

NECESSARY WAYLEAVES REGIME

Consultation on proposed reforms to
the Electricity Act process



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The consultation and Impact Assessment can be found on DECC's website:
<http://www.decc.gov.uk/en/content/cms/consultations/>

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1967 No. 450	

General information

Purpose of this consultation

This consultation invites views from interested parties on possible reforms in England and Wales to the existing process for handling applications from electricity network operators for “necessary wayleaves” under Schedule 4 of the Electricity Act 1989.

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Respond by: 28 November 2012

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Consultation reference: URN 12D/310 – Necessary Wayleave Regime – Consultation on Proposed reforms to the Electricity Act process

Territorial extent:

The content of this consultation is relevant to England and Wales only.

How to respond:

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

When responding please state whether you are responding as an individual or representing views of an organisation. If responding on behalf of an organisation, please make clear who the organisation represents and, where applicable, how the views of members were assembled. Responses should be submitted, preferably by e-mail, using this dedicated mailbox address: WayleavesConsultation@decc.gsi.gov.uk

Additional copies:

You may make copies of this document without seeking permission. An electronic version can be found at <http://www.decc.gov.uk/en/content/cms/consultations/>

Other versions of the document in Braille, large print or audio-cassette are available on request. This includes a Welsh version. Please contact us using the above details to request alternative versions.

Confidentiality and data protection:

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. It would be helpful if you could explain

to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded by us as a confidentiality request.

We will summarise all responses and place this summary on our website at www.decc.gov.uk/en/content/cms/consultations/. This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

Quality assurance:

This consultation has been carried out in accordance with the Government's consultation principles, which can be found here:

<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf>

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

DECC Consultation Co-ordinator

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Executive Summary

1. This consultation invites views from interested parties on possible reforms in England and Wales, to the system for handling applications from electricity network operators for “necessary wayleaves” under the Electricity Act 1989 (“the Act”). Necessary wayleaves are one way for network operators to secure the right to run electric lines across land in cases where it is considered to be in the public interest for them to do so but they are unable to reach agreement with the owners or occupiers of the land in question.
2. In particular, we are seeking views on proposals in respect of:
 - possible changes to the wayleaves procedures currently set out in legislation, in particular modernisation of the Electricity (Compulsory Wayleaves) (Hearings Procedure) Rules 1967¹ (“the 1967 Rules” – see Annex A);
 - the possible introduction of a formal procedure for hearing statutory applications made by electricity transmission and distribution licence holders relating to essential vegetation management adjacent to overhead lines and electrical plant (e.g. to fell or lop trees or shrubs or cut back their roots where they pose a risk to safety or security of supply);
 - the possible introduction of a scale fees for handling necessary wayleave and essential vegetation management applications, to be payable by licence holders at various stages in the process, in line with Government policy that such services should be on a “full cost recovery basis” so that the cost to the tax payer is broadly neutral.

¹ Statutory Instrument 1967 No. 450 <http://webarchive.nationalarchives.gov.uk/http://www.berr.gov.uk/files/file23026.pdf>

Outline of the existing regime

3. The electricity networks in England and Wales are owned and operated by the National Grid Company plc (NG) and electricity Distribution Network Operators (DNOs) (i.e. electricity licence holders). Licence holders are companies who distribute or transmit electricity and have respective duties contained in section 9 of the Electricity Act 1989 (as amended by the Utilities Act 2000) to develop and maintain an efficient, co-ordinated and economical system of electricity distribution and transmission.

Voluntary land agreements

4. Network operators need to be able to install and keep installed their electric lines, including poles, pylons, and staywires, on, over or under any land which they do not own or occupy themselves, and to have access to that land for the purposes of inspecting, maintaining, repairing, adjusting, altering, replacing or removing the line.

5. Network operators cannot do these things lawfully unless they have sufficient rights over the land in question (in addition to any statutory consents or planning permission required²). Wayleaves and easements are legal agreements that allow them to install new or retain (and maintain) existing transmission or distribution lines and structures on, over or under land that they do not own.

6. The vast majority of such land access rights are secured by operators in the form of wayleaves or easements negotiated on a commercial basis with the relevant landowners. Wayleaves are a formal licence, normally considered to be a “personal contract” between parties, in other words, one in which the network operator’s rights do not automatically continue on a change of ownership of the land. Compensation is usually made in annual instalments to the landowner and/or occupier. The Department understands that most DNOs have between 150,000 and 500,000 wayleave agreements each to manage on an ongoing basis, with continual churn as property ownership changes. Easements however are a legal interest in the land capable of being registered at the Land Registry and provide rights to install and retain electricity infrastructure on the land normally to be held in perpetuity or for a specified period. Payments for such easements are usually made as a one-off capital sum payment, so any subsequent change in land ownership will not derive any new payment from operators to any new landowner.

