

**Electricity Act Schedule 9 statement
consultation**

Executive summary

The electricity industry potentially has significant impacts on the landscape and on items of natural and cultural significance. These impacts are managed by a range of legislation including Schedule 9 of the Electricity Act 1989 (as amended) ("the Act"). Schedule 9 requires licensees to take these matters (referred to in the Schedule as "amenity") into account when carrying out certain works.

Licence holders and persons authorised by exemption to generate, transmit, distribute or supply electricity in England, Wales and Scotland have obligations under Section 38 and Schedule 9 of the Act. These persons are required to have regard to preserving amenity (and fisheries in Scotland) when proposing to carry out specific works that are set out in the legislation.

Licence holders and those authorised by exemption must also mitigate any impacts which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.

Licence holders must produce a statement setting out how they will comply with the requirements under Schedule 9. This must be done within 12 months of the licence being granted. This requirement does not apply to those authorised by exemption.

Schedule 9 requires each licensee to consult with named bodies on Schedule 9 statements, such as English Nature, English Heritage, Cadw: Welsh Historic Monuments and Scottish Natural Heritage who are statutory consultees under the Act (see Chapter 2 for a full list of the statutory consultees). Throughout this document these bodies are referred to as "the statutory consultees".

Reason for this consultation

Ofgem does not have a direct role in relation to Schedule 9, although Ofgem's predecessor had some administrative arrangements in place for notifying licensees of their requirements. In consulting on the Environmental Action Plan (EAP), Ofgem found that compliance with Schedule 9 is uneven and that there is some concern about many issues surrounding the provision. It is also important that the position of various classes of licensees in relation to Schedule 9 is clarified following the significant changes

resulting from the Utilities Act, including the separation of supply and distribution licences.

After informal meetings with most of the statutory consultees, the DTI and a number of licensees Ofgem undertook to consult with all interested parties so as to:

- ◆ examine the current administrative arrangements for Schedule 9, and
- ◆ seek views on the usefulness of the model Schedule 9 statements.

Scope of this consultation

This consultation seeks views from all interested parties on a range of issues set out in this document. Some of the key questions asked in this consultation include:

A proportional approach

The requirements under Schedule 9 apply to large and small licensees alike. Ofgem recognises that the regulatory and administrative burden will have a differing impact depending on the size of the operation. Large multi-site generators, transmission operators and distribution companies have the resources to consult in detail and develop individual Schedule 9 statements. Draft guidance to assist companies in this process is suggested and views would be welcome. It may also be appropriate for smaller-scale licensees and single-site generators to use a model statement. This would not exempt them from their legal obligations but would allow a reduction in the burden both on the licensees and the statutory consultees.

Activities

The electricity industry works within a detailed environmental regulatory framework. Ofgem seeks views on whether the focus of the Schedule 9 statements should continue to be issues that do not come under other provisions, such as the consents process. This would include work carried out where specific consent is not required such as street works.

Impacts

The matters that have to be taken into account under Schedule 9 are 'natural beauty, flora, fauna and geological or physiographical features of special interest and sites,

buildings and objects of architectural, historic or archaeological interest'. Some statutory consultees have argued that the concept of amenity requires attention to the full environmental agenda including global warming, air quality and water emissions. Ofgem seeks comments on the view that these broader environmental issues are beyond the scope of Schedule 9 as they are covered by specific legislation.

Updating of statements

The Act requires statements to be modified "from time to time". The consensus appears to be that a period of 3 – 5 years would, in the absence of a major change of circumstances, be an appropriate time between updates.

Annual reports

Schedule 9 statements are statements of intent. It has been suggested that one way of keeping interested parties informed of current developments or issues between the updates that come under Schedule 9 would be to issue an annual report. This could form part of a company's overall annual report on environmental performance, for example.

Co-ordination

In the past OFFER took a lead in asking for Schedule 9 statements to be submitted, and met with the statutory consultees when the need arose. If the majority of views in response to this paper are in favour Ofgem is prepared to continue this arrangement and could also undertake to:

- include Schedule 9 material in information packs to prospective licensees,
- keep a central record of Schedule 9 statements
- facilitate an annual workshop on Schedule 9 matters.

Responses to this consultation will be discussed with DTI. Any resulting guidance will be circulated with interested parties.

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1. Introduction

Purpose of this document

- 1.1 The electricity industry potentially has significant impacts on the landscape and on items of natural and cultural heritage. These impacts are managed by a range of legislation, including Schedule 9 of the Electricity Act 1989 (as amended) ("the Act"). This requires licensees to take these matters (referred to in the Schedule as "amenity") into account when carrying out certain works.
- 1.2 All electricity licence holders, and those authorised by exemption, have obligations under Section 38 and Schedule 9¹ of the Act (See Appendix 2). These state that they must have regard to the preservation of amenity when constructing or operating power stations, installing overhead (or underground) lines, or carrying out other works in connection with the transmission or supply of electricity. In formulating proposals to carry out these works, licensees and those authorised by exemption are also required to mitigate any effects on amenity. Licensees must also prepare a statement setting out how they will meet these obligations, known as a Schedule 9 statement. This statement is the focus of this consultation document.
- 1.3 The consultation² leading up to Ofgem's Environmental Action Plan³ indicated that there was considerable uncertainty surrounding these obligations.
- 1.4 Ofgem has no formal role under Schedule 9 although, historically, Ofgem's predecessor, OFFER, had an administrative arrangement in place for notifying licensees of their requirements. Consultation on Ofgem's Environmental Action Plan during 2000–2001 highlighted a need for clarification on aspects of Schedule 9. Following publication of the Environmental Action Plan, Ofgem sent a letter to all electricity licensees and interested parties in November 2001 setting out its intention to consult on certain administrative aspects of Schedule 9.

