

District Heating Act (2008:263)

SFS no: 2008:263

Department/Authority: Ministry of Enterprise, Energy and Communications

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Introductory provisions

Section 1 In this Act, 'district heating operation' means the distribution in pipelines of heated water or other heat carrier for heating, provided an unspecified group within a particular geographical area may be connected to the operation.

A district heating operation also includes the production and sale of the heat distributed in the pipelines, provided the party conducting the distribution also conducts the production and sale of the heat.

Section 2 In this Act,

a 'district heating undertaking' means a legal entity that conducts a district heating operation,

a 'district heating customer' means a party who has concluded a contract for district heating with a district heating undertaking,

a 'consumer' means a district heating customer who is a natural person and who uses district heating mainly outside business operations,

a 'district heating contract' means a contract for the distribution in pipelines of a heat carrier for heating and for the sale of the heat distributed.

Section 3 The provisions of this Act regarding district heating undertakings shall also apply to natural persons who conduct a district heating operation.

Section 4 Contract terms that are disadvantageous to a consumer compared to the provisions of this Act are ineffective against the consumer.

Price information

Section 5 A district heating undertaking shall ensure that information about the district heating undertaking's prices for district heating and for a connection to the district heating operation and also how a price is structured is readily available to district heating customers and the general public. A district heating undertaking that applies different prices for different categories of district heating customer is subject to the same obligation as regards providing information about the principles employed for dividing district heating customers into different categories.

Price information must be correct and clear.

The Government or the authority appointed by the Government may issue regulations concerning the obligation to provide price information for the general public according to the first and second paragraphs.

The district heating contract

Information included in a district heating contract

Section 6 A district heating contract shall include information about

1. the district heating undertaking's obligations in relation to the district heating customer,
2. the price of the district heating and how it is structured.
3. where the district heating customer can find information about the district heating undertaking's prices for district heating,
4. the period that the contract will run,
5. for contracts that run for a fixed term, the provisions applicable regarding extension of the contract,
6. whether the contract allows a district heating undertaking to make a unilateral amendment of the contract terms and about the preconditions for the district heating undertaking being allowed to make such an amendment,
7. the termination conditions for the contract,
8. the district heating undertaking's liability to pay compensation if it does not fulfil the contract,
9. who will bear the reinstatement costs following
 - a) a connection to the district heating operation,
 - b) maintenance work to pipelines, or
 - c) the removal of a connection, and
10. how negotiations can be requested and mediation applied for according to this Act.

Negotiations concerning contract terms for district heating

Section 7 A district heating undertaking shall negotiate with a district heating customer who requests negotiations regarding the price of district heating or regarding the capacity at a connection to the district heating operation.

Section 19 provides that the district heating undertaking may also have a negotiation obligation in cases where the undertaking has made a unilateral amendment of the contract terms to the disadvantage of the district heating customer.

Section 8 A district heating undertaking's obligation to negotiate with a district heating customer means that the district heating undertaking shall

1. state the reasons for the contract condition to which the negotiations relates,
2. provide the district heating customer with sufficient information to be able to assess the reasonableness of the contract condition, and

3. attempt to reach an agreement with the district heating customer regarding the contract condition.

Section 9 If negotiations do not result in an agreement, the district heating undertaking shall notify the district heating customer that the negotiations have been concluded and shall state the reasons for the position taken by the district heating undertaking.

This notification may be given verbally at a meeting between the district heating undertaking and the district heating customer. If such a verbal notification is not provided, the district heating undertaking shall notify the district heating customer in writing.

Mediation

Section 10 The district heating undertaking or the district heating customer may apply for mediation if negotiations between a district heating undertaking and a district heating customer do not result in any agreement on terms for district heating.

Section 11 An application for mediation shall be submitted to the mediating authority under this Act. The application shall have been received by the authority within three weeks from the date when the district heating undertaking gave notice to the district heating customer in accordance with Section 9 that the negotiations have been concluded.

