

<b>Title:</b> <b>Updating the Electricity Act “necessary” wayleaves process for overhead lines</b>  <b>IA No: DECC0100</b>  <b>Lead department or agency:DECC</b>  <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>				
	<b>Date:</b> 13/07/2012				
	<b>Stage:</b> Consultation				
	<b>Source of intervention:</b> Domestic				
	<b>Type of measure:</b> Secondary legislation				
<b>Contact for enquiries:</b> John Swift DCPR 0300 068 5685					
<b>Summary: Intervention and Options</b>					<b>RPC:</b> Green

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB in 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
£1,177,500	£1,177,500	£136,800	Yes	OUT

**What is the problem under consideration? Why is government intervention necessary?**  
**The current legislative framework for Wayleaves is unnecessarily burdensome for operators. There are two issues to deal with:**

(1) Improving the current legislative framework for electricity network operators seeking to secure rights to install new or retain existing power lines and structures and/or apparatus across third party land;

(2) Reduce the burden of “compensation” claims made against such operators by owners and occupiers of land where such lines and apparatus have been installed in the past;

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

To update the process from its nationalised industry days (the current hearing rules dating back to 1967) and to recover the actual cost to Government of processing applications. The intended effect is to ensure a more level playing field between parties, through the introduction of an alternative less burdensome handling process, and reducing the time and costs of hearings, whilst ensuring fairness for all parties in the process.

**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 into line with modern best practice, including setting fees for processing wayleave applications. This is the preferred option.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 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.	<b>Micro No</b>	<b>&lt; 20 No</b>	<b>Small Yes</b>	<b>Medium Yes</b>	<b>Large Yes</b>

What is the CO2 equivalent change in greenhouse gas emissions? (Million tonnes CO2 equivalent)	Traded: N/A	Non-traded: N/A
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***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

Date:

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# Summary: Analysis & Evidence

# Policy Option 2

Description: Bring the 1967 Rules into line with modern best practice, including setting fees for processing wayleave applications.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2010	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: £1,177,500

COSTS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant)	Total Cost (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate		0	0

**Description and scale of key monetised costs by ‘main affected groups’** Business Costs - cost recovery. The main affected groups will be Distribution Network Operators and Transmission Network Operators in England and Wales. The implementation of a fee is likely to be a series of tiered fees covering all stages of the necessary wayleaves hearing process. (Fees to be treated as “out of scope of “one in one out” under exemption 10 in the OIOO methodology).

**Fees costs have been monetised as £836 000 in the impact assessments but are treated as transfers and there for not included in the NPV**

Transition costs are estimated to be zero as the proposal will be bringing the regime in line with other

**Other key non-monetised costs by ‘main affected groups’**

None

BENEFITS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant)	Total Benefit (Present Value)
Low	0	£110 000	£942 000
High	0	£247 500	£2 119 400
Best Estimate	0	£137 500	£1 177 500

**Description and scale of key monetised benefits by ‘main affected groups’**

1. Government savings – transfers of £836,000 . Government: processing costs for applications for “necessary” wayleaves would be recovered from applicants.
2. Business savings – Electricity DNOs and TNOs

**Other key non-monetised benefits by ‘main affected groups’**

1. Fewer cases being contested through the formal process, with a resulting reduction in ‘stress’ on all parties involved.

Key assumptions/sensitivities/risks

3.5%

The fee level would be set at the rate that would allow recovery from the lower estimate of annual applications.

**BUSINESS ASSESSMENT (Option 2)**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of</b>	<b>Measure qualifies</b>
<b>Costs:</b>	<b>Benefits:</b>	<b>Net:</b>	Yes	OUT
£0	£137 500	£136,800		

## **Introduction**

1. Wayleaves and easements are legal agreements that allow the transmission and Distribution Network Operators (DNOs) 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 industry operators cannot do so lawfully unless they have sufficient 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 operators in the form of voluntary wayleaves or easements. Voluntary wayleaves are a formal 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 licence holder a written notice to remove an existing line from his land, the licence holder 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 compulsory “necessary” wayleave to ensure they can continue to have rights over the land in question in order to undertake their statutory duty to provide a public service role. The licence holder 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 licence holder will only be negotiated after the Secretary of State has determined the application.
4. There are other options open to licence holders, such as the compulsory purchase order process however in practice this option is rarely made use of.
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>.
6. DECC receives many applications for compulsory or “necessary” wayleaves that arise from essentially financial disputes over existing, rather than new lines. In such cases, while DECC can reach a view as to whether it is still “necessary or expedient” for the operator to be granted a necessary wayleave, it has long taken the view that it has no power to address the matter which is really in dispute, as the financial terms of a wayleave fall to be considered, in default of agreement between the parties, by the Upper Tribunal (Lands Chamber). In addition, the 1967 Rules

