

**APPLICATIONS TO THE SCOTTISH MINISTERS FOR THE GRANT OF A
NECESSARY ELECTRICITY WAYLEAVE IN SCOTLAND**

GUIDANCE FOR APPLICANTS, LANDOWNERS AND OCCUPIERS



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This document is intended to provide general guidance to –

1. Electricity companies (holders of an electricity licence) who propose applying to the Scottish Ministers for the grant of a necessary wayleave; and
2. Landowners and/or occupiers in Scotland whose land is or may be the subject of such an application.

If you require further information or have any questions regarding necessary wayleaves, please contact the Wayleaves Manager, Energy Consents and Deployment Unit, the Scottish Government, Atlantic Quay, 150 Broomielaw, Glasgow G2 8LU
Email: Catherine.Cacace@scotland.gsi.gov.uk
Tel: 0300 244 1239

INTRODUCTION

Electricity Licence Holders and Compulsory Procedures

1. The electricity networks feed electricity to nearly all of the households and businesses in Scotland. The networks are operated by electricity transmission and distribution companies, who are electricity licence holders. Electricity licence holders have general duties contained in section 9 of the Electricity Act 1989 as amended ("the 1989 Act") to develop and maintain an efficient, co-ordinated and economical system of electricity distribution and transmission and to facilitate competition in the supply and generation of electricity.
2. Electricity licence holders operate under a regulatory regime which gives them access to the compulsory acquisition powers set out in section 10 and Schedules 3 and 4 to the 1989 Act. These powers enable licence holders to comply with their statutory duties and obligations.
3. Licence holders need rights to install and keep their electric lines and associated equipment (such as poles, pylons, staywires and transformers) on, over or under private land and to have access to that land for the purpose of inspecting, maintaining, repairing, adjusting, altering, replacing or removing the electric line or equipment. Commonly, electricity licence holders do this through negotiation of a contractual arrangement with the landowner and/or the occupier of the land.
4. However, where an agreement has not been reached through negotiation, licence holders have access to compulsory procedure. They may promote a compulsory purchase order under Schedule 3 to the 1989 Act or may apply for a compulsory wayleave (the legislation uses the terms "necessary wayleave") under Schedule 4 to the 1989 Act.

Compulsory Purchase Orders

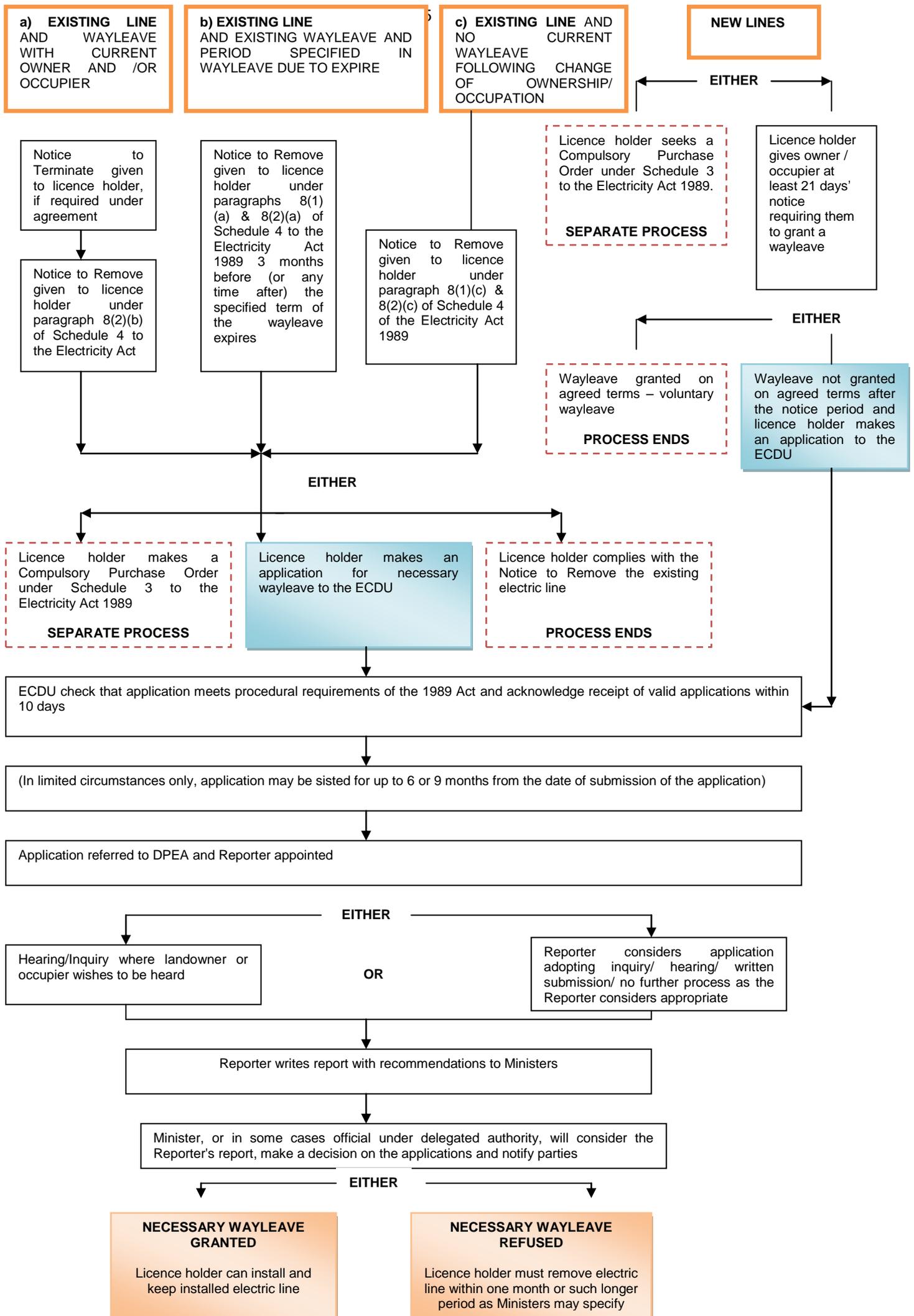
5. Compulsory purchase orders can be used, where appropriate, for the installation and retention of electric lines, or other purposes allowed for by statute. In such cases, the licence holder will make an Order for the compulsory acquisition of land or rights over land, and then seek confirmation of the Order from the Scottish Ministers. Where statutory objections are raised, (i.e. objections from landowners, lessees or occupiers) the Scottish Ministers are required to give statutory objectors an opportunity of being heard before confirming the Order. The procedure for making a compulsory purchase order is set out in legislation (the 1989 Act and the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947). Inquiries into objections to compulsory purchase orders are held in accordance with the Compulsory Purchase by Public Authorities (Inquiries Procedure) (Scotland) Rules 1998.
6. The Scottish Government has issued separate advice on the use of

compulsory purchase orders, which is outwith the scope of this guidance¹.

