Department for
Business, Energy
& Industrial Strategy

Land Rights and Consents for Electricity Network Infrastructure

A call for evidence

Closing date: 15 September 2022

August 2022

Any enquiries regarding this publication should be sent to us at:
ElectricityNetworkConsents@beis.gov.uk

Contents

General information

Why we are consulting

The Department for Business, Energy and Industrial Strategy is seeking information on the role of land rights and consents in the build of electricity network infrastructure, in the context of the transition to an energy system that can deliver net zero and meets our energy security objectives. We want to further understand the current landscape, including to what degree land rights and consents present barriers to the building of electricity network infrastructure.

Consultation details

Issued: 4 August 2022

Respond by: 15 September 2022

Enquiries to:

Net Zero Electricity Networks Team
Department for Business, Energy and Industrial Strategy
3rd Floor, Abbey 1
1 Victoria Street
London
SW1H 0ET

Email: ElectricityNetworkConsents@beis.gov.uk

Consultation reference: Land Rights and Consents for Electricity Network Infrastructure: A Call for Evidence

Audiences: We are keen to hear from all stakeholders with an interest in electricity networks and connections; especially network companies, landowners, land agents, local planning authorities and connection customers, such as housing developers, renewable energy developers and electric vehicle chargepoint installers.

Territorial extent: Great Britain

How to respond

Respond online at: beisgovuk.citizenspace.com/energy-strategy-networks-markets/land-rights-and-consents-electricity-network

or

Email to: ElectricityNetworkConsents@beis.gov.uk

Write to:

Net Zero Electricity Networks Team
Department for Business, Energy and Industrial Strategy
3rd Floor, Abbey 1
1 Victoria Street
London
SW1H 0ET

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our privacy policy.

We will summarise all responses and publish this summary on GOV.UK. The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

If you have any complaints about the way this call for evidence has been conducted, please email: beis.bru@beis.gov.uk.

Introduction

If we are to deliver net zero by 2050 and continue to safeguard Great Britain's energy security, timelines for electricity network build need to be accelerated. As part of the recently announced British Energy Security Strategy, government has committed to dramatically reducing timelines for delivery of transmission (high-voltage) network infrastructure and to speed up the connections process for the distribution (low-voltage) network. This call for evidence seeks information to help government establish whether current land rights and consenting processes for electricity network infrastructure[1] are fit to accommodate the rapid, transformative change to the electricity network that will be required in the coming decades.

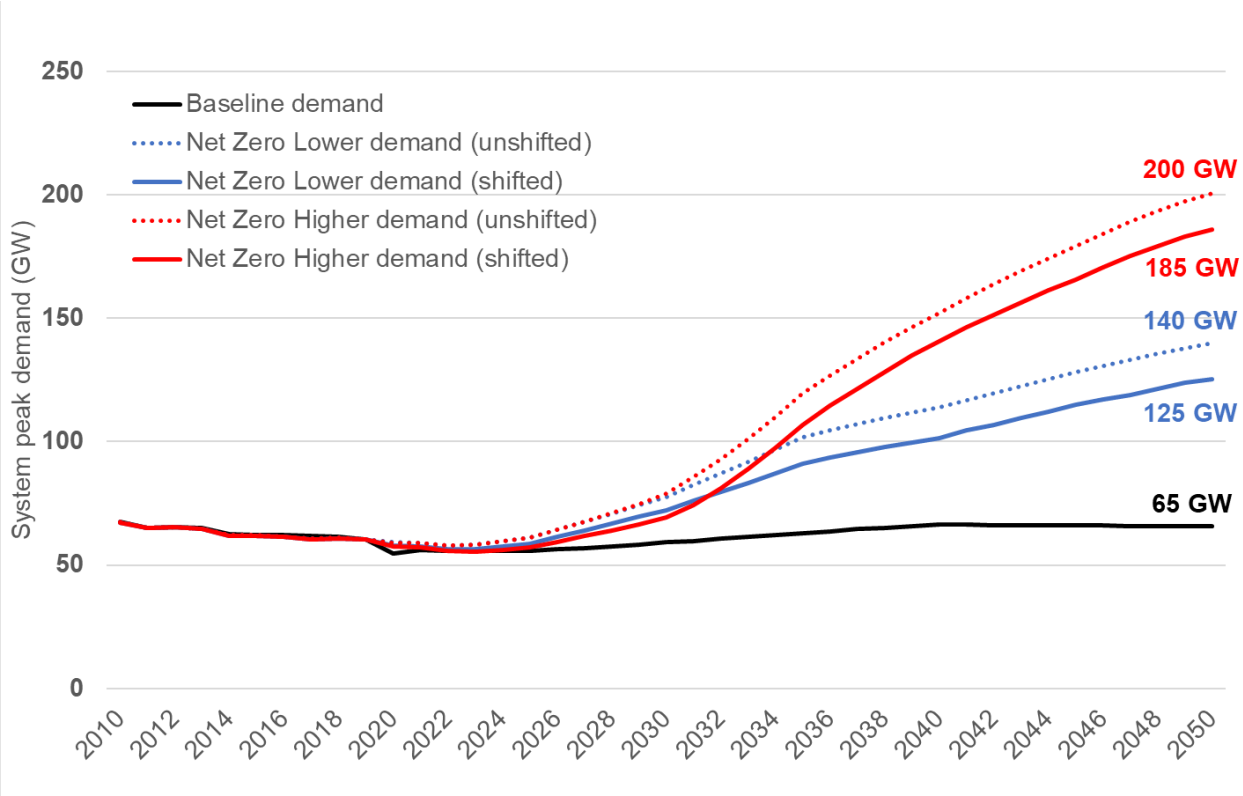
In 2019, the UK became the first major economy in the world to commit to a legally binding target of net zero emissions by 2050. Beyond meeting net zero, we must also focus on generating cheaper, cleaner power in Great Britain, to guarantee continuing energy security. Our net zero and energy security objectives are supported by various government targets, including:

