



Department  
of Energy &  
Climate Change

## **GUIDANCE NOTE**

# **THE STATUTORY CONSENTS REGIME FOR OVERHEAD POWER LINES IN ENGLAND AND WALES UNDER SECTION 37 OF THE ELECTRICITY ACT 1989**

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# SECTION 1 INTRODUCTION & GENERAL GUIDANCE

- 1.1. This guidance provides an outline of the statutory consenting process in England and Wales under section 37 of the Electricity Act 1989 to install and keep installed electric lines above ground (“overhead lines”). This guidance replaces “The Statutory Consents Regime for Overhead Power Lines in England and Wales and New Measures Introduced by the Overhead Lines (Exemption) (England and Wales) Regulations 2009: guidance note” dated April 2009.
- 1.2. Applications for consent of overhead lines that fall within section 37 of the Electricity Act 1989 are made to the Secretary of State for Energy and Climate Change. The section 37 regime enables views to be gathered on any particular overhead line proposal before the Secretary of State makes a decision to grant consent. Views are obtained by the applicant from the relevant planning authority on behalf of the local community, and from statutory bodies with responsibilities for environmental and heritage protection such as Natural England, Natural Resources Wales (NRW), Cadw, English Heritage, Welsh Historic Monuments and, where appropriate, the Environment Agency. These views are then submitted to the Secretary of State to help inform the decision making process on the application. The general public and non-governmental organisations may also give their views on any proposal. All applications for consent are considered by the Secretary of State carefully on a case-by-case basis and a decision is taken on the merits of each proposal. If consent under section 37 is granted, the Secretary of State may also give a direction for planning permission to be deemed to be granted for the development under section 90(2) of the Town and Country Planning Act 1990.
- 1.3. The applicant seeking consent for the works from the Secretary of State must serve notice of their application on the relevant planning authority<sup>1</sup> in whose area the development is proposed to be situated. The applicant will send the appropriate “Form B” document to the relevant planning authority which describes the proposed development and seeks confirmation of any objections from the relevant planning authority. The relevant planning authority has two months to undertake its consultation process and to decide whether or not to object to the application. If the relevant planning authority has concerns about the proposals they may make an objection to the Secretary of State who must hold a public inquiry unless the objection is withdrawn or the Secretary of State grants consent subject to modifications or conditions that meet the objection of the relevant planning authority<sup>2</sup>. An inquiry may also be held in cases where the relevant planning authority does not object to the proposed development but the Secretary of State considers an inquiry appropriate

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<sup>1</sup> Paragraphs 2(1) and 2(6)(a) of Schedule 8 to the Electricity Act 1989. “Relevant planning authority” is a local planning authority as defined in Part I of the Town and Country Planning Act 1990. In relation to an application for an overhead line consent it includes the county planning authority only

(i) where the line is to be installed in a National Park; or

(ii) where the line will have a nominal voltage of not less than 132 kilovolts.

<sup>2</sup> Paragraphs 2(2) and 2(4) of Schedule 8 to the Electricity Act 1989

in the light of other objections and other material considerations<sup>3</sup>. Inquiries are held under the provisions of [The Electricity Generating Stations and Overhead Lines \(Inquiries Procedure\) \(England and Wales\) Rules 2007](#)<sup>4</sup>.

- 1.4. Even if the relevant planning authority or other statutory bodies consulted do not object to the proposal, they may propose conditions to be attached to the planning permission for that development that meet the [six tests for conditions as described in the National Planning Policy Framework](#)<sup>5</sup> which the Secretary of State may decide to incorporate in the consent if given.

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<sup>3</sup> Paragraph 3(2) of Schedule 8 to the Electricity Act 1989

<sup>4</sup> <http://www.legislation.gov.uk/uksi/2007/841/contents/made>

<sup>5</sup> <http://planningguidance.planningportal.gov.uk/blog/guidance/use-of-planning-conditions/application-of-the-six-tests-in-nppf-policy/>

# SECTION 2 – ELECTRIC LINES TO WHICH SECTION 37 APPLIES

2.1. The Electricity Act 1989 sets out that, with certain exceptions, consent must be obtained for installing and maintaining any electric lines above ground (overhead lines). However the Planning Act 2008 introduced a threshold for development consent for overhead lines of 132kV or greater to be considered as Nationally Significant Infrastructure Projects (NSIPs) and prescribed that consent for these NSIPs would be determined under the Planning Act regime, not under the Electricity Act 1989. In June 2013 the threshold for overhead lines was amended further by [The Planning Act 2008 \(Nationally Significant Infrastructure Projects\) \(Electric Lines\) Order 2013](#)<sup>6</sup>, which provides two categories of electric line installation that are no longer considered Nationally Significant Infrastructure Projects because they are for minor works that are not considered to be nationally significant.

2.2. The current position is that an application for a new overhead line that is:

- (a) an electric line of less than 132kV nominal capacity;
- (b) an electric line of any voltage that is less than 2 kilometres in length; or
- (c) an electric line replacing an existing line that meets certain tests, unless it is exempted;

is submitted to the Secretary of State under section 37 of the Electricity Act 1989 and an application is made to DECC. The “certain tests” in category (c) above define whether a replacement electric line where the nominal capacity is being uprated will require consent under the Electricity Act 1989 or the Planning Act 2008. These tests are:

- 1) the height of any support above ground in the replacement line does not exceed the height of the highest existing support which is being replaced by more than 10%;
- 2) the distance between the replacement line and the existing line is no more than 60 metres, and the existing line will be removed within 12 months; and
- 3) in the case of a line not in a European Site or Site of Special Scientific Interest (SSSI), the nominal voltage of the replacement line is expected to be greater than the nominal voltage of the existing line.