Necessary Wayleaves

7. Alternatively, rights to install a new electric line or retain an existing electric line can be achieved by applying to the Scottish Ministers for a necessary wayleave under Schedule 4 to the Electricity Act 1989. It is usual, but not mandatory, for licence holders to try to negotiate a voluntary wayleave or a servitude with landowners and/or occupiers of land before invoking this more formal necessary wayleave process under Schedule 4 to the 1989 Act.
8. A necessary wayleave is a statutory right which confers powers on the licence holder to install their electric lines and associated equipment on, over or under private land, to keep the electric line there and to have access to that land for the purposes of inspecting, maintaining, repairing, adjusting, altering, replacing or removing the electric line or equipment. The necessary wayleave confers only those rights over land. It does not confer planning permission or any other development consent which might be required for a particular project.
9. Once granted, the necessary wayleave will remain in force for the period specified in the wayleave itself (this can be for a period of up to 40 years, but the duration of the rights may vary from case to case as circumstances dictate). Throughout the period that a necessary wayleave is in place, it is enforceable by the licence holder against subsequent landowners or occupiers, if the land is sold or the occupant changes during the period.
10. The procedure for applications for necessary wayleaves is set out in Schedule 4 to the 1989 Act. Guidance on the necessary wayleave process is provided in more detail in the following sections.
11. Once granted, Ministers have no role in monitoring or enforcement of the necessary wayleave. Entry by a licence holder on to land without requisite property rights or in breach of a condition attached to a necessary wayleave is a matter between the parties.

¹ <http://www.scotland.gov.uk/Publications/2011/10/21133522/21>



ENGAGING EARLY WITH THE PEOPLE AFFECTED

12. Scottish Ministers expect licence holders to involve people in the decisions that affect them. The licence holder should seek to listen to and engage with the people affected before, during and after the necessary wayleave process.
13. Engaging early with the people potentially affected by a necessary wayleave will let landowners and occupiers know what the licence holder is proposing and let them know how it will affect them. Such engagement will help identify and address difficulties and may save time and money by reducing objections to the grant of a necessary wayleave. In particular, early landowner engagement which informs routeing strategy and the siting of electric lines and supporting structures will reduce the timescale associated with the necessary wayleave determination process.
14. Scottish Ministers recognise that in some cases it may be impracticable for the licence holder to obtain all land rights required by agreement in the project timeframe or at a reasonable cost. Scottish Ministers do not expect the licence holder to attempt to secure rights by agreement where this would not be practicable.
15. The licence holder should take a realistic view, depending on the circumstances, on whether it is practicable to acquire the rights by agreement. The date by which the licence holder needs entry to the land may be particularly important in determining the approach that it adopts. For example, it may not be practicable to reach a voluntary agreement in the project timescale or at a reasonable cost when numerous landowners and/ or occupiers are affected by a single proposal, or when a landowner and/ or occupier has unrealistic aspirations about the value of the rights to be granted, or a landowner and/ or occupier is unwilling to engage with the licence holder. The Scottish Ministers recognise that the licence holder may wish to continue their discussions with landowners following submission of an application for a necessary wayleave. However, this is not a substitute for pre-application engagement, which should inform the content of the necessary wayleave application.
16. In the course of pre-application engagement, the licence holder should explain to affected parties in plain, accessible language why it is seeking a necessary wayleave over their land. It should explain the nature and extent of rights sought, the purpose for which it seeks to acquire the rights, the powers that it is using, and what alternative routes or locations (if any) it has considered. The licence holder should meet with landowners, tenants, occupiers and anyone else affected as early as possible.
17. When seeking to acquire a necessary wayleave over agricultural or business land, the licence holder should give consideration to farming and business issues. It should consider the value of consulting a suitably qualified and experienced land agent or chartered rural surveyor to identify issues early. It should also consider the benefits of ensuring that its own wayleave officers have an awareness of farming and/or business issues.

CIRCUMSTANCES IN WHICH A NECESSARY WAYLEAVE APPLICATION MAY BE MADE

18. The legislation recognises two situations:
- A. Where the application for the grant of a necessary wayleave relates to a new electric line; and
 - B. Where it relates to an existing electric line.

A - Applications for the grant of a necessary wayleave for a new electric line

19. The circumstances in which an application may be made for a necessary wayleave for a new electric line are set out in paragraph 6(1) of Schedule 4 to the 1989 Act.
20. Where a licence holder wishes to apply for a necessary wayleave to install a new electric line on, under or over land, it must first serve a notice on the landowner and/ or occupier of the relevant land requiring him to provide the wayleave within a period specified in the notice.
21. If, after reasonable enquiry, the licence holder is unable to ascertain the name and/or address of a landowner or occupier, it can serve notice by addressing the notice to 'the owner' or 'the occupier' of the affected land (describing the land to which the notice relates). It should hand deliver the notice to some person on the premises who appears to be resident or employed on the land. Alternatively, the licence holder should conspicuously affix the notice to some building or object on or near the land. Photographic evidence that the notice has been affixed in this way would provide helpful confirmation that this procedural step has been observed. A copy of the notice should accompany any subsequent application for a necessary wayleave.
22. The period specified in the notice must be at least 21 days. On receipt of the notice from the licence holder requiring the grant of a wayleave, the landowner and/ or occupier may decide to;
- a) Grant the wayleave on the terms requested by the licence holder, or on alternative terms and conditions which have been agreed between the licence holder and the landowner and/ or occupier. This would constitute a voluntary wayleave arrangement between the parties and no further procedure would be required; or
 - b) Refuse to grant the wayleave; or
 - c) Grant the wayleave, but on terms and conditions which differ from those requested by the licence holder and which are not agreed with the licence holder.
23. In circumstances where the landowner and/ or occupier has elected to follow b) or c) above, then the licence holder may make an application to the Scottish Ministers for the grant of a necessary (compulsory) wayleave. An application for a necessary wayleave cannot be made until the period specified in the landowner and/ or occupier notice has expired. Any

applications made before the specified notice period has expired will be rejected, but there is no upper time limit for submission of an application for a necessary wayleave.

