

DRAFT BUILDINGS (HEATING AND ENERGY PERFORMANCE) AND HEAT NETWORKS (SCOTLAND) BILL

DRAFT EXPLANATORY NOTES

[18 NOVEMBER 2025]

INTRODUCTION

1. These draft Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the draft Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL: AN OVERVIEW

3. The Bill is divided into 4 Parts, consisting of 18 sections and 2 schedules. Commentary on the effect of individual sections and schedules follows below. In summary—

- Part 1 sets a target for the decarbonisation of heating systems used in buildings. It requires the Scottish Ministers to publish a strategy for meeting the target and to report periodically on the progress being made towards meeting the target.
- Part 2 allows the Scottish Ministers to make regulations to set minimum energy performance standards for buildings in which direct emission heating systems (those that emit greenhouse gases) are used, and to provide for the assessment and improvement of the energy performance of those buildings.
- Part 3 relates to heat networks (as defined by section 1(1) of the Heat Networks (Scotland) Act 2021). In particular, it gives the Scottish Ministers regulation-making powers to further regulate heat network zones and to set up a new licensing regime for granting certain rights and powers over land in connection with the installation and maintenance of heat networks.
- Part 4 contains general provisions for the Bill, including provision about interpretation, regulations, and commencement.

INTERPRETATION

4. In these Notes, the following abbreviations are used—

- “the 2021 Act”, which refers to the Heat Networks (Scotland) Act 2021,¹
- “ILRA”, which refers to the Interpretation and Legislative Reform (Scotland) Act 2010.²

5. The Bill’s free-standing text (that is, any provision which is not a textual amendment of another piece of legislation) is to be interpreted in accordance with section 14 of the Bill and ILRA. Among other things, ILRA provides default definitions for certain expressions and sets out default rules for common situations.

6. The text that the Bill inserts into other enactments is to be interpreted in accordance with the interpretation legislation that applies to that enactment. So, text inserted into the 2021 Act is also to be interpreted in accordance with ILRA.

CROWN APPLICATION

7. Section 20 of ILRA provides that the Crown will be bound by an Act of the Scottish Parliament or Scottish statutory instrument unless the Act or instrument expressly exempts it. This Bill therefore applies to the Crown in the same way as it applies to everyone else. However, in so far as the Bill amends the 2021 Act, it makes no change to that Act’s application to the Crown. That Act, subject to the provision made in sections 68, 70, 97 and 98, applies to the Crown.

COMMENTARY ON PROVISIONS

Part 1 – Decarbonisation of heating systems

Section 1 – The heat decarbonisation target

8. This section sets a target for the decarbonisation of heating systems in buildings, which is referred to as the “heat decarbonisation target” (subsection (1)). The heat decarbonisation target is that by the end of the year 2045, as far as reasonably practicable, no direct emission heating system is used in any building in Scotland (subsection (2)). A “direct emission heating system” is defined in section 14(1).

9. Essentially, the target is about reducing the levels of greenhouse gas emissions³ that are directly caused by the combustion of fossil fuels for heating (as well as cooling and providing hot water within) buildings in Scotland. So, the target is to complete the transition from the use of heating systems that emit greenhouse gases (like gas and oil boilers) to ‘cleaner’ alternatives (like heat pumps or low carbon heat networks) by the end of 2045 as far as reasonably practicable. It is necessary to consider what is reasonably practicable as there will likely be certain buildings (or

¹ [Heat Networks \(Scotland\) Act 2021](http://www.legislation.gov.uk) (www.legislation.gov.uk).

² [Interpretation and Legislative Reform \(Scotland\) Act 2010](http://www.legislation.gov.uk) (www.legislation.gov.uk).

³ See section 14(1), which defines “greenhouse gas” and “emissions” by reference to sections 10(1) and 17(1), respectively, of the [Climate Change \(Scotland\) Act 2009](http://www.legislation.gov.uk) (www.legislation.gov.uk).

types of building) for which that transition is not achievable – for example, traditional or listed buildings (see paragraph 14 below for further discussion on this).

10. The Scottish Ministers can make regulations to change the target year of 2045, to exclude certain types of building from the target, or to make additional provision about what the target is to cover and how it is to apply (subsection (3)). The regulations may make different provision for different purposes or areas, as well as a range of ancillary provision, and are subject to the affirmative procedure⁴ (see section 16(1) and (2)).

Section 2 – Preparation and publication of a heat decarbonisation strategy

11. This section requires the Scottish Ministers to prepare a strategy for meeting the heat decarbonisation target, which is referred to as the “heat decarbonisation strategy” (subsection (1)).

12. It further requires the heat decarbonisation strategy to set out certain information (subsection (2)). There are essentially three categories of information which the strategy must cover. The first is information on what action the Scottish Ministers plan to take, or what action they think others should take, to ensure that the heat decarbonisation target is met. The second is information on which organisations (or types of organisation) the Scottish Ministers plan to work with to ensure that the heat decarbonisation target is met. Both of these reflect the need for collective action (by central government, local government, businesses, individuals, etc.) to meet the target. And the third category is information on how the Scottish Ministers plan to monitor the progress being made towards meeting the heat decarbonisation target, as well as how they plan to assess whether the target is actually met.

