

Electricity Act Schedule 9 statement

Summary of responses and decision document

March 2003 17/03

Summary

The impact of the electricity industry on the landscape and on items of natural and cultural heritage is the subject of a range of legislation, including Schedule 9 of the Electricity Act 1989 (as amended). This requires licensees (and persons authorised by exemption to generate, transmit, distribute or supply electricity in Great Britain) to have regard to preserving amenity (and fisheries in Scotland) when proposing to carry out specific works set out in the legislation, and to 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. 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. These are referred to as statutory consultees.

In September 2002 Ofgem issued a consultation paper setting out proposals for updating and revising administrative procedures for Schedule 9 statements. This document sets out what Ofgem's role will be in carrying out administrative arrangements in relation to Schedule 9 in the light of the submissions received to the consultation document issued in September 2002¹. Responses to the consultation have also been shared with the DTI, given their responsibilities in this area.

Guidance

Ofgem will publish guidance on Schedule 9 statements. This will be primarily to assist smaller licensees and new entrants who are not familiar with the requirements under the Act. The guidance will be voluntary and companies will be free to take a different approach to the one suggested in the guidance so long as it complies with their legal obligations.

Model statement

The model statement has been recognised as a useful method for smaller licensees to discharge their duties. The statement was designed by the statutory consultees and goes beyond the minimum requirements set out in the Act, to identify good practice. As with

¹ Ofgem *Electricity Act schedule 9 statements consultation* September 2002

the guidance above, use of the model statement is voluntary and companies are free to produce their own statement if they feel that it would better reflect their businesses. Ofgem proposes to facilitate the updating of the current model statement by statutory consultees.

Updating of statements

Ofgem believes that good practice would be for licensees to review statements at least every 5 years, in the absence of a significant event. For example, reviews could be triggered by events such as changes in company ownership or price controls. If a review found that the statement was no longer relevant then a full update should follow.

Scope and impacts

The majority of respondents agreed that the scope of Schedule 9 statements should continue to be activities and sites that are not specifically covered by planning consents and regulation. Some respondents suggested some changes to the scope of Schedule 9. Ofgem has no role in altering the scope of Schedule 9 as it is a matter for Parliament.

There was general agreement on the issue that Schedule 9 should avoid duplicating other areas where regulation is established. This includes issues such as air quality and greenhouse gas emissions. Legislation in these areas has expanded significantly since the Schedule 9 duties were first set down. Ofgem accepts this view.

Reporting

Ofgem considers that including reference to Schedule 9 in environmental reports is good practice as it keeps interested parties up to date on relevant issues. Many companies already carry out wide ranging dialogue with stakeholders when producing their annual reports which give interested parties an opportunity to raise issues of significance for inclusion. Ofgem therefore agrees that including Schedule 9 issues in annual reports should remain discretionary.

Co-ordination

Ofgem will carry out an administrative role in relation to Schedule 9, the purpose of which will be to assist new entrants. This will include the following:

- ◆ providing copies of the guidance on Schedule 9 statements to new or potential licensees, which will give them an introduction to the requirements under the Act, and

- ◆ providing copies of the model Schedule 9 statement to new or potential licensees, enabling smaller licensees to discharge their functions in a relatively standard format that is acceptable to the statutory consultees.

Ofgem is prepared to assist in the organisation of workshops on Schedule 9 statements, and invites licensees to send Ofgem copies of their statements for information purposes.

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1. Rationale

- 1.1 Under the Electricity Act 1989 (as amended) Ofgem has a duty to have regard to the effect on the environment of activities connected with the generation, transmission, distribution and supply of electricity.

Issue

- 1.2 As part of this duty and to address wider environmental concerns, Ofgem published its Environmental Action Plan in August 2001. A commitment to consult on Schedule 9 statements was included in the Environmental Action Plan. This was as a result of uncertainty expressed during the consultation about the role of Schedule 9 and who held responsibility for the provision. A consultation document was issued in September 2002 which set out Ofgem's suggestions for updating the administrative arrangements for Schedule 9, to which 25 responses were received. These are available on the Ofgem website.

Objective

- 1.3 The objective of this document is to set out Ofgem's continuing role in Schedule 9 and help clarify understanding within the industry and for interested parties of how the Schedule 9 provision works and who has responsibilities and duties under the provision. It also highlights good practice that Ofgem recommends be adopted when producing or reviewing Schedule 9 statements.