B - Applications relating to an existing electric line

24. The circumstances in which an application may be made for a necessary wayleave for an existing electric line are set out in paragraphs 6(2) and 8 of Schedule 4 to the 1989 Act.
25. In cases where an existing wayleave has expired or is about to expire, the landowner and/or occupier to whose land the wayleave relates may serve a notice on the licence holder requiring the electric line and apparatus to be removed (commonly referred to as a “notice to remove”).
 - a) In the case of existing wayleaves which have been terminated by the landowner and/ or occupier in accordance with a term of the wayleave (which may include a requirement to serve a separate notice of termination; the period for service of the notice of termination will be specified in the existing wayleave document), then the notice to remove may be served at any time following termination.
 - b) In the case of existing wayleaves which have expired in accordance with the timescale specified in the wayleave, notices to remove may be served at any time after the date falling three months before the wayleave expiration date.
 - c) In the case of existing voluntary wayleaves agreements which have expired by reason of a change in ownership or occupation of the land, the notice to remove may be served at any time following the change in ownership or occupation.
26. When serving a notice to remove, landowners and/ or occupiers should use the template form shown at Appendix 1. Although use of the template form is not mandatory, it will assist all parties to simplify the procedure going forward if used. If the template is not used and the wording of the notice to remove leaves any doubt as to the landowner's and/ or occupier's intentions, then the licence holder should check the situation with the landowner/ occupier as appropriate. If it is the landowner and/ or occupier's intention to request removal, then the licence holder should guide them to the Scottish Ministers' template document so that they can provide the correct information. Notices to remove should be sent by the landowner/ occupier by post or by email to the appropriate licence holder at the addresses below:

Scottish and Southern Energy Power Distribution

Central Wayleave Registry

SSE plc

10 Henderson Road

Inverness

IV1 1SN

wayleave.registry@sse.com

Scottish Power

Wayleaves

SP Energy Networks

55 Fullerton Drive

Cambuslang

Glasgow

G32 8FA

wayleavesnorth@sppowersystems.com

27. There is no requirement for the landowner and/ or occupier to copy notices to remove to the Scottish Ministers.
28. In some cases, landowners/ occupiers serve a notice to remove when they wish an existing electric line to be removed and relocated along an alternative route. In those circumstances, landowners/ occupiers should provide details of the alternative route or location sought in the notice to remove. This will allow licence holders to begin addressing the merits of that alternative proposal before submitting an application for a necessary wayleave to retain the existing electric line. The landowner/ occupier should provide the licence holder with sufficient information to clearly identify the location and/ or route of the proposed alternative and should explain why the alternative is preferred to the existing location.
29. On receipt of a notice to remove, the licence holder is obliged to comply with its terms and to remove the electric line and apparatus from the land within three months from the date of the notice (although there is no obligation to comply with any alternative route proposed by the landowner and/ or occupier in the notice to remove).
30. However, if an application for a necessary wayleave or a compulsory purchase order is made within three months from the date of the notice to remove, then the existing wayleave continues temporarily until the application has been determined. The licence holder is not obliged to remove the electric line during the application process. If the necessary wayleave application is refused or the compulsory purchase order is not confirmed, the licence holder must remove the electric line within one month of the decision, unless the Scottish Ministers specifically allow a longer period for removal.
31. An application for a necessary wayleave to retain the existing line may be made at any time following receipt of the notice to remove and during which the line and any associated apparatus remain in situ. If a notice to remove has been served and an application for a necessary wayleave or compulsory purchase order is made after the date falling three months from the date of the notice to remove, then there are no temporary retention rights associated with the existing electric line.

Landowners and occupiers should be aware that service of a notice to remove triggers a statutory process in which they will be required to participate. The statutory requirement on the licence holder to submit an application within three months to avoid having to remove the electric line at the expiry of that period may reduce the licence holder's ability to negotiate a voluntary agreement for retention of existing electric lines. Landowners and occupiers are strongly encouraged to consider whether engaging in dialogue with licence holders **early** to reach an agreement voluntarily may be more advantageous than proceeding directly to the necessary wayleave process by service of a notice to remove.

Amendments to existing necessary wayleaves

32. There is no process by which licence holders can apply to amend or vary an existing necessary wayleave granted by the Scottish Ministers. Nor can the necessary wayleave process be used to vary or amend an existing voluntary wayleave.
33. The Scottish Ministers take the view that, if a proposed amendment to an electric line or supporting apparatus differs from that permitted under an existing wayleave (whether the existing wayleave is a necessary wayleave or a voluntary wayleave), then the proposal represents a new electric line in respect of which a new wayleave will be required. The procedure for necessary wayleaves for a new electric line should be adopted in relation to the amended line, in addition to any application for retention of the existing line which may be required in the circumstances.

FORM AND CONTENT OF NECESSARY WAYLEAVE APPLICATIONS

Submission of applications

34. All applications to the Scottish Ministers for a necessary wayleave (whether for a new electric line or to retain an existing electric line) should be on the Scottish Government's application form and should be accompanied by the information specified in Appendix 2. The application should clearly identify the land to which the application relates. A separate application is required for each landowner/ occupier interest and for each electric line. Where multiple necessary wayleaves are required in relation to a single project or electric line, each application should clearly identify all related or linked applications.
35. Applications for necessary wayleaves should be submitted by the licence holder to the Scottish Government, Energy Consents and Deployment Unit at Atlantic Quay, 150 Broomielaw, Glasgow G2 8LU. It is recommended that

licence holders send their applications by signed for or special delivery post (as these methods require an acknowledgement of receipt). The Energy Consents and Deployment Unit (ECDU) will also accept applications by e-mail if agreed in advance with the Wayleaves Manager.

36. The ECDU will check applications to confirm whether they have been lodged in accordance with the procedural requirements of the 1989 Act. Applications which do not meet the requirements of the 1989 Act will be rejected. The ECDU will also check whether the application is accompanied by all relevant supporting information. This initial check will not prevent the Reporter from requesting additional information where required to inform his consideration of the application (the Reporter's role in the necessary wayleave application process is described at paragraph 54 onwards)
37. The ECDU will aim to acknowledge receipt of all applications within 10 working days. If receipt is not acknowledged within 10 working days, licence holders are encouraged to contact the ECDU to confirm that the application has been received and allocated to a case officer.
38. The ECDU will allocate a reference number to each necessary wayleave application which it receives. The reference number should be quoted in all subsequent correspondence with the ECDU.

Supporting information

39. All applications should be accompanied by the information specified in Appendix 2.
40. The Scottish Ministers expect that all applications will be accompanied by sufficient information to allow the decision maker to identify the terms of the necessary wayleave sought, and to assess whether the grant of the wayleave is necessary or expedient in the circumstances of the case. The Scottish Ministers strongly encourage applicants to include as much relevant information as possible in a supporting statement accompanying the application. This should include a summary of pre-application engagement with the affected landowner and/ or occupier and how any concerns expressed were taken into account in design of the final proposals.
41. In the case of applications for retaining existing electric lines, licence holders should include a response to any alternative route or location proposed by the landowner/ occupier in the notice to remove, where that information is available at the time of submission of the application.
42. The ECDU can provide licence holders with pre-application advice on the form and content of applications where required.

