

# HEAT NETWORKS (SCOTLAND) ACT 2021

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## EXPLANATORY NOTES

### THE ACT

#### *Overview*

#### **Part 3 – Heat network zones**

#### **Designation of heat network zone**

##### ***Section 46: Power to designate heat network zone***

105. Section 46 provides that a local authority may at any time designate an area (within its area) as a “heat network zone”, being an area that is particularly suitable for the construction and operation of a heat network, in accordance with section 48. The Scottish Ministers may designate an area as a heat network zone in accordance with section 49 (subsection (2)). Subsection (3) defines a “heat network zone” as an area designated by a local authority or the Scottish Ministers.

##### ***Section 47: Duty on local authority to review heat network zoning in area***

106. Each local authority must carry out a review to consider whether one or more areas in its area is likely to be particularly suitable for the construction and operation of a heat network (subsection (1)). Subsection (2) provides that the first review must be carried out as soon as practicable after the day on which section 47 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 (6).
107. Subsection (2) specifies that in carrying out the review under subsection (1), a local authority must have regard to the matters mentioned in section 48(1).
108. If following a review, the local authority found any area or areas that may be particularly suitable for the construction or operation of a heat network, the local authority must decide (in relation to each area) to either proceed to considering whether to designate the area as a heat network zone in accordance with section 48, or to request that the Scottish Ministers consider whether to designate the area under section 49 (subsection (4)).
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 53. Under section 53, 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 in relation to each area considered as part of the review (subsection (6)). The statement has to explain whether the local authority considers that the area is likely to be particularly suitable for the construction and operation of a heat network and, if the area is considered to be particularly suitable, identifying the area by reference to a map and setting out reasons for its decision. The Scottish Ministers may by regulations specify any further 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 (7)).

***Section 48: 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. 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 such manner as the Scottish Ministers may specify by regulations.

***Section 49: 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 48(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)).

**Variation of heat network zone**

***Section 50: 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 48(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 identify the varied area in a document with reference to a map, specify in the document the day on which the variation takes effect and publish the document in such manner as the Scottish Ministers specify by regulations (subsection (5)).

***Section 51: 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 48(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)).

## **Local authorities acting jointly**

### ***Section 52: 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 to 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 46 (power to designate heat network zone), 48 (designation of a heat network zone by local authority), 49 (designation of heat network zone by Scottish Ministers), 50 (variation of heat network zone by local authority) and 51 (variation of heat network zone by Scottish Ministers).

## **Ministerial direction and guidance**

### ***Section 53: 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 48(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 two or more local authorities act jointly to designate or vary a heat network zone by a direction under this section the 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 53.

### ***Section 54: Guidance***

126. Subsection (1) provides that the Scottish Ministers may issue guidance about reviews under section 47(1) and the designation and variation by local authorities of heat network zones. 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 (2) and (5)). Before issuing any guidance under subsection (1), 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 (subsection (3)).
127. Local authorities must have regard to such guidance when exercising their functions under Part 3 (subsection (4)).