

**EXPLANATORY MEMORANDUM TO
THE OVERHEAD LINES (EXEMPTION) (ENGLAND AND WALES)
REGULATIONS 2009**

2009 No. 640

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

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

2. **Purpose of the instrument**

2.1 These regulations revoke, in England and Wales, the Overhead Lines (Exemption) Regulations 1990 (the “1990 regulations”) and introduce in those territories replacement measures which include wider circumstances where consent under section 37 of the Electricity Act 1989 is not required. This will create a more proportionate and less bureaucratic regulatory framework for statutory consents to minor changes to maintain, replace or strengthen existing overhead electricity lines to improve their reliability.

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

3.1 None

4. **Legislative Context**

4.1 The 2006 Energy Review Report ‘The Energy Challenge’ noted that the Government believes a better balance can be struck between changes to existing overhead electric lines for which the full section 37 consents process is currently required, and changes where a more flexible approach can be adopted. It also committed Government to consult on its proposal for new guidance on the consenting arrangements for overhead power lines.

4.2 The findings of the consultation signalled that an updating of the 1990 regulations and the production of associated guidance for network operators, Local Planning Authorities, statutory consultees and other interested parties was desirable.

4.3 Regulation 1(2) revokes the 1990 regulations in England and Wales. The Regulations re-introduce the revoked provisions, but with certain changes: Regulation 3(1)(c) now provides that temporary diversions within National Parks and areas of outstanding natural beauty can be carried out without consent. Regulation 3(1)(e) achieves the same effect for replacements or improvements to existing lines in such areas. Regulations 3(1)(f) and 4 provide that additional pole supports can be installed to existing lines, within existing parameters. Regulation 5(1)(c) limits the newly permitted changes in National Parks and areas of outstanding natural beauty so

that consent must be sought where significant adverse environmental effects are likely, though (by regulation 5(3)), this consent requirement is replaced by a notification requirement in the case of emergency repairs to an existing line

5. Territorial Extent and Application

5.1 These regulations apply to England and Wales.

5.2 In line with recommended practice where some of the original enabling powers have been devolved, these regulations revoke the 1990 regulations and re-introduce amended provisions in England and Wales. Functions under section 37 of the Electricity Act were transferred to the Scottish Ministers in 1999. The 1990 Regulations will, therefore, remain in place in relation to consent applications in Scotland.

6. European Convention on Human Rights

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

7. Policy background

- *What is being done and why*

7.1 These regulations will bring into effect further provisions to deregulate the consenting process for overhead power lines and to enable minor changes to be made to existing overhead lines, often for the purposes of improving the resilience of the overhead line electricity network.

7.2 The Electricity Act 1989 is the main legislation dealing with planning consent to install or keep installed overhead electric lines within England and Wales.¹ Under section 37 of the Act any application for consent for an overhead line is made to the Secretary of State (now the Secretary of State for Energy and Climate Change).

7.3 The Overhead Lines (Exemption) Regulations 1990 make provision for cases where consent by the Secretary of State for Energy (as respects England and Wales) and Secretary of State for Scotland (as respects Scotland) is not required under section 37 of the Electricity Act 1989.

8. Consultation outcome

8.1 The Energy Group of the Department of Trade and Industry (incorporated into the Department of Energy and Climate Change under Machinery of Government

¹ The provisions also apply in relation to Scotland

change in October 2008) carried out a consultation² from 18 December 2006 until 14 March 2007 that sought views on proposed changes in approach to handling consents to minor works to replace or strengthen existing overhead lines in England and Wales for the purposes of resilience of the electricity network.

8.2 The consultation document was sent to key stakeholders such as energy companies, non Government organisations and Local Planning Authorities. It was also placed on the Department's website and on the Planning Portal run by the Department for Communities and Local Government. Ten responses were received, largely from industry sources and non Government organisations. No responses were received from Local Planning Authorities. The responses recognised that some amendment to the existing regulations was desirable to reduce unnecessary bureaucracy in the consenting process. The full Government response to the consultation is available on the Department for Business and Regulatory Reform (BERR) website at (<http://www.berr.gov.uk/consultations/page36107.html>). A further short informal consultation took place from 6 December 2008 to 16 January 2009 with key stakeholders and the Devolved Administrations, to identify if there were any technical constraints to what was being proposed in the draft Statutory Instrument and whether further clarification was required by Government in the associated draft guidance.

9. Guidance

9.1 The finalised Guidance note that explains the statutory regime for overhead line consents and the new measures introduced by these regulations will be published on the BERR/DECC website in time to accompany the coming into force date of the 2009 regulations.

10. Impact

10.1 The impact on business, charities or voluntary bodies, through the streamlining of the administration process for minor works for existing overhead lines will be positive, and introduce a more proportionate and deregulatory approach for all parties involved in the consenting process. It carries no identifiable costs to the public.

10.2 The impact on the public sector of the streamlined regime, specifically the Local Planning Authorities and the Department itself will be both positive and deregulatory. The Local Planning Authorities will be able to take a view on the acceptability of proposals on a larger number of applications without invoking the full section 37 process unless they considered a particular application warranted it, whilst the Department should experience a decline in the volume of section 37 applications it receives in respect of minor works.

² Consultation on the resilience of overhead power line networks: An Energy Review Consultation [URN] Available on <http://www.berr.gsi.gov.uk/xxx> and can also be obtained through BERR Publications Order line, telephone 0xxxx

10.3 A partial Impact Assessment was produced for the 2006 consultation exercise. No alternative figures were offered as an outcome of the consultation, so no further refinement on cost assessment has been undertaken.

11. Regulating small business

11.1 Although the regulations apply to small businesses, as explained above their impact will be positive and introduce a more proportionate and deregulatory approach for all parties involved in the consenting process.

12. Monitoring & review

12.1 The Department will continue to monitor the number of section 37 applications it receives following implementation of the changes in this Regulation. The Department expects to see a reduction in the number of section 37 applications it receives by up to two thirds of current volume. For 2007/08 the number of applications received was 795.

12.2 The Department will undertake an informal review after 12 months and a formal review after 2 years. The 2 year review period has been set out as part of the Department's responsibilities for overhead line consents below 132kV under the Government's planning reform agenda.

13. Contact

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