

EXPLANATORY MEMORANDUM TO
THE ELECTRICITY (NECESSARY WAYLEAVES AND FELLING AND LOPPING OF
TREES) (CHARGES) (ENGLAND AND WALES) REGULATIONS 2013

2013 No. 1986

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 The Secretary of State has power to grant a necessary wayleave to enable an electricity company to install and keep installed an electric line on, under or over any land, and also has power to make an order to empower an electricity company to fell or lop trees close to electric lines. In both cases the Secretary of State must give the owner or occupier of the land the opportunity to be heard before making such a decision.

- 2.2 This instrument introduces a full cost recovery charging regime that is applicable to electricity companies for the processing by Government of applications for necessary wayleave and tree lopping and tree felling orders, and services relating to hearings.

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

- 3.1 This instrument introduces charges for applications by electricity companies for necessary wayleaves and tree felling and lopping orders, and for the conduct of the written representation procedure or oral hearing procedure in respect of such applications. No charges were previously payable for such services.

4. **Legislative Context**

- 4.1 This instrument is made under section 188(1) to (5) of the Energy Act 2004.

- 4.2 This instrument introduces charges payable to Government to enable the recovery of the cost to Government for processing applications for necessary wayleave hearings under paragraph 6 of Schedule 4 to the Electricity Act 1989 and tree lopping and tree felling orders under paragraph 9 of Schedule 4 to the Electricity Act 1989 and for the conduct of the written representation procedure or oral hearing procedure in respect of such applications, conducted under The Electricity (Necessary Wayleaves and Felling

and Lopping of Trees) (Hearing Procedures) (England and Wales) Rules 2013 (also coming into force on 1 October 2013).

5. Territorial Extent and Application

5.1 This instrument applies 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. 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 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.

7.3 Before granting a necessary wayleave or tree lopping and tree felling 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.

7.4 There is currently no fee payable to Government for an application for a necessary wayleave or tree lopping or felling order, or for the conduct of the hearings. The cost of processing applications and conducting hearings is currently met by Government at the expense of the taxpayer. It is estimated that providing these services costs Government approximately £719,000 over 10 years in present value terms.

7.5 A key proposal in the consultation on the Necessary Wayleaves Regime of Overhead Power Lines ([link to document](#)) published on 17 October 2012 was a setting of charges to recover the costs to Government of processing applications and conducting hearings. The consultation closed on 28 November 2012.

7.6 Following the public consultation Government considered all the responses it received. The majority of respondents agreed that Government should recover its costs for processing applications and conducting hearings by introducing a fair and reasonable charging structure. This instrument therefore introduces the following charges:

- A flat application charge of £34 payable by electricity companies to cover the cost of DECC administrative staff processing a typical application.
- A charge of £1,000 per Inspector day of work for any hearings conducted by the Planning Inspectorate (PINS) England, and a charge of £742 per Inspector day for those conducted by PINS Wales plus travel and subsistence costs. These rates will accumulate from the date the Inspector commences any work for a hearing and will also apply to those hearings conducted by written representation procedure.

7.7 The proposed charges will recoup the full cost to Government of providing necessary wayleaves and tree lopping and tree felling services.

Consolidation

7.8 As this instrument does not amend another statutory instrument, consolidation is not applicable.

8. Consultation outcome

8.1 The proposal for the introduction of charges was subject to a full public consultation. The consultation on the Necessary Wayleaves Regime of Overhead Power Lines was published on the 17 October 2012 and closed on the 28 November 2012. A total of 31 responses were received.

8.2 The majority of respondents accepted that Government should recover its costs for processing necessary wayleave hearings and tree lopping and tree felling orders by introducing a fair and reasonable charging structure. A minority of respondents were not convinced that the introduction of charges would discourage misuse of the applications process, and a few raised concern that the proposal may lead to an unintentional increase in the number of landholders wishing to terminate agreements with electricity companies in the knowledge that they would face additional costs.

8.3 We have fully considered all of the responses and remain committed to recovering costs to Government for providing this service in order to reduce the burden on the tax payer. Whilst we note the concerns raised by some that the introduction of charges may not have the desired effect, we remain committed to cost recovery. We have, however, committed to keeping the charges under review as part of the overall necessary wayleaves regime policy review.

8.4 The full Government Response can be found at:

<https://www.gov.uk/government/consultations/necessary-wayleaves-regime>

9. Guidance

9.1 Guidance is issued by DECC on applications for necessary wayleaves and tree lopping and tree felling orders for electric lines. This guidance will be updated to reflect the introduction of charges.

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 Costs to Government will be monitored regularly as part of normal financial activities.

12.2 The Department of Energy and Climate Change will review the impact of these charges as part of the overall necessary wayleaves regime policy review.

13. Contact

Naomi Williams at the Department of Energy and Climate Change Tel: 0800 068 5822 or email: naomi.williams@decc.gsi.gov.uk can answer any queries regarding the instrument.