¹ Section 38 of the Act refers to Schedule 9.

² Ofgem *Environmental Action Plan A Discussion Paper* July 2000

³ Ofgem *Environmental Action Plan* August 2001 No. 50/01

- 1.5 Since that time, Ofgem has held meetings with a number of electricity companies, the DTI and most of the statutory consultees. This document sets out the issues raised in those meetings, concerning the current administrative arrangements for Schedule 9.

Status of this document

- 1.6 This document sets out options for updating and revising administrative procedures for Schedule 9 statements. It does not consider changes to the legislation which would be for Ministers to consult on. There are no current plans to amend the legislation. This document should be read in conjunction with, and should not be seen as a definitive interpretation of, the relevant legislation. Anyone in doubt about how they may be affected by the legislative requirements should seek independent legal advice.

Next steps

- 1.7 Views are invited from interested parties on all issues raised. Replies will be discussed with the DTI. At that point any guidelines will be circulated to interested parties.

Handling of responses

- 1.8 In accordance with Ofgem's normal practice, all responses to this consultation will be available through the Ofgem Library and website. However, if asked to do so we shall respect the confidentiality of any response. Respondents wishing their responses to remain confidential should clearly mark the documents to that effect.

Timetable for consultation

- 1.9 Views are requested by 6 December 2002 and should be sent, preferably by email, to:

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- 1.10 If you have any queries on this document John Costyn on 020 7901 7166 (john.costyn@ofgem.gov.uk) or Alex Thorne on 020 7901 7194 (alex.thorne@ofgem.gov.uk) will be pleased to help.

2. Background

The legislation

- 2.1 Section 38 and Schedule 9 of the Act (see Appendix 2) gives all electricity licensees (and those with licence exemption) in England, Wales and Scotland a duty to 'preserve amenity' (and fisheries in the case of Scotland) in the following cases: 1. constructing or extending a generating station of 10MW or more or to operate such a station in a different manner, 2. installing overhead (or underground) electricity lines, or 3. carrying out any other works for or in connection with the transmission or supply of electricity. These are referred to as the relevant proposals.
- 2.2 Licence holders and those authorised by exemption must also mitigate any impacts which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.
- 2.3 It further requires that licensees draw up a statement setting out how they will meet these obligations. This requirement does not apply to those authorised by exemption. Schedule 9 requires that a '*licence holder shall within 12 months from the grant of his licence prepare, and from time to time modify, a statement setting out the manner in which he proposes to perform his duty*'. The duty is:
- ◆ '*to have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological and physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest*'
 - ◆ and '*shall do what he reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.*'
- 2.4 The Schedule 9 statement is to be updated '*from time to time*'.
- 2.5 The statement must be produced in consultation with the following agencies (where applicable):

- ◆ England:
 - The Countryside Agency
 - Nature Conservancy Council for England (now known as English Nature)
 - Historic Buildings and Monuments Commission for England (known as English Heritage)
- ◆ Wales
 - Countryside Council for Wales
 - Cadw: Welsh Historic Monuments
- ◆ Scotland
 - Ancient Monuments Board for Scotland
 - Historic Buildings Council for Scotland
 - The Fisheries Committee (if the generating station is driven wholly or mainly by water)
 - Scottish Natural Heritage

2.6 In Scotland, hydroelectric generators must co-operate and consult with the Fisheries Committee. The Committee's statutory function is to advise and assist Scottish Ministers and any person engaging in, or proposing to engage in, the generation of hydroelectric power on any question relating to the effect of hydroelectric works on fisheries or stocks of fish.

Who should prepare Schedule 9 statements?

2.7 All licensees are required to produce a Schedule 9 statement.

Large-scale licensees

2.8 At the time of the establishment of the Schedule 9 provision in the Act the licensees consisted mainly of:

- ◆ the three major multi-site generators;
- ◆ the major transmission company;
- ◆ the (former) Public Electricity Suppliers; and
- ◆ the (vertically integrated) Scottish companies.

2.9 Since that time there have been major changes in the structure and ownership of the industry. The major changes have been a broadening of the ownership of major generation assets; the regulatory separation of supply and distribution; and

concentration in the distribution sector. As a result of these changes, the extent of compliance and commitment to the Schedule 9 process is now less clear. This was not addressed in the Utilities Act 2000. Preliminary consultation between Ofgem, the statutory consultees and industry indicates that some licensees have maintained and regularly reviewed their Schedule 9 statements while others have not.

- 2.10 Large-scale generation and distribution businesses are the companies that are most likely to formulate the proposals as outlined in Schedule 9 (ie the “relevant proposals”) and may be the most likely to undertake works that affect amenity.