Compulsory land agreements

7. When network operators are unable to secure sufficient rights to enable them to run electric lines over a piece of land in the form a voluntary wayleave or easement, as electricity licence holders who operate under a regime that reflects their public service role, they are able to call upon statutory provisions in the Act, that provides means by which they can acquire the necessary rights compulsorily, subject to demonstrating to the Secretary of State that this interference with property rights is justified.

8. The most frequently used procedure is for the network operator to apply for a “necessary wayleave” under paragraphs 6 to 8 of Schedule 4 to the Act and the 1967 Rules. The necessary wayleave procedure can be invoked either in respect of a proposed new electric line or when a

² Notably consent to install or keep installed an electric line above ground under s. 37 Electricity Act 1989; on development consent for electric lines above ground, see [refer to later note].

landowner and/or occupier has served on the licence holder a written notice to remove an existing line from their land. In either case, the network operator must (in England and Wales³) make an application to the Secretary of State for Energy and Climate Change, and – if subsequent negotiations do not result in a voluntary agreement being reached after all – an inspector appointed by the Secretary of State will hear the arguments of either side as to whether it is necessary or expedient for the line to cross the land in question and the Secretary of State will take a final decision in the light of the inspector’s report and recommendations. If a compulsory “necessary” wayleave is granted by the Secretary of State it will usually be for a fifteen year term, but unlike a voluntary wayleave it will survive a change in the ownership of the land during that period. The Secretary of State has no power to rule on the amount of compensation payable in respect of necessary wayleaves: if this is not agreed between the parties, further proceedings must be instigated before the Upper Tribunal (Lands Chamber)⁴.

9. There is a further option open to network operators which is the compulsory purchase order process under Schedule 3 to the Act. This can be used to acquire land outright, or to secure a compulsory easement over it. The procedures to be followed in these cases are essentially the same as in most other compulsory purchase proceedings, involving the application of the Acquisition of Land Act 1981 and the Compulsory Purchase Act 1965.

10. There is Departmental guidance on the current application procedures for the grant of a necessary wayleave which also briefly touches on Compulsory Purchase Orders⁵. For larger projects involving new lines for which development consent is required under the Planning Act 2008, there is no need to make a separate application under Schedule 4 and the 1967 Rules,⁶ as any necessary wayleaves or easements can be incorporated in the Planning Act process, but such projects only constitute a very small fraction of the cases in which network operators may wish to have recourse to compulsory acquisition of land or rights over land.

The Hearings process and the legislation

11. When the Department receives a necessary wayleave application, the Secretary of State must determine firstly that he has jurisdiction to proceed with the application and – in the case of an existing line – that the application has been submitted within three months of a notice to remove being served by the landowner as required by the Act. Once this is confirmed, the Secretary of State will, if required to so do, proceed to arrange a pre-hearing and hearing date and issue a formal notice of these dates to the parties. Any hearing would then take place in accordance with the 1967 Rules. The person appointed to conduct the hearing and pre-hearing will usually be an independent Engineering Inspector.

³ In Scotland, applications are made to Scottish Ministers. For convenience, the remainder of this document refers to the process as conducted by the Secretary of State and officials in the Department for Energy and Climate Change (DECC).

⁴ The Upper Tribunal (Lands Chamber) is the successor to the Lands Tribunal and is an independent and specialist judicial body. The Tribunal consists of a President, who is the judicial head, and legal and surveyor members. The Lands Chamber judges and members decide certain disputes concerning land, particularly the valuation of land. They hear cases under many different Acts of Parliament and statutory instruments. They determine disputed compensation in compulsory purchase and certain other types of land compensation cases and they hear appeals from Valuation Tribunals, Leasehold Valuation Tribunals and Residential Property Tribunals.

⁵ <https://www.og.decc.gov.uk/EIP/pages/files/file23024.pdf>

⁶ For electric line projects that fall under the Planning Act 2008, it is possible to deal with necessary wayleave (or easement) issues as part of the process of obtaining development consent, with provision about wayleaves or easements forming part of the eventual development consent order. By consent, projects consented under s. 37 of the 1989 Act require separate wayleave documents – although it is possible to combine wayleave hearings with s. 37 public inquiries where these are held.

Vegetation management in the vicinity of electric lines

12. Licence holders have a duty to comply with requirements contained in the Electricity Safety, Quality and Continuity Regulations 2002 (ESQCR)⁷ as amended⁸ to keep sufficient distance between vegetation and overhead lines both to protect public safety and to ensure continuity of supply. Landowners are generally responsible for managing trees and vegetation where lines or other network apparatus may be situated on their land. Because cutting trees in close proximity to live electricity lines can be very dangerous, in practice licence holders are better equipped to come in and undertake the works at their own expense and consequently most land owners normally leave such work to the company to arrange.

