

**ELECTRICITY (NORTHERN IRELAND)
ORDER 1992**

**APPLICATIONS BY NORTHERN IRELAND
ELECTRICITY PLC (“NIE”) FOR THE GRANT OF
NECESSARY WAYLEAVES FOR THE
INSTALLATION OF NEW ELECTRIC LINES AND
THE RETENTION OF EXISTING LINES**

**GUIDANCE FOR NIE AND LANDOWNERS AND/OR
OCCUPIERS**

**DEPARTMENT OF ENTERPRISE, TRADE AND
INVESTMENT**

April 2003

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1. INTRODUCTION

- 1.1 The public electricity network in Northern Ireland is owned by Northern Ireland Electricity plc (“NIE”) and consists of approximately 44,600 kilometres of electric lines which are used to supply electricity to some 710,000 customers.
- 1.2 As the holder of a transmission licence under **the Electricity (Northern Ireland) Order 1992 (“the 1992 Order”)** NIE has the respective duties under **Article 12(2) of the 1992 Order** to develop and maintain an efficient, co-ordinated and economical system of electricity transmission.
- 1.3 NIE requires permission from the owner and/or occupier of land in private ownership to install, and keep installed, its electric lines and associated equipment (such as poles, pylons, stay wires and transformers), together with future access to the land.
- 1.4 This permission normally takes the form of either a voluntary wayleave agreement between NIE and the owner and/or occupier or a necessary (compulsory) wayleave which can be granted by the Department of Enterprise, Trade and Investment (“the Department”).
- 1.5 The legislative authority for the grant by the Department of necessary wayleaves for the installation, and keeping installed, of new electric lines and the retention of existing electric lines is presently contained in **Article 13(1) of, and paragraphs 10-12 of Schedule 4 to, the 1992 Order**.

- 1.6 This note is intended to provide general guidance to:-
- (a) NIE (as an electricity licence holder) on applications to the Department for the grant of necessary wayleaves for the installation and keeping installed of electric lines or the retention of existing electric lines; and
 - (b) Landowners and/or occupiers whose land is, or may be, the subject of such applications.
- 1.7 It should be noted that a number of the procedures outlined in this note are not provided for in the legislation. However, the Department considers that it is important for these procedures to be followed by NIE and landowners/occupiers in order to assist it in reaching fully informed, objective, transparent and equitable decisions.
- 1.8 This guidance may be refined in the light of continuing experience in the processing of applications by NIE for necessary wayleaves, with a view to improving the effectiveness of the procedures.
- 1.9 If you require any further information, or have any questions, on necessary wayleaves, please contact the Department of Enterprise, Trade and Investment, Netherleigh, Massey Avenue, Belfast, BT4 2JP (e-mail: rod.robson@detini.gov.uk, telephone: 02890 529372, fax: 02890 529549).

2. **REQUIREMENT FOR NECESSARY WAYLEAVES**

- 2.1 NIE requires permission to install, and keep installed, electric lines and associated equipment on, over or under private land, and to have access to that land for the purpose of inspecting, maintaining, adjusting, repairing or altering the lines or equipment.
- 2.2 In most cases, the rights to install, and keep installed, an electric line, together with access to the land, are secured by NIE, voluntarily. NIE normally does this by way of a contractual agreement with the owner and/or the occupier of the land – this is called a wayleave.
- 2.3 However, if a voluntary agreement cannot be reached between the parties, NIE may apply to the Department for a necessary (or compulsory) wayleave under **paragraphs 10-12 of Schedule 4 to the 1992 Order** to enable the installation etc of the electric line.
- 2.4 These statutory provisions provide a safeguard for a landowner/occupier in that NIE cannot install, or keep installed, an electric line across his lands either without his permission or where the Department is minded to grant a necessary wayleave.
- 2.5 **Paragraph 10(5) of Schedule 4 to the 1992 Order** precludes the grant of a necessary wayleave for an overhead electric line where a dwelling covers the land or where valid planning permission exists for a dwelling to be constructed. **Paragraph 10(6) of Schedule 4** stipulates that this provision does not apply in the case of land in respect of which a wayleave was granted before

paragraph 10(5) came into operation (on 11 February 1992).