Terms of the necessary wayleave sought

43. A necessary wayleave may be granted subject to such terms and conditions as the Scottish Ministers think fit. Any necessary wayleave granted by the Scottish Ministers will be based on the standard terms outlined at Appendix 3. The standard terms are intended to provide some certainty over the form and content of necessary wayleaves, but they are not prescriptive. It is recognised that there will be some circumstances in which a departure from the standard terms will be appropriate. Licence holders should describe in their application whether any departure from the standard terms is sought in the circumstances of the case and should provide a reasoned justification for the departure sought.
44. The standard term of necessary wayleaves granted after the date of publication of this guidance will be 40 years from the date on which they are granted. The Scottish Ministers consider that 40 years represents an equitable period which provides a balance between the need for certainty in the electricity transmission and distribution systems and the interests of landowners and occupiers, who may wish the opportunity to have the continuing operation of the necessary wayleave examined in light of changing circumstances at the end of the wayleave period. Parties who consider that, if granted, a necessary wayleave of a shorter or longer duration would be more appropriate because of particular circumstances, should indicate the period sought in the application and should give their reasons as part of the information accompanying their application.

Related applications

45. The licence holder should identify any related application or appeal that Scottish Ministers may wish to consider at the same time as the necessary wayleave application. This will allow Ministers to consider whether a joint inquiry or hearing might be appropriate. For example, a necessary wayleave application could be considered at the same time as any application for section 37 consent for the installation of the overhead line to which it relates. Multiple necessary wayleaves in relation to the same electric line may be considered at a conjoined hearing, where appropriate to do so. The licence holder should ensure that it carries out any procedures for which it is responsible at the appropriate time to allow Ministers to consider related applications or appeals in step.

Notice of applications to landowners and occupiers

46. There is no requirement for licence holders to notify the landowner and/ or occupier that a necessary wayleave application has been submitted. At the same time as providing acknowledgement of receipt of the application to the applicant, the ECDU will write to the landowners and occupiers identified on the application form as having an interest in the land. The letter will notify the landowner and occupier that an application has been submitted, will inform the landowner and occupier of their right to be heard before the application is

determined and will outline timescales for referral of the case to the Scottish Government Directorate of Planning and Environmental Appeals (“DPEA”).

47. The ECDU will not take steps to confirm the accuracy of the landowner or occupier information contained in the application form. It is therefore important that the licence holder ensures that the information contained in the application is both comprehensive and accurate, since any deficiency in the information provided which leads to an inability on the part of the Ministers to notify affected parties correctly may lead to delay.

Referral of application to DPEA

48. In all cases where an application has been validly lodged, the ECDU will refer applications to the DPEA. The ECDU will not consider the substance or the merits of any application. The ECDU will aim to refer to the application to the DPEA within eight weeks of receipt, unless the application is sisted (put on hold) before the date of referral.

Sists in limited circumstances

49. Ministers only expect to sist or postpone the decision making process in limited circumstances. The licence holder should not therefore make an application for a necessary wayleave unless it is ready to proceed.
50. In all cases (applications for new lines and applications for existing lines) a sist will be awarded where both the applicant and landowner/ occupier make a joint submission to the ECDU requesting a sist to allow ongoing discussion between the parties to achieve a voluntary wayleave. If a sist is awarded in these circumstances, the ECDU will delay its referral of an application to the DPEA by a period not exceeding six months from the date of submission of the application.
51. In the case of applications for existing electric lines where the licence holder can demonstrate to the satisfaction of the ECDU that additional time is required to allow environmental surveys to be undertaken during the appropriate season, the ECDU may delay its referral of an application to the DPEA by a period of up to nine months (on cause shown) from the date of submission of the application.
52. Requests for a sist should be made to the ECDU in writing within six weeks of the date of acknowledgement of receipt of the application/ notification of the application to the landowner by the ECDU.
53. To avoid abortive costs associated with the hearing or inquiry process (e.g. cancellation charges for the venue, the Reporter's travel and accommodation etc) the DPEA will generally not agree to sist any application other than in exceptional circumstances.

CONSIDERATION OF THE NECESSARY WAYLEAVE APPLICATION

Procedure adopted by the DPEA

54. Before determining an application for a necessary wayleave, the Scottish Ministers must afford the occupier and, if different, the landowner of the land an opportunity of being heard.
55. The ECDU will refer all validly lodged applications to the DPEA. The DPEA will arrange for the application to be considered by an independent Reporter appointed by Scottish Ministers. The Reporter will usually be a specialist such as a planner, surveyor, engineer, architect or lawyer.
56. On receipt of an application from the ECDU, the DPEA will contact affected parties to confirm arrangements, including the contact at the DPEA to whom all future correspondence in relation to the case should be addressed. The DPEA will ask the landowner/ occupier to confirm whether they wish to be heard or wish to make representation by way of written submission before the application is determined. If the landowner/ occupier does not respond to the DPEA within 28 days of the date of its letter, then it will be assumed that the landowner/ occupier does not wish to take the opportunity of being heard.

It is important that landowners and occupiers respond to the DPEA within the 28 day period outlined in the DPEA's letter, since a failure to respond will be treated as meaning that the landowner/ occupier does not wish to be heard before the application is determined.

The landowner/ occupier response to the DPEA's letter will inform the process to be following going forward.

57. If the landowner and/ or occupier wishes be heard, either a hearing or a public local inquiry will be held. These both involve an oral process, where those involved will state their case in person, in front of the Reporter. The Electricity (Compulsory Wayleaves) (Hearing Procedure) Rules 1967 set out the procedure to be followed. A **hearing** takes the form of a structured discussion led by the Reporter. A **public local inquiry** is normally a more formal event, where witnesses give their evidence in front of the Reporter and can be cross-examined by other parties (normally by their legal representatives), similar to what you might see in the law courts. The DPEA will decide whether a public local inquiry session or a hearing session is more appropriate in the circumstances of the case.
58. The DPEA will propose a date on which to hold the inquiry or hearing. While the DPEA will try to meet the wishes of all parties on timing, the Scottish Ministers' responsibility to act expeditiously on applications may in exceptional circumstances lead the DPEA to impose a date if agreement cannot be reached. In circumstances where requests are made for an inquiry or hearing into two or more necessary wayleaves relating to the same electric line, the

Scottish Ministers will usually consider it appropriate to hold concurrent or conjoined hearings.