13. However, in circumstances where the landowner is unwilling to allow necessary works to be undertaken, the licence holder has statutory powers under Paragraph 9 of Schedule 4 of the 1989 Act to serve notice on owners and/or occupiers of land requiring them to fell or lop trees or shrubs or cut back their roots where they pose a danger or interfere with overhead lines or electrical plant. Where these notices are not complied with by the landowner and/or occupier within 21 days, the licence holder may undertake the felling, lopping or cutting back itself, unless the owner and/or occupier serves a counter-notice within that time, in which case the matter is referred to the Secretary of State. Historically, the 1967 Rules have been used as a proxy process for hearings into vegetation management matters although there have been very few hearings conducted by Inspectors, perhaps one or two per year over the last five years. This suggests that it is usually possible for network operators and landowners to reach a suitable arrangement, with the statutory process only being used as a last resort.

Problems with the existing regime

14. Securing rights over land is a major issue for network operators. Equally, for landowners and occupiers, the presence of electric lines on their land can be a major issue. The necessary wayleaves procedure is an important part of the way that legislation tries to ensure that the rights and interests of both sides are given due consideration. However, the Department is concerned that the regime may not be working as efficiently or effectively as it should in all cases.

15. Prior to publication of this consultation document, the Department had some informal engagement with members of the Energy Networks Association (ENA) Wayleaves and Estates Forum and with a number of landowner groups such as the Countryside Landowners Association, National Farmers Union and a sample of land agents' representatives who regularly conduct business with the Department on their clients' behalf. This approach to those parties was made to help inform the Department of the magnitude of the industry wayleaves caseload, and to explore more widely how interested parties might consider that the regime itself could be improved. We are planning a consultation event shortly after the consultation document is published at which we will explain the proposals and how they might work and receive informal comments on those ahead of the consultation closure.

Structural issues

16. The Department's figures show that during 2010/2011, 366 applications for necessary wayleaves were made to the Secretary of State. The vast majority of these applications relate to

⁷ <http://www.legislation.gov.uk/ukxi/2002/2665/contents/made>

⁸ <http://www.legislation.gov.uk/ukxi/2006/1521/contents/made>

existing lines (i.e. cases where the landowner or occupier has served a notice to remove) rather than to proposed new lines. In such cases, the network operator must – if it does not manage to reach an agreement with the landowner or occupier – apply either for a necessary wayleave or for compulsory purchase under Schedule 3 within three months in order to preserve its position.

17. Experience also shows that in the vast majority of cases, the parties reach a commercial agreement without a hearing taking place. This would suggest that there is often either no real dispute about the need for an electric line to cross the land concerned, or at least that the landowner or occupier is prepared to accept having the line cross the land provided that adequate compensation is paid. In effect, the statutory process is being used by landowners (in an entirely legitimate way) to apply pressure to network operators in the context of ongoing negotiations.

18. With this in mind, when the Department receives a valid necessary wayleave application, it writes to the parties explaining that a hearing will only be organised if and when they indicate that negotiations have broken down. In the case of the 366 applications received in 2010/2011, this has so far occurred in only 55 cases. However, the setting of a pre-hearing or hearing date may result in negotiations re-opening: of those 55 cases, only 9 applications have so far progressed to a pre-hearing meeting and 8 to a hearing requiring a decision by the Secretary of State.

19. As already noted, compensation is outside the scope of the statutory wayleave process and the Secretary of State has no statutory role. Disputes about a person's entitlement to compensation or the amount of any compensation would be determined under Part 1 of the Land Compensation Act 1961⁹ if parties cannot reach an agreement, and an application would need to be made to the Lands Chamber once a necessary wayleave has been granted.

20. The Department understands that the cases which are the subject of necessary wayleave applications constitute only a fraction of the number of wayleave disputes which network operators deal with each year. The necessary wayleaves process is, inevitably, a formal legal procedure which places burdens on both sides: clearly, there would be potential advantages for all concerned if a greater proportion of such disputes were resolved without the need for landowners or occupiers having to serve notices to remove or network operators having to apply for necessary wayleaves.

The case for modernising the 1967 Rules

21. The 1967 Rules were written over 40 years ago and remain essentially unamended. It would perhaps be surprising if there were not scope for modernising the 1967 Rules in the light of so many years not only of their operation, but of development in legislative systems for the handling of similar applications.

22. The Department considers that there may be scope for improving the 1967 Rules in three broad areas:

- *Reducing the costs and other burdens on parties:* The Department is concerned that in some cases, following the 1967 Rules imposes greater costs and other burdens on the parties than may be necessary. For example, at present they require an oral hearing to take place in **all** circumstances rather than providing in appropriate cases, for the

⁹ <http://www.legislation.gov.uk/ukpga/Eliz2/9-10/33>

parties to make their case and respond to each other by way of written representations (where both parties agree to do so), as is done in some other comparable sets of procedural rules such as the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 and the Agricultural Land Tribunals (Rules) Order 2007.