13. However, the heat decarbonisation strategy can include other relevant information (subsection (3)(a)). It can also be in whatever form the Scottish Ministers decide is appropriate, including forming part of another document – for example, it may be incorporated as part of a wider strategy relating to reducing greenhouse gas emissions (subsection (3)(b)).

14. As mentioned in paragraph 9 above, when working out how best to meet the heat decarbonisation target, it is necessary to consider the extent to which it is reasonably practicable that no direct emission heating system will be used in any building in Scotland by the end of 2045. So, in preparing the heat decarbonisation strategy, the Scottish Ministers can take into account a number of factors in relation to specific buildings or types of building (subsection (4)). The listed factors relate to the practical and financial implications of installing an alternative heating system (as defined by section 14(1)). More specifically, they direct Ministers to consider the following questions: whether alternative heating systems are (or are likely to be) available; whether there are (or are likely to be) qualified people who can install them; how suitable and affordable the alternative heating systems are (or are likely to be); and how long the alternative heating systems are likely to last. They also direct Ministers to consider whether the specific building, or type of building, would need to be altered in order for an alternative heating system to be installed and work properly; and whether any such building alterations would need third-party consent (for example, planning permission, listed building consent or the consent of a co-owner of the building).

⁴ For details on the affirmative procedure, see [section 29 of ILRA](http://www.legislation.gov.uk) (www.legislation.gov.uk).

15. When preparing the heat decarbonisation strategy, the Scottish Ministers must consult each local authority⁵ and anyone else they consider appropriate (subsection (5)). In meeting that requirement, it does not matter whether any consultation is carried out before or after this section comes into force (subsection (6)). The Scottish Ministers must also publish the strategy, and lay a copy of it before the Scottish Parliament, as soon as reasonably practicable after it has been prepared (subsection (7)).

Section 3 – Review of the heat decarbonisation strategy

16. This section requires the Scottish Ministers to keep the heat decarbonisation strategy under review and allows them to update it whenever appropriate (subsection (1)).

17. Every 5 years, the Scottish Ministers must either update the strategy or explain in a published statement why they are not updating it (subsection (2)). But they do not have to do this for a 5-year review period that ends on or after 31 December 2045, which is the date by which the heat decarbonisation target is to be met (subsection (3)). The 5-yearly review cycle starts when the first heat decarbonisation strategy is published (subsection (4)).

18. The same requirements as to content, consultation, publication, review, etc. that apply to the first version of the heat decarbonisation strategy apply also to any updated version of the strategy (subsection (5)).

Section 4 – Preparation and publication of periodic reports

19. This section requires the Scottish Ministers, every 5 years, to report on the progress being made towards meeting the heat decarbonisation target. Each report must look backwards and set out what has been done during the previous 5-year reporting period to meet the target, and how much progress has been made towards meeting the target as a result (subsection (1)(a) and (b)). Except for the final 5-yearly report, each report must also look ahead and set out what action the Scottish Ministers plan to take, or what action they think others should take, during the next 5-year reporting period in order to meet the target (subsections (1)(c) and (6)). The 5-yearly reporting cycle starts when the first heat decarbonisation strategy is published (subsection (5)).

20. The report must be prepared within 12 months after the end of the 5-year reporting period, and may include other relevant information (subsection (2)). When preparing the report, the Scottish Ministers must consult each local authority and anyone else they consider appropriate (subsection (3)). They must also publish the report, and lay a copy of it before the Scottish Parliament, as soon as reasonably practicable after it has been prepared (subsection (4)).

Part 2 – Energy performance

Section 5 – Energy performance requirements

21. This section gives the Scottish Ministers a regulation-making power to set minimum energy performance standards for buildings in which direct emission heating systems⁶ are used

⁵ See [schedule 1 of ILRA](http://www.legislation.gov.uk) (www.legislation.gov.uk) for the definition of “local authority”.

⁶ Defined by section 14(1) of the Bill.

(subsection (1)). In this context, a building’s “energy performance” includes its energy use, energy efficiency and greenhouse gas emissions (subsection (7)).

22. The power also allows the Scottish Ministers to set up a system for assessing the energy performance of those buildings, and to require the owners of buildings that do not meet the minimum standard to take action to improve the energy performance of those buildings (subsection (2)). However, rather than set up a new system for assessing the energy performance of buildings, the Scottish Ministers may use an existing one (for example, the system put in place by the Energy Performance of Buildings (Scotland) Regulations 2008⁷ or their proposed replacement – the Energy Performance of Buildings (Scotland) Regulations 2025,⁸ a draft of which was laid before the Scottish Parliament in autumn 2025).

23. Regulations under subsection (1) (“energy performance regulations”) may contain further provision about related matters, as well as a range of ancillary provision, and are subject to the affirmative procedure⁹ (subsection (3) and section 16(1) and (2)).