59. Once a date is agreed, the DPEA will arrange a suitable venue for the inquiry or hearing which will be near to the location of the existing or proposed electric line.
60. **Written submissions** may be used as an alternative means of considering any landowner and/ or occupier objection to the grant of a necessary wayleave. This process will be used where the landowner/ occupier does not wish to participate in an oral process, but would nonetheless like to make some representation in relation to the application, in cases where the Reporter is content that the written submissions procedure is appropriate to allow him to consider all evidence relevant to the application. This is a quicker, more simple and normally cheaper method of considering an application than an inquiry or hearing. It involves the licence holder and the landowner/ occupier stating their cases in writing for consideration by the Reporter, with an opportunity to comment on each other's statements. The written submission removes the need for either party to appear in person.
61. Where the landowner/ occupier indicates that he does not wish to be heard by the Scottish Ministers before the application is determined, then the Reporter will determine the most appropriate procedure to be adopted. This may involve a public inquiry session, a hearing, written submissions or determination of the application without further procedure. The means of disposal will be a matter for the Reporter's discretion, having regard to any representations made by the parties and the information accompanying the application.
62. In most cases, the Reporter will inspect the site in addition to the other procedure used to examine the application.
63. In all cases, the Reporter will set out a timetable to be followed for people to provide the information relevant to the Reporter's consideration of the application. A failure by any party to provide information requested by the Reporter, to attend scheduled hearings, or to otherwise participate in the necessary wayleave process may lead to the application being determined and the necessary wayleave being granted or refused without their views being taken into account. Late submissions may be returned to the sender and may not be taken into account when a decision is made on the application.
64. Where a landowner or occupier fails to engage in the necessary wayleave process or does not wish to be heard by the Scottish Ministers before the application is determined, then the Reporter may determine the application on the basis of the information accompanying the licence holder's application without further procedure, where the Reporter considers it appropriate to do so. It is therefore incumbent upon the licence holder to ensure that their applications are accompanied by sufficient information to allow the Scottish Ministers to identify and assess whether the grant of the wayleave is

necessary or expedient in the circumstances of the case in the event that the application is to be determined without further procedure.

65. The DPEA publishes information and correspondence relating to live necessary wayleave applications on the internet: at www.dpea.scotland.gov.uk. This allows you access to key documents on the Scottish Government's file which will be taken into account before a decision is made on a necessary wayleave application.

Purpose and scope of the Reporter's consideration

66. Before granting a necessary wayleave, the Scottish Ministers must be satisfied that it is either (i) necessary or (ii) expedient to install and to keep the electric line installed. The Reporter will wish to examine evidence which informs his consideration of these two tests.
67. In scope, the Reporter's consideration of a necessary wayleave is focused more on establishing the effect of private land interests, rather than matters of a more general planning nature. Accordingly, there is no right for third parties to participate and evidence may, at the request of the licence holder or landowner and/ or occupier, be given in private. Evidence that will be relevant at a necessary wayleave hearing is site specific, for example, the effect of the electric line in question on farming (crops and livestock), on the use of machinery, on wild flora and fauna and, in the case of an overhead line, on the outlook from buildings situated on the land in question. Other relevant evidence is likely to be the cost of any suggestions for local diversions of the application route and, in the case of an overhead line, the location of supporting structures on the land in question.
68. Matters of a more general nature, such as planning considerations that are not site-specific, will not normally be treated as appropriate for detailed consideration by the Reporter. Such matters are more properly considered in the context of the separate section 37 (of the 1989 Act) consent or planning application process, which allows all those affected by a proposed electric line to make representations to the Scottish Ministers or the planning authority as appropriate.
69. Licence holders must indicate in their necessary wayleave application whether there are any associated live applications, for example for planning permission or for section 37 consent for the proposed electric line. Where possible to do so, the DPEA will conjoin its consideration of separate but related applications. A Reporter will not ordinarily be appointed until the DPEA has received information on all related applications which are relevant to consideration of the application.

Compensation

70. Questions of compensation in respect of a necessary wayleave will not be addressed by the Reporter when making a recommendation on whether a necessary wayleave should be granted, although issues which relate to the

impact on the use or enjoyment of the land which may subsequently be the subject of a claim for compensation may be considered by the Reporter.

71. The Scottish Ministers have no power under Schedule 4 to the 1989 Act to prescribe financial conditions in any necessary wayleave case or to resolve disputes on the level of compensation. Compensation will fall to be settled by agreement between the parties or, failing agreement, by the Lands Tribunal for Scotland at the request of either party.

Costs

72. Landowners and occupiers have no legal entitlement to claim their professional costs incurred as part of the statutory necessary wayleave process, although licence holders may on occasion offer to meet landowners' or occupiers' reasonable professional costs incurred in the negotiation of voluntary wayleaves or servitudes. The licence holder should clearly tell people what professional fees, if any, they are willing to meet when engaging in the necessary wayleave process.
73. Nor is there any legal entitlement for either party to make a claim for expenses associated with the necessary wayleave hearing, inquiry or written submissions process. Everybody who participates in the necessary wayleave process will be expected to cover their own expenses. The application procedures support parties being able to make a case to the Reporter by themselves. However, if parties employ a professional agent, such as a planning consultant, architect or lawyer, they will have to cover their fees at their own cost.

THE REPORTER'S RECOMMENDATION AND MINISTERS' DECISION

74. Following his consideration of a necessary wayleave application under the hearing, inquiry, written submission process or consideration of the application without further procedure, the Reporter will submit a written report to the Scottish Ministers with conclusions and recommendations as to whether or not the necessary wayleave applied for should be granted. The Scottish Ministers, or an official at the ECDU acting under delegated authority in certain circumstances, will then consider the report and associated documentation before reaching a decision on the necessary wayleave application. Ministers do not have to agree with the Reporter's recommendation.
75. The Ministers may either grant a necessary wayleave on such terms and conditions as they think fit, or may refuse to grant a necessary wayleave.
76. The decision will be in the form of a letter, accompanied by a copy of the Reporter's report and, if a necessary wayleave is being granted, the wayleave document itself. The decision letter will be issued to the licence holder applicant, landowner and occupiers.
77. If an application for the grant of a necessary wayleave to retain an existing

electric line which was lodged within three months of the date of the notice to remove is refused by the Scottish Ministers, then the licence holder has one month from the date of the refusal to remove the electric line, or such longer period as the Scottish Ministers may specify.