Test 3 is included solely because where the nominal voltage is expected to be the same or lower than the existing line, it will be exempt under The Overhead Lines (Exemption) (England and Wales) Regulations 2009 (see below). It does not apply in the case of a line that is in a European Site or SSSI. Therefore any replacement to an existing line in such an area will fall to be consented under section 37 if it meets tests 1 and 2, whether the nominal voltage is expected to be greater than, the same, or lower than the existing line. Overhead lines that do not meet the above tests will be consented under the Planning Act 2008.

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<sup>6</sup> <http://www.legislation.gov.uk/ukxi/2013/1479/introduction/made>

2.3. Applications for new overhead lines of 132kV nominal capacity or greater and 2 kilometres or longer are submitted to the Secretary of State under the Planning Act 2008 and an application is made to the Planning Inspectorate (PINS).

## Exemptions

2.4. Proposed works on overhead lines require a fresh consent unless they are permitted under an existing consent or under an available exemption. The Electricity Act 1989 and the Planning Act 2008 together set out the consent requirements for all overhead lines. However the Electricity Act 1989 has two exemptions from consenting procedures and there are exemption regulations for minor works to overhead lines.

2.5. Section 37(2) of the Electricity Act 1989 provides exemption from consent for:

(i) any line up to and including 20 kV which is used or intended to be used for supplying a single customer; and

(ii) any line that is on land that is, or will be, in the occupation or control of the undertaker.

2.6. Routine refurbishment and damage repair during the life of an overhead line may be carried out on worn or damaged components under existing consents on a “like-for like” basis including the installation in some situations of any additional pole support or supports subject to a notification procedure to the relevant planning authority so that they could consider the proposal. Although some of the line components originally used in its construction may still be available, a new generation of components that differ in some respects from their predecessors, usually referred to as “design successors”, have become available. In particular, advances in design and technology have led to the use of improved materials, resulting in more robust overhead lines with greater resilience against accidental damage and better able to cope with adverse weather conditions. The installation of these “design successors” is regarded by the Secretary of State as replacing an existing electric line and thus exempt (other than in specified sensitive areas) from the consent requirements.

2.7. Minor works to existing overhead lines are also exempt from consent requirement under [The Overhead Lines \(Exemption\) \(England and Wales\) Regulations 2009 \(the 2009 Regulations\)](http://www.legislation.gov.uk/uksi/2009/640/made)<sup>7</sup> as amended by [The Overhead Lines \(Exempt Installations\) Order 2010](http://www.legislation.gov.uk/uksi/2010/277/made)<sup>8</sup> and [The Overhead Lines \(Exempt Installations\) \(Consequential Provisions\) Order 2010](http://www.legislation.gov.uk/uksi/2010/29/made)<sup>9</sup>.

2.8. The Secretary of State and relevant planning authorities already regard the introduction of covered conductor systems, such as Aerial Bundled Conductors (ABC) for low voltage lines and Compact Covered Conductors (CCC) for 11 kV, as generally falling within the scope of the replacement of electric line exemption. Further, there is no restriction on introducing replacement supports that are more substantial into an existing line, such as H-poles.

2.9. The 2009 Regulations extend previous exemptions to replacement of existing lines in National Parks and Areas of Outstanding Natural Beauty (AONBs) the existing exemption from consent requirements to temporary diversions for periods not exceeding six months, provided they connect two points on the existing lines up to 500 metres apart for lines with a nominal voltage below 66 kV, or up to 850 metres apart for other lines. They do *not* exempt any works to overhead lines in a European Site or SSSI. Such works remain

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<sup>7</sup> <http://www.legislation.gov.uk/uksi/2009/640/made>

<sup>8</sup> <http://www.legislation.gov.uk/uksi/2010/277/made>

<sup>9</sup> <http://www.legislation.gov.uk/uksi/2010/29/made>



subject to the full section 37 consent requirements, given the sensitivities of the sites and the obligation to consult Natural England or Natural Resources Wales.

- 2.10. Emergency works, for example to repair storm damage or where Health and Safety Executive Inspectors require that the height of an existing section of overhead power line must be increased without delay for safety reasons are exempt, including work in National Parks and AONBs when it is clear that essential and urgent work must be carried out as soon as possible to ensure safety and security of supply.

# SECTION 3 – APPLICATION FOR A SECTION 37 CONSENT

- 3.1. Applications for section 37 consent submitted to the Secretary of State must comply with Schedule 8 to the Electricity Act 1989, [The Electricity \(Applications for Consent\) Regulations 1990](#)<sup>10</sup> and [Electricity Works \(Environmental Impact Assessment\) \(England and Wales\) Regulations 2000](#)<sup>11</sup>.
- 3.2. Section 37 applications should be made electronically through the Department's [Energy Infrastructure Portal \(EIP\)](#)<sup>12</sup>. The Department may accept paper-based applications for section 37 consent on an exceptional basis. Each application must be submitted to the Department with the appropriate processing fee. [The Electricity \(Applications for Consent\) Amendment \(England and Wales\) Regulations 2013](#)<sup>13</sup> sets out the fees for categories of applications. The Department will not commence processing any section 37 application for consent until all required information has been provided to the Secretary of State. This required information is:
- A Form B completed and signed by the relevant local authority
  - Map showing the proposed route (including Ordnance Survey co-ordinates)
  - A statement from the applicant (or agent) giving:
    - The company's reference number
    - The name of the scheme/line
    - The location – relevant planning authority and parish
    - Confirmation that the applicant will comply with the Electricity Safety, Quality and Continuity Regulations 2002
    - The specification and length of the proposed route
    - The voltage of the line
    - Any tolerance requested
    - If the relevant planning authority/other consultees have requested conditions to be included
    - Whether all permissions have been obtained from landowners and/or occupiers for the land along the proposed route
- 3.3. Applicants should submit the complete application to the Secretary of State in sufficient time ahead of when they plan to commence development and to factor in consultation time with the relevant planning authority and other relevant stakeholders. The Department is

