

<b>Title:</b> <b>Updating the Electricity Act “necessary” wayleaves process for overhead lines in England and Wales</b>  <b>IA No: DECC0100</b>  <b>Lead department or agency: DECC</b>  <b>Other departments or agencies:</b>	<b>Impact Assessment</b>	
	Date: 09/07/2013	
	Stage: Validation	
	Source of intervention: Domestic	
	Type of measure: Secondary legislation	
Contact for enquiries: Naomi Williams NIC 0300 068 5822		

**Summary: Intervention and Options**

RPC:

Cost of Preferred (or more likely) Option (rounded to the nearest £1,000)				
Total Net Present Value	Business Net Present Value	Net cost to business per year	In scope of One-in, Two-out?	Measure qualifies as
£60,000	£0	£0	Yes	Zero Net Cost

**What is the problem under consideration? Why is government intervention necessary?**

When Distribution Network Operators (DNOs) and/or Transmission Network Operators (TNOs) need to install new or retain existing transmission or distribution lines and structures over land which they do not own, and this cannot be secured by voluntary agreement with the landowner, the DNOs/TNOs can seek a necessary (compulsory) wayleave from the Secretary of State to enable them to install or retain that line over third party land. The regulations also allows DNOs/TNOs to seek a tree felling or tree lopping order where there are trees or other vegetation close to electric lines that interferes with the installation, maintenance or working of the line or where it constitutes an unacceptable source of danger to children or other persons. The current legislative framework for processing such applications (applications for necessary wayleaves, tree felling and/or tree lopping orders and services relating to hearings collectively referred to as “applications and hearings”) and resolving disputes in relation to them is unnecessarily burdensome for DNOs/TNOs.

There are two issues to deal with:

- (1) improving the current legislative framework to enable earlier and more effective communications between parties, allow faster processing of applications and hearings and reduce the burden of compensation claims made against DNOs/TNOs by owners and occupiers of land where electricity lines and apparatus have been installed in the past; and
- (2) introducing fees payable by DNOs/TNOs to recover the full costs of processing applications and conducting hearings to relieve the burden on the taxpayer of Government providing these services.

This IA reflects costs and benefits of improving the current legislative framework for necessary wayleave and tree felling and tree lopping orders and introducing fees payable by DNOs/TNOs for the provision of services relating to applications and hearings.

**What are the policy objectives and the intended effects?**

As part of the Red Tape Challenge, Government intends to update the necessary wayleaves process introduced in the pre-liberalisation period over 40 years ago with the aim to reduce the overall burden of regulation on business. The intended effect is to ensure a more level playing field between parties through the introduction of an alternative, less burdensome process for handling applications and reduce the time and costs of hearings. The new regime will also recover the actual cost to Government of processing applications and conducting hearings.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

The policy options considered are:

(a) Do nothing.

(b) Bring the 1967 Rules for necessary wayleaves into line with modern best practice, including the introduction of fees for processing applications and conducting hearings. This is the preferred option.

**Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** 03 / 2018

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small Yes	Medium Yes	Large Yes
What is the CO2 equivalent change in greenhouse gas emissions? (Million tonnes CO2 equivalent)			Traded: N/A		Non-traded: N/A

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible  
Minister :

x Mich Q Fuller

Date: 8th August 2013

# Summary: Analysis & Evidence

# Policy Option 2

Description: To bring the 1967 Rules for necessary wayleaves into line with modern best practice, including setting fees for processing applications and conducting hearings for necessary wayleaves and tree felling and tree lopping orders.

## FULL ECONOMIC ASSESSMENT

Price Base Year: 2013	PV Base Year: 2013	Time Period: 10 Years	Net Benefit (Present Value (PV))		
			Low:	High:	Best Estimate: £60,000

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0		
High	0		
Best Estimate	0	£76,000	£659,000

**Description and scale of key monetised costs by 'main affected groups'**

DNOs/TNOs in England and Wales are the main affected groups. There is currently no fee charged for applications or for services relating to hearings. The proposed option allows cost recovery from fees payable by DNOs/TNOs for application and hearing services. These fees break down into:

- A flat application fee of £34
- A fee of £1000 per Inspector day of work for any hearings conducted by PINS England and a fee of £742 per Inspector day for those conducted by PINS Wales, plus travel and subsistence costs.

The best estimate for the total costs over ten years of these fees is £659,000, based on the higher fee of £1,000 per day for PINS Inspector costs. These fees are out of scope of "One in Two Out" (OITO) pursuant to paragraph 1.9.8(vii) of the Better Regulation Manual v.2. These fees should be treated as transfers as they represent cost recovery by the Government for processing the applications and conducting hearings. Transition costs are estimated to be zero as the proposal will be bringing the regime in line with existing hearing rules procedures and processes.