- *Ensuring that the procedures are always appropriately balanced:* It is a matter of potential concern that the 1967 Rules do not oblige both licence holders and owners and/or occupiers to attend any hearing that is set up. This could be seen as meaning that the incentives on the two sides to reach an agreement are not equal.
- *Ensuring that the legislation covers everything it ought to cover:* As noted above, at present, there are no specific rules for vegetation management cases. Equally, certain features of the way that wayleave applications are handled, for example, pre-hearing meetings, which have proved a useful way of clarifying issues to be considered at hearings, are not currently provided for in the Rules, and it may be better if they were.

Fees for necessary wayleave and/or vegetation management applications

23. The Department does not currently impose any charges upon those who use or benefit from necessary wayleave or vegetation management procedures, so they are currently free at the point of use and the costs of administering the application and hearings procedures have been met entirely by the tax payer through general taxation. This is not in keeping with Government policy that such services should be on a “full cost recovery basis”.

Options for reform

Overview

24. A radical approach would be to abolish the necessary wayleaves process altogether by repealing the relevant paragraphs of Schedule 4 to the Act. Network operators would still be able to negotiate voluntary wayleaves, where they could not do so they could apply for compulsory purchase of an easement under Schedule 3. However, on balance, the Government considers that this would not be an attractive option either for network operators (who would almost certainly face higher costs as a result and pass these costs on to customers) or landowners and occupiers (who would also face higher costs and potentially a greater degree of interference with their rights).

25. Instead, the Government considers that there may be scope to reform the necessary wayleaves regime in a number of ways, with a view to reducing the number of cases that have to go through the necessary wayleaves procedure; improving provision made for that procedure in the 1967 Rules; and making it financially self-sufficient. The options for reform on which views are being sought are described below.

26. Our proposals for improvement of the necessary wayleaves process are:

1. If there is sufficient appetite among respondents, to work with network operators and landowners’ and occupiers’ representatives to develop a voluntary code of practice for negotiations that may give rise to necessary wayleave applications, with a view to reducing the number of such applications made.

2. To introduce measures designed to simplify, refine and bring more fairness to all parties into the necessary wayleaves hearings process;
3. To introduce new powers for persons appointed by the Secretary of State to hear applications concerning compulsory vegetation management so that electricity operators can comply with ESCQR; and
4. To introduce fees for necessary wayleave and vegetation management applications and hearings procedures in order to recover Departmental costs for conducting these.

27. As indicated below, we are also seeking views as to what the Secretary of State's policy should be in the future on the statutory timescale which should be allowed to elapse after a notice to remove has been served on the licence holder and before they must make a necessary wayleave or compulsory purchase application to protect its position (paragraph 32), and on the duration of necessary wayleaves (paragraph 34).

Proposal 1: Reducing the number of necessary wayleave applications; possible code of practice for wayleave disputes and changes to timescales

28. The number of cases in which network operators apply for necessary wayleaves would be reduced if landowners or occupiers were motivated to serve fewer notices to remove and/or if more cases were resolved in the period between service of a notice to remove and the expiry of the deadline for network operators to protect their position by making a necessary wayleave or Schedule 3 compulsory purchase application.

29. One way to reduce the need to use the necessary wayleaves procedure may be for network operators (and possibly also those who act professionally for landowners and occupiers) to follow a voluntary code of practice for dealing with cases before they reach the notice to remove stage (in the case of existing lines) or the application stage (for new lines). For example, for existing line cases, such a code might require network operators to allow the landowner an opportunity to express preferences about the line in a structured way (and even submit an "opening bid" as regards increased compensation if it is to remain in its current form and location), and to explain in broad terms why it thinks the line should remain in place and whether / how it would be prepared to modify the current arrangements (including any counter-offer as regards compensation).

30. Such a code of practice would serve two purposes. In some cases it should assist in avoiding the need for an application under Schedule 4. In all cases, it should at least help to identify the issues in contention between the parties at an early stage. If such a code of practice were implemented, the Secretary of State could consider adopting a policy of factoring into his decision making process whether it had been followed in individual cases or not, and this may determine how quickly to progress any applications where it had not been demonstrated it had been factored into discussion.

31. If, following consultation, there is a consensus view amongst respondents that the development of a voluntary code of practice would be beneficial to all parties in the process, the Department would consider talking to the industry with a view to them putting this together in consultation with landowners and/or their agents and DECC.

32. Another option would be to amend Schedule 4 to the Act to allow network operators a longer period than the current three months in which to reach an agreement with landowners or

occupiers before the network operators have to make a necessary wayleave or compulsory purchase application in order to protect their position.