- The commitment to decarbonise the electricity system by 2035.
- The phasing out of all new non-zero emission road vehicles by 2040, subject to consultation.
- The aim to install 600,000 heat pumps per year by 2028.
- The ambition to deliver up to 50GW of offshore wind capacity by 2030.
- The ambition to deploy up to 24GW of civil nuclear by 2050.

To meet these ambitions, it is expected that there will be a very significant increase in peak electricity demand – from 58 GW in 2020[2] to between 130-190 GW in 2050[3] depending on the net zero scenario (see Figure 1). The scenario will depend on levels of electricity demand and whether this demand can be shifted outside of peak times. The changes will be significant even in the medium term, with electricity peak demand rising to 90-110 GW by 2035 – an increase of 60-90% on 2020 levels.

[1] Projects that constitute nationally significant infrastructure projects under the Planning Act 2008 are not within the scope of this call for evidence.
[2] NGESO (2021), Winter Outlook Report, p.4, https://www.nationalgrideso.com/research-publications/winter-outlook
[3] BEIS Dynamic Dispatch Model (DDM), Net Zero Lower Demand and Net Zero Higher Demand scenarios.

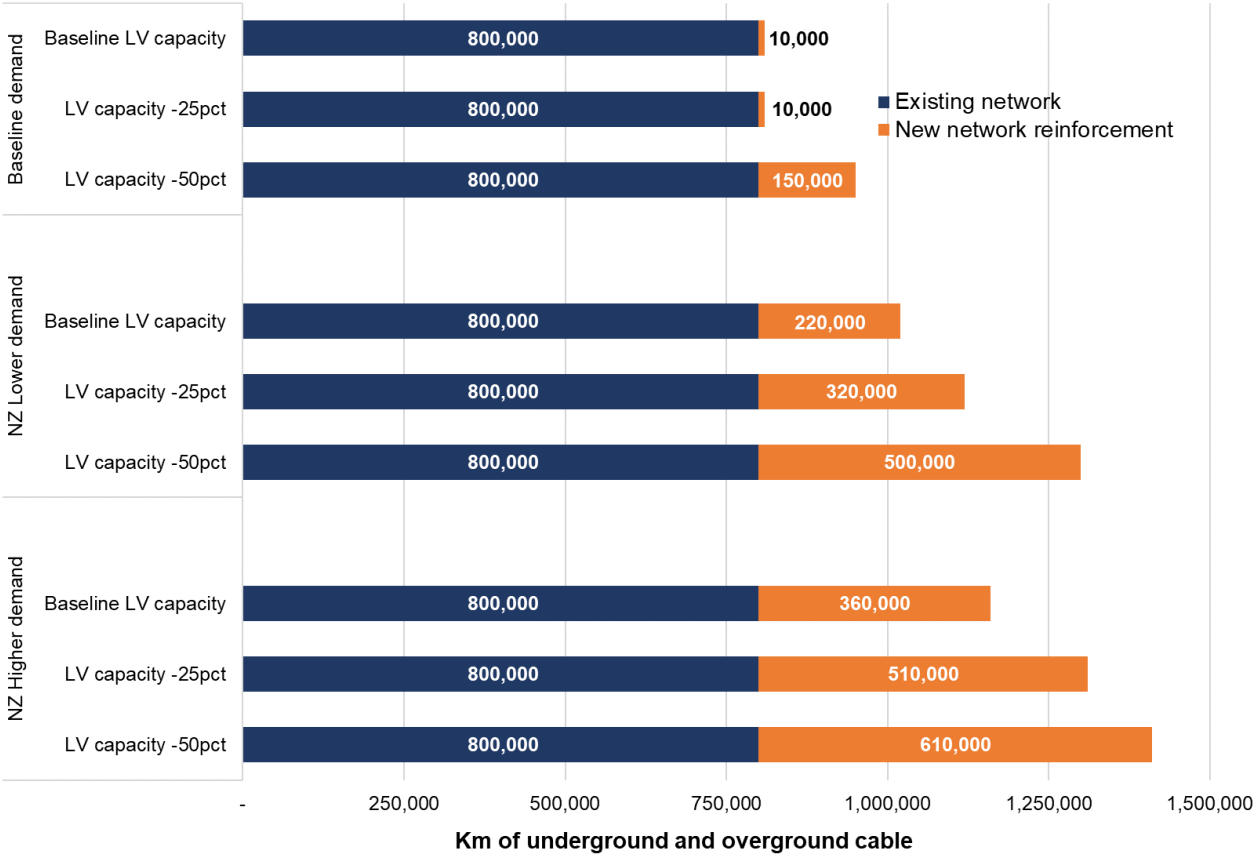
Figure 1: Future system peak demand demonstrating the impact of shifting demand on higher or lower levels of electricity demand



The electricity network will be a fundamental enabler of meeting this increased demand and changed nature of supply, transporting the power from where it is generated to the consumers and businesses who need it. New sources of supply and demand, such as solar farms and electric vehicle chargepoints, will need to be connected to the network and the existing network will need to be upgraded to ensure the electricity cables can cope with the increase in power flow. Over the next decade and beyond, this means an unprecedented build of new electricity network infrastructure and reinforcement, especially of the existing distribution network where between 200,000-600,000 km of additional distribution network cabling could be required by 2050.[4] This is an increase of 25% to 75% respectively on current levels of network cabling in the distribution network. Figure 2 illustrates the level of network cabling required depending on the various net zero scenarios.