**Other key non-monetised costs by 'main affected groups'**

None.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0		
High	0		
Best Estimate	0	£84,000	£719,000

<p><b>Description and scale of key monetised benefits by 'main affected groups'</b></p> <p>Business benefits cannot be monetised.</p> <p>Fees for processing applications and conducting hearings are currently met by the Government at the expense of the taxpayer. It is estimated that providing these services currently costs Government approximately £719,000 in present value terms. This cost estimate represents the average DECC Inspector and administrative staff time required to process a typical necessary wayleave application or a tree felling and tree lopping order, from application through to the hearing stages, against a plausible range of demand. The estimate of applications is based on empirical data collected between 2007 and 2012. The monetisable benefit to society is the difference between the current fee structure and the proposed fee structure, which equals to £60,000 in present value terms (please see Table B in Annex A for a breakdown of these calculations).</p>	
<p><b>Other key non-monetised benefits by 'main affected groups'</b></p> <p>It is expected that the proposed new approach will assist earlier and more effective negotiation between parties. This will result in fewer cases needing to go through the formal process, saving businesses time and the cost of fees. It has not been possible to quantify the reduction in cases expected.</p> <p>As these benefits relate to efficiency savings from reform of the process, they are in scope of OITO but we are unable to monetise them.</p>	
<p><b>Key assumptions/sensitivities/risks</b></p>	<p><b>Discount rate (%)</b></p>
<p>3.5</p> <p>It is not possible to estimate with confidence how many individual applications each DNO/TNO might submit to DECC in future. As such, an average of the past five years of collected data has been used to estimate future volumes. The cost data represents the average DECC staff time necessary to process a typical application against a plausible range of demand.</p> <p>Based on the collected data we have used an estimated average of 2 days' work for pre-hearing meetings and a total of 7 days' work for a hearing. Some cases may take much longer and sensitivity analysis has been used to test the impact of increasing this figure. Please see Table A in Annex A for a summary of the fee calculations.</p> <p>PINS do not expect to increase their fees with inflation.</p>	

**BUSINESS ASSESSMENT (Option 2)**

<p><b>Direct impact on business (Equivalent Annual) £m:</b></p>			<p><b>In scope of OIOO?</b></p>	<p><b>Measure qualifies as</b></p>
<p><b>Costs:</b></p> <p>£0</p>	<p><b>Benefits:</b></p> <p>£0</p>	<p><b>Net:</b></p> <p>£0</p>	<p>Yes</p>	<p>Zero Net Cost</p>

## Policy issue

1. Wayleaves and easements are legal agreements that allow DNOs/TNOs in England and Wales, as owners and operators of the electricity transmission and distribution network, to install new or retain existing transmission or distribution lines and structures on, over or under land that they do not own. These electricity industry operators cannot do so lawfully unless they have sufficient legal rights over the land in question (in addition to any statutory consents or planning permission required<sup>1</sup>).
2. The vast majority of such land access rights are secured by electricity industry operators in the form of voluntary wayleaves or easements with the landowner. Voluntary wayleaves are a form of a licence, normally considered to be a “personal contract” between parties, that does not run with the land, and terminates on change of ownership. Compensation is usually made in annual instalments to the landowner and/or occupier.
3. When a landowner and/or occupier has served to the DNO/TNO a written notice to remove an existing line from his land, the DNO/TNO can, as mentioned above, fall back on statutory procedures when voluntary negotiations fail. They may seek from the Secretary of State the grant of a “necessary” (compulsory) wayleave to ensure they can continue to have rights over the land in question in order to maintain and undertake their statutory duty to provide a public service role. The DNO/TNO can also apply to the Secretary of State for a compulsory wayleave pertaining to an application for a new line development where they have been unable to secure voluntary wayleave arrangements with the landowner and/or occupier(s) in question. If a compulsory “necessary” wayleave is granted by the Secretary of State it will usually be for a 15 year term and will survive a change in the ownership of the land. Compensation to the landowner from the DNO/TNO will only be negotiated after the Secretary of State has determined the application.
4. There are other options open to DNOs/TNOs to secure land rights, such as the Compulsory Purchase order process, however in practice this option is rarely made use of by the electricity industry more generally.
5. Present legislation governing such matters is contained within paragraphs 6, 7 and 8 of Schedule 4 to the Electricity Act 1989<sup>2</sup> and the Electricity (Compulsory Wayleaves)(Hearings Procedure) Rules 1967<sup>3</sup> (the 1967 Rules).
6. Between 2007 and 2012 DECC received an average of 465 applications per annum for necessary wayleaves. DECC considers that a significant proportion of these applications each year arose from unresolved financial disputes between parties for the retention of existing, rather than installation of new lines. In such cases, while DECC can reach a view as to whether it is still “necessary or expedient” for the electricity network operator to be granted a necessary wayleave, it has long taken the view that the Secretary of State has no power to address the matter which is really in dispute between parties – the level of compensation. Financial terms of a wayleave fall to be considered, in default of agreement between the parties, by the Upper Tribunal (Lands Chamber)
7. There is currently no fee payable by any party for making an application to the Secretary of State for a necessary wayleave or a tree felling and tree lopping order, or for the provision of services relating to hearings.