TIMESCALES

78. Indicative timescales for various stages in the necessary wayleave process can be summarised as follows:
- Applications will usually be acknowledged by the ECDU within 10 working days of receipt.
 - Applications for a sist will be considered within 6 weeks of the date of acknowledgement of receipt of the application/ notification by the ECDU of the application to the landowner. The ECDU may agree to sist a necessary wayleave application only in limited circumstances as described at paragraphs 50 and 51.
 - Applications will usually be referred by the ECDU to the DPEA for consideration within 8 weeks of receipt (unless a sist has been granted).
 - Once referred to the DPEA, applications will generally proceed to determination unless the necessary wayleave application is withdrawn. The DPEA will award a sist in exceptional circumstances only.
 - Where the DPEA determines that an inquiry is the appropriate means of disposal, then an inquiry will usually be held within 12 – 24 weeks of the date of appointment of the Reporter. The Reporter appointed to the case will usually provide a written report of his or her findings, conclusions and recommendations to the Ministers within 16 weeks of conclusion of the inquiry.
 - Where the DPEA determines that a hearing is the appropriate means of disposal, a hearing will usually be held within 12 weeks of the date of appointment of the Reporter. The Reporter appointed to the case will usually provide a written report of his recommendations to the Ministers within 12 weeks of conclusion of the hearing.
 - Where the DPEA determines that written submission is the appropriate means of disposal, then the Reporter appointed to the case will usually provide a written report of his or her findings, conclusions and recommendations to the Ministers within 16 weeks of the date of his appointment.
 - The Scottish Ministers will aim to issue a decision on the necessary wayleave application within 12 weeks of receipt of the Reporter's recommendation.
79. These timescales are indicative only. Some applications will take longer depending upon the complexity of the issues raised.

APPENDIX 1 - NOTICE TO REMOVE FOR USE BY LANDOWNER AND/ OR OCCUPIER

This form is for use by landowners and/ or occupiers who wish to serve notice on an electricity licence holder to remove existing electric lines and associated apparatus from their land.

This form can be used:

- a) At any time following service of a notice of termination of a wayleave agreement;
- b) At any time after the date falling three months before the date of expiration of an existing wayleave agreement; or
- c) Where an existing voluntary wayleaves agreement has expired by reason of a change in ownership or occupation of the land.

Service of this notice will trigger the statutory necessary wayleave process under Schedule 4 of the Electricity Act 1989. You should read the Guidance published by the Scottish Government on the Necessary Wayleave process before completing this form. [\[insert URL\]](#)

| 1. Landowner/ Occupier Details <i>[delete as appropriate]</i> | | 2. Agent's Details (if appropriate) | |
|--|--|-------------------------------------|--|
| Title | <input style="width: 95%;" type="text"/> | Ref No. | <input style="width: 95%;" type="text"/> |
| Forename | <input style="width: 95%;" type="text"/> | Forename | <input style="width: 95%;" type="text"/> |
| Surname | <input style="width: 95%;" type="text"/> | Surname | <input style="width: 95%;" type="text"/> |
| Company Name | <input style="width: 95%;" type="text"/> | Company Name | <input style="width: 95%;" type="text"/> |
| Building No./Name | <input style="width: 95%;" type="text"/> | Building No./Name | <input style="width: 95%;" type="text"/> |
| Address Line 1 | <input style="width: 95%;" type="text"/> | Address Line 1 | <input style="width: 95%;" type="text"/> |
| Address Line 2 | <input style="width: 95%;" type="text"/> | Address Line 2 | <input style="width: 95%;" type="text"/> |
| Town/City | <input style="width: 95%;" type="text"/> | Town/City | <input style="width: 95%;" type="text"/> |
| Postcode | <input style="width: 95%;" type="text"/> | Postcode | <input style="width: 95%;" type="text"/> |
| Telephone | <input style="width: 95%;" type="text"/> | Telephone | <input style="width: 95%;" type="text"/> |
| Mobile | <input style="width: 95%;" type="text"/> | Mobile | <input style="width: 95%;" type="text"/> |
| Fax | <input style="width: 95%;" type="text"/> | Fax | <input style="width: 95%;" type="text"/> |
| E-mail | <input style="width: 95%;" type="text"/> | E-mail | <input style="width: 95%;" type="text"/> |

APPENDIX 2 –SUPPORTING INFORMATION FOR NECESSARY WAYLEAVE APPLICATIONS

Applications to the Scottish Ministers for the grant of a necessary wayleave should be made on the Scottish Government’s application form and should be accompanied by the following supporting information:

1. Confirmation that the applicant is a licence holder with powers under Schedule 4 of the 1989 Act and that there is no restriction in the electricity licence which would restrict the use of necessary wayleave powers.
2. The name and address of the landowner of the land to which the application relates.
3. The name and address of the occupier of the land to which the application relates.
4. The postal address of the land to which the application relates, including post code, if applicable.
5. Details of the electric line and apparatus to which the application relates.
6. An ordnance survey based site plan of approximate scale 1:500 showing the land to which the application relates. This should include
 - a. the proposed route of the electric line (showing a distinction between lines placed or to be placed under or over ground);
 - b. any limits of deviation sought;
 - c. any rights of access sought;
 - d. any exclusion or safety zones which the licence holder seeks to impose;
 - e. the boundary of the affected landowner and occupiers’ interests.

This plan will be appended to the necessary wayleave if granted (subject to modifications agreed during the application process) and should contain sufficient detail for the extent of rights to be clearly identified.

7. An ordnance survey based location plan of approximate scale 1:2500 showing the location of the application site. Where the necessary wayleave relates to only part of an electric line, the location plan should include an insert showing the location and extent of the application site relative to the overall line route.
8. In the case of applications for new electric lines only, a copy of the minimum 21 day notice to landowners/ occupiers requesting a wayleave; **OR**
9. In the case of applications for existing electric lines only, a copy of the notice to remove served by the landowner or occupier under paragraph 8 of Schedule 4 to the 1989 Act.
10. A supporting statement outlining why the necessary wayleave is either necessary or expedient. This should include a summary of pre-application discussion with the landowner/ occupier(s) and how any issues or concerns raised by affected parties have been taken into account in the final proposals. It should also include a description of why the extent of land for the line, limits

- of deviation and access are considered to represent what is reasonably necessary for delivery of the scheme to which the application relates.
11. A separate application is required for each landowner/ occupier interest. Where multiple necessary wayleaves are required in relation to a single project or line, the application should clearly identify all related or linked necessary wayleave applications.
 12. Details of any related applications (for example applications for consent under section 37 of the 1989 Act or for planning permission), including a description of the consent or permission sought, the application reference, dates of submission and contact details for the case officer at the relevant consenting authority.
 13. A statement confirming the terms of the necessary wayleave being sought. Reasons should be provided for any departure sought from the Scottish Ministers' standard necessary wayleave terms and conditions.

The above list is not exhaustive. All necessary wayleave applications are different and it is for the applicant to judge whether there is any additional information that might be relevant to the Scottish Ministers' determination of the application.