[4] Please note that these estimates only include additional cabling required due to Load Related reinforcement work on the distribution network. These figures do not account for any additional cabling required due to asset replacement or due to asset extensions from new connections. Therefore, there is a risk that these figures could represent an underestimation of the total cabling requirements of the GB distribution network by 2050.

Figure 2: Distribution network overhead wires and underground cabling needed across Great Britain by 2050 (kilometres)



As set out in the Electricity Networks Strategic Framework, the electricity network of the future should allow for efficient build of infrastructure. The delivery of new network infrastructure, such as overhead lines, underground cables, and substations, should be timely, cost effective and fair, enabling a growing variety and number of connecting customers to connect to the network, to meet their needs and those of all electricity consumers and the system as a whole.

Land rights and consenting processes are an important factor in ensuring this. By land rights and consenting processes, we refer to gaining the consent to build appropriate network assets and the ability of network operators to access land to install these assets, while protecting the rights of landowners and local stakeholders.

Government understands that, in some cases, costs and delays as a result of land rights and consenting processes can hinder or prevent electricity network infrastructure projects from going ahead. With the major transformation of the electricity network that will be required over the coming decades, we are therefore conducting a review of the current processes and considering whether these processes are fit to enable the net zero and energy security transformation.

Scope

Different network assets, for example overhead lines or substations, are subject to differing land rights and consents processes. Table 1 below illustrates some of the processes which are required to obtain land access, land purchase and planning permission dependent on the type of infrastructure in question.

Table 1: Land rights and consents processes

Desired outcome	Infrastructure	Process
Land access (acquisition of rights over land)	Overhead lines	Voluntary wayleave or easement or Necessary wayleave (Schedule 4 Electricity Act 1989)
Land Purchase	Substations	Freehold or Leasehold purchase or Compulsory Purchase Order (Schedule 3 Electricity Act 1989)
Planning Permission	Overhead lines[5]	Section 37 consent (Electricity Act 1989) unless exempt
	Substations	Planning permission under Town & Country Planning Act (if above 29m^3) or Permitted development right (Town and Country Planning (General Permitted Development) (England) Order 2015) (if 29m^3 or less)

This call for evidence is seeking views on the following land rights and consent processes for electricity network infrastructure:

- voluntary wayleaves and easements;
- necessary wayleaves;
- voluntary purchase and leasing of land;

[5] Overhead lines that constitute nationally significant infrastructure projects under the Planning Act 2008 are not within the scope of this call for evidence.

- compulsory purchase of land;
- permitted development rights for substations; and
- section 37 consents for overhead lines.

The installation of certain overhead lines in England and Wales, typically higher voltage lines at 132kV and above, and 2 kilometres in length or over,[6] requires a development consent order under the Planning Act 2008 and these are considered Nationally Significant Infrastructure Projects ("NSIPs"). This process is out of scope. The Department for Levelling Up, Housing and Communities-led reform of the NSIP consenting process is already underway after the National Infrastructure Strategy established a National Infrastructure Planning Reform Programme. This is alongside a review of the energy National Policy Statements, supported further by the policy ambitions outlined in the British Energy Security Strategy.

Question

1. **Should anything else be included, or excluded, from the scope of this review of the land rights and consents processes for electricity network infrastructure, and why?**

2. **Questions on specific processes will be asked below. What has been your overall experience of the land rights and consenting processes for electricity network infrastructure?**

[6] The Planning Act 2008 section 16 sets out exemptions where the installation of above ground electricity lines will not be treated as an NSIP. These include lines whose nominal voltage is expected to be less than 132kV or whose length is less than 2km.

Understanding the Current and Future Landscape

In order to review the impacts that current land rights and consents processes have on the efficient rollout of electricity network infrastructure, government needs to have a full understanding of the current landscape and additionally the anticipated implications of a rapid increase in network build to meet net zero and energy security objectives.

Land rights and consents for electricity network infrastructure

Voluntary wayleaves and easements

Electricity network operators often need to access private land to install, maintain or upgrade assets when facilitating new connections or undertaking general network maintenance and reinforcement. This requires an appropriate agreement to be in place with the private landowner and for appropriate compensation to be paid. Wayleaves and easements are agreements to access private land and install or maintain equipment upon it. Typically, these agreements are initially sought by electricity network operators[7] through voluntary negotiation with landowners or a party acting on their behalf.

Wayleaves are temporary, terminable agreements, tied to the landowner. This means that if the land changes hands, the agreement is terminated. The signing of a wayleave agreement will involve compensatory payments, either one-off or annual, to the landowner.

Easements are permanent access rights, registered against the property through the Land Registry. Typically, they may be sought for high-value or strategic assets. The signing of an easement will also include the payment of a compensatory lump sum to the landowner. Due to their permanent nature, easements can have a more significant effect on the value of land. Existing wayleave agreements can be converted to easements, if agreed between the two parties.