24. In particular, energy performance regulations may include provision setting out: what the regulations cover and do not cover; who may be required to have assessments carried out; when assessments are to be carried out and by whom; and how the energy performance of buildings is to be assessed. As a way of recording (as evidence) the results of energy performance assessments, the regulations may include provision about: the issuing of certificates following assessments; the form and content of such certificates; the registration of certificates; and the disclosure of information contained within a register of certificates. The regulations may also include provision about recommendations as to how the energy performance of buildings may be improved following assessments, and about how and by when owners may be required to take action to improve the energy performance of buildings that do not meet the minimum standard.

25. In terms of enforcement, energy performance regulations may include provision about: the authority responsible for enforcing the regulations; the enforcement authority’s functions; the keeping of records and the provision of information to the enforcement authority; securing compliance with requirements imposed by or under the regulations, subject to any specified exemptions from those requirements; and the review and appeal of the enforcement authority’s decisions. The enforcement authority is to be whomever the Scottish Ministers think is appropriate to take on the role (subsection (4)). It may be the case that the regulations provide for the enforcement authority’s functions to be carried out by two or more such authorities and, so, they may set out the respective functions of each authority (subsection (5)). The enforcement authority’s functions may include power to impose a charge to recover reasonable costs incurred while carrying out any of its functions under the regulations or doing anything in connection with carrying out those functions (subsection (6)).

Section 6 – Energy performance regulations: further provision

26. This section makes further provision about how the regulation-making power in section 5(1) may be used.

⁷ [S.S.I. 2008/309](http://www.legislation.gov.uk) (www.legislation.gov.uk).

⁸ [The Energy Performance of Buildings \(Scotland\) Regulations 2025](http://www.legislation.gov.uk) [Draft S.S.I.] (www.legislation.gov.uk).

⁹ For details on the affirmative procedure, see [section 29 of ILRA](http://www.legislation.gov.uk) (www.legislation.gov.uk).

27. It enables the Scottish Ministers to set different minimum energy performance standards in relation to different types of building (subsection (1)). So, for example, different standards could be set for domestic buildings as opposed to industrial or commercial buildings. It also allows energy performance regulations (and therefore the minimum energy performance standard) to apply to specified areas, specified types of building, or any combination of those areas and types of building (subsection (2)). That means the regulations could apply to the whole of Scotland or only to some areas of Scotland. They could apply to all buildings or only to some types of building, which may be specified by reference to types of owner as well as types of building (subsection (3)). Or, they could apply to a combination of both – for example, to all buildings in a specific area of Scotland or to specific types of building in the whole of Scotland.

28. Energy performance regulations may not be commenced – that is, brought into force – until at least 12 months after they are made (subsection (4)). Since the regulation-making power may be used more than once,¹⁰ the 12-month restriction applies only when the first set of regulations are made (and therefore when the minimum energy performance standard is first set) in relation to a specified area, specified type of building, or combination of the two. So, for example, where regulations are made applying to all buildings using a direct emission heating system in one specified area, and subsequently regulations are made which apply to that area as well as others (or possibly to the whole of Scotland), the 12-month restriction on commencement does not apply again in relation to the area previously specified.

Section 7 – Energy performance regulations: compliance and sanctions

29. This section allows energy performance regulations to provide for sanctions for the purposes of securing compliance with requirements imposed by or under the regulations (subsection (1)). More specifically, they may set out sanctions for failing to comply with such a requirement, for providing false information in connection with such a requirement, and for obstructing or impersonating the enforcement authority or someone acting on its behalf.

30. Those sanctions may involve the enforcement authority imposing a civil penalty up to a maximum of £15,000 (subsections (2) and (3)). But where energy performance regulations provide for this, they must also grant anyone who is given a civil penalty the right to appeal against it to a court or tribunal (subsection (4)).

31. The Scottish Ministers are also given the power to revise, by regulations, the maximum amount that may be imposed by way of civil penalty (subsection (5)). Regulations made using this power may include ancillary provision and are subject to the affirmative procedure¹¹ (section 16(1) and (2)). For example, this would allow the maximum penalty to be increased due to inflation or to match any increase in similar maximum penalties under the Energy Act 2011.

Section 8 – Modification of enactments

32. This section repeals sections 63, 64 and 71 of the Climate Change (Scotland) Act 2009. Sections 63 and 64 provide regulation-making powers for the assessment of energy performance and emissions of non-domestic buildings and living accommodation, respectively. They are replaced by the new regulation-making power in section 5(1) of the Bill. Section 71 placed a one-off and time-limited duty on the Scottish Ministers to provide for permitted development rights,

¹⁰ See [section 6](#) and [section 7\(1\)](#) of ILRA (www.legislation.gov.uk).

¹¹ For details on the affirmative procedure, see [section 29 of ILRA](#) (www.legislation.gov.uk).

in specified circumstances, for the installation of air source heat pump and wind turbine microgeneration equipment in non-domestic buildings. This duty has been complied with¹² and, so, is now spent.