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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; on 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>

have remained essentially unchanged for over 40 years and from a technical and user point of view are no longer fit for purpose

7. There is currently no fee payable by any party for making an application for a necessary wayleave to the Secretary of State. In line with current government policy on full cost recovery it is intended to implement a fixed or tiered charging regime to ensure that processing necessary wayleave applications is cost-neutral to Government.

8. The Government therefore proposes to revise the regime for compulsory wayleaves in line with current best practice for resolving comparable disputes, and to impose fees for wayleave applications which will reflect the true cost to Government of processing such applications.

### **Rationale**

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 existing Rules have not been revised since 1967 and are out of step with equivalent procedural rules such as those governing compulsory purchase, rights of way and planning inquiries. The current process has no formal power to abandon the hearing process if one party fails to provide the necessary preparatory material and no formal power to use written representations, rather than a full oral hearing. Currently hearings relating to the felling and lopping of tress etc, are not subject to formal procedural rules but are heard by inspectors applying the 1967 Rules process.

12. The current hearings process places disproportionate requirements on electricity companies to produce evidence without the agent and/or landowner having to incur any significant work or cost. Companies are also required to bear the cost of the pre-hearing and hearing venues along with other additional costs when on occasion, the agent and/or landowner decides not to attend. Amending the 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.

13. Modernisation of the 1967 Rules to create a more level playing field between all parties, through the introduction of an alternative less burdensome handling process, such as permitting written representations and placing an obligation on landowners/agents to provide evidence and to attend any hearing, should have a

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

positive effect in reducing the number of speculative applications for compulsory procedures made to the Department.

14. Imposing fees would be relatively simple to implement and would ensure that Government is able to recover the true cost of processing applications for necessary wayleaves.

### **Options**

15. Any action would require implementation through a Statutory Instrument amending the 1967 hearing rules. A further Statutory Instrument would be required to introduce charges for the wayleaves handling process itself.

16. 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 into line with modern dispute resolution practices, including setting fees for processing wayleave applications;

### **Cost /Benefit Analysis**

#### **Counterfactual / do nothing**

17. Administering the wayleaves process carries considerable manpower resource and financial burden for licence holders who are required to handle wayleave termination and removal notices. This is understandable given a new owner/occupier of land has a right to negotiate a position with the licence holder in line with current property values or has the right to obtain a better position for themselves by seeking removal of the line.

18. Again this would seem understandable given once they are confronted with a notice to remove, they have little choice other than to conclude negotiations with the landowner and/or occupier within the statutory three month time-frame or protect their position by applying to the Department under the statutory process.

19. If licence holders decide on the wayleave route they must lodge a necessary wayleave application with the Department within the three months from receipt of a Notice to Remove from the landowner/occupier. During 2010/11 less than 3 percent of applications for necessary wayleaves received progressed to a full hearing which would strongly suggest that the statutory process is being used as a negotiating tool between parties, rather than settling the real issue at hand.

20. The present system meets the *intentions* of the Electricity Act 1989, by protecting the right to a hearing for both landowner and network/transmission operator, rights which need to be retained. Land agents have a legitimate right to offer their services to landowners and landowners to take them. However the use of statutory powers to determine applications and for Inspector hearing requests, looks set to continue, requiring resources that may be better deployed elsewhere.

21. In addition, Network/Transmission operators backlogs of notices, which can bring delays into negotiations on offers of settlement with landowners would appear set to continue. Failing to conclude negotiations with landowners in a timely fashion has an impact on the downstream process of installing new, or maintaining existing network/transmission lines which could, in the worst case, ultimately lead to a reduction in security of supply possible resulting in more interruptions to supply.

22. Finally, there will be a continued reliance on the (outdated) 1967 Rules to determine tree cutting 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 Regulation impose duties on Network/Transmission operators relating to power quality and supply continuity to ensure an efficient and economic electricity supply service for consumers.

23. The costs to DECC of processing applications for necessary wayleaves, from pre-application to full hearing are set out below. It is not expected that the cost will rise significantly before 2015 at the earliest, owing to Government pay restraints and other cost-reduction measures.