- 2.6 It is important to note that the statutory provisions entitle the **occupier** of the land and, where the occupier is not also the owner of the land the **owner**, an opportunity of being heard by a person (known as a wayleave officer) appointed by the Department (**see paragraph 10(7) of Schedule 4 to the 1992 Order**) to provide an **independent** view to the Department on whether a necessary wayleave should be granted.
- 2.7 The 1992 Order does not provide definitions of “owner” and “occupier”. As a general rule, the Department takes the view that, in accordance with general legal principles, the “owner” for purposes of Schedule 4 means a person who is entitled to be registered as the outright owner of the land or otherwise the person(s) who own(s) all of the legal estate in the land. The Department would not generally construe “owner” to mean a party who only has a beneficial interest in the land in question.
- 2.8 The Department also takes the view that the “occupier” is a party who has lawful possession (including temporary possession) of the land in question, or is exercising a legal right to use the land, for example, under the terms of a lease.
- 2.9 These can be difficult issues and the Department may require the parties to provide further information on the ownership or occupation of the land to help it reach a view, for example, in cases where there is a dispute.

- 2.10 Landowners/occupiers will usually opt to be heard at an (informal) **oral hearing** arranged by the Department and conducted by a wayleave officer. The hearing will normally be held on the site which is the subject of the wayleave application. NIE will also be invited to be represented and to express its views.
- 2.11 If the landowner/occupier wishes, he may opt to make his representations on the application **in writing only** ie rather than present them personally to a wayleave officer at an oral hearing.
- 2.12 The independent wayleave officer, appointed by the Department, will consider the representations by both NIE and the owner/occupier, and will produce a report for the Department. This will include an analysis of the representations by each party and any other relevant information together with firm conclusions and a reasoned recommendation as to whether the Department should grant a necessary wayleave to allow the installation or retention of the electric line.
- 2.13 The Department will then decide, on the basis of the wayleave officer's report and recommendation – and any other information it may consider relevant - whether a necessary wayleave should be granted.
- 2.14 The procedures for the processing of applications by NIE to the Department for the grant of necessary wayleaves for the installation or retention of electric lines are described in more detail in the following sections.

3. **REQUIRED NOTICES BEFORE MAKING A NECESSARY WAYLEAVE APPLICATION**

3.1 The **1992 Order** recognises two situations as regards applications for necessary wayleaves: where the application for the grant of a necessary wayleave relates to a new electric line; and where it relates to an existing line.

Applications relating to a new electric line

3.2 Where NIE is unable to agree a voluntary wayleave and wishes to apply to the Department for the grant of a necessary wayleave it is required, first of all, to give the landowner or the occupier a minimum period of 21 days' written notice that it requires the grant of a necessary wayleave (**see paragraph 10(1)(b) of Schedule 4 to the 1992 Order**).

3.3 If, after the specified period, the owner or occupier has failed to give the necessary wayleave, or has given the wayleave subject to terms and conditions to which NIE objects, then the company may apply to the Department for the grant of the necessary wayleave in accordance with **paragraph 10(4) of Schedule 4 to the 1992 Order**.

3.4 The written notice sets the statutory wayleave proceedings in operation. It is important to note that the landowner or occupier must have been given the notice; and that the specified period of at least 21 days must have been completed before NIE may apply to the Department for a necessary wayleave. Any applications made before the specified notice period has been completed will be rejected.

- 3.5 The application by NIE to the Department should take the form of a letter and attach a copy of the notice to the landowner and/or occupier. The application should also clearly identify the land that is the subject of the necessary wayleave application and the name of the landowner and - where the landowner is not also the occupier - the occupier, along with an explanation of the nature of his occupation of the land (if known after reasonable enquiry).
- 3.6 In addition, applications should attach a map clearly showing, where possible, the boundaries of the owner and/or occupier's land affected and the route of the proposed electric line across the land, including the position of any supporting poles or towers (**see also Section 4.1(a) of this guidance note**).