Small-scale licensees

- 2.11 Prior to the formation of Ofgem in 1999, OFFER, with a view to keeping the burden of regulation to a minimum, issued a model Schedule 9 statement. This was drawn up by the statutory consultees for use by smaller single-site generators, and recognises that licensees whose operations are on a relatively small scale should have less of a regulatory and administrative burden imposed upon them. It is likely that the impact on amenity of these licensees is limited in both scale and area.
- 2.12 Under these arrangements, smaller generators could adopt the model statement in the knowledge that it was acceptable to the statutory consultees in form and content. This served to reduce the administrative burden on both parties.
- 2.13 This is likely to be a particular issue because of the growth in small generators expected as a result of the Renewables Obligation and other Government policies. The principles are also relevant for other small-scale licensees such as local distribution networks.

Suppliers

- 2.14 In 1999, with the introduction of competition in electricity supply to all customers, second-tier supply licenses for domestic supply were established. The question arose as to whether these licensees would be required to produce Schedule 9 statements, since they were unlikely to build and operate distribution or transmission networks and would not undertake “relevant proposals”.

However the requirement to produce a Schedule 9 statement was still required by law.

- 2.15 With the introduction of separate licences for distribution and supply companies in October 2001, all suppliers are now in a similar position to the second-tier suppliers under the previous framework, and are required to produce a statement.

EAP Consultation

- 2.16 In July 2000, Ofgem published a consultation document on its Environmental Action Plan⁴. Paragraph 3.27 states that:

"Ofgem has started to discuss with the Environment Agency whether they might take over responsibility for analysing and reporting on the gas and electricity companies' statements."

- 2.17 The responses to the consultation were varied on the subject of Schedule 9. There was also some confusion as to who currently has responsibility for Schedule 9. The views included the following:

- ◆ responsibility should rest with one agency
- ◆ the Schedule 9 process does not involve Ofgem or the Environment Agency, and there was no basis for anyone taking over responsibility
- ◆ a number of respondents thought that the current level of reporting was satisfactory
- ◆ the bodies already consulted had the most relevant experience, and
- ◆ consistency is needed to ensure comparison of relative performance.

- 2.18 The Environmental Action Plan, issued in August 2001, stated that Ofgem would issue a revised model statement as well as continue to discuss with the Environment Agency its possible input in the Schedule 9 process.

⁴ Ofgem *Environmental Action Plan: a discussion paper* July 2000

These discussions have now been completed, and no role is expected for the Environment Agency.

Abolition of Scottish Bodies

- 2.19 There is currently a Bill before the Scottish Parliament to abolish the Ancient Monuments Board for Scotland and the Historic Buildings Council for Scotland. These are advisory Non-Departmental Public Bodies (NDPB). A consultation was held in 2001 which concluded that a number of NPDB's were no longer required⁵. Progress of the Bill will depend on the legislative timetable. The potential abolition of these Bodies, which licensees are required to consult under Schedule 9 of the Act, raises a number of questions about consultation in Scotland; these issues are addressed in Chapter 4.

Environmental reporting in the electricity industry

- 2.20 Schedule 9 can be seen in the context of a more general environmental reporting framework. In 2001, Ofgem commissioned KPMG to carry out a study on environmental reporting within the gas and electricity sectors. The purpose of the study was to gain a better understanding of existing regulatory requirements and voluntary initiatives and to assess the level of performance as regards environmental reporting across the sector. The main results of the study are available on Ofgem's website⁶.
- 2.21 The report states that the energy sector is in many ways one of the leading industries for environmental reporting. The report states that:

"As described in the Business in the Environment 5th Index of Corporate Environmental Engagement, the utilities sector, comprising electricity, gas and water companies are "heavily regulated". This, together with an above average concern of environmental impacts has resulted in a high incidence of reporting in this sector."

⁵ Public Bodies: Proposals for Change, Scottish Executive, 2001

⁶ www.ofgem.gov.uk

- 2.22 The study showed strong resistance on the part of the companies to mandatory public environmental reporting requirements, reflecting the opinions expressed in the responses to the July 2000 discussion document. The companies described the industry as an already 'heavily regulated' sector, with some companies already sending statutory statements to more than one regulatory agency. Some respondents highlighted the high cost of issuing public environmental reports, while others saw environmental reporting as a good opportunity for competition between companies and enjoyed the current freedom to present data when and how they choose.

Statutory and voluntary environmental reporting

Voluntary reporting

- 2.23 In the last ten years there has been a growing demand from the general public for information on company performance. This has led to an increasing number of companies voluntarily disclosing information to the public. The KPMG study reported that 19 out of a sample group of 29 gas and electricity companies produced an environmental report⁷ in addition to a financial report. Examples of the types of initiatives for voluntary reporting are:

- ◆ Making a Corporate Commitment (MACC)
- ◆ Global Reporting Initiative
- ◆ EMAS – Eco-Management and Audit Scheme

- 2.24 There are also a number of organisations that produce guidelines and instructions designed to help companies who wish to report on their environmental performance, for example:

- ◆ Department for Environment, Food and Rural Affairs (DEFRA)
- ◆ International Chamber of Commerce
- ◆ United Nations Environment Programme

⁷ For the purposes of the KPMG study, an environmental report was defined as a report dedicated to environmental performance, which may include health, safety, social, sustainability or community information, and is published separately from the financial statement.