APPENDIX 3 - STANDARD NECESSARY WAYLEAVE TERMS AND CONDITIONS

ELECTRICITY ACT 1989

GRANT OF NECESSARY WAYLEAVE

1. The Scottish Ministers, in exercise of their powers conferred by paragraph 6(3) of Schedule 4 to the Electricity Act 1989 and all other powers enabling them to do so, grant a necessary wayleave subject to the undernoted conditions to [INSERT NAME OF APPLICANT], a company incorporated under the Companies Acts with Company Number [INSERT] and having its registered office at [INSERT ADDRESS] (“the Company”);
 - a. to install and keep installed at [INSERT ADDRESS OF LAND AS DESCRIBED IN THE APPLICATION FORM] (“the Property”) the following electric line: [DELETE AS APPROPRIATE*]

*UNDERGROUND LINE
Underground electric lines along the route shown delineated in [red] on the Plan annexed and executed as relative hereto.

*OVERHEAD LINE
Overhead electric line along the route shown delineated in [blue] on the Plan annexed and executed as relative hereto.

“Electric Line” means any line which is used for carrying electricity for any purpose and includes; (i) any support for any such line, that is to say, any structure, pole or other thing in, on, by or from which any such line is or may be supported, carried or suspended; (ii) any apparatus connected to any such line for the purpose of carrying electricity; and (iii) any wire, cable, tube, pipe or other similar thing (including its casing or coating) which surrounds or supports, or is surrounded or supported by, or is installed in close proximity to, or is supported, carried or suspended in association with, any such line.
 - b. together with rights of access in favour of the Company and any employee, contractor or other party authorised by the Company at such times as the Company deems necessary over the area shown shaded in [green] on the Plan for the purpose of installing, inspecting, maintaining, adjusting, repairing, altering, replacing or removing any part of the electric line and for any incidental purpose, including the exercise of powers conferred under paragraph 4 of this necessary wayleave.
2. Notwithstanding the terms of paragraph 1 above, the Company may install and keep installed the electric line subject to such reasonable deviations, including but not limited to temporary deviations for the purpose of maintenance or replacement as the Company may determine necessary or desirable at its sole discretion, provided always that any such deviations are restricted to the areas shown [hatched in yellow] on the Plan and that the Company shall furnish the landowner and occupier with a plan showing the as built location of the electric line which differs from the location described at paragraph 1(a) within thirty (30) days of installation or deviation (as applicable).
3. Except with the written agreement of the Company, this necessary wayleave may not be terminated by the landowner or occupiers until the date falling [FORTY] years after the date of grant of this necessary wayleave.
4. The Company may, on giving not less than twenty one (21) days’ notice to the landowner and occupier (or without notice in the case of emergency), fell or lop any tree or other vegetation or remove any other obstruction or structure which is or will be in such close proximity to the electric line to which this necessary wayleave relates as to obstruct or interfere with or give rise to safety

concerns, or which is likely to obstruct or interfere with the electric line or to give rise to safety concerns.

5. The electric line described in paragraph 1 shall remain the property of the Company.
6. The landowner will advise the Company in writing of any change in ownership or occupation of the Property.
7. The installation of the electric line shall be executed by the Company in accordance with all statutory regulations applicable and for the time being in force.
8. The Company shall free and relieve the landowner and occupier of the Property and any other person deriving title thereto against all loss, injury and damage caused to the landowner or occupier or to their property by reason of or in consequence of the existence of the electric line on, under or over the Property; except in so far as any such loss, injury or damage may be due to or caused by the wrongful act, neglect or default of the landowner or occupier or any person for whom they are responsible in law.
9. Paragraph 7 of Schedule 4 to the Electricity Act 1989 confers rights to compensation in respect of a grant of wayleave, or in respect of any damage or disturbance caused by the exercise of any right conferred by a wayleave. Any question of disputed compensation is to be determined by the Lands Tribunal for Scotland, 1 Grosvenor Crescent, Edinburgh.

Subscribed for an on behalf of the Scottish Ministers by:

Sign:.....

Print name:.....

Minister for Energy, Enterprise and Tourism/
Being an officer and authorised signatory of the Scottish Ministers

At 5 Atlantic Quay, Glasgow G2 8LU

Date:.....

APPENDIX 4 - GLOSSARY OF TERMS

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| Compulsory wayleave | Another name for a necessary wayleave. |
| DPEA | The Directorate of Planning and Environment Appeals, the Scottish Government department responsible for the conduct of a range of planning and environmental appeals, including the appointment of independent Reporters to consider applications for necessary wayleaves and to compile a report, with recommendations, for the Scottish Ministers. |
| ECDU | The Energy Consents and Deployment Unit, a branch of the Scottish Government Directorate for Energy and Climate Change, responsible for processing applications for necessary wayleaves. |
| Hearing | A formal oral process where evidence is heard on matters relevant to determination of the necessary wayleave application. A hearing takes the form of a structured discussion led by the Reporter. The procedures in relation to hearings differ from those which apply to inquiries. |
| Inquiry | A formal oral process where evidence is heard on matters relevant to determination of the necessary wayleave application. A public local inquiry is normally more formal than a hearing. Witnesses give their evidence in front of the Reporter and can be cross-examined by other parties (normally by their legal representatives), similar to what you might see in the law courts. The procedures in relation to inquiries differ from those which apply to hearings. |
| Necessary wayleave | A statutory right in favour of an electricity licence holder to install and keep installed an electric line on, under or over any land and to have access to the land for the purpose of inspecting, maintaining, adjusting, repairing, altering, preplacing or removing the electric line. Necessary wayleaves are not registered against the title of the land to which they relate, but are automatically binding on successive landowners and occupiers. |
| Reporter | An independent person appointed by the DPEA on behalf of the Scottish Ministers to consider necessary wayleave applications and to make recommendations to the Ministers on how each application should be determined. |

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| Section 37 Consent | Consent granted by the Scottish Ministers under section 37 of the Electricity Act 1989, authorising the installation and keeping of an above ground electric line. This is usually required for overhead lines with a nominal voltage in excess of 20 kilovolts and which do not serve a single consumer. |
| Servitude | A private contractual arrangement which is binding on successive landowners, entered into on a voluntary basis between landowner and electricity company. A servitude differs from a wayleave because it is registered in the Land Register for Scotland as a burden on the title to the property to which it relates. The Scottish Government has no involvement in the process of creating servitudes for electric lines. |
| Sist | A temporary suspension of the process of determination of the necessary wayleave application, granted at the discretion of the ECDU or the DPEA only in exceptional circumstances. |
| Voluntary wayleave | A private contractual agreement which is not binding on successive landowners, entered into on a voluntary basis between a landowner and electricity company. The Scottish Government has no involvement in the process of creating voluntary wayleaves for electric lines. |
| Written submissions | A formal written process where evidence is provided on matters relevant to determination of the necessary wayleave application. Written submissions can be a quicker and cheaper means for parties to make submissions on the proposed necessary wayleave. This process can be used as an alternative to the inquiry or hearing process where parties agree. |

