning as in Part 4 of the New Roads and Street Works Act 1991 (see section 107 of that Act),
 - “road works authority” has the same meaning as Part 4 of that Act (see section 108 of that Act),
 - “roads authority” has the same meaning as in section 151 of the Roads (Scotland) Act 1984.
- (9) In this section, 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

83 Interpretation of Part 6

In this Part—

- “heat network apparatus” has the meaning given in section 69(11),
- “licence holder” has the meaning given in section 68(7),
- “necessary wayleave” has the meaning given in section 69(11),
- “network land right” has the meaning given in section 79(2),
- “network wayleave right” has the meaning given in section 69(1),

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“wayleave document” has the meaning given in section 69(11).