24. Analysis of costs is based on a median of 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.

25. There are 6 Distribution Network Operators and 1 Transmission Network Operator in England and Wales, who 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 fees. It is also likely that their customers would be indirectly affected, as higher costs may be passed on. In addition the proposed changes would also have a direct or indirect effect on landowners who have, or may be required to have transmission or distribution equipment located on, under or over their land.

#### Option a “do nothing”:

26. This would provide no relief to the network companies with some applications progressing to the pre-hearing and hearing stages of the necessary wayleaves process unnecessarily.

#### Option b “Bring the 1967 Rules into line with modern dispute resolution practices. Setting fees for processing necessary wayleave applications”

27. The table below shows the options for fees that could be charged to network operators to ensure that processing of applications for necessary wayleaves are cost-neutral to DECC.

### **Table A – Proposed tiered application fee to be applied in 3 stages**

A graded fee payable at each advancing stage of the process, a potential model of which is shown below.

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

<b>STAGE</b>	<b>PROPOSED TOTAL FEE PAYABLE</b>
Application stage	<b>£34</b>
Application + Request for hearing/pre-hearing	<b>£2897</b>
Application + Request for hearing/pre-hearing + full hearing & post-hearing	<b>£10 709</b>

28. The table below sets out the total DECC resources necessary for processing necessary wayleave applications from application through to post-hearing, including the present cash value.

**Table B - Hearing stage staff<sup>6</sup> time taken and actual cost of processing**

<b>STAGE</b>	<b>TOTAL STAFF HOURS</b>	<b>CASH VALUE PER STAGE (£)</b>
Application stage	1	34
Request for hearing	1	34
Pre-hearing	56.5	2761
Hearing	45	2496
Post-hearing	116	5384

29. The table below sets out the cost to DECC for processing necessary wayleave applications at each stage in the process based on average annual applications which reach each stage.

**Table C – Necessary wayleave application cost per application (actual)**

	<b>UP TO AND INCLUDING:</b>	<b>TOTAL COST TO DECC (£) PER APPLICATION</b>
<b>A</b>	Application stage	34
<b>B</b>	Request for hearing	68
<b>C</b>	Pre-hearing	2829
<b>D</b>	Hearing & Post-hearing	10 709

30. The potential costs for our proposals are chiefly related to the introduction of chargeable fees as detailed in Table F. These costs have been worked out using the average DECC staff time necessary to process each application (detailed in Table B) against a median of estimated number of applications for a necessary wayleave.

31. The monetary benefits of our proposed approach are expressed as a saving to DNO's/TNO's from not having to defend a case all the way to a hearing, and all of the preparatory work that this entails in circumstances where there is likely no real dispute about the need for an electric line to cross the land concerned. The benefits

<sup>6</sup> Including administrative staff and Electrical Inspector time

are based on a estimation of the average costs/time involved in such cases as detailed in Table H.

32. As part of the consultation process, we are asking Industry to provide estimates of the costs and benefits of this approach (see question 8 in the consultation document).

### **One-in, One-out**

Table I in the annex sets out the EANCB calculation for this OUT. Fees are out of scope of One-in, One-out so Total Net Business Benefits = £1,177,500. This produces an OUT of **£136,800**

### **Equality Impact Assessment**

33. Government has considered potential equality impacts of the proposed changes to the Electricity (Compulsory Wayleaves)(Hearings Procedure) Rules 1967 (“The Rules”) and the imposition of a chargeable regime. The effect of the proposed changes would be that “The Rules” are brought in line with modern dispute resolution procedures and Government would be able to recover most of the actual cost of processing applications for necessary wayleaves. The Government considers that, with regard to its duties under section 149 of the Equality Act 2010<sup>7</sup> in respect of people with certain protected characteristics identified in that Act, that there is no effect on any such group as a result of this proposal. (An initial screening EqIA has previously been carried out in respect of the consenting process under s.37.)

### **Specific Impact Tests**

#### Competition assessment

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

#### Small Firms’ Impact Test / Micro businesses

35. There are no small firms that install or keep installed electric lines that require development consent under section 37 of the Electricity Act 1989. The proposed amendments to the Rules and imposition of fees will therefore have no impact on small firms directly. It is not considered likely that indirect impacts on customers of DNOs would create a disproportionate burden for smaller firms and micro businesses.