- 2.25 For a number of years the Electricity Association has been producing a document called 'Electricity and the Environment', the latest of which was published earlier this year. This covers the electricity industry's performance in a number of areas such as sustainable development, climate change, emissions and energy efficiency. For the first time, this year's document included environmental benchmarking indicators for the industry. This shows performance for the past two reporting years against a baseline year of 1990.

Statutory reporting

- 2.26 There is a variety of legislation that requires companies to report certain information to individual agencies, for example the Environment Agency. This information is not released to the public and may include data such as quarterly emissions monitoring data. This requirement falls on electricity generators and gas transporters from a requirement under the Environmental Protection Act. Reporting may also be required under the following:

- ◆ Inventory of Sources and Releases (ISR) which is managed by the Environment Agency who also provide a public version.
- ◆ European Pollutant Emissions Register (EPER)
- ◆ Schedule 9 statements (electricity)
- ◆ Regular reporting is required to Ofgem by suppliers on compliance with the Energy Efficiency Commitment and the Renewables Obligation.

Next steps

- 2.27 It is clear that the energy sector is relatively well developed in the area of environmental reporting both in the amount of statutory reporting that is required and the number of companies that are reporting on their performance voluntarily. However, Ofgem is working with the Environment Agency and DEFRA with a view to developing key performance indicators against which companies can benchmark their performance in a transparent and comparative way.

3. The planning and consents system and Schedule 9

- 3.1 This section examines how Schedule 9 fits into the wider environmental controls that are covered by various pieces of legislation.

Consents

- 3.2 Proposals for new generating stations and extensions to existing stations, and for overhead lines are subject to a system of statutory consent. Proposals for generating stations in England and Wales with an electrical output of over 50 megawatts are subject to the consent of the Secretary of State for Trade and Industry, under Section 36 of the Electricity Act. In Scotland, this is a devolved matter for the Minister for Enterprise and Lifelong Learning.
- 3.3 Stations of 50 MW and below are subject to consent from local planning authorities under the normal planning regime governed by the Town and Country Planning Act 1990. In addition, any power station proposal of 10 MW or more which is proposed to be fuelled by natural gas or oil has to seek clearance from the Secretary of State for Trade and Industry under section 14 of the Energy Act 1976.
- 3.4 All but the most minor overhead line proposals in England and Wales must obtain development consent from the Secretary of State for Trade and Industry, under section 37 of the Electricity Act. In Scotland, this has been devolved to the Minister for Enterprise and Lifelong Learning.
- 3.5 Under Section 36 and 37 of the Electricity Act all applications are notified to the local planning authority and if that authority objects the Secretary of State must call a public inquiry. Even if the local planning authority does not object, the Secretary of State has the discretion to call a public inquiry in the light of objections by other persons.
- 3.6 In processing cases, the DTI considers the environmental consequences of what is proposed. Most power station cases have a formal environmental impact assessment carried out. With overhead lines, the most significant projects have a formal environmental impact assessment (see paragraphs 3.7–3.9 below). Even if a formal environmental impact assessment is not called for, in practice most

developers will carry out some form of environmental assessment. This can take the form of a more limited environmental report or, at a minimum, a statement on how the proposal complies with the company's Schedule 9 obligations.

3.7 With section 36 and section 37 proposals Environmental Impact Assessments (EIA) are always required in the following specific cases as set out in the Electricity Works Regulations⁸:

- ◆ an overhead line of 220kV or more and more than 15km in length
- ◆ a nuclear power station
- ◆ a conventional power station with a heat output of 300MW or more

3.8 The need for an EIA is also determined on a case-by-case basis in the following situations:

- ◆ an overhead line greater than 132kV or any line installed in a sensitive area
- ◆ a conventional power station with a heat output of less than 300MW

3.9 In Scotland, the EIA regulations⁹ set the same thresholds as the England and Wales regulations.

3.10 Some electricity developments are authorised under the normal planning regime governed by the Town and Country Planning Act 1990. Thus smaller power stations and larger sub-station developments are subject to consent from local planning authorities. Such development is subject to the requirements of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1990 and may therefore be subject to an environmental impact assessment.

Sensitive areas

3.11 When considering development in National Parks or other specially designated sites such as Sites of Special Scientific Interest (SSSIs), Areas of Outstanding

⁸ The Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 No. 1927

⁹ The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 SI No. 320

Natural Beauty (AONBs) etc. the consenting authority, whether it is the Secretary of State for Trade and Industry or a local planning authority, needs to take into account appropriate planning guidance and the requirements of other legislation such as:

- ◆ Wildlife and Countryside Act 1981– SSSIs
- ◆ National Parks and Access to the Countryside Act 1949 – National Parks and AONBs.

3.12 Both in implementing development in such areas and in maintaining their developments in such areas electricity licensees will need to comply with the requirements laid down in such legislation.

3.13 Ofgem also has duties under other legislation relating to the environment. For example, the National Parks and Access to the Countryside Act 1949 (as amended by the Environment Act 1995) requires Ofgem, when performing functions in relation to, or so as to affect, land in any National Park, to have regard to certain criteria set out in that Act.

Works not requiring consent

3.14 Electricity licensees are authorised to dig up streets for the purposes of installing, repairing etc. electrical lines or plant by virtue of Schedule 4 of the Electricity Act.