Applications relating to an existing electric line

- 3.7 **Paragraph 12 of Schedule 4 to the 1992 Order** sets out the procedures to be followed where an owner/occupier wishes NIE to remove an electric line from his land, and NIE may apply to the Department for a necessary wayleave to retain the line, in circumstances where the existing wayleave:

- (a) Is determined by the expiration of a period specified in the wayleave

Although not normally employed by NIE, some wayleaves are determined by the expiration of a period specified in the wayleave agreement.

In those cases, the owner and/or occupier who is party to the wayleave agreement may, either within 3 months before the end of the specified period, or at any time afterwards, give notice to NIE to remove the electric line, as provided for by **paragraphs 12(1)(a) and 12(2)(a) of Schedule 4 to the 1992 Order.**

- (b) Is terminated by the owner/occupier in accordance with a term specified in the wayleave

Where there is already a wayleave in existence and the owner/or occupier requires the electric line which is the subject of that wayleave to be removed, he may give notice to the electricity company to terminate the existing wayleave agreement in accordance with a term contained in it (NIE's wayleaves normally contain a clause requiring 12 months notice of termination) and as provided for by **paragraph 12(1)(b) of Schedule 4 to the 1992 Order.**

Once the period required for the notice of termination has been completed, the owner and/or occupier may give a notice to NIE to remove the electric line at any time, as provided for by **paragraph 12(2)(b) of Schedule 4.**

Accordingly, in such cases two notices are required before NIE may apply to the Department for the grant of a necessary wayleave: (1) a notice to terminate the existing wayleave; and (2) a subsequent notice to remove the electric line.

- (c) Ceases to be binding on the owner/occupier by reason of a change in the ownership/occupation of the land after the granting of a wayleave

In some cases, an existing wayleave will cease to be binding following a change in ownership or occupancy of the land and, in such cases, a notice to remove the electric line may be given at any time after the change in ownership or occupancy as provided for by **paragraphs 12(1)(c) and 12(2)(c) of Schedule 4 to the 1992 Order**.

3.8 **Paragraph 12 of Schedule 4 to the 1992 Order** refers to the owner and/or occupier giving to the licence holder (ie to NIE) a notice – which must be in writing - requiring him to “remove the electric line from the land”. The Department considers, therefore, that the removal notice needs to make a clear reference to the removal of the electric line or apparatus from the land. It should not simply be a request to reposition, move or divert, relocate or underground the electric line (unless the notice makes it clear that the line is to be repositioned, relocated or diverted off the land in question ie removed). Similarly, it should not merely be a request to the company to make contact and discuss what can be done about the electric line.

3.9 The Department also considers that NIE must actually receive the notice to remove (and notice to terminate) referred to in **paragraph 12 of Schedule 4 to the 1992 Order** for it to be effective. The notices should be addressed to “The Company Secretary, Northern Ireland

Electricity plc, Danesfort, 120 Malone Road, Belfast, BT9 5HT”.

- 3.10 If NIE does not intend to comply with a notice to remove an electric line, **paragraph 12(3) of Schedule 4 to the 1992 Order** provides that it must make an application to the Department for a necessary wayleave within 3 months of the date of the notice in accordance with **paragraph 10(2) of Schedule 4** (or for a Vesting Order by virtue of **paragraph 1 of Schedule 3 to the 1992 Order**) or remove the line.
- 3.11 If the validity of the notice to remove is in doubt, it may be in NIE’s interest to write to the owner and/or occupier to obtain confirmation of the owner and/or occupier’s intention. The period allowed for making applications should provide adequate time to do this, although the Department rigorously enforces the 3 month rule.
- 3.12 It is recommended that, as a matter of good practice, NIE and owners and/or occupiers should send their applications and notices by recorded or special delivery (as these methods require an acknowledgement of receipt). It is also suggested that NIE contact the Department’s Energy Division if confirmation of receipt has not been given prior to the end of the 3 month period of making necessary wayleave applications. Although the Department will endeavour to acknowledge new applications within two days of receipt, there may be occasions where a response is delayed. There is no requirement for the owner and/or occupier to copy notices to the Department.

- 3.13 A notice to remove can be withdrawn by an owner/occupier by writing to NIE. The company will then be able to write to the Department withdrawing its application for a necessary wayleave. The Department, in turn, will confirm, in writing, that no further action will be taken with the application.
- 3.14 It should be noted that before NIE applies to the Department for the grant of a necessary wayleave to retain an existing electric line it is not necessary for it to serve a notice on the owner and/or occupier in accordance with **paragraph 10(1)(b) of Schedule 4 to the 1992 Order** as this only applies to the installation of new electric lines.