Section 12 The party applying for mediation must pay an application fee of SEK 1 000 at the same time as submitting the application. A consumer must pay SEK 500 instead.

Section 13 The mediating authority under this Act shall make a decision on mediation.

An application for mediation shall only be approved if the authority considers that mediation may result in an agreement between the district heating undertaking and the district heating customer.

Section 14 An application for mediation shall be dismissed if

1. the applicant has not paid the application fee,
2. the application does not include a sufficient explanation of the circumstances of relevance to the mediation task, despite the applicant having been directed to rectify the deficiency, or
3. the application was received by the authority too late.

Section 15 The authority shall conclude the mediation when the mediating authority under this Act considers that there is no longer any cause to continue with mediation.

The district heating undertaking and the district heating customer shall be notified of a decision to conclude mediation.

Section 16 The mediating authority under this Act shall issue the orders required for the mediation task.

Such an order may be made subject to a default fine.

Unilateral amendments of contract terms to the disadvantage of the district heating customer

The contract

Section 17 The provisions of Clauses 18 to 26 apply where a district heating undertaking has been granted under the district heating contract the right to unilaterally amend the contract terms to the disadvantage of the district heating customer.

The district heating undertaking's notification obligation

Section 18 If the district heating undertaking makes an amendment of the contract terms, the district heating customer shall be notified of the amendment in writing no later than two months prior to the date on which the amended terms will start to apply.

The reasons for the amendment shall be stated in the notification and information shall also be provided about the district heating customer being entitled to request negotiations, apply for mediation and to give notice terminating the contract.

The amended terms may not be applied if the district heating undertaking does not observe the provisions of the first and second paragraphs.

Negotiations regarding the amended terms

Section 19 A district heating undertaking is liable to negotiate with a district heating customer regarding a unilateral amendment of the contract terms to the disadvantage of the district heating customer, provided the customer requests negotiations within three weeks from the date on which the customer was notified, in accordance with Section 18 of the amended contract terms.

Section 20 If the district heating customer has requested negotiations in accordance with Section 19, but no agreement is reached between the parties, the amended terms may start to be applied from the date they should start to apply, though at the earliest three weeks from the date when the district heating undertaking notified the district heating customer of the negotiations having been concluded in accordance with Section 9.

This does not apply in cases referred to in Section 21 or if the district heating customer gives notice terminating the contract in accordance with Section 23.

Mediation

Section 21 The amended terms may start to be applied from the date they should start to apply if an application for mediation regarding a unilateral amendment of the contract terms to the disadvantage of the district heating customer has been made in accordance with Section 10, but no agreement is reached between the parties.

However, the terms may start to be applied at the earliest three weeks from the date on which the authority made the decision to conclude mediation or, if the application has been rejected, at the earliest three weeks from the date of the decision.

This does not apply if the district heating customer gives notice terminating the contract in accordance with Section 24.

Termination of the district heating contract

Section 22 A district heating customer is entitled to give notice terminating the district heating contract if the district heating customer is given notice under Section 18 regarding amended contract terms.

In order to have effect, notice of termination shall be made no later than two months from the date the customer is notified of the amendment, or such later day as prescribed by Section 23 or 24.

As regards a consumer, notice of termination shall be deemed to have been made when notification regarding the termination has been submitted for postal conveyance or dispatched in some other appropriate way.

Section 23 If the district heating customer has requested negotiations in accordance with Section 19, but no agreement is reached between the parties, the district heating customer is entitled to give notice terminating the contract no later than three weeks from the date when the district heating undertaking notified the district heating customer of the negotiations having been concluded in accordance with Section 9.

Section 24 If an application for mediation regarding a unilateral amendment of the contract terms to the disadvantage of the district heating customer has been made in accordance with Section 10, but no agreement is reached between the parties, the district heating customer is entitled to give notice terminating the contract no later than three weeks from the date when the authority made the decision to conclude the mediation or, if the application is rejected, no later than three weeks from the date of such decision.