33. The Department would be interested in respondents' views on both of these options. It should be noted that, for reasons of legislative process, an amendment to the three month deadline in Schedule 4 may well not be able to be brought forward in the same time-frame as the proposed changes to the 1967 Rules and introduction of fees discussed below, since it would require primary legislation (i.e. a clause in a Bill) or the making of an order under the Legislative and Regulatory Reform Act 2006.

Duration of wayleaves

34. Under the current regime, a necessary wayleave when granted by the Secretary of State remains valid usually for a specified period of fifteen years. The current practice allows a degree of certainty for the licence holder in regard to retention of its assets and for the landowner in the fact that there is a definite review point for any wayleave in place. Historically, it has been the Department's considered view that a fifteen year term represents an equitable period which provides a balance between offering the electricity company a degree of certainty for the installation of apparatus whilst still affording the landowner the opportunity of having the position reviewed in the light of subsequent changes in circumstances and the local environment. The Department is interested in exploring through this consultation process whether fifteen years is in fact the right default duration for necessary wayleaves (particularly in the case of new lines), or whether the question of the duration of necessary wayleaves should be approached more by the Department on a case by case basis in relation to each individual application.

Proposal 2: Introduce measures designed to simplify, refine and bring more fairness to all parties into the necessary wayleaves hearings process

35. As noted above, the 1967 Rules provide for a hearing to take place in **all** circumstances whereas more up to date dispute resolution practices would allow for hearings to proceed by written representations if agreed by both parties (which is a more timely and cost-effective way for parties to proceed, rather than a full hearing that would involve location logistics, costs of attendance by both parties, costs of stenographer etc). The Department's current view is that it would be better to provide for written representations to take the place of a hearing where the parties agree to this way of proceeding.

36. We also consider that the new Rules should make formal provision for pre-hearing meetings where necessary, at the discretion of the Secretary of State or his appointed Inspector. These are a useful means of getting some preliminary matters out of the way and ensuring that the hearing itself runs smoothly. However, as with hearings, there may be cases where it is appropriate for the parties to agree to dispose of these matters by written representations, or for the meeting to be conducted by teleconference. We propose that new Rules should make provision for pre-hearing meetings along these lines.

37. There is currently no requirement in the 1967 Rules upon landowners and/or occupiers or their representative land agents to provide evidence and to attend any hearing that is arranged. This means that sometimes they do not turn up, and do not submit evidence or only on the day of the hearing. Inspectors cannot compel parties to attend any hearing although a hearing can go ahead without the landowner and/or occupier's presence but not without the network operator. The Department is suggesting this practice should change in the future and that responsibility to provide evidence in the form of a Statement of Case or Statement of Evidence should be applicable for **all** parties, to be provided within a defined timeframe indicated by

Inspectors. This is the practice utilised in comparable rules such as the Rights of Way (Hearings and Inquiries Procedure) (England) Rules 2007 and the Transport and Works (Inquiries Procedure) Rules 2004, which also provide for the use of electronic communications to submit documents.

38. We are considering whether the Secretary of State should be able to recover costs incurred by the Department where a hearing is arranged and the landowner and/or occupier or their representative agent fails to attend or provide evidence as agreed without reasonable excuse. This would mean that the Department's costs only, could be potentially charged to the landowner and/or occupier i.e. to the party who has failed to comply with the Inspector's requirements. As indicated above, the current rules provide that any hearing can not take place without the licence holder in attendance. We consider that this provision should be retained in any new rules.

39. The Department considers that through the introduction of the written representations procedure in any new rules, and more specifically if these were applied more routinely to applications made by licence holders to retain existing lines, (which are by far the larger proportion of applications received and tend to be less controversial than applications for new lines) there would be benefits to be gained in that decisions made by the Secretary of State on each application could be reached in a more timely manner. This would be without compromising scrutiny or the opportunity for participation in a hearing where there is a need for evidence to be examined orally.

40. A new requirement for all parties to submit a Statement of Case or Statement of Evidence within a defined time frame, which is the more or less invariable practice of all comparable planning or compulsory purchase regimes, will also have clear benefits in that early circulation of information will make it easier for the Inspector to identify whether and how parties wish to participate and whether he considers in each case if the written representations procedure is the best course of action.

Proposal 3: To introduce new powers for Inspectors appointed by the Secretary of State to hear applications concerning compulsory vegetation management so that electricity operators can comply with ESCQR

41. There are currently no formal hearing rules in place to process objections made by landowners and/or occupiers to statutory applications to the Secretary of State relating to rights of licence holders to ensure sufficient clearance between electric lines and vegetation is maintained for safety and continuity of supply reasons. The 1967 Rules have been used by Inspectors as a proxy process for hearing the small number of applications that are made to the Department. Given the primary purpose of a vegetation hearing is to ensure that the electric line can be installed and/or maintained in a manner that is required to make its presence safe, and this would apply to lines on land where a voluntary or compulsory wayleave would be in place with the landowner and/or occupier, the review of the 1967 Rules will provide an opportunity to incorporate this new measure into any new wayleave hearing rules.