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<sup>10</sup> <http://www.legislation.gov.uk/ukxi/1990/455/contents/made>

<sup>11</sup> <http://www.legislation.gov.uk/ukxi/2000/1927/contents/made>

<sup>12</sup> <https://www.og.decc.gov.uk/EIP.htm>

<sup>13</sup> <http://www.legislation.gov.uk/ukxi/2013/495/contents/made>: the fees are:

- Overhead line with a nominal capacity not exceeding 132kV: £200.00
- Overhead line with a nominal capacity exceeding 132kV: £700.00
- Where an application is Environmental Impact Assessment (EIA) development, an additional fee of £375.00
- A fee payable upon a request for a screening opinion of an application £60.00

unable to be specific about the amount of time each application will take to process owing to the need for careful assessment of all the circumstances relevant to each application.

- 3.4. Applicants need to establish, by providing appropriate information to the Secretary of State, that an overhead line connection or reinforcement is needed (for instance in areas where there is little or no existing network or to connect a new energy generation) and that the development applied for, including the route proposed, is an acceptable way of satisfying that need. It is advisable, therefore for applicants to contact bodies with relevant specialist expertise and information at an early stage when framing proposals for new overhead lines or major works to replace existing lines.
- 3.5. The extent to which prior consultation will need to be undertaken before making the application, and with whom, is of course a matter for the applicant to determine. Much will depend on the nature and size of the proposed development, and the potential local impact that would occur. The way an applicant's proposed development is perceived by interested parties may be influenced by how it has been presented to them, and consultation at an early stage can be beneficial to both applicants and those potentially impacted by the proposal. It is from such contacts with people, who either have to evaluate the development in the consents process or expect to have to live with it on the ground should it be installed, that difficulties with a proposal can be identified and aired, and the applicant given the opportunity to strengthen the application, either by making modifications to the proposal or to explain why such modifications need not or cannot be made.
- 3.6. Where the applicant proposes works to replace an existing overhead line that are exempt from obtaining new consent under section 37, the relevant planning authority must be notified. If the relevant planning authority considers that there is likely to be a significant adverse environmental effect, it may require that the works should obtain new section 37 consent. For emergency works in National Parks and AONBs the 2009 Regulations provide that, while the relevant planning authority must be notified as soon as possible by the applicant, the essential and urgent work can be commenced within the authority's 6-week determination period, with any necessary action to formalise the situation being completed as soon as practicable. For emergency works in a SSSI there is provision that such works shall be a reasonable excuse for non-compliance provided that Natural England or Natural Resources Wales is notified as soon as practicable after the start of the works.

### **Amenity and Environmental Impact Assessments**

- 3.7. When preparing an application for consent of an overhead line, the applicant must:
- (a) have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest; and
  - (b) do what they reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects<sup>14</sup>.
- 3.8. In considering such proposals the Secretary of State must have regard to the matters mentioned in sub-paragraph (a) and the extent to which the applicant has complied with this duty under sub-paragraph (b)<sup>15</sup>.

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<sup>14</sup> Paragraph 1(1) of Schedule 9 to the Electricity Act 1989.

- 3.9. A proposed project may also require an Environmental Impact Assessment (EIA), as set out in the Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (the EIA Directive), which is implemented in respect of overhead lines and other electricity infrastructure by the [Electricity Works \(Environmental Impact Assessment\) \(England and Wales\) Regulations 2000](#)<sup>16</sup>. These Regulations have been updated to reflect the EU's Public Participation Directive through the [Electricity Works \(Environmental Impact Assessment\) \(England and Wales\) Regulations 2007](#)<sup>17</sup>. [Supplementary guidance](#)<sup>18</sup> is available from the Energy Infrastructure Portal.
- 3.10. Overhead lines fall within Annex II of the Directive (Schedule 2 of the Regulations) and an EIA will only be required where the Secretary of State determines that the proposed development is likely to have significant effects on the environment by virtue of factors such as its nature, size or location<sup>19</sup>. In the opinion of the Secretary of State overhead lines are unlikely to require an environmental statement if their nominal voltage is less than 132 kV or if they are less than two kilometres in length. Proposals that exceed these parameters should apply to the Secretary of State for a screening opinion. Where a Secretary of State is asked for a screening opinion, he will seek the views of the relevant planning authority, which must give its view to the Secretary of State within three weeks of being asked to do so.
- 3.11. Each case will nevertheless be considered on its merits by the Secretary of State, particularly where an overhead line would pass across especially sensitive land such as a SSSI or AONB.
- 3.12. If an EIA is required, an environmental statement must be submitted with an application to the Secretary of State and a copy of the environmental statement should be sent to the relevant planning authority with the Form B. Where an environmental statement is not submitted with an application for consent, it may be submitted subsequently in response to a notification by the Secretary of State<sup>20</sup>. In such cases the environmental statement should be sent to the relevant planning authority at the same time as it is submitted to the Secretary of State.
- 3.13. Applications under section 37 for new overhead lines of a nominal voltage of 132 kV or above, and other applications for EIA developments that may be higher or lower voltage developments, must be notified to the public by placing a notice in those newspapers that are available in the locality of the development and the London Gazette for proposals requiring an Environmental Statement and state where copies of the Environmental Statement may be obtained. This gives the public an opportunity to express their views on major development proposals, but the relevant planning authority should consider whether to publicise other individual proposals.
- 3.14. Applicants must also publicise any additional relevant information obtained after submission of the application to the Secretary of State under [The Electricity Works \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2007](#).<sup>21</sup>

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<sup>15</sup> Paragraph 1(2) of Schedule 9 to the Electricity Act 1989.

