

EXPLANATORY MEMORANDUM TO
THE ELECTRICITY (NECESSARY WAYLEAVES AND FELLING AND LOPPING OF
TREES) (HEARING PROCEDURES) (ENGLAND AND WALES) RULES 2013

2013 No. 1987

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change in consultation with the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Secretary of State has power to grant a necessary (compulsory) wayleave to enable an electricity company to install and keep installed an electric line on, under or over any third party land, and also has power to make an order to empower an electricity company to fell or lop trees close to electric lines to ensure compliance with statutory obligations that are placed upon them to safeguard public safety and ensure continuity of supply. In both cases the Secretary of State must give the owner or occupier of the land the opportunity to be heard before making a decision.

2.3 This instrument sets out the hearing procedure to be followed in respect of an application for a necessary wayleave or a reference for an order for the felling or lopping of trees. It revokes and replaces The Electricity (Compulsory Wayleaves) (Hearings Procedure) Rules 1967 (“the 1967 Rules”) and introduces a less burdensome process for electricity companies by:

- Allowing hearings to proceed by written representations;
- Formalising pre-hearing meetings and hearings relating to tree felling and tree lopping orders which are not currently provided for in the 1967 Rules; and
- Allowing pre-hearing meetings to be conducted by modern methods of communication such as teleconference and video-link.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 This instrument is made under section 9 Tribunals and Inquiries Act 1992, and relates to hearings carried out in accordance with paragraph 6(5) of Schedule 4 to the Electricity Act 1989 and paragraph 9(6) of Schedule 4 to the Electricity Act 1989.

4.2 This instrument will revoke and replace The Electricity (Compulsory Wayleaves) (Hearings Procedure) Rules 1967 in respect of England and Wales. The 1967 Rules will continue to apply in respect of Scotland.

4.3 The Secretary of State is also introducing charges for processing applications for necessary wayleaves and tree felling and lopping orders, and charges for conducting the written representation procedure and oral hearing procedure under these rules, by the Electricity (Necessary Wayleaves and Felling and Lopping of Trees) (Charges) (England and Wales) Regulations 2013.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Electricity companies cannot install or retain electric lines and related structures or fell or lop trees close to electric lines lawfully unless they have sufficient legal rights over the land in question (in addition to any statutory consents or planning permission required).

7.2 The vast majority of such land access rights are secured by electricity companies in the form of voluntary wayleaves or easements with the landowner. In the case of tree felling or lopping the landowner is responsible for managing trees and can reclaim costs from the electricity company. This is dangerous work and for safety reasons it is common for most electricity companies to undertake the necessary work on the landowner's behalf. However, when voluntary negotiations with a landowner fail, the electricity company can fall back on statutory procedures to seek from the Secretary of State the grant of a "necessary" (compulsory) wayleave or tree felling and tree lopping order to ensure they can obtain or continue to have rights over the land in question in order to maintain and undertake their statutory duty to provide a public service role. In cases where the landowner is unwilling to allow tree felling or lopping works to be undertaken, the network operator has powers to give notice to the landowner requesting the work is carried out. If necessary the electricity company will carry out work within 21 days following the notice subject to an objection procedure with disputes referred to the Secretary of State.

7.3 Before granting a necessary wayleave or tree felling and tree lopping order, the Secretary of State must afford the owner or occupier of the land an opportunity of being heard in accordance with paragraphs 6(5) and 9(6) of Schedule 4 to the Electricity Act 1989. The procedure for such hearings is currently set out in the Electricity (Compulsory Wayleaves) (Hearings Procedure) Rules 1967 (“the 1967 Rules”), which this instrument revokes and replaces.

7.4 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.

7.5 For example, the 1967 Rules require a full oral hearing in all circumstances which may impose greater costs and other burdens on the relevant parties than may be necessary. The 1967 Rules currently provide no formal power to use the written representations procedure, conduct pre-hearing meetings or conduct hearings relating to the felling and lopping of trees where vegetation poses a risk to safety or security of supply.

7.6 This key aim of this instrument is to introduce a less burdensome process by permitting written representations and enabling pre-hearing meetings to be conducted via modern means of communication such as teleconferencing and video-link. It will also formalise pre-hearing meetings and hearings relating to tree felling and tree lopping orders. These changes should facilitate a less onerous and more cost-effective way for parties to proceed. It should also result in faster processing of applications for 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.

Consolidation

7.7 As this instrument revokes and replaces The Electricity (Compulsory Wayleaves) (Hearings Procedure) Rules 1967, consolidation is not applicable.

8. Consultation outcome

8.1 The proposed hearing rules were subject to a full public consultation. The consultation was published on 17 October 2012 and closed on 28 November 2012. A total of 31 responses were received.

8.2 The overall consensus of responses supported the introduction of a written representation procedure where it was agreed by both parties. A pre-hearing meeting was considered by some as a necessary part of the negotiation process acting as a catalyst towards settlement before the hearing itself took place. The formal introduction of provisions to hear tree felling and lopping order applications was welcomed by all respondents.

8.3 The Government response to the consultation is available on the Department of Energy and Climate Change website at:
<https://www.gov.uk/government/consultations/necessary-wayleaves-regime>

9. Guidance

9.1 Guidance is currently published by DECC on applications for necessary wayleaves and tree felling and tree lopping orders for electric lines. This guidance will be updated to reflect the changes in the hearing procedures.

10. Impact

10.1 An Impact Assessment of the effect that this instrument will have on the cost of business is available on the Department of Energy and Climate Change website at:
<https://www.gov.uk/government/consultations/necessary-wayleaves-regime>

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The impact of the changes to the hearings procedures will be monitored as part of the necessary wayleaves policy review.

13. Contact

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