The cost and timescales associated with negotiating these voluntary agreements can be unpredictable, as they are dependent on a number of factors including the value of the land, the type of equipment housed on the land, and the relationship between the network operator and the landowner. Although not always directly involved in negotiations, customers (for example electric vehicle chargepoint installers) seeking connections for specific projects often experience costs and delays to their projects as a result. In some cases, a connection customer may negotiate directly with the landowner and pay an additional compensatory sum in order to secure the signing of an agreement.

[7] Or an Independent Connection Provider

Sometimes, there are complex lease arrangements in place whereby the occupier of the land is different to the freeholder and is therefore unsure of their ability to grant rights to third parties such as electricity network operators. The network operator will then have to renegotiate with the freeholder, adding further costs and delays to projects.

The landowner is not compelled to engage in these voluntary negotiations. In this case, the network operators can redesign the route of the electricity line to avoid the land in question, make use of statutory powers in the form of necessary wayleaves, described in further detail below, or in some cases, abort the project altogether.

Questions

3. **What is your experience of, and what are the pros and cons of, the current voluntary negotiation process for wayleaves and easements? For example, this could include consideration of time and cost, impact on landowners, communication between parties.**

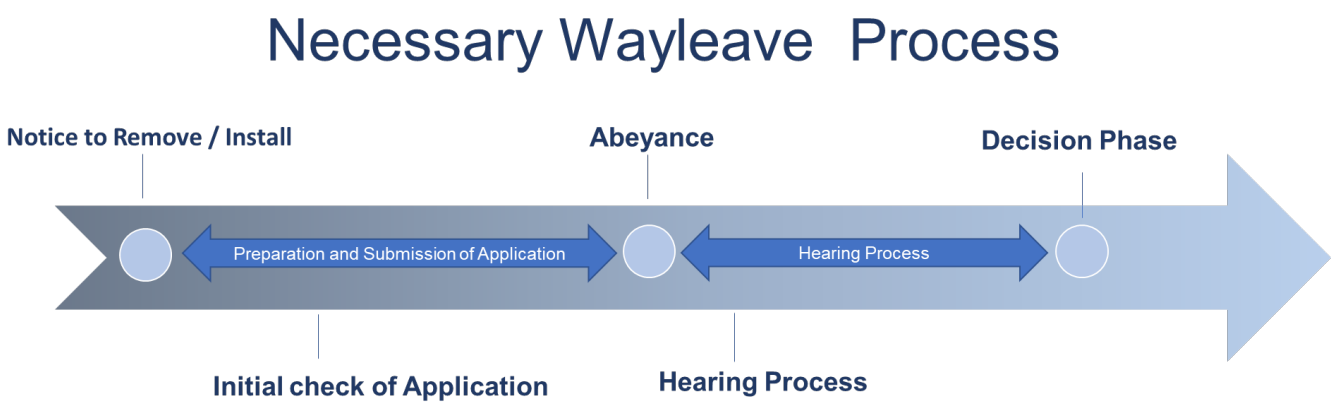
4. **How do you expect your experience of the voluntary negotiation process for wayleaves and easements to change given a rapid increase in network build will be required to meet net zero and energy security objectives?**

5. **How do you think the voluntary negotiation process for wayleaves and easements could be improved?**

Necessary wayleaves

Where an agreement cannot be reached by voluntary negotiation, or if there is an existing wayleave in place which the landowner wishes to revoke, there is the option of the statutory procedure under Section 10(1) of and Schedule 4 to the Electricity Act 1989, known as necessary wayleaves. Applications for necessary wayleaves can be granted by the Secretary of State in relation to England and Wales, or a Scottish Minister in relation to Scotland,[8] and will typically cover a 15-year period, although this can be longer if the network operator requests it. The time taken to complete this process, and the costs involved, can also be significant. The necessary wayleave application has a number of distinct steps before a final decision can be reached, these are briefly detailed below.

[8] The same process applies across England, Wales and Scotland. For all future references to the Secretary of State as decision-maker for applications under the Necessary Wayleaves process, in relation to Scotland this power to make decisions on applications falls to Scottish Ministers.



- **Start of the process:** The necessary wayleave process is started once a landowner/occupier, or a representative acting on their behalf, submits a valid notice to remove electric line(s) and supporting equipment from their land. Or the licence holder wants to install and keep installed an electric line and has given notice to the landowner/occupier but the landowner/occupier fails to give the wayleave or the wayleave is subject to terms and conditions that the licence holder doesn't accept.
- **Preparation of the necessary wayleave application**: the network operator must then submit a necessary wayleave application to the Secretary of State which should contain information relating to the landowner/occupier, the land, the equipment in question as well as details on previous applications and the current status regarding negotiations between the landowner/occupier and network operator.
- **Initial check of the application**: officials will check the application to install or retain the equipment to ensure that the Secretary of State is able to consider the application and may request further information as necessary.
- **Abeyance**: The application will usually go into abeyance, which provides the network operator and landowner/occupier more time to negotiate. If either party requests a hearing this will begin the hearing process (either by written representations or as an oral hearing).
- **Hearing process**: If a hearing is requested, the Secretary of State will ask the Planning Inspectorate to appoint an Inspector to oversee the hearing. The Secretary of State will request written statements of evidence from both parties. After receiving this, the statements of evidence are shared between parties. A hearing process is then followed by way of evidence, cross-examination, and re-examination of those giving evidence.
- **Decision**: As soon as possible after receipt of the Inspector's report, the Secretary of State will give notice to each party of their decision to grant or refuse the relevant application and the reasons for that decision.

