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Date: 8th August 2016

Dear Sirs

Felling and lopping of trees

Further to a request from the Examiners at the DCO hearing on Thursday 28th July to provide a note on details of protocols for notification to landowners of felling or lopping of trees on their land under Article 41.

The Electricity Act 1989 under Schedule 4 paragraph 9 (1) and (2) sets out that if a tree is interfering with a line or will be in close proximity the licence holder can give a notice to the landowner requiring him to fell or lop the tree and this is subject to the payment to the landowner by the licence holder of the expenses reasonably incurred. Please find attached Schedule 4 Other Powers of Licence Holders and a copy of the Electricity (necessary wayleaves and felling and lopping of trees) (Charges) (England and Wales) Regulations 2013.

Further the 'Guidance for Applicants and Landowners and /or Occupiers' if applying for a necessary electric wayleave highlights on page 7 paragraph 1.8 and 1.9 it states how any licence holder will usually hold discussions with the landowner/occupier and agree mutual terms. Paragraph 1.9 states that a notice should be served on the landowner/occupier and that the work is needed due to safety or security of supply and in giving the notice the licence holder must pay reasonable incurred expenses. It further states though that in most circumstances the licence holder will usually offer to undertake the necessary works on behalf of the landowner.

It is the experience of NFU members that this is the normal process with the distribution company or the contractors on behalf of the power company contacting the relevant landowner and agreeing the works to take place. The NFU as requested at the hearing believe that Article 41 should state the landowner and/or occupier will be notified and that NG would need to be able to show how the tree will obstruct or interfere with the construction, maintenance or operation of the authorised development. Under the Electric Act 1989 in paragraph 9 (1) it does state in 'such close proximity' and it is felt that this wording should be added under Article 41 rather than just relying on the words 'it reasonable believes'. Also the landowner should be able to keep the timber if requested otherwise the timber should be taken away.

The following documents are attached:

Schedule 4 – Felling and lopping of trees.

Department Name/NFU Policy/September '11/draft.

NFU, Agriculture House, Stoneleigh Park, Stoneleigh, Warwickshire CV8 2TZ
Tel: 024 7685 8500 Fax: 024 7685 8501 Web: www.nfuonline.com

Statutory Instrument ' The Electricity (Necessary Wayleaves and Felling and Lopping of Trees) (Charges) (England and Wales) Regulations 2013.
DECC – Guidance for applicants and landowners and/ or occupiers re the Grant of a necessary electricity wayleave - January 2014. Page 7.

Hopefully this helps to explain how tree felling and lopping is carried out by the distribution companies.

Yours faithfully

Louise Staples

Name: Louise Staples
Position: Senior Rural Surveyor

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Electricity Act 1989. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES^{F 1}

SCHEDULE 4

OTHER POWERS ETC. OF LICENCE HOLDERS

Felling and lopping of trees etc.

- 9 (1) This paragraph applies where any tree is or will be in such close proximity to an electric line or electrical plant which is kept installed or is being or is to be installed by a licence holder as—
- (a) to obstruct or interfere with the installation, maintenance or working of the line or plant; or
 - (b) to constitute an unacceptable source of danger (whether to children or to other persons);
- and in this paragraph “the land” means the land on which the tree is growing.
- (2) The licence holder may give notice to the occupier of the land requiring him to fell or lop the tree or cut back its roots so as to prevent it from having the effect mentioned in sub-paragraph (1)(a) or (b) above, subject to the payment to him by the licence holder of the expenses reasonably incurred by him in complying with the notice.
- (3) Where the occupier is not also the owner of the land, a copy of any notice under sub-paragraph (2) above shall also be served on the owner.
- (4) If within 21 days from the giving of a notice under sub-paragraph (2) above—
- (a) the requirements of the notice are not complied with; and
 - (b) neither the owner nor occupier of the land gives a counter notice under sub-paragraph (5) below,
- the licence holder may cause the tree to be felled or lopped or its roots to be cut back so as to prevent it from having the effect mentioned in sub-paragraph (1)(a) or (b) above.
- (5) If, within 21 days from the giving of a notice under sub-paragraph (2) above, the owner or occupier of the land gives a counter notice to the licence holder objecting to the requirements of the notice, the matter shall, unless the counter notice is withdrawn, be referred to the Secretary of State.
- (6) On a reference under sub-paragraph (5) above, the Secretary of State, after giving the parties an opportunity of being heard by a person appointed by him, may make such order as he thinks just, and any such order—
- (a) may empower the licence holder (after giving such notice to any person by whom a counter notice was given of the commencement of the work as the order may direct) to cause the tree to be felled or lopped or its roots to be cut back so as to prevent it from having the effect mentioned in sub-paragraph (1)(a) or (b) above; and
 - (b) may determine any question as to what expenses (if any) are to be paid.