Section 25 If a district heating customer gives notice terminating a contract according to Section 22, 23 or 24, the contract ceases to apply three months from the date of the notice of termination.

The amended contract terms may not be applied during the period of notice of termination.

Section 26 A district heating customer may give notice terminating a district heating contract in accordance with Section 22, 23 or 24 without any costs, fees or other obligations being imposed as a consequence of the notice of termination.

Distribution of district heating to consumers

Discontinuation of distribution in the event of a breach of contract

Section 27 The distribution of district heating to a consumer may be discontinued if the consumer has neglected the obligations under the contract and this neglect constitutes a fundamental breach of contract. However, the distribution may only be discontinued if the consumer does not comply with a written demand to fulfil the obligations under the contract within a specified and reasonable period.

If the neglect relates to something other than the consumer not having paid according to the contract, the written demand shall contain a notification that the distribution of district heating may be discontinued if the event of non-compliance with the demand.

The distribution of district heating may not be discontinued if the circumstances give cause to anticipate that a discontinuation of the distribution may entail personal injury that is not insignificant or substantial property damage. However, this does not apply if the consumer has behaved in an improper manner.

Section 28 If a consumer has not made payment according to the contract, the distribution of district heating may be discontinued provided that, in addition to that provided by the first and third paragraphs of Section 27,

1. the claim of the district heating undertaking is undisputed,
2. the consumer has not complied with the written demand to pay the claim and the consumer has subsequently been served a written reminder to pay within three weeks from service,
3. the reminder included information that the distribution of district heating may be discontinued if the claim is not paid, and
4. a message concerning the content of the reminder has been sent to the social welfare committee in the municipality where the consumer has the district heating distributed.

The distribution of district heating may not be discontinued if the claim has been paid or the social welfare committee has notified the district heating undertaking, within the time specified in the first paragraph, item 2, that the committee will pay the claim.

Section 29 Notifications and messages as referred to in Section 28 shall be submitted using a standard form approved by the Government or the authority appointed by the Government.

Section 30 A district heating undertaking is entitled to reasonable compensation from a consumer for costs resulting from measures in accordance with Sections 27 and 28.

Discontinuation of distribution for safety reasons, etc.

Section 31 A district heating undertaking may discontinue the distribution of district heating to a consumer in order to implement measures aimed at

1. avoiding personal injury or substantial property damage,
2. extending the district heating operation, or
3. ensuring good distribution security.

The discontinuation may not last longer than is necessary to implement the measure.

The district heating undertaking shall notify the consumer of a forthcoming disruption in good time if the district heating undertaking can anticipate that this disruption will be more than short term. The consumer shall be notified personally or, if it is appropriate, by public notice.

Liability of district heating undertakings to pay compensation

Section 32 A district heating undertaking shall pay compensation for damage or injury that a consumer has been caused by the distribution of district heating being discontinued without the discontinuation being due to the consumer's neglect and the district heating undertaking being entitled to discontinue such distribution according to Section 27 or 28.

Section 33 A district heating undertaking shall pay compensation for damage or injury that a consumer has been caused by the distribution of district heating being discontinued without the discontinuation being due to the consumer's neglect and the district heating undertaking being entitled to discontinue such distribution according to the first paragraph of Section 31.

The same applies to damage/injury that a consumer is caused by

1. a disruption as referred to in the first paragraph of Section 31 lasting longer than is necessary to implement the measure, or
2. the district heating undertaking not notifying the consumer of a forthcoming disruption in accordance with the third paragraph of Section 31.

However, the district heating undertaking is not liable to pay compensation for damage or injury if the district heating undertaking shows that the disruption in the distribution of district heating results from an impediment which was outside the control of the district heating undertaking and whose consequences the undertaking could neither reasonably have anticipated nor have avoided or overcome.

If the disruption is due to someone that the district heating undertaking has engaged to perform maintenance, repair or similar work, the district heating undertaking is only released from the liability to pay damages if the party engaged would have been released from the liability to pay damages in accordance with the third paragraph.