Proposal 4: To introduce fees for necessary wayleave and vegetation management applications and hearings procedures in order to recover Departmental costs for conducting these

42. The Department does not currently charge any fees for administering the necessary wayleaves or vegetation management application or hearings process. In the light of current

economic conditions and the Government Spending Review, it is essential that Government recovers its costs wherever possible and ensures that the taxpayer gains value for money.

43. The Department does have powers under section 188 of the Energy Act 2004 to impose charges on any party on whose application a service is provided or on any parties to whom the matter in question relates. It is therefore our intention to enable recovery from licence holders of the costs of conducting the necessary wayleaves and vegetation management procedures in the future, except for the additional provision in paragraph 38 above relating to the landowner and/or occupier. More detail can be obtained from the attached consultation stage Impact Assessment (IA). However, whilst the structure set out in the IA has been based on an analysis of actual DECC costs, the Department is considering whether the Planning Inspectorate may carry out services relating to hearings on its behalf.

Devolution

44. Any replacement for the 1967 Rules made by UK Ministers will apply only to England and Wales. Scottish Ministers have powers to make equivalent rules for Scotland. We will share consultation responses with Scottish Ministers, to enable them to consider whether to make new hearing rules of their own.

Consultation questions

Consultation Question	
1.	Do you agree that the necessary wayleaves regime in Schedule 4 to the Act should be retained in some form? Yes or No?
Consultation Question	
2.	Do you agree that there is scope to improve the operation of the current necessary wayleaves regime? What improvements might you like to see?
Consultation Question	
3.	Do you consider that a voluntary code of practice on wayleave negotiations that may result in fewer necessary wayleave applications being sought, would be useful? Why? What do you consider are the benefits or disadvantages?
Consultation Question	
4.	Do you think the Secretary of State's general policy of granting necessary wayleaves with a duration of 15 years is reasonable? Should it be changed? If so: why, what alternative duration and how?
Consultation Question	
5.	Do you agree with our proposals to make provision in new hearing rules for pre-hearing meetings, written representations and vegetation management?

Consultation Question

6. Do you think that new provisions should be introduced to ensure that the landowner and/or occupier or their land agents produce a Statement of Case or Statement of Evidence before any hearing convenes, and that they should be compelled by the Inspector to attend any hearing? If not, why not?

Consultation Question

7. Do you think the Secretary of State should be entitled to recover the Department's costs against the landowner and/or occupier if a pre-hearing or hearing is arranged and they or their representative agent fails to attend (or provide evidence to the Inspector as agreed) without reasonable excuse? If you agree, please state why, and if not, why not?

Consultation Question

8. Do you agree that DECC should introduce fees that are applicable to licence holders for processing necessary wayleave applications? Are our proposals reasonable and fair? If not, why not?

Consultation Question

9. Do you have any ideas for other wayleave reforms that you might wish the Department to consider? If so, please explain below and what benefits if any you consider they might accrue.

Consultation Question

10. Once the Department has considered response to this consultation and decided how to proceed, would you like to see/comment on any draft statutory instruments relating to the new hearing rules and introduction of processing fees applicable to licence holders, before they are laid before Parliament? Please indicate below: Yes or No?

What happens next?

45. DECC invites views on these questions from all interested parties. In particular we would welcome any evidence or examples that could help to support the case for making a change to the hearing rules, what the extent of that change should be, or indeed the case for making no change at all to existing practices.

46. Following the end of the consultation period, the Department will analyse all responses received. We will then produce a Government response to the consultation which will be placed on the Department's website. In that response we will indicate how the Department plans to proceed.

47. Depending on the conclusions that can be drawn in the light of the responses, it is intended that statutory instruments will be drafted with the aim that any such statutory instruments should, subject to Parliamentary approval, come into force on 6 April 2013.

48. DECC will consult on an informal basis with respondents to the consultation who have indicated that they would like to see the draft statutory instruments before they are laid before Parliament. Please ensure that you provide the relevant contact details for this action to take place within your response.

Annex A – Statutory Instrument 1967 No. 450

STATUTORY INSTRUMENTS

1967 No. 450

TRIBUNALS AND INQUIRIES

The Electricity (Compulsory Wayleaves) (Hearings Procedure) Rules 1967

Made

21st March 1967

Laid before Parliament

3rd April 1967

Coming into Operation

17th April 1967

I, Gerald, Baron Gardiner, Lord High Chancellor of Great Britain, in exercise of the powers conferred on me by section 7A of the Tribunals and Inquiries Act 1958 (inserted in that Act by section 33 of the Town and Country Planning Act 1959) and after consultation with the Council on Tribunals, hereby make the following Rules:—

Citation and Commencement

1. These Rules may be cited as the Electricity (Compulsory Wayleaves) (Hearings Procedure) Rules 1967, and shall come into operation on the 17th April 1967.