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<sup>1</sup> Notably consent to install or keep installed an electric line above ground under s. 37 Electricity Act 1989 and development consent for electric lines above ground.

<sup>2</sup> <http://www.legislation.gov.uk/ukpga/1989/29/schedule/4>

<sup>3</sup> <http://www.legislation.gov.uk/uksi/1967/450/contents/made>

8. The Government therefore proposes to revise the regime for necessary wayleaves and tree felling and tree lopping orders in line with current best practice for resolving comparable disputes, and to impose fees for processing applications and conducting hearings which will reflect the cost to Government of providing these services.

### **Rationale for Government intervention**

9. The current legislative regime has remained unchanged for over 40 years and needs to be updated to reflect modern approaches and working practices to dispute resolution.

10. It is Government policy to charge for many publicly provided goods and services. This approach helps allocate use of goods or services in a rational way because it prevents waste through excessive or badly targeted consumption. It also makes for easier comparisons with the private sector, promotes competition and helps develop markets. The norm is to charge at full cost<sup>4</sup>.

11. The current hearings process places disproportionate requirements on electricity network companies to produce evidence without the landowner/occupier or their land agent having to incur any significant work or cost. Companies are also required to bear the cost of the pre-hearing meeting and hearing venues along with other additional costs when on occasion, the agent and/or landowner/occupier decides not to attend. Amending the 1967 Rules to make them more equitable to all parties should help to ensure the hearings process is used as a "last-resort" when all attempts to settle have failed, rather than the first port of call, which can be open to misuse.

12. Introducing fees would be relatively simple to implement and would ensure that Government is able to recover the true cost of processing applications and conducting hearings.

13. The Government consulted on the above options between 17 October and 28 November 2012. There were 31 responses to the consultation and the majority of respondents accepted that Government should recover its costs for processing applications and conducting hearings by introducing a fair and reasonable fee structure. However, some respondents were not convinced that the introduction of fees would discourage misuse of the applications process, and others raised concern that the proposal may lead to an unintentional increase in the number of landholders wishing to terminate agreements with DNOs/TNOs in the knowledge that they would face additional costs.

### **Policy options considered**

14. Action to implement these measures would be required through a Statutory Instrument to revoke and replace the 1967 Rules for England and Wales. A separate Statutory Instrument would be required to introduce fees for the application and hearing process.

15. Government has identified two options for possible action:

- (a) Leave the current statutory regime in place without alteration ("do nothing").
- (b) Bring the 1967 Rules for conducting hearings into line with modern best practice, and introduce fees for processing applications and conducting hearings.

### **Expected Business Impact**

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<sup>4</sup> "Managing Public Money" Chapter 6, p41: .HMT 2007

### **Option 1: Counterfactual / do nothing**

16. The current wayleaves process is burdensome to DNOs/TNOs and encourages “speculative” applications, with just 3% of applications continuing to a full hearing.
17. In addition, there is a continued reliance on the (outdated) 1967 Rules to determine tree felling and tree lopping procedures that do not take into account the needs of network operators to comply with the Electricity Safety, Quality and Continuity Regulations, 2002<sup>5</sup>. These Regulations impose duties on DNOs/TNOs relating to power quality and supply continuity to ensure an efficient and economic electricity supply service for consumers.
18. Government is currently funding the cost of DECC providing services relating to applications and hearings. This effectively subsidises the industry, and does not comply with Government policy on full-cost recovery.
19. By definition, there are no costs or benefits associated with the do nothing option.

### **Option 2: Modernising the 1967 Rules and the introduction of fees**

20. There are 6 DNOs and 1 TNO in England and Wales. They are responsible for all development consent applications for electric lines in England and Wales and would be directly affected by the change in the legislative regime and the imposition of processing fees. Micro businesses will not be affected by this change.