Policy

- 1.4 The consultation focussed on:
- ◆ the model Schedule 9 statement;
 - ◆ Ofgem's draft guidance;
 - ◆ time between updates;
 - ◆ scope and impacts of Schedule 9, and
 - ◆ Ofgem's co-ordination role.

- 1.5 Ofgem will be issuing guidance for those preparing Schedule 9 statements and copies of the model statement in the licensing pack that is issued to new or prospective licensees. It also recommends that statements should be reviewed every 5 years or in the event of a specific circumstances such as a change in ownership.
- 1.6 The purpose of the guidance and model statement is to assist smaller licensees or new entrants who have not had experience in preparing a Schedule 9 statement before. However these documents are not prescriptive and are entirely voluntary, ensuring that companies may follow their own route to producing a tailored statement if this would better reflect their business.
- 1.7 The model statement and guidance go beyond the minimum requirements set out in the legislation to reflect best practice. Following this would have a positive impact on the environment as the policies set out in the statements directly affect the environment in the vicinity of generating stations and overhead lines etc.
- 1.8 It is not expected that the policy will have an impact on the interests of special consumers for which Ofgem has a specific duty, including the sick and disabled, the elderly, those on low income and those in rural areas.
- 1.9 There is minimal impact on Ofgem in terms of costs or staffing requirements as the licensee pack is already available for new entrants, and the periodic requesting of Schedule 9 statements is not work intensive.
- 1.10 All licensees are required to have a Schedule 9 statement already so there is no change to the compliance issues relating to Schedule 9 statements. The aim of the consultation was to improve understanding in the industry and among the statutory consultees about Schedule 9 issues, as there was significant confusion highlighted in the responses to the Environmental Action Plan consultation document published in July 2000. Furthermore, the guidance and model statement should reduce the regulatory burden on smaller licensees and new entrants.

2. Introduction

- 2.1 The electricity industry potentially has significant impacts on the landscape and on items of natural and cultural heritage. These impacts are the subject of 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.
- 2.2 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.
- 2.3 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.
- 2.4 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.
- 2.5 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. These are referred to as statutory consultees under the Act.
- 2.6 In September 2002, Ofgem issued a consultation paper setting out proposals for updating and revising administrative procedures for Schedule 9 statements. 25 responses were received and a summary of these is included in chapter 3. This document summarises the responses and sets out the decisions that Ofgem has made in each of the relevant areas.
- 2.7 If you have any queries on this document please contact John Costyn on 020 7901 7166 (john.costyn@ofgem.gov.uk) or Alex Thorne on 020 7901 7194 (alex.thorne@ofgem.gov.uk).

3. Summary of responses

General Comments

Respondents' views

- 3.1 Most respondents welcomed the draft proposals on a number of key administrative questions for Schedule 9. These included 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.
- 3.2 Some respondents stated that the proposals sought to expand the duties on electricity companies which are over and above duties on others in the energy sector and in other industries more generally. A number of respondents stated that the Schedule 9 process did not have any continuing relevance and value in light of environmental regulations that have been introduced since Schedule 9 was created.

Ofgem response

- 3.3 Ofgem has an interest in promoting environmental best practice where this does not involve excessive costs to consumers. Ofgem carried out the consultation as a result of the uncertainty surrounding the Schedule 9 obligations that emerged as a result of the consultation on Ofgem's draft Environmental Action Plan².
- 3.4 Ofgem recognises that the energy sector, and especially the electricity industry, is relatively well developed in terms of environmental reporting. In consulting on Schedule 9, Ofgem was seeking to clarify what was required of companies and to provide a suggested updated model statement and guidance for smaller licensees and suppliers who have a limited impact on amenity.
- 3.5 Ofgem consulted with the DTI closely before issuing the consultation but has no power to change the requirements under Schedule 9. Ofgem has passed on comments regarding the continuing relevance of the Schedule 9 provision to the Department.

Draft guidance (4.4)³

- 3.6 Views were requested on the suggested draft guidance for those preparing statements.

Respondents' views

- 3.7 The majority of respondents thought that the draft guidance would be useful for those preparing statements. It was suggested that the guidance should be flexible and recognise that licensees should be able to take a different approach if they thought that this would better reflect the nature of their business. Some respondents argued that the guidance should set out the minimum requirements demanded by the legislation and make it clear that going beyond this was voluntary.
- 3.8 A number of respondents stated that any guidance provided by Ofgem regarding Schedule 9 statements to new licensees should be paid for by those companies, rather than as part of Ofgem's regulatory activities.