4. **MAKING OF APPLICATIONS FOR NECESSARY WAYLEAVES**

4.1 To assist the Department to deal with cases efficiently and as quickly as possible, the following information should be provided by NIE in its necessary wayleave applications:

For all necessary wayleave applications

- (a) (i) the name and address of the landowner and – where the owner is not also the occupier – the occupier of the land along with an explanation of the nature of his occupation of the land (if known after reasonable enquiry);
 - (ii) the location of the land by reference to townlands, etc; and
 - (iii) details of the electric line(s) and apparatus in question;
- (b) a statement of whether the application is to install a new electric line (overhead or underground) **under paragraph 10(1)(a) of Schedule 4 to the 1992 Order** or to retain an existing line (overhead or underground) **under paragraph 10(2) of Schedule 4;**
- (c) a map/plan of 1:2500 scale, clearly detailing:
- . where possible, the owner and/or occupier's affected land boundaries;
 - . the existing or proposed electric line(s) and apparatus in question crossing the land and

whether the electric line is, or is to be, placed under or over ground; and

- . any other electric lines crossing the land which are not subject to the application; and

For new electric lines only

(d) confirmation that:-

- (i) at least 21 days notice has been given to the owner/occupier in accordance with **paragraph 10(1)(b) of Schedule 4 to the 1992 Order** (a copy of the notice should be attached);
- (ii) except for electric lines to be placed underground, the land in question is not covered by a dwelling as defined in **paragraph 10(10) of Schedule 4**; and
- (iii) except for electric lines to be placed underground, planning permission is not in force for a 'dwelling' to be constructed;

(e) a detailed statement of:-

- (i) the company's reasons for the proposed installation of the electric line along the route in question;
- (ii) any technically feasible alternative routes for the line and associated estimated costs; and
- (iii) any other relevant information;

- (f) copies of any documents (including maps, photographs and plans) the company intends to refer to at a hearing; and
- (g) where it is impracticable to provide copies of any of the documents, a statement of the times and place at which the Department and the owner/occupier and/or his advisers may inspect the documents and, where practicable, take copies of them.

For existing lines only

- (h) confirmation of which part of **paragraph 12(1) of Schedule 4** applies ie whether the existing wayleave:-
 - (1)(a)** - has been determined by the expiration of a period specified in the wayleave;
 - (1)(b)** - has been terminated by the owner/occupier in accordance with a term contained in the wayleave; or
 - (1)(c)** - has ceased to be binding on the owner/occupier by reason of a change in the ownership/occupation of the land after the granting of a wayleave;
- (i) a copy of the written notice from the owner/occupier to remove the electric line from the land in accordance with **paragraph 12(2) of Schedule 4**;

- (j) a copy of any previous written notice from the owner/occupier to terminate the wayleave, in accordance with **paragraph 12(1)(b) of Schedule 4**, (if applicable);
- (k) a copy of any relevant wayleave agreement(s) (to enable the Department to determine whether an application is in accordance with the requirements of either **paragraph 12(1)(a) or 12(1)(b) or 12(1)(c) of Schedule 4**);
- (l) if unable to locate the previous wayleave agreement for the electric line, in question, confirmation of:-
 - (i) whether any record exists of wayleave payments having been made in the past for the electric line;
 - (ii) whether any record exists of a wayleave being secured for the installation of the line; and
 - (iii) how long the line has been installed;
- (m) confirmation of the state of play on negotiations with the owner/occupier ie whether they are continuing and the application should be held in abeyance, or whether processing of the application should proceed.
- (n) where negotiations with the owner/occupier are not continuing, a detailed statement of:-
 - (i) the company's reasons for the proposed retention of the electric line;

- (ii) any technically feasible alternative routes for the line and associated estimated costs; and
 - (iii) any other relevant information;
- (o) copies of any documents (including maps, photographs and plans) the company intends to refer to at a hearing; and
- (p) where it is impracticable to provide copies of any of the documents a statement of the times and place at which the Department, the owner/occupier and/or his advisers may inspect the documents and, where practicable, take copies of them.