Section 34 Damages in accordance with Sections 32 and 33 include compensation for costs, loss of income and other losses.

Section 35 If the obligation to pay damages to a consumer in accordance with Sections 32 and 33 is unreasonably burdensome considering the financial circumstances of the district heating undertaking, a reasonable adjustment of damages may be made.

Existing insurance and insurance opportunities, the capacity of the district heating undertaking to anticipate and prevent the damage or injury and other special circumstances should be taken into account when assessing whether the liability to pay damages is unreasonably onerous for the district heating undertaking.

Section 36 A right to compensation from the district heating undertaking lapses unless the consumer notifies the district heating undertaking about the claim for compensation within three years from the damage occurring.

If notice of a claim for compensation has been submitted for postal conveyance or dispatched in some other appropriate way, the notification of the claim shall be deemed to have been made when this has been effected.

Negotiations regarding access to pipelines

Section 37 If a district heating undertaking receives a request for access to the pipelines from someone who wishes to sell heat to the district heating operation or use the pipes for the distribution of heat, the district heating undertaking shall conduct negotiations for access with the party making the request. The obligation to negotiate means that the district heating undertaking shall endeavour to reach agreement regarding access with the party who requested such access.

If an agreement on access cannot be reached, the district heating undertaking shall state the reasons for access not being granted.

Municipal district heating undertakings

Section 38 If a municipal undertaking as referred to in Chapter 3, Sections 16 to 18 of the Local Government Act (1991:900) conducts a district heating operation, the operation shall be run on commercial principles.

Section 39 Notwithstanding the provisions of Chapter 2, Section 1 of the same Act concerning links to the district of the municipality or its members, such a municipal undertaking as referred to in Chapter 3, Sections 16 to 18 of the Local Government Act (1991:900) may conduct a district heating operation outside the district of the municipality if it is conducted in the geographical proximity of the district heating operation within the municipality with the aim of ensuring an efficient district heating operation.

Accounting of district heating operation

Section 40 The financial accounts related to a district heating undertaking shall be kept separately by drawing up an annual report every year.

When accounting for the district heating operation, electricity that has been generated at the same time as heat distributed in the district heating operation is produced is deemed to form part of the operation. The same applies to sales of such electricity.

The Government or the authority appointed by the Government may issue additional regulations regarding the accounting of the district heating operation.

Section 41 A district heating undertaking shall provide details of business and operational data of the district heating operation. Such details shall be provided for each integrated system of pipelines and plants for the production of the heat distributed in the pipes, if such production forms part of the district heating operation.

However, this information may refer to the overall operation with the pipelines and plants where the price of district heating is the same for different systems of pipelines and plants for the production of heat.

The Government or the authority appointed by the Government may issue additional regulations regarding the obligation to provide information.

Section 42 The annual report must be audited by an auditor.

The audit shall involve an examination of whether the annual report has been drawn up in accordance with the applicable provisions. The audit must be as detailed and extensive as required by generally accepted auditing standards.

The auditor shall submit a written statement on the audit.

The Government may issue regulations regarding the auditing of the annual report.

Section 43 Details of the operational and business data of the district heating operation together with a certified copy of the annual report and annual report audit statement shall be submitted to the supervisory authority. This information and documents must be submitted to the supervisory authority within seven months from the end of the financial year.

If the district heating undertaking decided on an adjourned general meeting according to Chapter 7, Section 14 of the Swedish Companies Act (2005:551) or an adjourned general meeting of the association according to Chapter 7, Section 4, third paragraph of the Co-

operative Societies' Act (1987:667), this information and documents must instead be received by the supervisory authority within nine months from the end of the financial year.

These documents may be transmitted to the supervisory authority electronically.

An electronic original shall be equated to a certified copy.

Charges for delay

Section 44 The district heating undertaking shall pay a charge for delay of SEK 10 000 if the supervisory authority has not received the annual report and the annual report audit statement in the prescribed manner and within the prescribed time.