Ofgem response

- 3.9 The guidance offered by Ofgem reflects good practice that has been developed since Schedule 9 was first introduced, and this goes beyond the minimum required by the legislation.
- 3.10 The guidance is voluntary and should not be seen as a definitive interpretation of the relevant legislation. If licensees want to take a different approach than the one suggested in the guidance then they are free to do so. They will need to be sure that their interpretation of the regulations is legally correct. Appropriate rules will be provided with the guidance to reflect this. Ofgem will issue guidance on the requirements of Schedule 9 and on best practice to licence applicants and on request. The guidance will include appropriate assurances about its voluntary status.

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

³ Numbers in brackets relate to paragraph number in the consultation document

- 3.11 If companies feel that changes are required to the guidance that Ofgem will issue, then please submit these in writing to the address in the introduction. These will be considered and periodic updates to the guidance will be issued.
- 3.12 Ofgem does not envisage any work it undertakes in respect of Schedule 9 being unduly onerous. Providing guidance and model statements would be primarily intended for new or potential licensees and others that requested information. This is not expected to impose a significant cost burden on Ofgem or licensees.

Model statement (4.4)

- 3.13 Views were requested on use of a model statement by smaller generators and suppliers.

Respondents' views

- 3.14 A majority of respondents were in favour of the model statement, stating that it is useful as a starting point for smaller companies who are not familiar with the Schedule 9 process. However, a number of respondents thought that it should be clear in the model statement which activities are a legal requirement and which are suggestions by Ofgem for good practice that go beyond the minimum requirements. Some also thought that the companies concerned should pay for using this service.
- 3.15 One respondent did not agree that the proportional approach should be based on the scale of the environmental impact rather than the scale of the operation operated by the licensee.
- 3.16 Views were mixed about the need for a model statement for use by suppliers. One respondent questioned the need for one, suggesting it was difficult to see what impact a supplier would have on amenity.

Ofgem response

- 3.17 The model statement is primarily designed for use by smaller licensees as a way of fulfilling their Schedule 9 duties with the minimum of burden to both themselves and the statutory consultees. As with the guidance above the model statement is entirely voluntary and companies are free to use it as they see fit or

produce their own statement if they think that this would better reflect their business.

- 3.18 Suppliers are required to produce a Schedule 9 statement even though they are unlikely to undertake any 'relevant proposals', as defined in the schedule. For this reason Ofgem consulted on whether a model statement for use by suppliers would be useful. Ofgem has no powers to remove the requirement on suppliers to produce a statement.
- 3.19 Ofgem agrees that the size of any potential environmental impact, rather than the size of the company operations, is a more useful method of deciding the level of consultation required for a Schedule 9 statement. For example companies with generation, distribution or transmission licences are more likely to formulate relevant proposals than suppliers. In this case Ofgem would expect more detailed consultation with statutory consultees and other interested parties.
- 3.20 Ofgem will provide copies of the model statement to assist licensees, on request. This will include appropriate legal warnings on its status. Providing copies of the model statements to new or potential licensees or interested parties is not expected to impose a significant cost burden on Ofgem. Ofgem is currently considering including the model statement on its website.
- 3.21 Some of the respondents to the consultation suggested changes to the content of the model statement. Ofgem believes that any changes to the model statement should be negotiated with the statutory consultees, as it was they who originally produced it.
- 3.22 Ofgem intends to facilitate updating of the model statement by statutory consultees.

Scope of Schedule 9 statements (4.10)

- 3.23 Comments were requested on the scope of Schedule 9, especially on whether the focus of Schedule 9 should continue to be activities and sites that are not specifically covered by planning consents and regulation.

Respondents' views

- 3.24 The vast majority of respondents supported the premise that an important focus of Schedule 9 statements should continue to be activities and sites that are not specifically covered by planning consents and regulation. The electricity industry works within a detailed framework set out by the Electricity Act 1989 (as amended) under the consents process. They agreed that the focus of the Schedule 9 statements should remain unaltered and pointed out that the regulation already represents duties over and above those in other industries.
- 3.25 However one respondent suggested that, in order to address ongoing management of generation or transmission facilities that are not fully addressed in the planning or consents process, a specific site-based addendum to the Schedule 9 statement should be prepared with any new generation or transmission facility. This would focus on any specific commitments in relation to the management of the amenity around that facility.
- 3.26 Another respondent suggested that the scope of Schedule 9 statements should include the environmental impacts of the movement of abnormal loads on roads associated with the electricity industry. It was suggested that these result in increased road congestion, disruption of utilities and closure of roads.