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- (7) Where the licence holder exercises any powers conferred under sub-paragraph (4) or (6) above, he shall—
- (a) cause trees to be felled or lopped or their roots to be cut back in accordance with good arboricultural practice and so as to do as little damage as possible to trees, fences, hedges and growing crops;
 - (b) cause felled trees, lopped boughs or root cuttings to be removed in accordance with the directions of the owner or occupier; and
 - (c) make good any damage done to the land.
- (8) In this paragraph “tree” includes any shrub and references to felling or lopping, felled trees or lopped boughs shall be construed accordingly.

Annotations:

Modifications etc. (not altering text)

CI Sch. 4 para. 9: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1 (with art. 7)

STATUTORY INSTRUMENTS

2013 No. 1986

ELECTRICITY, ENGLAND AND WALES

The Electricity (Necessary Wayleaves and Felling and Lopping of Trees) (Charges) (England and Wales) Regulations 2013

<i>Made</i>	- - - -	<i>8th August 2013</i>
<i>Laid before Parliament</i>		<i>19th August 2013</i>
<i>Coming into force</i>	- -	<i>1st October 2013</i>

The Secretary of State, in exercise of the powers conferred by section 188(1) to (5) of the Energy Act 2004(1), makes the following Regulations.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Electricity (Necessary Wayleaves and Felling and Lopping of Trees) (Charges) (England and Wales) Regulations 2013 and come into force on 1st October 2013.

(2) These Regulations extend to England and Wales.

Interpretation

2. In these Regulations—

“applicant” means the person making a relevant application;

“Hearing Rules” means the Electricity (Necessary Wayleaves and Felling and Lopping of Trees) (Hearing Procedures) (England and Wales) Rules 2013(2);

“inspector” means an inspector appointed by the Secretary of State under the Hearing Rules to consider a relevant application;

“oral hearing” means a hearing held under rule 13 of the Hearing Rules;

“pre-hearing meeting” means a meeting held under rule 11 of the Hearing Rules;

“relevant application” means—

(a) an application made under paragraph 6(3) of Schedule 4 to the Electricity Act 1989(3), or

(1) 2004 c.20; section 188 was amended by the Energy Act 2008, section 36 and paragraphs 13(a), (b), (c), (d) and (e) of Schedule 1; and S.I. 2011/1043, article 6(1)(d).

(2) S.I. 2013/1987.

(3) 1989 c.29.

- (b) a reference made under paragraph 9(5) of that Schedule; and
- “site inspection” means an inspection carried out under rule 14 of the Hearing Rules.

Fees for a relevant application

3. An applicant must pay a charge of £34 to the Secretary of State when making a relevant application.

Fees for inspector’s time

- 4.—(1) An applicant must pay to the Secretary of State—
- (a) the daily charge for each day on which an inspector is engaged on work connected with the relevant application;
 - (b) a charge of an amount equal to the reasonable cost of travelling and subsistence incurred by the inspector in connection with attending a pre-hearing meeting, oral hearing or site inspection.
- (2) For the purposes of paragraph (1)—
- (a) “day” means the period of 7.4 hours; and
 - (b) where the inspector is engaged on work connected with the relevant application for less than a day, the daily charge applies adjusted rateably.
- (3) In paragraph (1)(a), “the daily charge” means—
- (a) £1,000 where the relevant application relates to England; or
 - (b) £742 where the relevant application relates to—
 - (i) Wales; or
 - (ii) England and Wales.
- (4) A charge payable under paragraph (1) must be paid by the applicant within 30 days of the receipt of an invoice from the Secretary of State stating the amount of charge payable.
- (5) The Secretary of State may send an invoice to an applicant in respect of a charge payable under paragraph (1) at the conclusion of the relevant application.