Both parties must be willing to bear their own costs for the application, provision of evidence and hearings. Compensation is not decided within the hearing. Should an agreement not be reached, either party can request for compensation to be settled by the Lands Tribunal.

Questions

6. **What is your experience of, and what are the pros and cons of, the necessary wayleave process? For example, this could include consideration of time and cost, and the mechanism for determining compensation.**

7. **How do you expect your experience of the necessary wayleave process to change given a rapid increase in network build will be required to meet net zero and energy security objectives?**

8. **How could the necessary wayleave process be improved?**

Voluntary purchasing and leasing of land

When network operators wish to maintain critical assets, such as substations, on private land, they will attempt to purchase via lease or freehold the land on which the asset is situated. Typically, they will seek to do this through voluntary agreement with landowners or a party acting on their behalf.

Similar to voluntary wayleaves and easements, the cost and timescales associated with negotiating voluntary purchase of land can be unpredictable.

Questions

9. **What is your experience of, and what are the pros and cons of, the voluntary negotiation process for purchase or lease of land?**

10. **How do you expect your experience of the process for voluntary purchasing and leasing of land to change given a rapid increase in network build will be required to meet net zero and energy security objectives?**

11. **How could the process for voluntary purchasing and leasing of land be improved?**

Compulsory purchase of land

Where agreement cannot be reached through negotiation, the Secretary of State in England and Wales has the power under Section 10(1) and Schedule 3 of the Electricity Act 1989 to authorise network operators to compulsorily purchase land required for purposes connected with their licensed activities.[9] A compulsory purchase order grants a network operator ownership and rights over the specified land to both retain or construct new network infrastructure.

Compulsory purchase interferes with the property rights of those whose land is taken. As such, there must always be a compelling case in the public interest and acquiring authorities must pay compensation to those affected in accordance with the statutory framework. Compulsory

[9] In Scotland, this power is exercised by Scottish Ministers. The general law on compulsory purchase in Scotland is devolved to the Scottish Parliament.

Purchase Orders must be confirmed by the Secretary of State before they can be implemented.

The Compulsory Purchase Order process, which network operators as acquiring authorities must follow, is made up of several stages:

- **Preliminary enquiries:** the acquiring authority considers whether land is required to deliver a project it is promoting and the extent of the land that may be required.
- **Voluntary purchase of land**: the acquiring authority will try to acquire the interests in land it needs voluntarily before reverting to use of compulsory purchase powers.
- **Compulsory Purchase Order preparation and submission**: the acquiring authority formally 'resolves' to use its compulsory purchase powers and gathers detailed information about land ownership and occupation. The acquiring authority then makes the Compulsory Purchase Order, publicises it and submits it to the confirming authority (the Secretary of State).
- **Objections to a Compulsory Purchase Order:** those affected by the Compulsory Purchase Order are invited to submit objections to the confirming authority.
- **Compulsory Purchase Order consideration**: the Compulsory Purchase Order is considered by the confirming authority either through a public inquiry or through written representations or a hearing.
- **Confirmation**: the confirming authority decides whether to confirm, modify or reject the Compulsory Purchase Order.
- **Possession and acquisition**: the acquiring authority takes ownership of the land.

The government is committed to creating a faster and more modern Compulsory Purchase Order process which makes the best use of digital technology. We are bringing forward reforms for England and Wales in the Levelling up and Regeneration Bill, which is currently being considered by Parliament, to achieve this. The reforms include:

- a new power for confirming authorities to confirm a Compulsory Purchase Order subject to conditions which must be met before it can be implemented
- increased flexibility for the Planning Inspectorate to decide the appropriate procedure for considering the confirmation of a Compulsory Purchase Order and greater use of a shorter representations procedure than a public inquiry
- a new power for confirming authorities to grant a longer expiry period for compulsory purchase powers than the current three years in appropriate cases
- modernisation of the Compulsory Purchase Order process through improved online accessibility and the ability to set data standards, which acquiring authorities will need to adhere to in preparing, holding and providing compulsory purchase documents.

Further reforms proposed on compensation are summarised in a separate consultation that has been issued by the Department for Levelling Up, Housing and Communities, which closed on 19 July 2022.

The government also intends to update the guidance on the compulsory purchase process to encourage earlier and more effective engagement between acquiring authorities and landowners.