Part 3 – Heat networks

Section 9 – Heat network consent and key heat network assets

33. This section makes a number of changes to the 2021 Act.

34. Subsection (2) amends section 19(1)(b) of the 2021 Act, which enables the Scottish Ministers to specify in regulations certain kinds of heat network that may be constructed or operated without the heat network consent otherwise required by section 18(1) of that Act. The amendment gives two specific examples of the kinds of heat network that may be exempted from the section 18(1) requirement. The first example is all heat networks situated within a heat network zone, which is an area designated as such under Part 3 of the 2021 Act because it is particularly suitable for the construction and operation of a heat network. Those heat networks may be regulated instead under Part 4 of the 2021 Act (heat network zone permits) or by regulations made under section 10(1) of this Bill (regulations about heat network zones). The second example is communal heating systems (as defined by section 1(3) of the 2021 Act). As many of those networks are small-scale, the Scottish Ministers may in future wish to exempt them from the consent requirement to minimise the regulatory burden they incur.

35. Subsection (5) repeals Part 7 of the 2021 Act, which provides for a scheme to transfer heat network assets in the event that a heat network operator ceases, or is to cease, operating a heat network. The provisions of Part 7 are expected to be superseded by regulations under the Energy Act 2023 and, so, are no longer necessary. Subsections (3) and (4) amend sections 20 and 23 of the 2021 Act in consequence of that repeal.

Section 10 and schedule 1 – Regulations about heat network zones

Section 10 – Regulations about heat network zones

36. Section 10 gives the Scottish Ministers a regulation-making power to make provision about heat network zones (subsection (1)). Those are areas designated as such under Part 3 of the 2021 Act¹³ because they are particularly suitable for the construction and operation of a heat network (subsection (2)).

37. Regulations under subsection (1) (“zone regulations”) may make various kinds of provision about heat network zones (subsection (3) and schedule 1). They may also make different provision for different purposes or areas, as well as a range of ancillary provision, and are subject to the affirmative procedure¹⁴ (see section 16(1) and (2)).

38. Before making zone regulations, the Scottish Ministers must consult each local authority and anyone else they consider appropriate (subsection (4)). In meeting that requirement, it does

¹² By virtue of the Town and Country Planning (General Permitted Development) (Non-Domestic Microgeneration) (Scotland) Amendment Order 2011 ([S.S.I. 2011/136](#)) (www.legislation.gov.uk).

¹³ Under section 46 of the 2021 Act, local authorities and the Scottish Ministers have the power to designate an area as a heat network zone.

¹⁴ For details on the affirmative procedure, see [section 29 of ILRA](#) (www.legislation.gov.uk).

not matter whether any consultation is carried out before or after this section comes into force (subsection (5)).

Schedule 1 – Provision that may be made by regulations under section 10

39. Schedule 1 contains examples of the kinds of provision that the Scottish Ministers may make by zone regulations. These are similar to the kinds of provision that the Secretary of State may make by regulations about heat network zones in England.¹⁵ The examples are illustrative of how the regulation-making power in section 10(1) may be used (paragraph 1(1)). But they do not limit the generality of section 10(1) so as to prevent the Scottish Ministers from making other (or different) provision about heat network zones (section 10(3)).

40. Zone regulations may, for example, make provision relating to—

- zone co-ordinators (paragraph 2),
- heat network zone requirements (paragraphs 3 to 9),
- delivery of district heat networks within heat network zones (paragraph 10),
- information requirements (paragraph 11),
- enforcement of heat network requirements (paragraph 12),
- penalties (paragraph 13),
- fees (paragraph 14).

41. In particular, they may establish the role of zone co-ordinator and set out the functions which a zone co-ordinator must carry out in relation to a heat network zone. The Scottish Ministers may designate any person (including a body)¹⁶ as the zone co-ordinator for a heat network zone. For example, they may choose to designate themselves as the zone co-ordinator for each heat network zone, or for one or more specific heat network zones. Or, they may choose to designate as the zone co-ordinator for a particular heat network zone the same person who may be designated as the permit authority for that zone.¹⁷ It may be the case, then, that a person is designated as a zone co-ordinator for more than one heat network zone, or that different persons are designated as zone co-ordinators for different heat network zones.

42. Zone regulations may also impose requirements aimed at decarbonising the heating systems used in buildings situated within a heat network zone. For instance, they may require that certain buildings within a heat network zone – namely, those in which a direct emission heating system¹⁸ is used – are connected to a district heat network.¹⁹ Or, they may simply prohibit the use of direct emission heating systems in buildings within a heat network zone (without requiring connection to a district heat network). In that case, it would be open to the owners of such

¹⁵ See the Secretary of State’s regulation-making powers under Chapter 2 of Part 8 of the [Energy Act 2023](#) (www.legislation.gov.uk).

¹⁶ See [schedule 1 of ILRA](#) (www.legislation.gov.uk) for the definition of “person”.