(Where negotiations are continuing and ultimately prove to be unsuccessful, NIE should notify the Department of this and, at the same time, submit the information listed at section 4.1 (n-p), and send copies to the owner/occupier.)

- 4.2 The above list is not exhaustive. All necessary wayleave applications are different, and it is for NIE's judgement as to whether there is other information that might be relevant.
- 4.3 NIE should copy its application and all attachments to the owner/occupier and explain why the application has been made. **The letter of application to the Department should confirm that this has been done.**
- 4.4 The Department will endeavour to acknowledge each application in writing, within two days of its receipt, and will copy the acknowledgement to the owner/occupier.

- 4.5 **The Department's reference number which is allocated to a necessary wayleave application should be included in all subsequent correspondence on the application.**

5. **HEARING THE REPRESENTATIONS BY THE LANDOWNER/OCCUPIER AND NIE**

- 5.1 Following receipt of an application from NIE for a necessary wayleave to install or retain (where negotiations are not continuing) an electric line, the Department will write to the owner/occupier offering him an opportunity to be heard (ie to state his objections to the proposed installation or retention of the electric line across his land) by an independent wayleave officer appointed by the Department, in accordance with **paragraph 10(7) of the 1992 Order.**
- 5.2 The owner/occupier will also be offered the choice of being heard at an (informal) oral hearing, to be conducted by the wayleave officer, or of presenting written representations to the wayleave officer only ie rather than presenting them personally to him at an oral hearing. He will be required to respond to the Department's letter within a specified period.

Procedures where the owner/occupier opts for an oral hearing

- 5.3 Owners/occupiers normally prefer to be heard at an oral hearing at which NIE will also be invited to be represented and to present its views. In exercising this option, the owner/occupier will also be offered an opportunity to present to the wayleave officer and the company a written statement of his objections to the proposed installation or retention of the electric line, by a specified date (at least 10 days prior to the hearing).
- 5.4 The Department will formally appoint an independent wayleave officer to handle the application and arrange with the owner/occupier (who may be accompanied by legal or other advisers), NIE and the wayleave officer, a date, time and place

(normally on site), for the hearing. If requested by the owner/occupier, the Department will endeavour to arrange a suitable venue for the hearing offsite, following consultation with the parties. The owner/occupier and NIE will be given at least 21 days advance notice of the hearing.

- 5.5 If the hearing is not conducted on site, the wayleave officer will subsequently inspect the land affected by the electric line, accompanied by NIE representatives and the owner/occupier.
- 5.6 It is possible that the parties may resume negotiations to try to reach a voluntary agreement after a date for a hearing has been set. The Department will agree to a postponement if both parties confirm, in writing, that they no longer wish to proceed with the hearing because they consider there is now a possibility of them reaching an agreement.
- 5.7 In circumstances where more than one request has been made for a hearing into necessary wayleave applications relating to the same electric line, the Department may consider whether to hold concurrent hearings.

Purpose and scope of a necessary wayleave hearing

- 5.8 The purpose of a necessary wayleave hearing is to hear representations as to:-
 - (a) why it is necessary, or expedient, for the electric line to cross the land in question; and
 - (b) what the effects are of the electric line on the use and enjoyment of the land.

- 5.9 In scope, a necessary wayleave hearing is focussed more on establishing the effect on private land interests rather than matters of a more general nature. This means that there is no right for third parties to participate.
- 5.10 Consequently, information that would be relevant at a wayleave hearing is site specific, for example, the effect of the intended installation of the electric line on farming (crops and animals), on the use of machinery, or on wild fauna and flora. Other relevant information is likely to include the cost of any suggestions for local diversions of the application route (typically up to a maximum of 500 metres on either side of the proposed route).
- 5.11 Following the hearing, the wayleave officer may also seek, from any other relevant source, any further information he requires to assist him to reach firm conclusions and a reasoned recommendation as to whether a necessary wayleave should be granted by the Department.