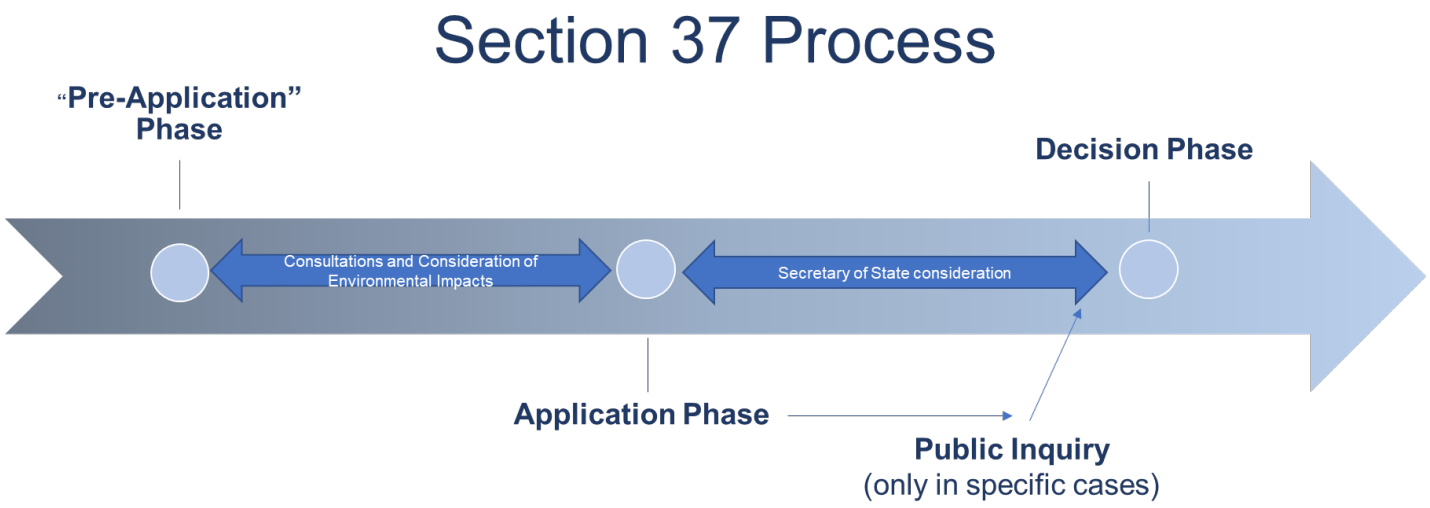
Questions

12. **Are there any specific issues with the compulsory purchase process in England and Wales relating to its use by network operators, beyond those addressed in the current Bill, which need to be considered, and what is the impact of the specific issue(s)? For example, this could include consideration of any issues around determining compensation.**

13. **How could the compulsory purchase process be improved further to address the issue?**

Section 37 consent for overhead lines

Section 37 of the Electricity Act 1989 establishes the statutory consenting process to install and keep installed overhead electric lines. This consenting process typically covers lines less than 132kV or lines less than two kilometres long.[10] Consent is granted by the Secretary of State in relation to England and Wales, save for certain cases.[11] Consent is granted by Scottish Ministers in relation to Scotland.[12] As described at page 10, lines which are considered to be Nationally Significant Infrastructure Projects are out of scope of this review.



- **Pre-application phase**: The network operator prepares the application. The network operator obtains views from the relevant planning authority on behalf of the local community, and from statutory bodies with responsibilities for environmental and

[10] However, there are exemptions, for example, as set out in The Overhead Lines (Exemption) (England and Wales) Regulations 2009.
[11] See sections 37(2A)-(2C) of the Electricity Act 1989 and Schedule 7A, Section M3 Development and buildings, paragraph 186 to the Government of Wales Act 2006 ("devolved associated lines").
[12] The same process applies across England, Wales and Scotland. For all future references to the Secretary of State within the Section 37 consent process, in relation to Scotland these decisions are made by the Scottish Ministers.

heritage protection. Notice of the application must be served on the relevant planning authority and they have two months to decide whether or not to object to the application. If the planning authority has concerns about the proposal it can make an objection to the Secretary of State.

- **Environmental impacts:** When developing a proposal, network operators must consider effects on the environment and include in the application any measures envisaged to avoid or mitigate such effects. If applicable, an Environmental Impact Assessment may also be required.
- **Application phase**: The application is submitted to the Secretary of State and is assessed. An inquiry must be held when the relevant planning authority objects and doesn't withdraw that objection, or may be held where the relevant planning authority does not object but the Secretary of State considers an inquiry appropriate in the light of other objections and all other material considerations.
- **Decision phase:** The Secretary of State will issue a decision having had regard to all matters that are relevant, including any environmental mitigations or other information supplied with the application.

There are some exemptions to requiring a full section 37 planning consent,[13] such as:

- Where lines are 20kV or less and to be used for supplying a single customer
- Lines within premises in the occupation or control of the person responsible for their installation
- Other exemptions set out in the Overhead Lines (Exemption) (England and Wales) Regulations 2009

Questions

14. **What is your experience of, and what are the pros and cons of, obtaining Section 37 consent for overhead lines?**

15. **How do you expect your experience of the consenting process for overhead lines to change given a rapid increase in network build will be required to meet net zero and energy security objectives?**

16. **How could the Section 37 process be improved?**

Permitted development rights for substations

Permitted development rights are a national grant of planning permission which allow certain building works and changes of use to be carried out without having to make a planning application. To enable the efficient rollout of certain assets such as substations and underground cables, the Town and Country Planning (General Permitted Development) (England) Order 2015 includes a permitted development right (Part 15, Class B) which allows

[13] For fuller guidance on section 37 consenting please see here: https://www.gov.uk/guidance/overhead-lines-applying-for-consent

for development in England by statutory undertakers in relation to the generation, transmission, distribution or supply of electricity without having to make a planning application.

The right is subject to limitations and conditions, including that the installation or replacement of electrical substations cannot exceed 29m3 in size. We are seeking views as to whether this right remains fit for purpose, as electricity demand becomes greater as we move towards our net zero goal. At present any proposal which exceeds the 29m3 threshold would require a planning application, which can add to the cost and time taken to deliver a substation.

Questions

17. **Is the 29m3 size threshold for substations (Part 15, Class B (B.1.(a)(ii))) suitable for a future electricity system? If not, what would be a suitable size threshold? What evidence do you have to justify this change?**

18. **What would be the benefits and impacts of increasing the threshold beyond 29m3? Are there any locations where an increased size threshold beyond 29m3 would be inappropriate?**

Comparison of land rights to other utility industries

Other utilities take alternative approaches to the acquisition of rights over land. An overview of the approaches to land rights for the telecommunications and water industries has been included below, so that these alternatives can be compared to those for electricity network infrastructure.