3.15 Electricity licensees are also permitted to carry out some works without needing specific planning permission. Thus development within certain limitations on operational land, smaller sub-stations, the installation of underground cables, and the alteration of existing lines outside of nationally designated areas within certain limitations, can all be carried out without there being a specific proposal for consent.

4. Issues for consideration

- 4.1 A number of key administrative questions have been identified for inclusion in this consultation. These include the activities and environmental impacts that should receive particular emphasis within the general framework created by Schedule 9 and best practice in regard to Schedule 9 statements, including updating and reporting on the statement.

A proportional approach to Schedule 9 statements

- 4.2 Since 1 October 2001, separate licences have been required for generation, transmission, distribution and supply. Although the obligation to produce a Schedule 9 statement applies to all licensees, it is clear that some licensees' functions have more of an impact on the environment than others. This implies a different level of complexity and effort by licensees of different size as their operations are likely to have vastly different impacts on the environment.
- 4.3 Large multi-site generators, transmission operators and distribution companies have the resources to consult in detail with the statutory consultees and other interested parties and develop individual Schedule 9 statements. Draft guidance to assist this process is included in Appendix 1. It may be appropriate for single-site generators and other small-scale licensees to use a model statement to assist in the discharge of their duties. This would not exempt them from their legal obligations but would allow a reduction in the burden both on the licensees and the statutory consultees. Some small licensees may wish to develop individual statements, or meet the requirements of Schedule 9 in other ways. The existing model statement is included at Appendix 3.
- 4.4 **Ofgem requests views from respondents on the following:**
- 1. Whether the draft guidance (Appendix 1) is useful for those preparing statements**
 - 2. Whether having a model statement (Appendix 3) for use by smaller generators is useful**

3. If so, whether the existing model statement needs updating, and if so along what lines
4. Whether having a model statement for use by suppliers would be useful

Scope of Schedule 9 statements

Activities

- 4.5 The scope of activities covered by Schedule 9 is open-ended. Construction of power stations over 10 MW is identified as well as installation (whether above or below ground) of an electric line. However the inclusion of “any other works for or in connection with the transmission or supply of electricity” means that virtually all activities could conceivably be covered.
- 4.6 As outlined in Chapter 3, the electricity industry works within a detailed framework in relation to developments over certain thresholds and their relationship to items of natural and cultural heritage. Power stations and high voltage overhead lines are covered by the consents process and therefore will include evaluation of the environmental impacts of the development.
- 4.7 Similarly, developments in environmentally sensitive areas, such as National Parks or designated areas, such as SSSIs or AONBs, are covered by specific legislation.
- 4.8 However, as noted in Chapter 3, licensees may undertake certain works without specific consent. While these works may be minor in nature, they could have significant cumulative effects. In these cases Schedule 9 may be the only regulatory means to help ensure protection of amenity.
- 4.9 It would follow, therefore, that an important focus of the Schedule 9 process should be to ensure that licensees not only meet their legal obligations but take particular account of amenity, and fisheries in Scotland, in relation to activities that are not covered by other specific regulation. This would include works carried out under street works and wayleaves powers, and works that affect sites with conservation or heritage values of local or regional (but not necessarily national or international) significance. It would also include day to day operation

eg. general maintenance and emergency work. This focus is reflected in the draft guidance and model statement (Appendices 2 and 3).

- 4.10 **Ofgem seeks comments on the view that, within the framework of Schedule 9 and other relevant legislation, an important focus of Schedule 9 statements should continue to be activities and sites that are not specifically covered by planning consents and regulation.**

Impacts

- 4.11 Schedule 9 of the Act is entitled 'Preservation of Amenity and Fisheries'. The main text of the Schedule refers to the 'desirability of preserving natural beauty, conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic and archaeological interest'.
- 4.12 In its Schedule 9 statement¹⁰, for example, National Grid interpreted amenity to mean the natural environment, cultural heritage, landscape and visual quality. Within the interpretation, impact of its works on communities such as the effects of noise and disturbance from construction is also included.
- 4.13 During the informal consultation the clear consensus emerged that broader environmental issues, such as air quality and greenhouse gas emissions, should not fall under Schedule 9. While these are very important issues, regulation of emissions and reporting requirements are already covered by specific legislation. It seems sensible therefore that Schedule 9 statements should focus particularly, though not exclusively, on nature conservation, scenic, historic, recreation, architectural or archaeological values. This focus is reflected in the draft guidance and model statement (Appendices 1 and 2). It is open to licensees to incorporate the Schedule 9 reports into broader environmental management and reporting processes.
- 4.14 **Ofgem seeks comments on the view that the major focus of Schedule 9 statements should in practice continue to include direct impacts on flora, fauna and geological or physiographical features of special interest and of**

¹⁰ The National Grid Company plc, Electricity Act 1989 Schedule 9 Statement

protecting sites, buildings and objects of architectural, historic and archaeological interest.