Application of Rules

2. These Rules apply to hearings held under the provisions of section 22(1) of the Electricity (Supply) Act 1919 for the purpose of considering whether consent should be given to the placing by an electricity authority of an electric line across land.

Interpretation

3.—(1) In these Rules, unless the context otherwise requires:—

“the Act of 1919” means the Electricity (Supply) Act 1919;

“the Minister” means the Minister of Power;

“appointed person” means the person appointed by the Minister to hold a hearing to which these Rules apply;

“electricity authority” means the Central Electricity Generating Board or, as the case may be, any Area Board established by the Electricity Act 1947;

“the land” means the land across which consent to place an electric line is sought;

“objector” means an owner or occupier of the land or any part thereof who has failed to give his consent to the placing of the Electric line or who has attached to his consent any terms, conditions or stipulations to which the electricity authority objects.

(2) The Interpretation Act 1889 shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

Procedure before Hearing

4.—(1) On receipt by the Minister of an application for his consent under section 22(1) of the Act to the placing of an electric line across land a date, time and place for the hearing shall be fixed and may be varied by the Minister, who shall give not less than 21 days notice in writing of such date, time and place to every objector and to the electricity authority:

Provided that—

(i) with the consent in writing of the objectors and of the electricity authority the Minister may give such lesser period of notice as may be agreed and in that event he may specify a date for service of the statement referred to in the next following paragraph later than the date prescribed in that paragraph;

(ii) where it becomes necessary or desirable to vary the time or place fixed for the hearing, the Minister shall give such notice of the variation as may appear to him to be reasonable in the circumstances.

(2) Not later than 14 days before the date of the hearing (except where the Minister specifies a later date under proviso (i) to the last foregoing paragraph) the electricity authority shall, unless it has already done so, serve on each objector a written statement of its reasons for the proposed placing of the electric line and shall supply a copy of the statement to the Minister.

(3) Where a government department has expressed in writing to the electricity authority a view in support of the proposed placing of the electric line and the electricity authority proposes to rely on such expression of view in its submissions at the hearing, the authority shall include it in the statement referred to in the last foregoing paragraph and shall send a copy of its statement to the government department concerned.

(4) Where the electricity authority intends to refer to or put in evidence at the hearing documents (including maps, photographs and plans), the authority's statement shall, unless the authority has already furnished each objector with copies of such documents, be accompanied by a list of such documents, together with a notice stating the times and place at which the documents may be inspected by any objector; and the electricity authority shall afford every objector a reasonable opportunity to inspect and, where practicable, to take copies of the documents.

Appearances at Hearing

5.—(1) The electricity authority may appear at the hearing by any of its officers appointed by it for the purpose or by counsel or solicitor, and an objector may appear on his own behalf or be represented by counsel, solicitor or any other person.

(2) Where there are two or more objectors having a similar interest in the matter under inquiry the appointed person may allow one or more persons to appear for the benefit of some or all of the objectors so interested.

Representation of Government Departments at Hearing

6.—(1) Where a government department has expressed in writing to the electricity authority a view in support of the proposed placing of the electric line and the electricity authority has set out such view in the statement referred to in rule 4(2), any objector may, not later than 7 days before the date of the hearing, apply in writing to the Minister for a representative of the government department concerned to be made available at the hearing.

(2) The Minister shall transmit any application made to him under the last foregoing paragraph to the government department concerned, who shall make a representative of the department available to attend the hearing.

(3) Such representative shall at the hearing state the reasons for the view expressed by his department and shall give evidence and be subject to cross-examination to the same extent as other witnesses, so, however, that the appointed person shall disallow any questions which in his opinion are directed to the merits of government policy.

Procedure at Hearing

7.—(1) Except as otherwise provided in these Rules, the procedure at the hearing shall be such as the appointed person shall in his discretion determine.

(2) The hearing shall take place in public unless the electricity authority or any objector requests the appointed person to hold it in private.

(3) Unless in any particular case the appointed person with the consent of the electricity authority otherwise determines the electricity authority shall begin and have the right of final reply; and the objectors shall be heard in such order as the appointed person may determine.

(4) The electricity authority and the objectors shall be entitled to call evidence and cross-examine persons giving evidence.

(5) The appointed person shall not require or permit the giving or production of any evidence, whether written or oral, which would be contrary to the public interest, but, save as aforesaid and without prejudice to rule 6(3), any evidence may be admitted at the discretion of the appointed person, who may direct that documents tendered in evidence may be inspected by any person entitled to appear at the hearing and that facilities be afforded him to take or obtain copies thereof.