<sup>16</sup> <http://www.legislation.gov.uk/ukxi/2000/1927/contents/made>.

<sup>17</sup> <http://www.legislation.gov.uk/ukxi/2007/1977/contents/made>

<sup>18</sup> <https://www.og.decc.gov.uk/EIP/pages/files/file42053.pdf>

<sup>19</sup> Regulation 5 of SI 2000/1927.

<sup>20</sup> Regulation 6(1) of SI 2000/1927.

<sup>21</sup> [http://www.opsi.gov.uk/si/si2007/ukxi\\_20071977\\_en\\_1](http://www.opsi.gov.uk/si/si2007/ukxi_20071977_en_1)

3.15. Members of the public are able to make representations to the Secretary of State on the application within 28 days from the latest publication date of the notice in the newspapers. When the Secretary of State has determined an application for EIA development, the Secretary of State's decision is then made available to the public. An applicant is also required to give notice of an application to Natural England and/or Natural Resources for Wales where a proposed development would affect a Site of Special Scientific Interest<sup>22</sup> and to consult them where an environmental statement is required.

## Wayleaves

3.16. The applicant will require permission, usually in the form of wayleaves, from the relevant landowner and/or occupier to install an electric line and to keep it installed, and to access the land as required to maintain their equipment. Wayleaves are usually secured voluntarily with the landowner and/or occupier. The Secretary of State usually expects applicants under section 37 to have secured the relevant wayleaves in advance of an application for section 37 consent (or for applications for necessary wayleaves to be made in parallel with the section 37 application). However, the Secretary of State will exceptionally consider granting section 37 consent without wayleaves in place, on the condition that the work must not proceed until the relevant agreements with landowners and/or occupiers are in place (in accordance with Schedule 8 of the Electricity Act 1989). The applicant will be required to confirm in writing to the Secretary of State before the commencement of works that all wayleave permissions have been granted. The Secretary of State will then write to the applicant giving permission for the development to commence.

3.17. If a voluntary agreement cannot be reached on wayleaves and because the electricity licence holder has a public service role to undertake, licence holders may seek a Compulsory Purchase Order under [Schedule 3 to the Electricity Act 1989](#) or more commonly, apply to the Secretary of State for the grant of a necessary (compulsory) wayleave under [Schedule 4 to the Electricity Act 1989](#). The Department has produced [guidance for Applicants and Landowners and/or Occupiers issued in January 2014](#)<sup>23</sup> explaining the statutory necessary wayleave process and the new rules that came into force on 1 October 2013 for hearings for necessary wayleaves and tree felling and lopping orders where the landowner and/or occupier has exercised their right to be heard. This guidance is available to download on the GOV.UK website and [DECC Energy Infrastructure Portal](#)<sup>24</sup>.

## Public Health

3.18. The presence of overhead lines may give rise to concerns within local communities. These are mainly in respect of visual intrusion but also with regard to concerns about possible adverse health effects. Other impacts can arise through proximity to sensitive environmental features such as nature conservation sites and archaeological heritage sites. This means that the Secretary of State looks carefully at all applications for development consent, having careful regard to the factual basis of any concerns raised.

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<sup>22</sup> Regulation 6 of the Electricity (Applications for Consent) Regulations 1990.

<sup>23</sup> <https://www.gov.uk/government/publications/granting-a-necessary-compulsory-electricity-wayleave-guidance-for-applicants-and-landowner-and-or-occupiers>

<sup>24</sup> <https://www.og.decc.gov.uk/EIP/pages/wayleaves.htm>

3.19. On perceived health effects, the UK has adopted the 1998 [guidelines of The International Commission on Non-Ionizing Radiation \(ICNIRP\)](#)<sup>25</sup> in the terms of the 1999 EU Recommendation<sup>26</sup> for limiting public exposure to Electric and Magnetic Fields (EMFs) as recommended by the Health Protection Agency (now Public Health England) to the Department of Health who are responsible for implementing such measures within Government. The ICNIRP guidelines are adopted on a voluntary basis by electricity network operators. Government and the electricity industry have worked together to publish three voluntary Codes of Practice relating to high voltage overhead power lines:

- [Demonstrating compliance with EMF public exposure guidelines: voluntary code of practice](#)<sup>27</sup>,
- [Optimum phasing of high voltage circuit power lines: voluntary code of practice](#)<sup>28</sup> and
- [Power Lines: Control of Microshocks and other indirect effects of public exposure to electric fields](#)<sup>29</sup>.

3.20. In 2013 the Energy Networks Association also published an Engineering Recommendation, in regard to best practice measures relating to low voltage distribution networks and substations. The recommendation is entitled '[Guidelines for Best Practice in relation to Electric and Magnetic Fields \(EMFs\) in the Design and Management of Low Voltage Networks](#)'<sup>30</sup>

3.21. The Secretary of State is likely to regard compliance with the ICNIRP exposure guidelines and with the additional policies established in the Government's responses to two reports from the Stakeholder Advisory Group on Extremely Low Frequency Electric and Magnetic Fields (SAGE), as implemented through the voluntary Codes of Practice, and with evidence of compliance being provided in accordance within those Codes, as satisfactorily addressing any EMF concerns regarding a section 37 application.