¹⁷ Part 4 of the 2021 Act sets up a permit regime for the purpose of regulating the operation of heat networks within heat network zones. Under section 55 of that Act, the Scottish Ministers are the permit authority for each heat network zone by default. But they may designate another person or body (for example, the relevant local authority) to perform the role of permit authority in relation to a particular heat network zone. Section 11 of the Bill amends section 55 of the 2021 Act to make it explicit that different heat network zones may have different permit authorities.

¹⁸ Defined by section 14(1) of the Bill.

¹⁹ Defined in paragraph 1(2) of schedule 1 of the Bill by reference to section 1(2) of the 2021 Act.

properties in which a direct emission heating system is used to replace it with an alternative heating system that produces no (or no more than a negligible level of) greenhouse gas emissions. Requirements may be imposed on specific persons (for example, owners of buildings), in relation to specific types of building (for example, public sector buildings), in specific circumstances (for example, where district heat networks are sufficiently developed and available), and subject to specific time limits for compliance. Zone regulations may provide for zone co-ordinators to give prior notice of requirements to those affected, as well as to grant exemptions from requirements where certain criteria are met. They may also set up a process for challenging any refusal to grant an exemption.

43. Zone regulations may give zone co-ordinators other functions. These may include the function of requiring a person, by notice, to provide information about a thermal energy²⁰ source on the person's property that may be suitable for recovery by a heat network for onward transmission to customers. Or, the function of setting "greenhouse gas emission"²¹ limits on district heat networks within a heat network zone, subject to the Scottish Ministers' consent. Zone co-ordinators may be permitted to give those who are required to comply with such limits a grace period for compliance before enforcement action is taken. Zone regulations may specify when and how a grace period may be given, and set up a process for challenging any refusal to give one. They may also provide for the Scottish Ministers to issue guidance in relation to grace periods.

44. In addition, zone regulations may make provision for zone co-ordinators to deliver district heat networks within heat network zones, and for the Scottish Ministers to give advice to zone co-ordinators about this. Specific provision may be made for zone co-ordinators to decide which district heat networks can be built and run within a heat network zone, or who can design, build, run and maintain district heat networks within heat network zones. This may include provision about how such decisions are to be made, varied, revoked, and challenged. And it may include provision for a zone co-ordinator to lose the power to decide the delivery model for district heat networks within a heat network zone if there is a failure to take certain steps within a certain time frame. Specific provision may also be made for zone co-ordinators themselves to design, build, run and maintain district heat networks within heat network zones, or to arrange for any of these things to be done.

45. Zone regulations may give zone co-ordinators the power to require, by notice, the provision of information which they need to carry out their functions, including enforcing any heat network zone requirement (as defined by paragraph 1(2)). Similar power may be given to the Scottish Ministers for the purpose of carrying out any function which the regulations specifically confer on them in their ministerial capacity (for example, some kind of oversight function). The regulations may set out: who may be issued with a notice requiring the provision of information; what type of information may be required by notice; when such a notice may (or may not) be issued; how and by when a notice is to be complied with; how any information provided is to be verified; and what (if any) specific restrictions or conditions apply to the disclosure of such information. They may also provide for zone co-ordinators and the Scottish Ministers to impose penalties for non-compliance with a notice and for providing materially false or misleading information in response to a notice.

²⁰ Defined in section 14(1) of the Bill by reference to section 1(5) of the 2021 Act, and which means heating, cooling or hot water.

²¹ Defined in section 14(1) of the Bill by reference to sections 10(1) and 17(1) of the Climate Change (Scotland) Act 2009.

46. Zone regulations may make provision for the enforcement of heat network zone requirements, such as a requirement to connect to a district heat network or to stop using a direct emission heating system. Paragraph 1(2) defines “heat network zone requirement” as any requirement imposed by, or by virtue of, zone regulations. But it excludes requirements to provide information to a zone co-ordinator, or the Scottish Ministers, as well as requirements imposed by virtue of paragraph 12(2)(a) or (b) (which are dealt with separately). In particular, the regulations may provide for zone co-ordinators to issue notices requiring persons to show that they have complied with a heat network zone requirement, or requiring persons to take specific action in order to comply with a heat network zone requirement. This may include provision that sets out: what information such a notice is to contain; when and how a notice may or must be issued; by when a notice is to be complied with; and how, and on what basis, a notice may be challenged. Zone co-ordinators may also be given the power to impose a (civil) financial penalty instead of, or in addition to, such a notice.

47. Also in terms of enforcement, zone regulations may make provision about the (civil) financial penalties that may be imposed for non-compliance with a heat network zone requirement or any other requirement imposed by, or by virtue of, the regulations. In particular, they may set out: the maximum amount that may be imposed as a penalty; when and how a penalty may be imposed; what considerations may or must be taken into account when a penalty is imposed; how a penalty may be recovered; and how, and on what basis, a penalty may be challenged. Provision may also be made for the payment of interest where a penalty is not paid on time and for a penalty (and any interest) to be paid in instalments.