#### **Option 2: Costs**

21. Under the new proposal, DNOs/TNOs will pay DECC a fee of £34 per application (wayleaves and/or tree felling/lopping applications). This fee covers the cost of DECC staff time required to process a typical application.
22. If the application progresses to a pre-hearing and hearing stage, services relating to hearings will be administered by the Planning Inspectorate (PINS), an Executive Agency of the Department of Communities and Local Government. PINS will charge £1,000 per Inspector day for hearings conducted by PINS England and £742 per Inspector day for those conducted by PINS Wales (plus travel and subsistence), which includes administrative support and report writing, for the actual cost to PINS to carry out these services. These rates will accumulate from the date the Inspector commences any work for a hearing and will also apply to those hearings conducted by written representation procedure.
23. Based on historic data we assume 465 necessary wayleave applications per annum, with 10 per annum making the pre-hearing stage, and 5 going to the full-hearing/post-hearing stage. An estimate of a total of 2 days’ work for pre-hearing meetings and a total of 7 days’ work for a hearing has been used on the basis that that the majority of cases in the past have required this amount of work.
24. We therefore expect the proposed fees to cost business an average of approximately £76,000 a year or £659,000 in present value terms over ten years. A breakdown of calculations is contained in Annex A.
25. The costs are all out of scope under OITO as detailed from paragraph 36 onwards.
26. Neither DECC nor respondents to the consultation identified any other costs to the proposed option.

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<sup>5</sup> <http://www.legislation.gov.uk/ukxi/2002/2665/contents/made>

27. More details on the proposed changes are contained in Annex B.

### **Option 2: Benefits**

28. Fees for processing applications and conducting hearings are currently met by the Government and amount to £719,000 in present value terms. This cost represents the average DECC Inspector and administrative staff time required to process a typical necessary wayleave application or tree felling and tree lopping order, from application through to the hearing stages, against a plausible range of demand. The estimate of applications is based on empirical data collected between 2007 and 2012. The benefit to Government of the proposed option is the full cost recovery for providing these services through the introduction of a fee payable by DNOs/TNOs. The new fee structure amounts to £659,000 in present value terms. The benefit to society is the difference between the current fee structure and the proposed fee structure, which equals £60,000 in present value terms (please see Table B in Annex A for a breakdown of these calculations).

29. The key benefits of the proposed changes to business arise from the reforms to the current application process. It has not been possible to monetise these benefits. These include earlier and more effective negotiations between parties resulting in fewer cases being disputed through the formal procedures, and a more timely allocation to PINS of requests for hearings resulting in faster processing of applications for hearings and the conclusion of any remaining disputes through the statutory process. They are described in more detail in the paragraphs below.

30. The faster processing of applications is beneficial because delays in the negotiations on offers of settlement between DNOs/TNOs and landowners might, in the worst case scenario, threaten the security of supply by causing interruptions to supply. For example, if DNOs/TNOs are unable to access equipment to protect, maintain and improve electricity networks, faults are likely to occur and result in a loss of supply. Tree roots can lead to a loss of supply if they disturb and prevent access to maintain underground electricity cables. Trees or tree limbs can also fall across an electricity line and cause power interruptions.

31. Transferring responsibility to conduct hearings on behalf of the Secretary of State relating to written representations, necessary wayleaves hearings and tree felling and tree lopping orders to PINS would allow faster progressing of hearing applications and production of recommendations to the Secretary of State, thus enabling negotiations or decisions by the Secretary of State to conclude in a more timely fashion than at present.

32. Finally, oral hearings are currently required to take place in all circumstances, which may impose greater costs and other burdens on the relevant parties than may be necessary. Allowing hearings to proceed by written representations and allowing pre-hearing meetings to be conducted by teleconference where agreed by both parties and the Inspector would be a more timely and cost-effective way for parties to proceed.

33. These additional benefits are direct benefits to business resulting from the reform of the regulatory system. They are therefore in scope of OITO, although they are not monetised.

### **One In, Two Out**

34. This proposal has two main elements:

- modernising the 1967 Rules relating to hearings for necessary wayleaves and tree felling and tree lopping orders; and

- introducing fees for applications and hearings for necessary wayleaves and tree felling and tree lopping orders.

35. The first element has direct benefits to business from the reduction in time spent being involved in unnecessary applications. This is in scope of OITO but we have been unable to estimate the number of applications the new system will deter and the benefits of efficiencies in the new process. This proposal is therefore in scope of OITO but has no quantifiable benefits (and the costs of the proposal are out of scope of OITO).

