

*Status: Point in time view as at 23/05/2018.*

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## F<sup>1</sup> SCHEDULES

### SCHEDULE 9 E+W+S

Section 38.

#### PRESERVATION OF AMENITY AND FISHERIES.

##### *Preservation of amenity: England and Wales*

- 1 (1) In formulating any relevant proposals, a licence holder or a person authorised by exemption to [F<sup>1</sup>generate, [F<sup>2</sup>distribute, supply or participate in the transmission of] electricity]—
- (a) shall 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 archeological interest; and
  - (b) shall do what he 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.
- (2) In considering any relevant proposals for which his consent is required under section 36 or 37 of this Act, the Secretary of State shall have regard to—
- (a) the desirability of the matters mentioned in paragraph (a) of sub-paragraph (1) above; and
  - (b) the extent to which the person by whom the proposals were formulated has complied with his duty under paragraph (b) of that sub-paragraph.
- (3) In this paragraph—
- “building” includes structure;
  - “relevant proposals” means any proposals—
- (a) for the construction or extension of a generating station of a capacity not less than 10 megawatts, or for the operation of such a station in a different manner;
  - (b) for the installation (whether above or below ground) of an electric line; or
  - (c) for the execution of any other works for or in connection with the transmission or supply of electricity.
- (4) The Secretary of State may by order provide that sub-paragraph (3) above shall have effect as if for the capacity mentioned in paragraph (a) there were substituted such other capacity as may be specified in the order.
- (5) This paragraph and paragraph 2 below extend to England and Wales only.

#### Textual Amendments

F1 Words in Sch. 9 para. 1(1) substituted (1.10.2001) by S.I. 2001/3264, art. 6

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**F2** Words in Sch. 9 para. 1(1) substituted (1.9.2004) by [Energy Act 2004 \(c. 20\), s. 198\(2\)](#), [Sch. 19 para. 16](#); [S.I. 2004/2184, art. 2\(2\)](#), [Sch. 2](#)

**Modifications etc. (not altering text)**

**C1** [Sch. 9 para. 1\(2\)](#) modified (1.4.2010) by [Marine and Coastal Access Act 2009 \(c. 23\), ss. 12\(5\)\(b\), 324\(3\)](#); [S.I. 2010/298, art. 2](#), [Sch. para. 4 \(with art. 4\(1\)\)](#)

- 2
- (1) A licence holder shall within twelve months from the grant of his licence prepare, and from time to time modify, a statement setting out the manner in which he proposes to perform his duty under paragraph 1(1) above, including in particular the consultation procedures which he intends to follow.
  - (2) Before preparing or modifying a statement under this paragraph, a licence holder shall consult the [<sup>F3</sup>Countryside Agency], [<sup>F4</sup>and—
    - (a) where the activities which he is authorised by his licence to carry on include activities in England, [<sup>F5</sup>Natural England] and the Historic Buildings and Monuments Commission for England; and
    - (b) where those activities include activities in Wales, [<sup>F6</sup>the Natural Resources Body for Wales] and the [<sup>F7</sup>National Assembly] for Wales.]
  - (3) As soon as practicable after preparing or modifying a statement under this paragraph, the licence holder shall publish the statement as so prepared or so modified in such manner as he considers appropriate.

**Textual Amendments**

- F3** Words in Sch. 9 para. 2 substituted (20.2.1999) by [S.I. 1999/416, art. 3](#), [Sch. 1 para. 13](#)
- F4** Words in Sch. 9 para. 2(2) substituted (1.4.1991) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\), s. 132\(1\)\(a\)](#), [Sch. 9 para. 16\(a\)](#); [S.I. 1991/685, art. 3](#)
- F5** Words in Sch. 9 para. 2(2) substituted (1.10.2006) by [Natural Environment and Rural Communities Act 2006 \(c. 16\), s. 107](#), [Sch. 11 para. 115\(b\)](#); [S.I. 2006/2541, art. 2 \(with Sch.\)](#)
- F6** Words in Sch. 9 para. 2(2)(b) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\), art. 1\(2\)](#), [Sch. 2 para. 197 \(with Sch. 7\)](#)
- F7** Words in Sch. 9 para. 2(2)(b) substituted (1.4.2006) by [The Historic Buildings Council for Wales \(Abolition\) Order 2006 \(S.I. 2006/63\), arts. 1\(2\), 3\(4\)](#)