48. Finally, zone regulations may include provision for zone co-ordinators and the Scottish Ministers to be paid a charge or fee for carrying out any of their functions under the regulations or for doing anything in connection with carrying out those functions (such as issuing notices to building owners of a prohibition on the use of direct emission heating systems).²² This may set out who is to pay such charge or fee, how a charge or fee is to be determined, and when a charge or fee may be reduced or waived or repaid. Where the regulations provide for a fee to be charged for any application made to a zone co-ordinator, paragraph 14(3) makes it clear that the zone co-ordinator is not required to consider the application unless and until the fee is paid.

Section 11 – Heat network zone permits: designation of “permit authority”

49. This section makes a minor change to section 55 of the 2021 Act, which defines “permit authority” for the purposes of the permit regime set up by Part 4 of that Act to regulate the operation of heat networks in heat network zones. It inserts a new subsection to explicitly allow for different heat network zones to have different permit authorities. So, for example, for some heat network zones the permit authority could be the relevant local authority, whereas for others it could be the Scottish Ministers.

Section 12 – Authorisation of use of powers in Part 6 of the 2021 Act

50. This section makes a number of changes to Part 6 of the 2021 Act, which gives the holder of a heat networks licence (issued under section 5(5) of that Act) certain rights and powers that may be required to build and run a heat network. These relate to the compulsory acquisition of

²² This power is similar to that in section 94 of the 2021 Act.

land, wayleave rights, carrying out surveys, entering land to replace or repair apparatus, and carrying out road works.

51. Subsections (2) and (3) amend sections 68(7) and 82(1) of the 2021 Act, respectively, to replace references to a heat networks licence with references to an installation and maintenance licence. As a result of those changes, subsection (4) amends the interpretation provision in section 83 of the 2021 Act to define “installation and maintenance licence”. Taken together, these changes provide for the use of the Part 6 powers to be authorised by an installation and maintenance licence issued under regulations made under section 13(1) of the Bill, instead of by a heat networks licence (see paragraphs 52 to 66 below for further discussion on installation and maintenance licences).

Section 13 and schedule 2 – Installation and maintenance licences

Section 13 – Installation and maintenance licences

52. This section gives the Scottish Ministers a regulation-making power to set up a new, opt-in licensing regime (subsection (1)). The new regime will partially replace the heat networks licensing regime under Part 1 of the 2021 Act. That Part regulates the supply of thermal energy²³ by a heat network by requiring the supplier to hold a heat networks licence. In that regard, Part 1 of the 2021 Act has been largely superseded by Part 8 of the Energy Act 2023.²⁴

53. However, as mentioned in paragraph 50 above, a heat networks licence also authorises the licence holder to use the powers in Part 6 of the 2021 Act. Given the importance of those powers in relation to the installation and maintenance of heat networks, their use needs to be authorised in another way. Regulations under subsection (1) will therefore provide for their use to be authorised instead by an installation and maintenance licence issued by the Regulator. The Regulator will be the Scottish Ministers by default (subsection (2)(a)). But they may decide to designate, by regulations subject to the affirmative procedure, another person as the Regulator (subsection (2)(b) and section 16(2)). Given its limited purpose of authorising the use of the Part 6 powers, an installation and maintenance licence is optional – a person need only apply for one if seeking to use any of the Part 6 powers in connection with the installation and maintenance of a heat network.

54. Regulations under subsection (1) may make various kinds of provision in relation to installation and maintenance licences (subsection (3) and schedule 2). They may also make different provision for different purposes or areas, as well as a range of ancillary provision, and are subject to the affirmative procedure²⁵ (see section 16(1) and (2)).

Schedule 2 – Installation and maintenance licences

55. Schedule 2 contains examples of the kinds of provision that the Scottish Ministers may make by regulations under section 13(1). These are similar to the kinds of provision that the Secretary of State may make by regulations about installation and maintenance licences in England

²³ Defined by section 1(5) of the 2021 Act as heating, cooling or hot water.

²⁴ Part 8 of the Energy Act 2023 provides for a GB-wide authorisation regime, administered by Ofgem, which will regulate most heat networks from January 2026. The repeal of Part 1 of the 2021 Act will likely require legislation to be passed by the UK Parliament. This is because the Secretary of State designated the Gas and Electricity Markets Authority, a reserved body, as the licensing authority for the purposes of the 2021 Act (see section 4(2) and (3) of that Act and regulation 67 of the Heat Networks (Market Framework) (Great Britain) Regulations 2025 ([S.I. 2025/269](#))).

²⁵ For details on the affirmative procedure, see [section 29 of ILRA](#) (www.legislation.gov.uk).

and Wales.²⁶ The examples are illustrative of how the regulation-making power in section 13(1) may be used (paragraph 1(1)). However, they do not limit the generality of section 13(1) so as to prevent the Scottish Ministers from making other (or different) provision about installation and maintenance licences (section 13(3)).