APPENDIX 5 - FREQUENTLY ASKED QUESTIONS

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| 1. | Who can apply for a necessary wayleave? |
| | Any holder of an electricity transmission, distribution or other electricity licence holder authorised under Schedule 4 of the Electricity Act 1989. The ability to apply for a necessary wayleave is subject to any restriction contained in the licence itself. |
| 2. | Can the licence holder make an application for a necessary wayleave to install or retain an electric line on, over or under a house or land which has planning permission for a house? |
| | <p>Where the necessary wayleave application relates to a new electric line, the Scottish Ministers cannot grant a necessary wayleave where the land is covered by a residential dwelling or planning permission exists for a residential dwelling be constructed, unless the electric line is to be placed underground.</p> <p>The same restriction does not apply where the application relates to an existing electric line.</p> |
| 3. | What is the definition of an “owner” and an “occupier” under the Electricity Act 1989? |
| | <p>The 1989 Act does not provide a definition of “owner” or “occupier”. The Scottish Ministers take the view that the “owner” is the registered heritable proprietor of the land. Benefited proprietors are not covered by this definition. The Scottish Ministers take the view that the “occupier” is any person who has lawful possession of the land, including temporary possession.</p> <p>The Scottish Ministers will rely on landowner and occupier information contained in the necessary wayleave application form and will not undertake any investigation to confirm the position. The Scottish Ministers will ask the licence holder to provide additional information in circumstances where there is a dispute as to the identity of relevant landowners/ occupiers or where there is a change of landowner/ occupier following the date of submission of the necessary wayleave application.</p> |
| 4. | What do the Scottish Ministers consider to be a valid notice to remove? |
| | <p>A notice to remove an electric line must be made by the landowner/ occupier in writing and delivered to the relevant licence holder. The notice should make it clear that the licence holder is being asked to remove the line/ apparatus from the landowner and/ or occupier’s land.</p> <p>The Scottish Ministers have provided a template notice to remove. Use of the template is not mandatory, but Scottish Ministers expect the template</p> |

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| | notice to remove to be used in most cases. |
| 5. | Who will address questions in relation to the validity or competence of a necessary wayleave application? |
| | <p>The ECDU will check applications to confirm whether the application has been lodged in accordance with the procedural requirements of the 1989 Act. This initial check will not prevent the Reporter appointed to consider a case from considering arguments in relation to competence or from requesting additional information where required to inform his consideration of the application.</p> <p>The ECDU will not consider the substance or the merits of any application. The ECDU will refer all applications to the DPEA within eight weeks of receipt, unless the application has been sisted.</p> <p>The DPEA will consider all substantive issues in relation to the application when making a recommendation to the Scottish Ministers, including the validity or competence of the application.</p> <p>Ultimately, only the law courts can make a binding ruling on the legality or validity or competence of any decision by the Scottish Ministers to grant or to refuse to grant a necessary wayleave.</p> |
| 6. | Is pre-application consultation with landowners and occupiers mandatory? |
| | <p>No. There is at present no legislative requirement for licence holders to engage with landowners or occupiers before submitting an application for a necessary wayleave. However, the Scottish Ministers strongly encourage licence holders to engage with people affected by a necessary wayleave before submission of an application, unless there are exceptional reasons which mean that it is not possible to do so. Applications should narrate the engagement with landowners and occupiers and how concerns expressed have been reflected in the final proposals.</p> <p>Pre-application consultation can reduce the time and cost associated with the necessary wayleave application and determination process as it allows landowner and occupier concerns to be addressed at an early stage in the process.</p> |
| 7. | How long does the necessary wayleave application process take? |
| | <p>Scottish Ministers will seek to process applications as quickly as possible, to reduce the uncertainty for parties involved. The timescale for the process will depend upon the procedure adopted, as described in more detail at paragraph 78 of this guidance. However, as a broad indication, parties should expect the necessary wayleave process to take between 9 – 18 months from the date of submission of an application by the licence holder to the date of a decision being issued.</p> |

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| 8. | In what circumstances will the application be sisted/ the procedure postponed? |
| | <p>Necessary wayleave applications will be sisted/ postponed only in very limited circumstances, as described at paragraphs 50 and 51 of this guidance.</p> <p>Licence holders should only submit an application when they are ready to proceed to a hearing/ inquiry. Landowners and occupiers should be aware that service of a notice to remove triggers the statutory necessary wayleave process in which they will be expected to participate.</p> |
| 9. | Is a hearing mandatory in all cases? |
| | <p>A hearing is mandatory where the occupier and, if different, the landowner of the land to which the necessary application relates wishes to be heard by the Scottish Ministers.</p> <p>Licence holders have no right to request a hearing, although they will be entitled to participate in any hearing held at the request of the occupier/ landowner.</p> <p>In cases where the occupier and/ or landowner have indicated that they do not wish to take the opportunity of being heard, the Reporter will determine the process to be applied.</p> |
| 10. | What is the procedure for necessary wayleave hearings? |
| | <p>The hearing process is governed by the Electricity (Compulsory Wayleaves) (Hearing Procedure) Rules 1967.</p> <p>The DPEA will contact parties to confirm the procedural requirements of the process adopted, including the information to be provided by parties and the date by which representations are to be received.</p> |
| 11. | Can the Scottish Ministers consider compensation matters? |
| | <p>No. The Scottish Ministers have no powers to attach financial conditions to any necessary wayleave granted or to determine the levels of compensation payable by the licence holder to the landowner/ occupier. Financial compensation is a matter to be agreed between the parties or, if agreement cannot be reached, by the Lands Tribunal for Scotland under separate proceedings.</p> <p>Questions of compensation in respect of a necessary wayleave will not be addressed by the Reporter at the necessary wayleave hearing, although issues which relate to the impact on the use or enjoyment of the land which may subsequently be the subject of a claim for compensation may be considered by the Reporter.</p> |

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| 12. | Can the Scottish Ministers make an award of costs? |
| | No. There is no provision for the Scottish Ministers to make an award of costs of any party involved in the necessary wayleave process. Parties should be prepared to meet their own costs, including any professional fees incurred. |
| 13. | For how long do necessary wayleaves remain in force? |
| | <p>The duration of a necessary wayleave will be specified in the wayleave document itself. Necessary wayleaves will generally be granted for a period of 40 years from the date on which they are granted. The Scottish Ministers consider that 40 years represents an appropriate balance between the need for certainty in electricity transmission and distribution and the interests of landowners. Parties who consider that, if granted, a necessary wayleave of a shorter or longer period would be more appropriate because of particular circumstances should give their reasons as part of their evidence.</p> <p>Necessary wayleaves can only be terminated after the period specified in the condition attached to the wayleave.</p> |