Monitoring, reporting and review

Updating of statements

- 4.15 The Act requires that Schedule 9 statements should be updated or modified '*from time to time*'. The model statement stipulates a period of three years. The consensus appears to be that 3 – 5 years is, in the absence of a significant event, an appropriate timeframe. Whatever the timeframe settled on by the company, this should be included in the statement.
- 4.16 **Views on the optimum length of time between updates to Schedule 9 statements are invited.**

Provision of annual reports

- 4.17 It has been suggested to Ofgem that some form of annual reporting should be required in the Schedule 9 process. Schedule 9 statements are relatively static, and are a statement of intention. Annual reports, perhaps part of a company's overall annual environment or financial report, would be a way of keeping the statutory consultees, Ofgem and the public aware of issues specific to each company.
- 4.18 Companies could report on the various issues contained in their Schedule 9 statement and whether they had met the commitments or whether there had been any transgression. Companies could also highlight any environmental programmes or examples of good practice that they have been involved in. this would be on a voluntary basis.
- 4.19 **Ofgem invites views on whether including this information in environmental reports would be a useful way of monitoring and reporting performance under Schedule 9.**

Co-ordination role

- 4.20 In the past OFFER took a lead in asking for Schedule 9 statements to be submitted, and it also held meetings with the statutory consultees when the need

arose. In light of all the evidence it appears that a co-ordination role is needed in relation to Schedule 9 and its requirements. Ofgem would be prepared to maintain this role if there is a majority of views in support of this.

Information packs

- 4.21 Ofgem sends out information packs to all prospective and new licensees. The aim of this is to ensure that prospective licensees are aware of the requirements under the legislation and licence conditions in the electricity industry. Ofgem could undertake to include advice on the requirements of Schedule 9 as part of this information pack.

Record of Schedule 9 statements

- 4.22 Ofgem could also keep a central record of Schedule 9 statements. This could be used to monitor licensees' statements throughout the industry.

Workshops

- 4.23 It has been suggested that an annual workshop to discuss Schedule 9 issues could usefully be held. A forum to discuss problems and ideas and to promote good practice, it could also be a way for smaller licensees to discuss issues with the statutory consultees in a way that has not been possible in the past.
- 4.24 **Views are requested on whether Ofgem should continue to have a co-ordinating role for the Schedule 9 process and to carry out the activities listed above. Views are also requested on whether an annual workshop on Schedule 9 issues would be useful for licensees and statutory consultees.**

Abolition of Scottish Bodies

- 4.25 A Bill¹¹ had been tabled in the Scottish Parliament to, *inter alia*, abolish a number of Non-Departmental Public Bodies in Scotland. This list includes two of the Statutory Bodies relating to Scotland under Schedule 9, the Ancient Monuments Board for Scotland and the Historic Buildings Council for Scotland.

¹¹ Public Appointments and Public Bodies etc. (Scotland) Bill

- 4.26 Assuming that the Bill is passed this would leave licensees having to consult with Scottish Natural Heritage and the Fisheries Committee. There would be no requirement to consult with any organisation with responsibility for the historic environment as is the case in England, (English Heritage) or Wales (Cadw).
- 4.27 For consistency and to ensure a wide range of consultation in Scotland, it may be desirable that licensees are required to consult with a body that has responsibility for the built environment and architecture. The equivalent body in Scotland is Historic Scotland, part of the Scottish Executive. However, in practice, day to day contact on Schedule 9 issues between Historic Scotland and the electricity companies in Scotland already takes place. This has been the case for a number of years. Therefore the abolition of the advisory bodies may not have any significant effect. **Views on this would be welcome.**

Appendix 1 Draft guidance

- 1.1 The following draft guidance is designed to help licensees when they are preparing their Schedule 9 statements. Views on the need and content of this guidance are welcome.

DRAFT GUIDANCE FOR THE PREPARATION OF SCHEDULE 9 STATEMENTS

ELECTRICITY ACT 1989: DUTIES OF PRESERVATION OF AMENITY AND FISHERIES

These guidelines should be read in conjunction with, and should not be seen as a definitive interpretation of, the relevant legislation. Anyone in doubt about how they may be affected by the legislative requirements should seek independent legal advice.

Preparation of the statement

Statements should document the process undertaken to prepare the statement, including the bodies consulted and the methods used to undertake consultation. The range of individuals and groups may go beyond the statutory consultees and might include:

- voluntary organisations with an interest in natural and cultural amenity
- Community groups
- Local and regional government bodies
- Interested members of the public

Scope of the statement

The statement should include a clear description of what matters are included. Schedule 9 refers to amenity in relation to nature conservation, scenic, historic recreation or archaeological values. Individual companies may choose to adopt a broader scope and include other aspects of their social and environmental impacts.

Mitigation

When proposing to undertake works that are likely to have an impact on the environment, steps should be taken to ensure that any impacts are minimised. The statement should set out the steps that will be taken to mitigate any environmental impacts.

Overview of the Company

The statement may include a description of the company's principal activities. This should include the coverage of the statement if it applies to a number of licensees in a single group.

Principles

The statement should detail the licensee's approach to meeting its legal obligations in relation to major works, and also in regard to how it intends to execute its duties in

relation to proposals which do not specifically require consideration of amenity through planning or environmental assessment regulation i.e. projects which fall below thresholds in planning legislation, ongoing maintenance and operations etc.

Inventory of sites of amenity value

The statement may include a commitment to identify relevant sites of amenity value within the Company's area or which may be affected by its activities and the criteria for selecting them.

Training and awareness

Statements may include commitments to ensure that all staff and contractors are aware of the statutory obligations and Schedule 9 commitments and include details as to how this is to be implemented and quality assured.