There are a range of differences, including due to historic and physical factors which dictate a varying approach to the comparable processes across the sectors. Both telecommunications network operators and water companies have stronger rights to access land than those of electricity network operators. The inclusion of processes for telecommunications and water are here to serve as a comparative tool and we are interested in whether there are lessons that can be learned and applied to the electricity sector.

Telecommunications

The Electronic Communications Code ("the Code") is the legal framework underpinning rights available to telecommunications network operators to install and keep electronic communications apparatus on public and private land. The purpose of the Code is to provide a regulatory framework that supports the efficient and cost-effective installation and maintenance of robust digital communications networks. At the same time, the Code aims to ensure that an appropriate balance is achieved between the public interest in these networks and the private rights of individual landowners and occupiers.

The Code: Overview

Code rights are ideally created by an agreement between a Code operator[14] and an occupier[15] of relevant land, with the terms of that agreement negotiated between the parties to achieve a mutually acceptable outcome. However, if a Code operator and an occupier are unable to reach an agreement consensually, a court may impose an agreement granting Code rights in certain circumstances. An agreement can only be imposed by a court if it is satisfied that the occupier can be adequately compensated and the prejudice to the occupier of the land is outweighed by the public benefit of the agreement being imposed.

[14] A 'code operator' is an individual or organisation able to exercise Code rights under the Electronic Communications Code. Code operators are designated as such by Ofcom. Operators include British Telecom (BT), Vodafone Limited, and Community Fibre Limited. A full list of code operators can be found here: https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/policy/electronic-comm-code/register-of-persons-with-powers-under-the-electronic-communications-code

[15] "Occupier", for these purposes, is defined by paragraph 105 of the Code.

The Code provides for agreements to automatically continue after the expiry of the original term. Even when the original term has expired, the site provider[16] (who is party to the code agreement) can only bring the agreement to an end in certain circumstances, if this is opposed by the operator.

The landowner must give at least 18 months' notice for this to take effect. Further, the proposed date for the agreement to end must be after the point at which the agreement was otherwise due to end, or could have been ended by the site provider.

Upon receipt of such a notice, if the operator does not want the agreement to end:

- It has a three-month period within which it can provide a counter-notice to the site provider, stating that it does not want the agreement to come to an end, or that they want the agreement to be changed, and
- The operator must also make an application to the court for such continuation or modification of the agreement within three months from the date on which it gives the counter-notice to the site provider.

Separate to terminating agreements is the process for removing equipment from land and the restoration of said land. A landowner[17] may only require the removal of equipment if certain conditions are met, as set out in detail in Part 6 of the Code. In general terms, those conditions include consideration of matters such as whether:

- The landowner has previously been bound by a code right entitling a telecommunications network operator to keep apparatus on the land;
- Any Code rights enjoyed by a network operator have ended or ceased to bind the landowner to keep apparatus on the land;
- The apparatus is no longer being used by the network operator or is not reasonably likely to be so used in the future; and,
- The Code has ceased to apply to a person.

2017 reforms – The Digital Economy Act

The Code was substantially reformed in 2017 to support faster and cheaper deployment of telecommunications networks across the UK. These changes reflected the increasing public demand for digital services. The five key changes were:

- New powers for the Tribunals/Courts to grant interim access to land, so that the rollout of infrastructure is not delayed while disagreements are resolved.
- New automatic rights to upgrade and share apparatus, subject to conditions taking into account the adverse impact on the landowner.

[16] Part 5 of the Code uses the term "site provider" to describe a person who confers or is otherwise bound by a code right as a result of a code agreement. Often this will be the owner of the land, but it could also include others, depending on the nature of the code agreement and who is bound by it.
[17] Part 6 of the Code describes a landowner as "a person with an interest in land".

- Improved dispute resolution procedures
- New, informed structure to negotiations.
- Changes to the basis on which access to land is valued when an agreement is imposed by a court, to a “no scheme” system. This means the value of the land is now assessed based on its value to the landowner, not on its value to the network operator as under the previous code.

2021-22 reforms - the Product Security and Telecommunications Infrastructure (PSTI) Bill

On 27 January 2021 the government published a consultation asking whether further reforms to the Code are needed. The consultation made it clear that the valuation framework introduced in 2017 would not be revisited, as the government continues to believe the framework strikes the right balance between the public need for digital communications and landowner rights to receive fair payments for allowing their land to be used. The consultation closed on 24 March 2021. The government’s response was published on 24 November 2021, alongside the introduction of the PSTI Bill. The PSTI Bill includes measures to:

- Encourage greater use of Alternative Dispute Resolution to support more collaborative relationships between telecoms operators and landowners and faster negotiations.
- Ensure any concerns about operator behaviour are dealt with through robust complaint procedures.
- Provide a fast track process that will allow operators to deploy new networks under or over certain types of land at pace if landowners do not respond to an operator’s repeated requests for code rights.
- Clarify the process and framework for the renewal of expired agreements, to ensure there is greater consistency in the way these are dealt with, and that renewed terms are more closely aligned to those for entirely new agreements.
- Support greater upgrading and sharing of apparatus. This will optimise the use of existing infrastructure, reducing the need for additional build, whilst still taking into account impacts on landowners.