The district heating undertaking shall pay a second charge for delay of SEK 10 000 if the documents have not been submitted within two months from notification having been sent to the district heating undertaking that a charge for delay has been imposed.

The district heating undertaking shall pay a third charge for delay of SEK 20 000 if the documents have not been submitted within two months from notification having been sent to the district heating undertaking that a second charge for delay has been imposed.

Section 45 A charge for delay may not be imposed following the registration of a decision with the Swedish Companies Registration Office that a district heating undertaking has been put into bankruptcy or has entered into liquidation.

If the district heating undertaking has entered into liquidation, the foregoing only applies as regards a report for the period preceding the liquidation decision.

Section 46 If the district heating undertaking has submitted an annual report and an annual report audit statement in time, but the documents have some inadequacy that can easily be rectified, a charge for delay shall only be imposed if the district heating undertaking has been notified of the inadequacy and been given an opportunity to rectify it, but has not done so within the time stated in the notice.

Such notice may be sent by post to the postal address last notified to the supervisory authority by the district heating undertaking.

Section 47 A charge for delay shall be waived if the failure to submit the annual report or annual report audit statement appears to be excusable having regard to circumstances that the district heating undertaking could not control. The charge for delay shall also be waived if it appears manifestly unreasonable to impose it.

The provisions concerning waiver shall be taken into account even if no application for waiver has been presented, if there is cause to do so considering the circumstances established in the matter.

Section 48 If a charge for delay has not been paid following a demand for payment, the charge shall be submitted for collection. Provisions concerning collection are contained in the Collection of State Debts, etc., Act (1993:891).

Enforcement under the Enforcement Code may take place in connection with collection. A decision concerning a charge for delay may be enforced even if it has not entered into final legal force.

Submission for collection is not required if the State's claim for the charge for delay is trivial.

Section 49 If a district heating undertaking is entitled to repayment of a charge for delay owing to the decision of a court, interest shall be paid on the repaid charge for delay as of and including the month after when such charge for delay was paid, up to and including the month when it was repaid. Chapter 19, Section 14 of the Tax Payments Act (1997:483) shall apply regarding the amount of interest.

Section 50 Issues regarding charges for delay shall be decided by the supervisory authority.

Section 51 Charges for delay belong to the State.

Supervision

Section 52 The supervisory authority shall exercise supervision to ensure that the district heating undertaking complies with the provisions of Sections 5 to 9, 18 to 21, 25 to 29, 31 and 37 to 43.

The supervisory authority may issue the orders required to ensure compliance with these provisions. Such an order may be made subject to a default fine.

Section 53 The supervisory authority is entitled to receive the information upon request and to have access to the documents that are necessary for supervision. Such an order may be made subject to a default fine.

Appeals

Section 54 An appeal may be made to a general administrative court regarding a decision on an order subject to a default fine according to the second paragraph of Section 16 and the second paragraph of Section 52, a request according to Section 53 that has been made subject to a default fine and a decision on a charge for delay.

Leave to appeal is required when appealing to the administrative court of appeal.

Appeals may not be made regarding other decisions under this Act.

Transitional provisions

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1. This Act enters into force on 1 July 2008.
2. The provisions contained in Sections 17 to 26 apply to such unilateral amendments of contract terms that shall start to apply after 30 June 2008.
3. As regards such unilateral amendments of contract terms that shall start to apply after 30 June 2008, the district heating undertaking is, in addition to that prescribed by Section 19, liable to negotiate if the district heating customer requests negotiations no later than 22 July 2008.
4. The provisions contained in Sections 27 to 31 apply to such discontinuation to the distribution that occurs after 30 June 2008.
5. The provisions contained in Section 41 apply for the first time for the financial year that first starts after 30 June 2008.

6. The provisions contained in Sections 44 to 51 apply to annual reports and statements of the auditing of annual reports that refer to any financial year that first starts after 30 June 2008.