Ofgem response

- 3.27 Any additional sections to the Schedule 9 statement, such as a site-specific addendum relating to the management of generation or transmission facilities, would have to be voluntary.
- 3.28 Ofgem considers that it is not a question of whether abnormal loads come under Schedule 9 or not. Rather, transportation issues in general might be relevant to Schedule 9 if any 'relevant proposals' entail a transport element which might have an impact on amenity. Depending on the nature of the relevant proposals it may be necessary for a licence holder to assess the ways in which transportation choices associated with a relevant proposal affect amenity.

Impacts (4.14)

- 3.29 Views were requested on whether the major focus of Schedule 9 should continue to be direct impacts on flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic and archaeological interest.

Respondent's views

- 3.30 It was widely thought that the Schedule 9 process should avoid duplicating other regulated activities where specific legislation is already in place. This includes issues such as air quality, greenhouse gas emissions and development in environmentally sensitive areas. It was pointed out that regulation on environmental matters grows continuously and has expanded greatly since the Schedule 9 duties were first set down. The Habitats Regulations and the Countryside and Rights of Way Act 2000 (CROW) are two particular areas where controls have been updated. It was stated that CROW has also improved protection for geological and physiographical features.

Ofgem response

- 3.31 Ofgem agrees with the majority of respondents that extension of Schedule 9 to cover issues such as air quality is not required. This area is already regulated by the Environment Agency and SEPA through the IPC/IPPC regimes. The recent legislation mentioned above has also improved environmental protection in other areas. In addition licensed electricity companies and Ofgem have duties under the National Parks and Access to the Countryside Act 1949 (as amended by the Environment Act 1995). This relates to performing functions in relation to, or as to affect, land in any National Park and they are required to have regard to certain criteria set out in that Act. There are also similar provisions under section 85 of the Countryside and Rights of Way Act 2000.

Updating of statements (4.16)

- 3.32 Views were sought on the optimum length of time between updates to the Schedule 9 statements.

Respondents' views

- 3.33 Views on the updating of Schedule 9 statements were split. Some respondents agreed that 3 – 5 years was an appropriate timeframe for updating statements. Others argued that, since the Schedule 9 statement is a generic statement of intent, it should not be subject to a specific timetable. Rather it should be updated in specific circumstances such as changes of ownership.
- 3.34 It was further argued that the necessity to update statements will depend on the type of licensee and also differ between holders of the same type of licence. A blanket timescale for modifications would therefore be unjustified.

Ofgem response

- 3.35 Ofgem recognises that the Schedule 9 statement is a statement of intent which does not need to be updated regularly. However, we are aware of one instance in which a Schedule 9 statement was not updated or modified for at least 10 years. It may be useful to distinguish between updating of statements and reviewing of statements. A review of a Schedule 9 statement may not necessarily result in an update. Reviews could be a periodic method of ensuring the continuing relevance of the statement.
- 3.36 A significant event could also trigger a review of a Schedule 9 statement. Such an event could include a change in ownership of a company, or a change in the operation of a generating station or major changes to legislation. A new price control, for instance, could also have a significant impact which may require an review of a Schedule 9 statement.
- 3.37 Ofgem believes that 5 years is an appropriate timescale for reviews, in the absence of a significant change in circumstances, and because it is consistent with the price control cycle,. It recommends this as good practice.

Provision of annual reports (4.19)

- 3.38 Ofgem invited views on whether companies should report on the Schedule 9 process as part of environmental reporting commitments.

Respondents' views

- 3.39 There was no consensus on this point. Some respondents were in favour of reporting on Schedule 9 activities, stating that this was good practice. Others agreed that reporting is good practice but thought that any reporting on Schedule 9 should remain entirely voluntary. The remainder of respondents who commented on this point were of the opinion that no additional reporting was necessary. One respondent, supported by a number of others, pointed out that environmental reporting and stakeholder dialogue have developed considerably since Schedule 9 was introduced. This dialogue ensures that issues that are of priority will be addressed in the company environmental reports, and this includes Schedule 9 matters.

Ofgem response

- 3.40 Schedule 9 statements are a statement of intent which in the majority of cases do not require additional annual reporting. Some electricity company environmental reports contain references to Schedule 9 but the majority do not. However, as a number of respondents pointed out, any issues particularly relevant to stakeholders should be included in environmental reports as they will be raised in the consultation process. Ofgem considers that including Schedule 9 issues in company environmental reports should remain discretionary.

