



Heat Networks (Scotland) Act 2021

2021 asp 9

PART 6

POWERS OF LICENCE HOLDERS

Wayleave rights

PROSPECTIVE

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.
- (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,

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 72. (See end of Document for details)

- (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.
- (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,

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- (b) where an application is made by the owner of the land, give the licence holder the opportunity to make representations.

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