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<sup>25</sup> <http://www.icnirp.de/documents/emfgdl.pdf>

<sup>26</sup> Published on 12 June 1999 EU Council Recommendation (1999/519/EEC) Framework for restricting EMF exposure of the general public within Europe

<sup>27</sup> <https://www.gov.uk/government/publications/demonstrating-compliance-with-emf-public-exposure-guidelines-voluntary-code-of-practice>

<sup>28</sup> <https://www.gov.uk/government/publications/optimum-phasing-of-high-voltage-circuit-power-lines-voluntary-code-of-practice>

<sup>29</sup> <https://www.gov.uk/government/publications/power-lines-control-of-microshocks-and-other-indirect-effects-of-public-exposure-to-electric-fields>

<sup>30</sup> [http://www.energynetworks.org/modx/assets/files/electricity/she/emfs/ENA\\_ER\\_G92\\_Issue\\_1\\_\(2013\).pdf](http://www.energynetworks.org/modx/assets/files/electricity/she/emfs/ENA_ER_G92_Issue_1_(2013).pdf)

# SECTION 4 – GUIDANCE ON PROCEDURE FOR OBTAINING VIEWS OF LOCAL PLANNING AUTHORITIES

- 4.1. The relevant planning authority is responsible for consulting with the local community on overhead line proposals within its geographical jurisdiction. As part of its information gathering process, the relevant planning authority may also wish to approach any bodies with relevant specialist expertise and information it considers pertinent to inform its role in the process. It therefore has a key role to play in the consents process given its familiarity and understanding of the local terrain. The relevant planning authority is obliged to make its representations to the Secretary of State on the application proposal within a statutory two month period or obtain an extension to the time limit from the Secretary of State and agreed with the applicant.
- 4.2. For overhead line developments that might affect aviation interests<sup>31</sup>, such as those proposed near certain civil aerodromes, the relevant planning authority has responsibility to check for any likely impact the development might have to ensure the proposal does not infringe on any safeguarded airspace. The applicant should nevertheless check if the positioning of any new installation indicates a need for it to be cleared with the Civil Aviation Authority and Controllers of non-safeguarded airports.
- 4.3. Joint Circular 14/90, which set out guidance to obtain the views of local planning authorities and included “Form B” notification to relevant planning authorities, has been cancelled. The following section replaces that advice in respect of section 37 consent.
- 4.4. The relevant planning authority is given the opportunity to form a view on whether proposed changes to install additional pole supports into an existing line is likely to have a significant adverse environmental impact; whether the introduction of new generation components are acceptable and, given the previous requirement for section 37 consent for temporary lines in National Parks and AONBs (but not in SSSIs) has been removed, that they give their authorisation to the works taking place to the applicant as soon as possible. A simplified procedure is applied under which the applicant submits a notification to the relevant planning authority (Annex D) for proposed works. The relevant planning authority will screen notifications and respond to the applicant within six weeks advising if they have no objections, or wish to invoke the full section 37 process for that proposal.

## **Consultation by relevant planning authorities for developments requiring an Environmental Assessment**

- 4.5. The relevant planning authority should note Article 16 of the Town and Country Planning (Development Management Procedure) Order 2010<sup>32</sup> on the extent to which consultation will be necessary. Further consultation may not be necessary with Government

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<sup>31</sup> Joint Circular from ODPM/NAFW: Safeguarding aerodromes, technical sites and military explosives storage areas: The Town and Country Planning (Safeguarded Aerodromes, Technical Sites and Military Explosives Storage Areas) Direction 2002

[http://www.lcacc.org/safeguarding/205634%20ODPM%20Aerodromes\\_1.PDF](http://www.lcacc.org/safeguarding/205634%20ODPM%20Aerodromes_1.PDF)

<sup>32</sup> SI 2010/2184

Departments or other bodies already consulted by the applicant, the results of which will be passed to the relevant planning authority.

- 4.6. The relevant planning authority may contact such bodies again if it believes it necessary to form a balanced view or to clarify a particular point.

### **National parks**

- 4.7. If a development is proposed to be situated in a National Park, the National Park authority is the relevant planning authority for that area. Where the development extends across a boundary of a National Park, the planning authority for the area inside the National Park is the National Park authority and the planning authority for the area outside the National Park is the relevant planning authority for that area. As each authority is the sole planning authority for its area, both the National Park authority and the relevant planning authority should sign the Certificate in Part I and complete Part II of the Form B.

### **Time limits for relevant planning authorities to register objections**

- 4.8. Relevant planning authorities are asked to register an objection to an application with the Secretary of State within a maximum of 2 months, except in cases where they agree a longer period with the Secretary of State and the applicant<sup>33</sup>. In cases of applications in respect of overhead lines of a nominal voltage of less than 132 kV, where the relevant planning authority has been sent Form B before the formal application is made to the Secretary of State, notice of such application when it is made is not required to be given to the relevant planning authority. In such cases, if the application is made before the relevant planning authority has completed and returned Form B to the applicant, the Secretary of State will inform the relevant planning authority of the date on which the application was made. This will ensure that the authority knows the period in which to register an objection if it wishes.