56. Regulations under section 13(1) may, in particular, make provision relating to—

- licence applications (paragraph 2),
- the determination of licence applications (paragraph 3),
- the duration of a licence (paragraph 4),
- the transfer of a licence (paragraph 5),
- the conditions and limitations of a licence (paragraph 6),
- the modification of a licence (paragraph 7),
- the review and revocation of a licence (paragraph 8),
- appeals against revocations of a licence (paragraph 9),
- information requirements (paragraph 10),
- the enforcement of licensing requirements (paragraph 11),
- penalties (paragraph 12),
- fees (paragraph 13).

57. More specifically, they may set out the process for applying for an installation and maintenance licence. This may include details about the application form to be used, the information to be provided, and the way in which the application and any accompanying documents are to be sent to the Regulator.

58. The regulations may also set out the process which the Regulator must follow when deciding whether to grant an application and issue an installation and maintenance licence. This may include requiring the Regulator to apply an ‘appropriate person’ test before issuing a licence and setting out what factors the Regulator must consider when applying that test. Similarly, the Regulator may be required to be satisfied of other specified conditions before issuing a licence.

59. The regulations may specify for how long an installation and maintenance licence is to have effect, or how the duration of a licence is otherwise to be determined. They may also provide for installation and maintenance licences, for so long as they have effect, to be transferable in certain cases and subject to certain conditions.

60. In addition, the regulations may make provision for installation and maintenance licences to be subject to certain conditions and/or limitations. Some standard conditions may be set out in the regulations themselves – for example, conditions relating to the provision of information to the Regulator (or others) or to the payment of fees in connection with the licence. Otherwise, the regulations may give the Regulator the power to set standard conditions – whether for all

²⁶ See the Secretary of State’s regulation-making power under section 219, and Part 5 of schedule 18, of the [Energy Act 2023](https://www.legislation.gov.uk) (www.legislation.gov.uk).

installation and maintenance licences or just those of a particular type. In either case, the Regulator may be required to consult on, and publish, any proposed standard conditions. Besides standard conditions, the Regulator may be given discretion to include case-specific conditions (including those that meet any objectives or criteria set out in the regulations) and/or limitations in a licence. On limitations, for instance, a licence might authorise the licence holder to use only some of the powers in Part 6 of the 2021 Act. Or, a licence might restrict the location where the licence holder can use the Part 6 powers.

61. The regulations may allow the Regulator to modify installation and maintenance licences by modifying or revoking a licence condition or limitation – whether it is specific to a particular licence, or is included in multiple licences. The Regulator may, or may not, be given discretion to modify or revoke a standard condition set out in the regulations. Provision may be made for the Regulator to modify a licence on the application of the licence holder or on the Regulator’s own initiative, and setting out the process to be followed in either case. Alternatively, the regulations may provide for licence conditions or limitations to be time-limited, or to stop having effect, or to be modified, in accordance with the terms of the relevant conditions or limitations.

62. Besides being allowed to modify installation and maintenance licences, the Regulator may also be allowed or required to review and revoke licences in accordance with any criteria and/or process set out in the regulations. For instance, the Regulator may be given the function of reviewing the conditions or limitations of a licence, to check their appropriateness, or of reviewing how the powers in Part 6 of the 2021 Act have been used as a result of the licence. If the Regulator becomes aware of any breach of licence condition or limitation, the regulations may permit or require the Regulator to revoke the licence. They may also set out: how a licence is to be revoked; how and when the licence holder is to be notified of a revocation; when a revocation is to take effect; and how, and on what basis, a revocation may be challenged. Alternatively, the regulations may provide for a licence to automatically stop having effect in circumstances set out in the licence or otherwise in accordance with the terms of the licence.

63. The regulations may give the Regulator the power to require, by notice, the provision of information which the Regulator needs to enforce any licensing requirement (as defined by paragraph 1(2)) or carry out any other function under the regulations. This may include setting out: who may be issued with a notice requiring the provision of information; what type of information may be required by notice; when such a notice may (or may not) be issued; how and by when a notice is to be complied with; how any information provided is to be verified; and what (if any) specific restrictions or conditions apply to the disclosure of such information by the Regulator or others.

64. The regulations may make provision for the enforcement of licensing requirements. A licensing requirement is defined in paragraph 1(2) as a condition of an installation and maintenance licence, a limitation of an installation and maintenance licence, or a requirement imposed on the licence holder by or under the regulations. In particular, the regulations may give the Regulator the power to issue notices requiring licence holders to take specific action in order to comply with a licensing requirement. This may include provision that sets out: what information such a notice is to contain; when and how a notice may or must be issued; by when a notice is to be complied with; how a notice may be enforced; and how, and on what basis, a notice may be challenged. The Regulator may also be given the power to impose a (civil) financial penalty instead of, or in addition to, such a notice, or else to accept an enforcement undertaking (as defined by paragraph 1(2)).