Monitoring and Reporting

The Schedule 9 statement may detail how the company will present, monitor and report upon the statement. This could include the frequency of reporting, the performance indicators to be used and the method of publication.

Consultation and review

The Statement may document the steps to be taken to ensure that there is an ongoing constructive dialogue with the statutory consultees and other relevant interested parties. The statement should also detail the process and frequency for review.

Appendix 2 Schedule 9 of the Electricity Act 1989

SCHEDULE 9

PRESERVATION OF AMENITY AND FISHERIES

Preservation of amenity: England and Wales

1.-(1) In formulating any relevant proposals, a licence holder or a person authorised by exemption to generate, transmit, distribute or supply electricity-

- (a) shall have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest; and
- (b) shall do what he reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.

(2) In considering any relevant proposals for which his consent is required under section 36 or 37 of this Act, the Secretary of State shall have regard to-

- (a) the desirability of the matters mentioned in paragraph (a) of sub-paragraph (1) above; and
- (b) the extent to which the person by whom the proposals were formulated has complied with his duty under paragraph (b) of that sub-paragraph.

(3) In this paragraph-

"building" includes structure;

"relevant proposals" means any proposals -

- (a) for the construction or extension of a generating station of a capacity not less than 10 megawatts, or for the operation of such a station in a different manner;
- (b) for the installation (whether above or below ground) of an electric line; or
- (c) for the execution of any other works for or in connection with the transmission or supply of electricity.

(4) The Secretary of State may by order provide that sub-paragraph (3) above shall have effect as if for the capacity mentioned in paragraph (a) there were substituted such other capacity as may be specified in the order.

(5) This paragraph and paragraph 2 below extend to England and Wales only.

2.-(1) A licence holder shall within twelve months from the grant of his licence prepare, and from time to time modify, a statement setting out the manner in which he proposes to perform his duty under paragraph 1(1) above, including in particular the consultation procedures which he intends to follow.

(2) Before preparing or modifying a statement under this paragraph, a licence holder shall consult with the [*Countryside Agency*], [and-

- (a) *where the activities which he is authorised by his licence to carry on include activities in England, the Nature Conservancy Council for England and the Historic Buildings and Monuments Commission for England; and*

(b) where those activities include activities in Wales [*the Countryside Council for Wales and* the Historic Buildings Council for Wales.

(3) As soon as practicable after preparing or modifying a statement under this paragraph, the licence holder shall publish the statement as so prepared or so modified in such manner as he considers appropriate. Preservation of amenity and fisheries: Scotland

3.-(1) In formulating any relevant proposals, a licence holder or a person authorised by an exemption to generate, transmit, distribute or supply electricity-

(a) shall have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest; and

(b) shall do what he reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.

(2) In considering any relevant proposals for which his consent is required under section 36 or 37 of this Act, the Secretary of State shall have regard to-

(a) the desirability of the matters mentioned in paragraph (a) of sub-paragraph (1) above; and

(b) the extent to which the person by whom the proposals were formulated has complied with his duty under paragraph (b) of that sub-paragraph.

(3) Without prejudice to sub-paragraphs (1) and (2) above, in exercising any relevant functions each of the following, namely, a licence holder, a person authorised by an exemption to generate or supply electricity and the Secretary of State shall avoid, so far as possible, causing injury to fisheries or to the stock of fish in any waters.

(4) In this paragraph-

"building" includes structure;

"relevant proposals" has the same meaning as in paragraph 1 above and, for the purposes of this paragraph, any such order as is mentioned in sub-paragraph (4) of that paragraph may be made under this sub-paragraph;

"relevant functions" means any powers conferred and any duties imposed by or under this Act.

(5) This paragraph and paragraphs 4 and 5 below extend to Scotland only.

4.-(1) A licence holder shall within twelve months from the grant of his licence prepare, and from time to time modify, a statement setting out the manner in which he proposes to perform his duty under paragraph 3(1) above, including in particular the consultation procedures which he intends to follow.

(2) Before preparing or modifying a statement under this paragraph, a licence holder shall consult with Scottish Natural Heritage the Ancient Monuments Board for Scotland and the Historic Buildings Council for Scotland.

(3) As soon as practicable after preparing or modifying a statement under this paragraph, the licence holder shall publish the statement as so prepared or so modified in such a manner as he considers appropriate. Fisheries Committee: Scotland

5.-(1) The Fisheries Committee appointed under section 5(2) of the Electricity (Scotland) Act 1979 shall continue in existence, and shall have the function of giving advice and

assistance (whether specifically requested or not), on questions relating to the effect in Scotland-

(a) on fisheries, or

(b) on the stock of fish in any waters,

of generating stations wholly or mainly driven by water, to the Secretary of State and to any person engaged in, or proposing to engage in, the operations of such a generating station.

(2) The Committee shall consist of such number of person, appointed by the Secretary of State, as he may think proper.

(3) The Committee shall have power to regulate its own procedure.

(4) Persons engaged in, or proposing to engage in, the operating of such a generating station as is mentioned in sub-paragraph (1) above shall furnish to the Committee any maps, plans drawings or information which the Committee may reasonably require, and give to the Committee reasonable facilities for inspection.

(5) A person making application to the Secretary of State for consent under section 36 of this Act as respects such a generating station as is mentioned in sub-paragraph (1) above shall, before or on doing so, consult the Committee as regards the matter to which the application relates.