Co-ordination role (4.20)

- 3.41 Views were requested on whether Ofgem should have a co-ordination role for Schedule 9 issues. This could include providing information to potential licensees, keeping a record of statements and running an annual workshop.

Respondents' views

- 3.42 The majority of respondents agreed that Ofgem should have a co-ordination role, though there was no consensus on what it should be.
- 3.43 Most respondents were in favour of the information packs that Ofgem sends to all prospective and new licensees including information on Schedule 9, although not every respondent commented on this point.

- 3.44 The suggestion that Ofgem could keep a central record of Schedule 9 statements was not widely commented upon. A few respondents supported the idea, while others did not. One stated that it would be of little value and would add to Ofgem's bureaucracy.
- 3.45 Respondents were generally in favour of an annual conference on Schedule 9 matters, but held differing views on who should run it. For instance it was suggested that the Electricity Association would be in a better position to run such a conference rather than Ofgem. Other respondents supported Ofgem running a conference but ensuring that the costs were borne by the attendees rather than being funded out of Ofgem's regulatory income.

Ofgem response

- 3.46 Ofgem will carry out a useful administrative role in relation to Schedule 9 which will be of benefit to new entrants to the electricity industry, which will include the following:
- ◆ providing copies of the guidance on Schedule 9 statements to new or potential licensees which will give them an introduction to the requirements under the Act, and
 - ◆ providing copies of the model Schedule 9 statement to new or potential licensees, enabling smaller licensees to discharge their functions in a relatively standard format that is acceptable to the statutory consultees.
- 3.47 Ofgem is prepared to assist in the organisation of workshops on Schedule 9 statements.
- 3.48 Ofgem does not have a remit to monitor or enforce compliance with Schedule 9 matters. However a number of respondents alluded to this. Scrutiny of the Schedule 9 process could be undertaken by voluntary organisations if there was a demand for this role to be undertaken. Ofgem invites licensees to submit copies of their Schedule 9 statements to Ofgem for information. If individual consumers are interested in obtaining a copy of particular Schedule 9 statements then they should contact the company concerned.

Abolition of Scottish bodies

- 3.49 Views were sought on whether the proposed abolition of the Ancient Monuments Board for Scotland and the Historic Buildings Council for Scotland would have an impact on Schedule 9 consultation in Scotland.

Respondents' views

- 3.50 The majority of respondents stated that the abolition of the Ancient Monuments Board for Scotland and the Historic Buildings Council for Scotland would not have any significant effect on Schedule 9 matters in Scotland. One respondent pointed out that Scottish Ministers have recently decided to establish a successor body, to be known as the Historic Environment Advisory Council for Scotland.

Ofgem response

- 3.51 Ofgem agrees that the proposed changes are unlikely to affect the way that the companies consult on amenity issues in Scotland.

4. Conclusion

- 4.1 Ofgem will continue to take an interest in Schedule 9 matters as part of its wider environmental functions under the Electricity Act (as amended), and is keen to promote best practice in partnership with the statutory consultees. In addition a number of specific actions will be undertaken.
- 4.2 The packs that are sent to new or potential licensees will be updated to include information on Schedule 9 matters, including:
- ◆ Schedule 9 guidance;
 - ◆ the model statement, and
 - ◆ contacts at the statutory consultees.
- 4.3 Ofgem intends to facilitate updating of the model statement by statutory consultees.
- 4.4 Ofgem would encourage companies to send Ofgem copies of their statements, for instance, after a review or update.
- 4.5 Ofgem is prepared to take part in any industry workshops on Schedule 9 matters.
- 4.6 Ofgem will pass on relevant issues on amending the Schedule 9 provision to the Department of Trade and Industry.

Appendix 1 List of respondents

Ancient Monuments Board for Scotland
Aquila Networks
Association of Energy Producers
British Wind Energy Association
Campaign for the Protection of Rural Wales
Confederation of UK Coal Producers
Council for National Parks
Electricity Association
English Nature
Envest Ltd (on behalf of Saltend Cogeneration Co. Ltd)
Friends of the Lake District
Historic Scotland
Innogy
LE Group
National Grid Company
NEDL/YEDL
Powergen
Scottish and Southern Energy
Scottish Natural Heritage
Scottish Power
SEPA
The Fisheries Committee
United Utilities
WPD
Wynns Ltd