### **General**

- 4.9. Where arrangements have been made under section 101 of the Local Government Act 1972 for one authority to discharge the functions of another in relations to these matters, the authority completing the Certificate in part I of Form B should state clearly that it is acting both on its own behalf and on behalf of another authority, naming that authority. The Secretary of State will rely on that statement being correct. If an authority which has authorised another to act for it decides that it will act on its own behalf, it must do so before the other authority has acted for it, and to ensure that the Department is left in no doubt about the position.
- 4.10. The views of relevant planning authorities have significant importance in informing the Secretary of State's decision whether or not to give consent and deemed planning permission and in what terms. The copies of Forms B and the Certificates which are sent to the Secretary of State should show a clear signature and an indication of the authority on whose behalf the Form B is signed. If provided in paper form the original signed copies should be sent to the applicant, to be forwarded electronically to the Secretary of State.

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<sup>33</sup> Regulation 8 of the Electricity (Applications for Consent) Regulations 1990.



## ANNEX A - FREQUENTLY ASKED QUESTIONS

### CONSENTS UNDER SECTION 37 ELECTRICITY ACT 1989

#### **Q1 Why does a separate regime exist for overhead power lines rather than making them subject to normal Town and Country planning procedures?**

A1 Parliament has decided that it is in the public interest to have an effective public electricity supply which is managed under a dedicated regime. The privatisation of electricity network companies does not change the rationale of public interest. Given that an overhead line may well extend across a number of local planning authority areas it also makes practical sense when consideration is given to whether the development should obtain consent.

#### **Q2 Who can apply for consent under section 37?**

A2 The Electricity Act 1989 does not specify the types of person that may apply for consent under section 37, and therefore there is no restriction on who may apply to the Secretary of State for consent under this provision. However, in most cases, it will be necessary to hold a licence under section 6 of the Electricity Act 1989 in order to transmit or distribute electricity once the line is in place. In considering whether to grant consent under section 37, the Secretary of State will take into consideration whether the applicant is a licence holder under section 6 or is exempt from the requirement to hold such a licence. Where the applicant for section 37 consent is not a licence holder, or otherwise exempted, the Secretary of State will expect the applicant to provide evidence that they are likely to be in a position to use the line if it is consented and that the design and operation of the overhead line will comply with relevant health and safety requirements including [The Electricity Safety, Quality and Continuity Regulations 2002 as amended](#)<sup>34</sup>.

#### **Q3 Could the change in Planning Act 2008 thresholds cover a scheme where shorter lengths of line but in the same scheme are, when combined, in excess of 2 kilometres and as such covered under the Planning Act 2008?**

A3 Where the lines are separate they can be considered by the Secretary of State under separate section 37 applications, but where a line is continuous/ connected it will be considered in aggregate and if the total new section of overhead line is in excess of 2 kilometres it will be considered under the Planning Act 2008.

#### **Q4 Can a section 37 consent be reviewed?**

A4 Development consent under section 37 is granted to install an overhead line and to keep it installed. Within that consent there may be provision for the Secretary of State to review the consent within a specified time (usually 5 years) and upon such a review giving all persons the opportunity to be heard, may vary or revoke the consent. Such reviews are rare and the public service benefit of maintaining the electricity networks will be a critical factor in the Secretary of State's decision.

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<sup>34</sup> <http://www.legislation.gov.uk/uksi/2002/2665/contents/made>

## ENVIRONMENTAL AND HUMAN RIGHTS ASPECTS

### **Q5 What about the human rights of those affected by overhead power line proposals?**

A5 Before taking any decision on a section 37 application, the Secretary of State will take into account any representations received, particularly from those affected by an applicant's proposal. Such representations can be received direct, as a result of public notices, or in other cases can arise through the local consideration of the application by the relevant planning authority. Experience has shown that only major network proposals give rise to significant representations with few if any being received for more routine works. The Electricity Act 1989 provides the Secretary of State with a discretionary power to call a public inquiry into a proposal in the light of objections by other persons i.e. not a local planning authority objection.

### **Q6 How does the Secretary of State consider the provisions of the Equality Act 2010 in taking decisions on section 37 applications?**

A6 Compliance with the general equality duty contained in Section 149 of the Equality Act 2010 is a legal obligation. All section 37 applications are considered by the Secretary of State before granting consent to ensure that the potential impact of the development will not be likely to result in any significant differential impacts on any of the protected characteristics or discriminate against any particular protected characteristics.

### **Q7 Can an appeal be made against the Secretary of State's decisions on overhead line applications?**

A7 Whilst there is no appeals procedure built-in to the Electricity Act 1989 statutory consents regime, anyone dissatisfied with a decision made by the Secretary of State is able to apply to the Planning Court to take judicial review proceedings. The procedure, however, is concerned with the improper exercise of legal power by the Secretary of State and is not a process to re-evaluate the merits of the development.

## 2009 EXEMPTION REGULATIONS

### **Q8 Who decides whether the full section 37 process should apply?**

A8 It would be for the applicant to consult the relevant planning authority. The relevant planning authority is in a good position to judge the degree of significance of what is being proposed for the local environment to help inform the Secretary of State's view. If the position on the proposal is not clear-cut, then either the applicant or the relevant planning authority can approach the Secretary of State for a screening opinion.

### **Q9 What about installing additional supports into an existing overhead line?**

A9 The 2009 regulations allow for installation of additional poles (for example wood) into an existing overhead line without the need for fresh section 37 consent, subject to the relevant planning authority determining that no significant adverse environmental impact is likely.

### **Q10 Why are temporary overhead lines exempted?**

A10 Such lines are temporary incursions into the landscape with the ground being restored afterwards in order to facilitate more permanent works. But they do not have permanent authority to remain in situ and as such it is appropriate for the exemptions from the full section 37 process be extended by the 2009 Regulations. Such lines must nevertheless be notified to the relevant planning authority.