(6) Upon being so consulted the Committee may make recommendations to the applicant or to any other person and shall transmit a copy of the recommendations to the Secretary of State; and the applicant shall intimate to the Committee and to the Secretary of State whether or not he is prepared to give effect to such recommendations as have been made to him.

(7) If an applicant is not prepared to give effect to a recommendation made to him under sub-paragraph (6) above, the Secretary of State may, after considering any representation made, refuse the consent applied for.

(8) Any expenses reasonably incurred by the Committee shall be defrayed by the Secretary of State out of money provided by Parliament.

(9) Where recommendations are made under sub-paragraph (6) above to a person other than the applicant, that person shall have regard to the recommendations in carrying out any activities to which they are relevant.

Appendix 3 Existing model statement

MODEL SCHEDULE 9 STATEMENT AS APPLICABLE TO A SINGLE SITE GENERATOR

ELECTRICITY ACT 1989: DUTIES OF PRESERVATION OF AMENITY AND FISHERIES

SCHEDULE 9 STATEMENT

Introduction

This statement sets out how [] will carry out its statutory duty under Section 38 of the Electricity Act 1989 to preserve amenity, as described in Schedule 9 of the Act.

This statement has been prepared after consultation with the Schedule 9 statutory consultees, English Nature, the Countryside Commission, the Historic Buildings and Monuments Commission for England (English Heritage), the Countryside Council for Wales and Welsh Historic Monuments (Cadw) where applicable and it will be reviewed in consultation with these bodies at not less than three yearly intervals.

[Description of the company's principal activities (what and where), date of coming into being and date of grant of licence.

Schedule 9

Schedule 9 of the Electricity Act requires that a licence holder, or a person authorised by exemption to generate or supply electricity, must within 12 months from the grant of the licence prepare, and from time to time modify, a statement (generally referred to as the Schedule 9 statement). This Schedule 9 statement should set out the manner in which certain duties relating to the preservation of amenity are to be performed. According to Schedule 9, these duties are as follows:

In formulating any relevant proposals, a licence holder or a person authorised by exemption to generate or supply electricity.

“shall have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features or special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest; and

shall do what he reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features site, buildings or objects;”

Relevant proposals include the following:

- the construction or extension of a generating station of a capacity not less than 10 MW, or for the operation of such a station in a different manner;
- the installation of an electric line (above or below ground); or

- the execution of any other works for or in connection with the transmission or supply of electricity.

Consultation

[] commit themselves to consulting the Schedule 9 consultees and where appropriate other non-statutory organisations when modifying the statement. The Schedule 9 statement will be reviewed periodically and if necessary updated. The results of the review will be reported.

Consultations with the Schedule 9 statutory consultees and other relevant bodies, as the Company feels appropriate, will be undertaken on an ongoing basis to establish constructive dialogue with these bodies on major amenity issues relevant to the Company's activities.

Planning

[] will comply with statutory provisions regulations for the preservation of amenity and fisheries. The term 'amenity' in this context refers to sites of nature conservation value; areas of scenic, historic or recreation value; buildings or archaeological value; and physical features of value.

In acknowledgement of a commitment to environmental sustainability [] will consult relevant statutory authorities and other appropriate organisations at the earliest time practicable on relevant proposals and on the assessment of their possible adverse effects. These consultations will be undertaken as necessary as projects progress. Where required, an environmental assessment will be produced to accompany the relevant planning application.

"When assessing the potential effects of relevant proposals [] will seek to protect all natural or cultural resources deemed to be of special importance. In the case of resources of lesser importance, where some loss of environmental quality may be unavoidable, mitigating measures will be sought wherever reasonably practicable, to offset any potentially adverse effects upon amenity. To offset unavoidable loss of natural or cultural resources, the company may propose environmental compensatory measures, including, where appropriate, habitat enhancement and other creative conservation schemes. Where development will cause unavoidable loss or damage to buildings or features of architectural or archaeological interest, a full record will be made of all such buildings or features".

In formulating any relevant proposals, [] will, as far as reasonably possible, seek to exclude them from areas designated for their amenity value and minimise disturbance of amenity within such areas. For this purpose [] commit themselves to the preparation of a central database of all sites of amenity value within the Company's area.

Operations

Environmental audits on operations and landholdings will be undertaken to monitor the effectiveness of protection measures implemented as well as to identify potential environmental impacts of the Company's operations.

[] commit themselves to manage all landholdings sensitively and particularly those of amenity interest. Areas adjacent to designated areas of amenity interest will be maintained and managed especially carefully.

Other issues

The Schedule 9 statement will be made available to the public and the consultees as will a regular report on measures taken to implement Schedule 9 commitments. The statement will be reviewed at any such time that the company extends its operations beyond the present power station and updated if necessary.

[] will also produce an Environmental Policy Statement to include the company's environmental strategy in areas such as emission control, energy efficiency and recycling. Details will include specific targets and timetables for action.

Contractors will be made aware of the Company's commitments contained therein and will be required to respect them as a part of their contractual obligations.

[] commit themselves to staff training leading to an increase in environmental awareness. A member of staff will be appointed responsible for environmental matters.

[] will review research relevant to the assessment and mitigation of the potential environmental impacts associated with its operations.

External environmental consultants will be used where in house expertise is not available.