36. The second element, the introduction of fees, is a cost to business. This is out of scope of OITO pursuant to paragraph 1.9.8(viii) of the Better Regulation Manual v.2.

37. This measure is therefore "Zero Net Cost" under OITO. Nevertheless, as a matter of good practice and in accordance with Annex 2 of the Better Regulation Manual v.2 which states that "[i]f there are no in scope impacts then include all impacts on business", we have set out the present value of the fees and charges in Table B of Annex A.

## **Specific Impact Tests**

### Competition assessment

38. There is no impact on competition from this proposal.

### Small Firms' Impact Test / Micro businesses

39. There are no small firms that are DNOs/TNOs under the Electricity Act 1989 and therefore the proposed amendments to the 1967 Rules and impositions of fees will not apply. It is not considered likely that indirect impacts on customers of DNOs/TNOs would create a disproportionate burden for smaller firms and micro businesses. We note that the policy is expected to be implemented prior to the small/micro business assessment coming into force in March 2014.

### Legal Aid Impact Test

40. There will be no legal aid impact from this proposal.

### Sustainable Development, Carbon Assessment, other Environment

41. This proposal will not have negative economic, environmental or social impacts and will not have a negative impact on future generations.

42. This proposal will not lead to increased carbon and other greenhouse gas emissions, nor have a negative impact on the Environment.

### Health Impact Assessment

43. There are no detrimental health impacts from this proposal.

### Rural Proofing

44. There are no impacts on rural areas.

Table A: Average number of applications for necessary wayleaves (empirical data) and hearing fee structure (PINS estimates)

Annex A

Number of applications based on data collected between 2007 and 2012:

	Number
Application Only	465
Application and Pre-Hearing	10
Application, Hearing and Report	5

Estimate of costs\* based on PINS fee structure:

PINS cost of one day of hearing	£1,000
Indicative travel costs	£75
Indicative subsistence costs	£220

Estimate of costs\* per stage based on PINS fee structure:

	Days	Cost per stage
PINS Pre-Hearing	2	£2,515
PINS Hearing	3	£3,735
PINS Post-Hearing Report Writing	4	£4,955

Estimate of annual costs\* for 2013 for the proposed option:

Application only	£15,810
Application and Pre-Hearing	£25,490
Hearing and Report: most likely	£43,450
<b>Total</b>	<b>£84,750</b>

\*Costs have been calculated using the higher fee of £1,000 per day for PINS Inspector cost

Table B: Comparison of present value of cost of the “do nothing” against the proposed option

	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	Total
Costs of the “do nothing” option:	£84,000	£84,000	£84,000	£84,000	£84,000	£84,000	£84,000	£84,000	£84,000	£84,000	£719,000
Costs of the proposed option:	£85,000	£83,000	£81,000	£79,000	£77,000	£75,000	£73,000	£71,000	£70,000	£68,000	£659,000
Difference in costs:											£60,000

The proposed option amounts to a net benefit (to society) of £60,000.

### **Changes to the hearing rules**

The existing hearing rules have not been revised since 1967 and are out of step with equivalent procedural rules such as those governing the compulsory purchase of land, rights of way and planning inquiries. For example, the existing process requires a full oral hearing in all circumstances and provides no formal power to use the written representations procedure. Pre-hearing meetings, which have proved a useful way of clarifying issues to be considered at hearings, and hearings relating to the felling and lopping of trees where vegetation poses a risk to safety or security of supply, are currently not subject to formal procedural rules as they are not provided for in the 1967 Rules.

The proposed changes will introduce a less burdensome process by permitting written representations and enabling pre-hearing meetings to be conducted by teleconference where agreed by all parties and the Inspector. The proposed changes will also formalise hearings relating to tree felling and tree lopping orders.

These changes should facilitate faster processing of hearings and faster production of recommendations to the Secretary of State, which will allow decisions to conclude in a more timely manner than at present.

### **Introduction of fees**

Government currently funds the cost of DECC providing services relating to necessary wayleaves and tree felling and tree lopping orders. This effectively subsidises industry and distorts the market, and does not comply with Government policy on full-cost recovery.

The introduction of a fee of £34 payable to DECC for applications for necessary wayleaves and tree felling and tree lopping orders, and a fee of £1,000 per Inspector day for hearings conducted by PINS England and £742 per Inspector day for those conducted by PINS Wales, or pro rata if less than a day, to cover the actual cost to PINS for carrying out services relating to hearings, is in line with Government policy on full-cost recovery and will relieve the burden on the taxpayer for providing this service. These changes should have a positive effect in reducing the number of speculative applications for compulsory procedures.