8th August 2013

Michael Fallon
Minister of State for Energy
Department of Energy and Climate Change

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply in respect of England and Wales.

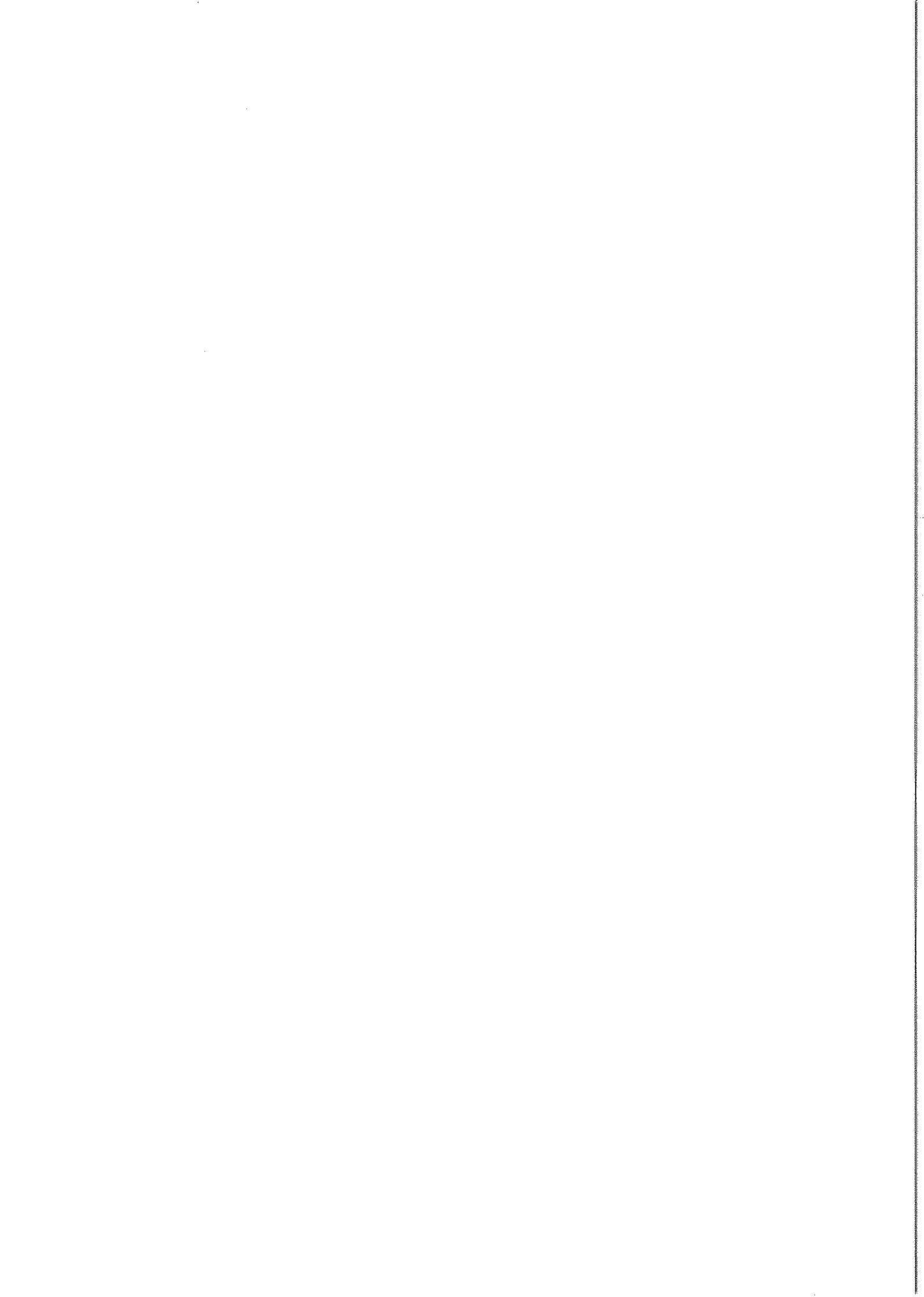
In accordance with paragraph 6(1) of Schedule 4 to the Electricity Act 1989 (c.29) (“the 1989 Act”), the Secretary of State has power to grant a wayleave (“a necessary wayleave”) to enable an electricity company to install and keep installed an electric line on, under or over any land. Before granting the necessary wayleave, the Secretary of State must afford the owner or occupier of the land an opportunity of being heard (paragraph 6(5) of Schedule 4 to the 1989 Act). Where a tree (or shrub) is in close proximity to an electric line, the Secretary of State may also make an order to empower an electricity company to cause a tree or shrub to be felled or lopped and to determine the compensation to be paid (paragraph 9(6) of Schedule 4).