(6) The appointed person may allow the electricity authority to alter or add to the reasons contained in the statement served under rule 4(2) or any list of documents which accompanied it so far as may be necessary for the purpose of determining the questions in controversy between the parties, but shall (if necessary by adjourning the hearing) give every objector an adequate opportunity of considering any such alterations or additions.

(7) If any objector does not appear at the hearing, the appointed person may at his discretion proceed with the hearing and, if he does so, shall (subject to disclosure thereof at the hearing) take into account any previous written representations of such objector in so far as the same appear to him to be proper and relevant to the matters in issue.

(8) The appointed person may from time to time adjourn the hearing and, if the date, time and place of the adjourned hearing are announced before the adjournment, no further notice shall be required.

Site Inspections

8.—(1) The appointed person may make an unaccompanied inspection of the land before, during or after the hearing without giving notice of his intention to any person entitled to appear at the hearing.

(2) The appointed person shall, if so requested by the electricity authority or any objector before or during the hearing, inspect the land after the close of the hearing and shall, when such a request is made, announce during the hearing the date and time at which he proposes to make such an inspection.

(3) The electricity authority and the objectors shall be entitled to accompany the appointed person on any inspection held as a result of a request made under paragraph (2) of this rule, but the appointed person shall not be bound to defer his inspection if any person entitled to accompany him is not present at the time appointed.

Procedure after Hearing

9.—(1) The appointed person shall after the close of the hearing make a report in writing to the Minister which shall include the appointed person's findings of fact and his recommendations, if any, or his reasons for not making any recommendations.

(2) Where the Minister—

(a) differs from the appointed person on a finding of fact, or

(b) after the close of the hearing receives any new evidence (including expert opinion on a matter of fact) or takes into consideration any new issue of fact (not being a matter of government policy) which was not raised at the hearing,

and by reason thereof is disposed to disagree with a recommendation made by the appointed person, he shall not come to a decision which is at variance with any such recommendation without first notifying the electricity authority and any objector who appeared at the hearing of his disagreement and the reasons for it and affording them an opportunity of making representations in writing within 21 days or (if the Minister has received new evidence or taken into consideration any new issue of fact not being a matter of government policy) of asking within 21 days for the re-opening of the hearing.

(3) The Minister may, in any case if he thinks fit, cause the hearing to be re-opened, and shall cause it to be re-opened if asked to do so in accordance with the last foregoing paragraph; and if the hearing is re-opened rule 4(1) shall apply as it applies to the original hearing.

Notification of Decision

10.—(1) The Minister shall notify his decision, and his reasons therefore in writing to the electricity authority and the objectors; and, where a copy of the appointed person's report is not sent with the notification of the decision, the notification shall be accompanied by a summary of the appointed person's conclusions and recommendations.

(2) If any person entitled to be notified of the Minister's decision under the last foregoing paragraph has not received a copy of the appointed person's report, he shall be supplied with a copy thereof on written application made to the Minister within one month from the date on which he is notified of the Minister's decision.

(3) For the purposes of this rule "report" does not include documents, maps, photographs or plans appended to the report, but the Minister shall afford any person entitled to be supplied with a copy of the report an opportunity, if he wishes, of inspecting such documents, maps, photographs and plans.

Service of Notices by Post

11. Notices or documents required or authorised to be served or sent under the provisions of these Rules may be sent by post.

Gardiner, C

Dated 21st March 1967

EXPLANATORY NOTE

These Rules prescribe the procedure to be followed at hearings of proposals by Electricity Boards for the placing of electric lines across land under section 22 of the Electricity (Supply) Act 1919.

Rule 4 prescribes the procedure before the hearing. Not less than 21 days' notice of the hearing must be given by the Minister of Power, unless the parties agree to shorter notice. The electricity authority must, if they have not already done so, serve on each objector a statement of their reasons for making the proposal and the statement must include any views expressed in writing by a government department to the electricity authority in support of the proposal on which the authority propose to rely.

Rule 5 entitles the electricity authority and any objectors to appear at the hearing while rule 6 provides for the representation, at the request of any objector, of any government department which has expressed a view in support of the proposal.

Rule 7 prescribes the procedure at the hearing and rule 8 makes provision for the inspection of the land by the person appointed to hold the hearing.

Rule 9 provides for the appointed person's making a report to the Minister, which must include his findings of fact and his recommendations, if any, or reasons for not making any recommendations. Where the Minister differs from the appointed person on a finding of fact or after the close of the hearing receives new evidence (including expert opinion on a matter of fact) or takes into consideration any new issue of fact (not being a matter of Government policy) and is in consequence disposed to disagree with any recommendation made by the appointed person, the Minister must not come to a decision at variance with the recommendation without first giving the electricity authority and any objector who appeared at the hearing an opportunity of making representations or (if the Minister has received new evidence or taken a new issue of fact into consideration) of having the inquiry re-opened.

Rule 10 requires the Minister to notify his decision and reasons to the electricity authority and the objectors.

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