65. The regulations may therefore include provision about the (civil) financial penalties that may be imposed for non-compliance with a licensing requirement. In particular, they may set out: the maximum amount that may be imposed as a penalty; when and how a penalty may be imposed; what considerations may or must be taken into account when a penalty is imposed; how a penalty may be recovered; and how, and on what basis, a penalty may be challenged. Provision may also be made for the payment of interest where a penalty is not paid on time, for a penalty (and any interest) to be paid in instalments, and for the Regulator to accept an enforcement undertaking from a licence holder instead of imposing a penalty. The regulations may further provide for the Regulator to publish (and update as necessary) a statement of policy about how penalties are imposed and how their amount is determined.

66. Finally, the regulations may include provision for the Regulator to be paid a charge or fee for carrying out any of the Regulator's functions or for doing anything in connection with carrying out those functions.²⁷ This may set out how a charge or fee is to be determined, and when a charge or fee may be reduced or waived or repaid. Where the regulations provide for a fee to be charged for any application made to the Regulator, paragraph 13(3) makes it clear that the Regulator is not required to consider the application unless and until the fee is paid

Part 4 – Final provisions

Section 14 – Interpretation

67. This section sets out the meanings of various expressions that are used in the Bill (subsection (1)).

68. It also allows the Scottish Ministers, by regulations, to vary, add or remove a definition of an expression (subsection (2)). For instance, they may use this power to update or broaden the definition of “direct emission heating system” to reflect advances in technology and increased availability of viable alternatives. Regulations under this section may include ancillary provision and are subject to the affirmative procedure²⁸ (section 16(1) and (2)).

Section 15 – Ancillary provision

69. This section enables the Scottish Ministers, by regulations, to make a range of ancillary provision (that is, incidental, supplementary, consequential, transitional, transitory or saving provision) for the purposes of, in connection with, or to give full effect to the Bill (once enacted) or any provision made under it.

70. Regulations under this section may modify any enactment (including the Bill, once enacted). The word “enactment” is defined in schedule 1 of ILRA,²⁹ and includes Acts of the Scottish Parliament and Acts of the UK Parliament, as well as secondary legislation.

²⁷ As highlighted in relation to paragraph 14 of schedule 1 of the Bill, this power is similar to that in section 94 of the 2021 Act.

²⁸ For details on the affirmative procedure, see [section 29 of ILRA](http://www.legislation.gov.uk) (www.legislation.gov.uk).

²⁹ [Schedule 1 of ILRA](http://www.legislation.gov.uk) (www.legislation.gov.uk).

71. By virtue of section 16(3), where regulations under this section textually amend an Act, they are subject to the affirmative procedure.³⁰ Otherwise, they are subject to the negative procedure.³¹

Section 16 – Regulations

72. This section provides that the various regulation-making powers under the Bill may make different provision for different purposes or areas and, other than section 15(1), include the power to make a range of ancillary provision – that is, incidental, supplementary, consequential, transitional, transitory or saving provision (subsections (1) and (4)).

73. Being able to make different provision for different purposes allows the Scottish Ministers to use their regulation-making powers in different ways in different circumstances. That means, for example, that zone regulations can impose different requirements in relation to different types of building. And being able to make different provision for different areas means, for example, that the Scottish Ministers can designate different persons as zone co-ordinator for different heat network zones under zone regulations made by virtue of paragraph 2 of schedule 1.

74. This section also sets out the parliamentary procedure that applies to regulations under the Bill (subsections (2) and (3)).

75. However, this section does not apply to commencement regulations under section 17(2) of the Bill, for which separate (and more limited) provision is made.

Section 17 – Commencement

76. This section sets out when the provisions of the Bill, once enacted, come into force (that is, when they take effect).

77. Some of the final provisions in Part 4, including this section, come into force automatically on the day after the Bill receives Royal Assent (subsection (1)).

78. However, the substantive provisions come into force in accordance with regulations made by the Scottish Ministers (subsection (2)). Those regulations may include transitional, transitory or saving provision related to commencement (subsection (3)(a)). They may also make different provision for different purposes (subsection (3)(b)). This allows different provisions to come into force on different days.

79. Regulations under this section will (unless combined with regulations under section 15(1) of the Bill) be laid before the Scottish Parliament but will not otherwise be subject to any parliamentary procedure.³²

³⁰ For details on the affirmative procedure, see [section 29 of ILRA](http://www.legislation.gov.uk) (www.legislation.gov.uk).

³¹ For details on the negative procedure, see [section 28 of ILRA](http://www.legislation.gov.uk) (www.legislation.gov.uk).

³² This is by virtue of [section 30 of ILRA](http://www.legislation.gov.uk) (www.legislation.gov.uk).

Section 18 – Short title

80. This section provides that the Bill, once enacted, will be referred to as the Buildings (Heating and Energy Performance) and Heat Networks (Scotland) Act 2027.

**DRAFT BUILDINGS (HEATING AND ENERGY
PERFORMANCE) AND HEAT NETWORKS
(SCOTLAND) BILL**

DRAFT EXPLANATORY NOTES

[18 NOVEMBER 2025]