## ANNEX B – Simplified Notification

THIS FORM IS FOR USE BY APPLICANTS TO ADVISE LOCAL PLANNING AUTHORITIES OF PROPOSED WORKS TO BE UNDERTAKEN WITHIN THEIR DESIGNATED AREA THAT ARE CONSIDERED TO BE EXEMPTED UNDER THE OVERHEAD LINES(EXEMPTION)(ENGLAND AND WALES) REGULATIONS 2009. LOCAL AUTHORITIES HAVE THE RIGHT TO INVOKE THE FULL SECTION 37 PROCESS UNDER THE ELECTRICITY ACT 1989 SHOULD IT BE CONSIDERED NECESSARY.

The Form should be sent in triplicate to each Local Planning Authority in whose area the proposed development would be situated.

### DETAILS OF APPLICANT

Name:

Address:

Telephone No:

Email address:

Applicant's reference:

Date:

To: Chief Executive,

District/Borough Council/Authority

Electricity Act 1989: Overhead Lines (Exemption)(England and Wales) Regulations 2009

It is proposed to undertake the following work that is considered to be exempted from the Electricity Act 1989 by falling within The Overhead Lines (Exemption)(England and Wales) Regulations 2009:

Particulars of proposed development to be completed by Applicant [A short description of the works accompanied by such plans as may be necessary to enable the Local Planning Authority to identify the land affected by the proposals and to appreciate the nature and extent of the proposed development and by a copy of the environmental statement if the applicant has prepared one.]

The Council/Authority is requested to indicate that it has no objection to the work being carried out by returning two copies of this Form with the Certificate completed and signed.

Yours faithfully

For and on behalf of the Applicant

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## CERTIFICATE

TO BE COMPLETED BY THE RELEVANT PLANNING AUTHORITY AND RETURNED TO THE APPLICANT  
WITHIN SIX WEEKS OF RECEIPT

The District/Borough Council/Authority

\*(i) objects/does not object for the proposed development detailed above to be undertaken under the exemptions laid down in The Overhead Lines (Exemption)(England and Wales) Regulations 2009

\* (ii) wishes/does not wish the Secretary of State to consider the application using the full section 37 process under the Electricity Act 1989

\*The reasons for requesting the full section 37 process are:

Dated:

Signed:

Designation

(on behalf of xxx District/Borough Council/Authority)

*\*delete as appropriate*

## ANNEX C - Form B (Type II)

**Notes:** This Form is for use in connection with an application for the Secretary of State for Energy and Climate Change consent under **section 37** of the Electricity Act 1989 **to install and keep installed above ground** an electric line of a nominal voltage of 132 kilovolts or more and less than 2 kilometres in length. The Form should be sent in **quadruplicate** to each County (where there is one) and District/Borough Council/Authority in whose area the proposed development would be situated. Where the form is sent to more than one District/Borough Council/Authority in a county the County Council should be sent an additional copy for each such additional District/Borough Council/Authority.

### DETAILS OF APPLICANT

Name:

Address:

Tel:

Email address:

### PART I

Applicant's reference:

Date:

To the Chief Executive

Council

Dear Sir

### Electricity Act 1989

Application is being made to the Secretary of State for Energy and Climate Change for his consent to the development described overleaf. The Secretary of State will at the same time be requested to direct that planning permission for this development shall be deemed to be granted. The consent and the direction may be given subject to conditions.

To assist the Secretary of State to determine the application:

- (i) The District Council/Authority is requested to return to me two copies of this Form with Part I Certificate and Part II completed and signed and to send one completed and signed copy to the County Council (where there is one),  
AND
- (ii) The County Council (where there is one) is requested to return to me two copies of this Form with Part I Certificate only completed and signed and to send one completed and signed copy to each District Council/Authority in whose area the development would be situated.

Department of Energy and Climate Change guidance note 14D/226 describes this procedure and the reason for it.

Yours Faithfully

For and on behalf of the applicant

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### CERTIFICATE

(To be completed by or on behalf of BOTH County AND District/Borough Councils/Authority)

The

County/District/Borough Council/Authority

- (i) \*object on the grounds set out below/have no objection to make to the development described overleaf;
- (ii) \*request/do not request that a public inquiry be held pursuant to paragraph 2 of Schedule 8 to the Electricity Act 1989 before the Secretary of State reaches his decision on the application.

Dated

Signed

\*Delete as appropriate

Designation

Council/Authority

On behalf of the County/District/Borough

[Reasons for objections]

## **PARTICULARS OF PROPOSED DEVELOPMENT AND REPRESENTATIONS**

[To be completed by the applicant]

Application is being made

- (a) for consent under section 37 of the Electricity Act 1989 to install or keep installed an electric line above ground;
  - (b) for a direction under section 90(2) of the Town and Country Planning Act 1990 that planning permission for the proposed development be deemed to be granted.
1. Particulars of proposed development. (These particulars should be accompanied by such plans as may be necessary to enable the local planning authority to identify the land affected by the proposals and to appreciate the nature and extent of the proposed development and by a copy of the environmental statement if the applicant has prepared one.)

2. Particulars of any representations or objections which have been made to the applicant.

3. Particulars of the applicant's compliance with the duty under paragraph 1 of Schedule 9 to the Electricity Act 1989.

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Date	20	For and on behalf of the applicant
Note:	This Part to be completed, dated and signed before submitting to the relevant planning authority	Signed  Designation

## **PART II – INFORMATION AND OBSERVATIONS**

(To be completed by the District/Borough Council/Authority)

Planning Reference No.