*Preservation of amenity and fisheries: Scotland*

- 3
- (1) In formulating any relevant proposals, a licence holder or a person authorised by an exemption to [<sup>F8</sup>generate, [<sup>F9</sup>distribute, supply or participate in the transmission of] electricity]—
    - (a) shall 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) shall do what he 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.
  - (2) In considering any relevant proposals for which his consent is required under section 36 or 37 of this Act, the Secretary of State shall have regard to—

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- (a) the desirability of the matters mentioned in paragraph (a) of sub-paragraph (1) above; and
  - (b) the extent to which the person by whom the proposals were formulated has complied with his duty under paragraph (b) of that sub-paragraph.
- (3) Without prejudice to sub-paragraphs (1) and (2) above, in exercising any relevant functions each of the following, namely, a licence holder, a person authorised by an exemption to generate or supply electricity and the Secretary of State shall avoid, so far as possible, causing injuries to fisheries or to the stock of fish in any waters.
- (4) In this paragraph—  
“building” includes structure;  
“relevant proposals” has the same meaning as in paragraph 1 above and, for the purposes of this paragraph, any such order as is mentioned in sub-paragraph (4) of that paragraph may be made under this sub-paragraph;  
“relevant functions” means any powers conferred and any duties imposed by or under this Act.
- (5) This paragraph and paragraphs 4 and 5 below extend to Scotland only.

#### Textual Amendments

- F8** Words in Sch. 9 para. 3(1) substituted (1.10.2001) by [S.I. 2001/3264, art. 6](#)
- F9** Words in Sch. 9 para. 3(1) substituted (1.9.2004) by [Energy Act 2004 \(c. 20\), s. 198\(2\), Sch. 19 para. 16; S.I. 2004/2184, art. 2\(2\), Sch. 2](#)

#### Modifications etc. (not altering text)

- C2** Sch. 9 para. 3: transfer of certain functions (S.) (1.7.1999) by [S.I. 1999/1750, arts. 1, 2, Sch. 1](#) (with art. 7)

- 4 (1) A licence holder shall within twelve months from the grant of his licence prepare, and from time to time modify, a statement setting out the manner in which he proposes to perform his duty under paragraph 3(1) above, including in particular the consultation procedures which he intends to follow.
- (2) Before preparing or modifying a statement under this paragraph, a licence holder shall consult with [<sup>F10</sup>Scottish Natural Heritage]<sup>F11</sup> ... [<sup>F12</sup>and with the National Park authority for any National Park which would be affected by the relevant proposals].
- (3) As soon as practicable after preparing or modifying a statement under this paragraph, the licence holder shall publish the statement so prepared or so modified in such a manner as he considers appropriate.

#### Textual Amendments

- F10** Words in Sch. 9 para. 4(2) substituted (1.4.1992) by [Natural Heritage \(Scotland\) Act 1991 \(c. 28, SIF 46:1\), ss. 27\(1\), 28\(2\), Sch. 10 para. 13; S.I. 1991/2633, art. 4](#)
- F11** Words in Sch. 9 para. 4(2) repealed (31.5.2003) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\), s. 21\(2\), Sch. 4 para. 10; S.S.I. 2003/219, art. 2\(1\)\(c\)](#)
- F12** Words in Sch. 9 para. 4(2) inserted (S.) (9.8.2000) by [2000 asp 10, s. 36, Sch. 5 para. 14\(2\)](#) (with s. 32); [S.I. 2000/312, art. 2](#)

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*Fisheries Committee: Scotland*

F135 .....

**Textual Amendments**

**F13** Sch. 9 para. 5 omitted (1.10.2010) by virtue of Flood and Water Management Act 2010 (c. 29), ss. 46(3), 49(3) (with s. 49(1)(6)); S.I. 2010/2169, art. 4, Sch.

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