Procedures where the owner/occupier opts only to make written representations

- 5.12 An owner/occupier may opt to make only written representations in respect of an application for a necessary wayleave for the proposed installation or retention of the electric line across his land ie rather than personally present his objections to a wayleave officer at an oral hearing.
- 5.13 In these circumstances, the Department will similarly appoint an independent wayleave officer to handle the case, and write to the owner/occupier setting a date (at least 14 days from the date of the letter) by which the wayleave officer and NIE should receive a written statement of the owner/occupier's objections.

The Department will also write to NIE pointing out, amongst other things, that it will have 14 days from the date for receipt by the wayleave officer and the company of the owner/occupier's statement to submit to the wayleave officer its response to the statement.

- 5.14 If he considers it necessary, the wayleave officer will seek clarification from the owner/occupier of any aspect of his written statement or NIE's response to the statement through an exchange of correspondence with him, and will copy this to NIE for comment.
- 5.15 The wayleave officer will also meet with a representative(s) of NIE (preferably on site) to discuss the owner/occupier's and the company's representations, and to view the route of the existing or intended electric line.
- 5.16 In addition, the wayleave officer will obtain any information he requires from any other relevant source, to assist him to reach firm conclusions and a reasoned recommendation as to whether a necessary wayleave should be granted by the Department.

Procedures where the owner/occupier declines an opportunity to be heard

- 5.17 On occasion, an owner/occupier may opt not to avail of his statutory right to be heard in response to an application by NIE to the Department for a necessary wayleave for the installation or retention of an electric line across his lands.
- 5.18 The Department will, nevertheless, nominate a wayleave officer to consider the representations by NIE, and to recommend whether a necessary wayleave should be granted.

- 5.19 The wayleave officer will arrange to meet representatives of NIE (preferably on site) to discuss its representations and the refusal of the owner/occupier to grant a voluntary wayleave.
- 5.20 Again, the wayleave officer will obtain any further information he requires to enable him to reach firm conclusions and a reasoned recommendation as to whether a necessary wayleave should be granted.

6. **AFTER THE REPRESENTATIONS BY THE OWNER/OCCUPIER AND NIE ARE HEARD**

- 6.1 After hearing the representations by the owner/occupier and NIE on the company's application to the Department for the grant of a necessary wayleave, the wayleave officer will submit a written report to the Department.
- 6.2 This will record and analyse the respective representations and any other relevant information; and reach firm conclusions and a reasoned recommendation as to whether the Department should grant a necessary wayleave for the installation, or retention, of the electric line across the land in question.
- 6.3 The Department will then consider the report, along with any additional information it considers relevant, before reaching its decision on whether to grant a necessary wayleave. The Department's decision is legally binding on both parties.
- 6.4 By virtue of **paragraph 10(8) of Schedule 4 to the 1992 Order**, a necessary wayleave which has been granted by the Department shall bind any person who is at any time the owner or occupier of the land.
- 6.5 The aim is that the parties will be notified by the Department of its decision within six weeks of their representations being heard. This will be in the form of a letter accompanied by a copy of the wayleave officer's report and, if a necessary wayleave is being granted, the wayleave document itself.
- 6.6 The overall process from receipt of an application to notification of the Department's decision will usually take between 3-4 months. However, it is evitable that, for a variety of reasons, some cases may take longer.

7. **COMPENSATION**

- 7.1 Questions of compensation payments in respect of a necessary wayleave will not be addressed by the wayleave officer in hearing the representations by the owner/occupier and NIE (although issues which relate to the impact on the use and enjoyment of the land and may subsequently be subject to a claim for compensation may be raised by either party).
- 7.2 The Department has no power under **Schedule 4 to the 1992 Order** to prescribe financial conditions in any wayleave it may grant or to resolve disputes on the level of compensation.
- 7.3 Financial compensation falls to be settled by agreement between the parties or, failing agreement, by the Lands Tribunal at the request of either party (**see paragraph 11 of Schedule 4 to the 1992 Order**).

8. **COSTS**

8.1 There is no provision under **Schedule 4 to the 1992 Order** for reimbursement of the costs of the parties associated with the processing by the Department of an application for a necessary wayleave.

8.2 Both the owner/occupier and NIE must therefore bear their own costs.

Department of Enterprise, Trade and Investment
Energy Division

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