#### Legal Aid Impact Test

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

#### Sustainable Development, Carbon Assessment, other Environment

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

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<sup>7</sup> <http://www.legislation.gov.uk/ukpga/2010/15/contents>

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

Health Impact Assessment

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

Rural Proofing

40. There are no impacts on rural areas.

## ANNEX A: NET PRESENT VALUE TABLES

Table D: Total benefit to industry of no pre-hearing preparation

<b>Annualised NPV @3.5% - High x costs</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>Total</b>
<b>Average hearing costs - Low</b>	£110 000	£106 100	£102 400	£98 900	£95 400	£92 100	£88 800	£85 700	£82 700	£79 800	£942 000
<b>Average hearing costs @£5.500 - High</b>	£247 500	£238 800	£230 500	£222 400	£214 600	£207 100	£199 900	£192 900	£186 100	£179 600	£2 119 400
<b>Average hearing costs - Median</b>	£137 500	£132 700	£128 000	£123 600	£119 200	£115 100	£111 000	£107 200	£103 400	£99 800	£1 177 500

Table E: Average Number of Applications for Necessary Wayleaves

<b>Averaged Applications:</b>	<b>High</b>	<b>Low</b>	<b>Median</b>
Application Only	785	262	465
Application +pre-hearing	15	5	10
Application +hearing+report	10	3	5

## ANNEX A: NET PRESENT VALUE TABLES

Table F: Cost of Applications on tiered fees structure (to be treated as transfers)

<b>Annualised NPV @3.5% - High x costs</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>Total</b>
<b>Total Low x costs</b>	<b>£55 200</b>	<b>£53 300</b>	<b>£51 400</b>	<b>£49 600</b>	<b>£47 900</b>	<b>£46 200</b>	<b>£44 600</b>	<b>£43 000</b>	<b>£41 500</b>	<b>£40 100</b>	<b>£472 600</b>
<b>Total High x costs</b>	£176 300	£170 100	£164 100	£158 400	£152 800	£147 500	£142 300	£137 400	£132 500	£127 900	£1 509 400
<b>Total Median x costs</b>	<b>£97 700</b>	<b>£94 200</b>	<b>£90 900</b>	<b>£87 800</b>	<b>£84 700</b>	<b>£81 700</b>	<b>£78 900</b>	<b>£76 100</b>	<b>£73 400</b>	<b>£70 900</b>	<b>£836 300</b>

Table G: Net Benefit = Benefit (*fees are transfers – business costs are public sector benefits*)

<b>Annualised NPV @3.5% - Net Benefits</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>Total</b>
<b>Low Benefit/High Cost</b>	£110 000	£106 100	£102 400	£98 900	£95 400	£92 100	£88 800	£85 700	£82 700	£79 800	£942 000
<b>High Benefit/Low Cost</b>	£247 500	£238 800	£230 500	£222 400	£214 600	£207 100	£199 900	£192 900	£186 100	£179 600	£2 119 400
<b>Median Benefit/Median Cost</b>	£137 500	£132 700	£128 000	£123 600	£119 200	£115 100	£111 000	£107 200	£103 400	£99 800	£1 177 500

## ANNEX A: NET PRESENT VALUE TABLES

Table H: Best estimate costs to Industry of defending a necessary wayleave application at the hearing stage

	<b>Preparation: Witnesses<sup>8</sup></b>	<b>Hearing: Witnesses<sup>9</sup></b>	<b>Preparation: Legal Representation<sup>10</sup></b>	<b>Hearing: Legal Representation</b>	<b>In-house admin costs (inc travel and subsistence etc)</b>	<b>Total</b>
<b>1 day hearing</b>	£2400	£2400	£2500	£2500	£500	£10 300
<b>3 day hearing</b>	£3600	£4800	£2500	£7500	£1500	£19 900

Table I: One-in, One-out: EANCB

One-in, One-out: EANCB	
<b>Total Business Benefits</b>	£1,177,500
<b>Total Business OIOO Costs</b>	£0 (fees out of scope of OIOO)
<b>Total Net Cost to Business</b>	£1,177,500
<b>Time Period assumption</b>	10 years
<b>EANCB</b>	£136,800

<sup>8</sup> Typically 3 witnesses would be called by a DNO/TNO to attend a hearing. An estimated cost of £800 per witness/day has been used.

<sup>9</sup> Typically all 3 witnesses would not be necessary for all 3 days, so an aggregated figure of 2 days per witness has been assumed.

<sup>10</sup> Typical costs for professional legal services estimated at £2500 per day.