1. Names of interested parties consulted as to the proposals with details of any observations received.
  
2. Particulars of any representations which have been made to the relevant planning authority objecting to the proposals.
  
3. Have any general or specific restrictions been imposed by any authority on development of the land affected by the proposed development?

4. Does the proposed development involve the demolition, alteration or extension of a building of special architectural or historic interest included in a list compiled or approved under section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990?
  
5. Does the relevant planning authority agree that the proposed development should be approved by the Secretary of State for Energy and Climate Change as described? (If the answer is no, please answer question 6.)
  
6. Would the relevant planning authority be prepared to agree that the proposed development should be approved subject to modifications or conditions? (If so, specify the modifications or conditions proposed and state whether they are acceptable to the applicant). (Note: the precise form of any modifications or conditions subject to which the consent or direction is given is a matter for the Secretary of State, who will however have regard to the form of words used.)
  
7. Does the relevant planning authority consider that the application should be accompanied by an environmental statement in accordance with the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000? (If so, please specify the particular points arising from the application which have caused the local planning authority to take this view.

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Date	20	Signed	Designation
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On behalf of the Council/Authority  
(Local planning authority for the area in which the proposed development is to be carried out)

Two completed copies of this Form, both signed, should be returned to the applicant who will submit these to the Department of Energy and Climate Change.



## ANNEX D - Form B (Type III)

**Notes:** This Form is for use in connection with an application for the Secretary of State for Energy and Climate Change consent under **section 37** of the Electricity Act 1989 to install and keep installed above ground an electric line of a nominal voltage of less than 132 kilovolts. The Form should be sent in **triplicate** to each District/Borough Council/Authority in whose area the proposed development would be situated.

### DETAILS OF APPLICANT

Name:

Address:

Tel:

Email address:

### PART I

Applicant's reference:

Date:

To the Chief Executive

Council

Dear Sir

### **Electricity Act 1989**

Application is being made to the Secretary of State for Energy and Climate Change for consent to the development described overleaf. The Secretary of State will at the same time be requested to direct that planning permission for this development shall be deemed to be granted. The consent and the direction may be given subject to conditions.

To assist the Secretary of State to determine the application the District Council/Authority is requested to return to me two copies of this Form with Part I Certificate and Part II completed and signed and to send one completed and signed. Department of Energy and Climate Change guidance note 14D/226 describes this procedure and the reason for it.

Yours Faithfully

For and on behalf of the applicant

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### CERTIFICATE

(To be completed by or on behalf of the District/Borough Council/Authority)

The

District/Borough Council/Authority

(iii)

\*object on the grounds set out below/have no objection to make to the development described overleaf;

(iv)

\*request/do not request that a public inquiry be held pursuant to paragraph 2 of Schedule 8 to the Electricity Act 1989 before the Secretary of State reaches his decision on the application.

Dated

Signed

\*Delete as appropriate

Designation

On behalf of the District/Borough Council/Authority

[Reasons for objections]

## PARTICULARS OF PROPOSED DEVELOPMENT AND REPRESENTATIONS

[To be completed by the applicant]

Application is being made

- (c) for consent under section 37 of the Electricity Act 1989 to install or keep installed an electric line above ground;
- (d) for a direction under section 90(2) of the Town and Country Planning Act 1990 that planning permission for the proposed development be deemed to be granted.

1. Particulars of proposed development. (These particulars should be accompanied by such plans as may be necessary to enable the local planning authority to identify the land affected by the proposals and to appreciate the nature and extent of the proposed development and by a copy of the environmental statement if the applicant has prepared one.)

2. Particulars of any representations or objections which have been made to the applicant.

3. Particulars of the applicant's compliance with the duty under paragraph 1 of Schedule 9 to the Electricity Act 1989.

---

Date	20	For and on behalf of the applicant
Note:	This Part to be completed, dated and signed before submitting to the relevant planning authority	Signed Designation

## **PART II – INFORMATION AND OBSERVATIONS**

(To be completed by the District/Borough Council/Authority)

Planning Reference No.

1. Names of interested parties consulted as to the proposals with details of any observations received.
2. Particulars of any representations which have been made to the relevant planning authority objecting to the proposals.
3. Have any general or specific restrictions been imposed by any authority on development of the land affected by the proposed development?

4. Does the proposed development involve the demolition, alteration or extension of a building of special architectural or historic interest included in a list compiled or approved under section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990?
  
5. Does the relevant planning authority agree that the proposed development should be approved by the Secretary of State for Energy and Climate Change as described? (If the answer is no, please answer question 6.)
  
6. Would the relevant planning authority be prepared to agree that the proposed development should be approved subject to modifications or conditions? (If so, specify the modifications or conditions proposed and state whether they are acceptable to the applicant). (Note: the precise form of any modifications or conditions subject to which the consent or direction is given is a matter for the Secretary of State, who will however have regard to the form of words used.)
  
7. Does the relevant planning authority consider that the application should be accompanied by an environmental statement in accordance with the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000? (If so, please specify the particular points arising from the application which have caused the local planning authority to take this view.)

---

Date

20

Signed

Designation

On behalf of the

Council/Authority

(Local planning authority for the area in which the proposed development is to be carried out)

Two completed copies of this Form, both signed, should be returned to the applicant for submission to the Department of Energy and Climate Change.



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Department of Energy & Climate Change  
3 Whitehall Place  
London SW1A 2AW  
[www.gov.uk/decc](http://www.gov.uk/decc)  
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