Regulation 3 specifies the charge payable for an application for a necessary wayleave or a reference for an order for the felling or lopping of trees or shrubs.

Regulation 4 specifies the charge payable for the time incurred by an inspector appointed by the Secretary of State to consider the application under the Electricity (Necessary Wayleaves and Felling and Lopping of Trees) (Hearing Procedures) Rules 2013 (“the 2013 Rules”). Regulation 4 also specifies the charge payable for the inspector’s travel and subsistence incurred in attending a pre-hearing meeting, oral hearing or site inspection under the 2013 Rules. The charges payable under regulation 4 differ in relation to England and to Wales. A charge of £1,000 per day applies to applications relating to England, and a charge of £742 per day applies to applications relating to Wales, or to England and Wales.

No charges were previously payable for such applications or for hearings conducted under the previous hearing rules, the Electricity (Compulsory Wayleaves) (Hearings Procedure) Rules 1967 (S.I. 1967/450).

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector has been placed in the Library of each House of Parliament and is annexed to the Explanatory Memorandum. Copies of the impact assessment are available on the gov.uk website.



Order for the felling or lopping of trees or shrubs (see below). The Inspector will consider the representations of both the licence holder and the owner and/or occupier at the hearing or through the written representations procedure and produce a report with a recommendation for the Secretary of State. The Secretary of State (or officials acting on the Secretary of State's behalf) will then consider whether or not a necessary wayleave (or an Order for the felling or lopping of trees) should be granted.

Tree felling or lopping of trees and shrubs

1.8 Where a tree or shrub is in close proximity to an electric line or electrical plant and requires essential vegetation management because it poses a risk to safety or security of supply, the Secretary of State may make an Order to empower a licence holder to cause the tree or shrub to be felled or lopped **under paragraph 9 of Schedule 4 to the 1989 Act**. In most circumstances however, and before the licence holder refers the matter to the Secretary of State for the grant of an Order, the licence holder will usually hold discussions with the landowner and/or occupier to agree mutual terms. Licence holders also have a duty to comply with requirements contained in the Electricity Safety, Quality and Continuity Regulations 2002 (ESQCR)³ as amended, to keep sufficient distance between vegetation and overhead power lines.

1.9 The licence holder should first give a notice to the landowner and/or occupier that essential vegetation works to fell or lop the tree, or to cut back its roots on their land, are needed to be carried out because of a risk to safety or security of supply. Paragraph 9(2) of Schedule 4 to the 1989 Act says that in giving notice, the licence holder must pay reasonably incurred expenses for the landowner and/or occupier to comply with the notice. However, in most circumstances the licence holder will usually offer to undertake the necessary works on behalf of the landowner and/or occupier at the licence holder's expense as working in close proximity to electricity lines is dangerous and the licence holders are better equipped to undertake this work.

1.10 Where the landowner and/or occupier is unwilling to comply with the licence holder's notice to allow necessary tree cutting works to be undertaken and if within 21 days from giving the notice the licence holder's requirements have not been complied with, and neither the landowner and/or occupier has given a counter-notice to the licence holder objecting to the requirements of the notice, the licence holder may cause the vegetation to be felled or lopped or to have its roots cut back. If within 21 days the landowner and/or occupier does serve a counter-notice to the licence holder objecting to the requirements of the notice, the licence holder can refer the matter to the Secretary of State and apply for an Order to empower the licence holder to fell or lop the relevant trees or shrubs **under Paragraph 9 of Schedule 4 to the 1989 Act**.

1.11 Before making such an Order the Secretary of State must give the parties an opportunity of being heard in accordance with Paragraph 9(6) to the 1989 Act. Any

³ <http://www.legislation.gov.uk/uksi/2002/2665/contents/made>

hearing will be conducted in accordance with **the Hearing Rules** following the same procedures as indicated above for necessary wayleaves.