The PSTI Bill completed the Lords Committee stage of Parliamentary passage on 29 June 2022, and will continue to Report stage when Parliamentary time allows.

The continuing evaluation of the Electronic Communications Code demonstrates how the government is actively taking steps to ensure that the framework for infrastructure delivery is reviewed regularly to ensure swift and efficient delivery that is fair for all stakeholders within the process. Such work is done in close consultation with the telecommunications industry and site provider stakeholder groups, which are actively engaged in the task of improving the Code to ensure it delivers in facilitating the deployment of digital infrastructure whilst respecting the rights of landowners.

Water

Water companies are provided with a wide range of powers that enable access to lay pipes. The Water Industry Act 1991 provides the legislative framework that enables each water company to submit and use an approved code of practice as a framework for interaction with landowners. These codes of practice provide for the following steps in securing access to land and delivering compensation to landowners:

- Water companies must consider the various factors involved in the pipe laying works (including the directness of the route, the compensation payments required, the levels of disruption, the environmental impact as well as general engineering questions), concurrently engaging the landowner ahead of works taking place.
- Water companies then have a statutory right to access land for pipe laying works provided that appropriate notice in writing is given to the landowner and to the occupier of the land. For new pipework infrastructure, this period is 3 months except for in the case of an emergency or in compliance with specified duties, where it is 21 days. For existing infrastructure this is 42 days except for in the case of an emergency or in compliance with specified duties.[18]
- Water companies are responsible for returning the land to as close to the original condition as possible in consultation with the landowner. This includes any changes to soil, agricultural land, garden areas or perimeter barriers which have been impacted by the works. Compensation may be granted if the landowner wishes to undertake some of the repair works themselves.

Landowners cannot contest a water company's access to their private land or the carrying out of works before or during the works, where a water company is working within the parameters of the relevant statutory power. However, they can complain to the water company and subsequently Ofwat. A complaint can be made to Ofwat as long as the following is the case:

- the company failed to adequately consult, before and during the course of the work (for example, where it was not known that the company was carrying out the work)
- the company acted unreasonably whilst carrying out the work (for example the company did not carry out the work as they had described in the consultation)

If there has been permanent loss in the value of the land due to the works then the landowner may negotiate directly with the water company and be entitled to compensation. If the two parties cannot agree, then the matter can be referred to the Upper Tribunal or some form of independent alternative dispute resolution agreed between the two parties.

Should the landowner wish to develop the land in future, they can request the water company to move the pipe at the landowner's expense. Should the request be deemed reasonable, the water company has a duty to comply.

[18] See Ofwat supply and standards for further information: https://www.ofwat.gov.uk/households/supply-and-standards/pipes-on-private-land/

Questions

19. **Recognising that there are differences between electricity network infrastructure and the infrastructure of other utilities, how could the electricity industry learn lessons from the comparable processes in the telecommunications and water industries?**

20. **Is there any additional information or evidence that you would like to submit?**

Summary of questions

1. Should anything else be included, or excluded, from the scope of this review of the land rights and consents processes for electricity network infrastructure, and why?
2. Questions on specific processes will be asked below. What has been your overall experience of the land rights and consenting processes for electricity network infrastructure?
3. What is your experience of, and what are the pros and cons of, the current voluntary negotiation process for wayleaves and easements? For example, this could include consideration of time and cost, impact on landowners, communication between parties.
4. How do you expect your experience of the voluntary negotiation process for wayleaves and easements to change given a rapid increase in network build will be required to meet net zero and energy security objectives?
5. How do you think the voluntary negotiation process for wayleaves and easements could be improved?
6. What is your experience of, and what are the pros and cons of, the necessary wayleave process? For example, this could include consideration of time and cost, and the mechanism for determining compensation.
7. How do you expect your experience of the necessary wayleave process to change given a rapid increase in network build will be required to meet net zero and energy security objectives?
8. How could the necessary wayleave process be improved?
9. What is your experience of, and what are the pros and cons of, the voluntary negotiation process for purchase or lease of land?
10. How do you expect your experience of the process for voluntary purchasing and leasing of land to change given a rapid increase in network build will be required to meet net zero and energy security objectives?
11. How could the process for voluntary purchasing and leasing of land be improved?
12. Are there any specific issues with the compulsory purchase process in England and Wales relating to its use by network operators, beyond those addressed in the current Bill, which need to be considered, and what is the impact of the specific issue(s)? For example, this could include consideration of any issues around determining compensation.
13. How could the compulsory purchase process be improved further to address the issue?

14. What is your experience of, and what are the pros and cons of, obtaining Section 37 consent for overhead lines?
15. How do you expect your experience of the consenting process for overhead lines to change given a rapid increase in network build will be required to meet net zero and energy security objectives?
16. How could the Section 37 process be improved?
17. Is the 29m3 size threshold for substations (Part 15, Class B (B.1.(a)(ii))) suitable for a future electricity system? If not, what would be a suitable size threshold? What evidence do you have to justify this change?
18. What would be the benefits and impacts of increasing the threshold beyond 29m3? Are there any locations where an increased size threshold beyond 29m3 would be inappropriate?
19. Recognising that there are differences between electricity network infrastructure and the infrastructure of other utilities, how could the electricity industry learn lessons from the comparable processes in the telecommunications and water industries?
20. Is there any additional information or evidence that you would like to submit?

This consultation is available from: www.gov.uk/government/consultations/land-rights-and-consents-for-electricity-network-infrastructure-call-for-evidence

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