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**THE NATIONAL GRID ELECTRICITY TRANSMISSION PLC (SCOTLAND TO ENGLAND  
GREEN LINK 1) COMPULSORY PURCHASE ORDER 2023**

**NOTE ON COMPENSATION POSITION**

**THE COMPULSORY PURCHASE (INQUIRIES PROCEDURE) RULES 2007**

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**NATIONAL GRID ELECTRICITY TRANSMISSION PLC**

**ELECTRICITY ACT 1989**

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## 1. INTRODUCTION

- 1.1 National Grid Electricity Transmission plc (**NGET**) has made The National Grid Electricity Transmission plc (Scotland to England Green Link 1) Compulsory Purchase Order 2023 (the **Order**) (**CD D.1**) under the provisions of the 1989 Act. The Order has been made in order to acquire the land and rights necessary to deliver the English Onshore Scheme components of the Project.
- 1.2 Following the making of the Order, a number of objections were submitted to the Secretary of State. The Secretary of State has caused an Inquiry to be held in accordance with The Compulsory Purchase (Inquiries Procedure) Rules 2007 (the **CPO Inquiries Rules**). The Inquiry sat on 26 and 27 September 2023, with a site visit taking place on 28 September 2023.
- 1.3 This Statement has been prepared in response to the Inspector's request for a note in respect of compensation matters. This Statement sets out the routes to compensation that landowners affected by the Order may have if: 1) the Order is confirmed; and 2) NGET exercises its powers of compulsory acquisition pursuant to the Order.
- 1.4 It is important to note that matters of compensation are for the Tribunal to determine following the confirmation of the Order, and as such are separate to the decision as to whether to confirm the Order. Section 13(4) of the Acquisition of Land Act 1981 (the **ALA**) provides that:
- 1.5 *"if the confirming authority is satisfied that an objection relates exclusively to matters which can be dealt with by the tribunal by whom the compensation is to be assessed it may disregard the objection"*.

## 2. RIGHT TO COMPENSATION

### Voluntary Position

- 2.1 NGET will continue to seek to acquire the land rights it needs to deliver the Project on a voluntary basis. NGET has made voluntary offers to all landowners for the acquisition of rights, including an additional incentive payment, in order to achieve this and compensate by providing easement consideration. See Appendix B and Appendix C to the Proof of Evidence of Mr Chandler (**CD G.9**). NGET's assessment is that this offer would exceed the level of compensation payable to landowners if NGET exercises powers of compulsory acquisition pursuant to the Order (reflecting the benefits in terms of speed of delivery and certainty that early agreements provide to NGET (and ultimately to end consumers)).
- 2.2 NGET's preference remains a voluntary agreement if possible, and that will remain NGET's position post confirmation of the Order (if positively confirmed).

### Compulsory Acquisition Position

- 2.3 If the Order is confirmed and NGET needs to resort to exercising powers of compulsory acquisition pursuant to the Order in order to deliver the Project, then the landowners over whose land NGET exercises those powers of compulsory acquisition (the **Affected Landowners**) will be entitled to compensation.
- 2.4 The right to compensation is established by the Land Compensation Act 1961 (the **1961 Act**). The rights to compensation for Affected Landowners, and the procedure for assessing such compensation, are governed by a combination of legislation, case law and established practice known as the Compensation Code.

- 2.5 The right to compensation arises on the valuation date (as established in accordance with section 5A of the 1961 Act).
- 2.6 If NGET exercise powers of compulsory acquisition pursuant to the Order, then NGET and the Affected Landowners can agree the value of compensation payable at any time following the exercise of the powers of compulsory acquisition pursuant to the Order. NGET would seek to reach agreement with the Affected Landowners.
- 2.7 If NGET and the Affected Landowners cannot reach agreement on the level of compensation payable, then either NGET or the Affected Landowners may make a reference to the Upper Tribunal (Lands Chamber) (the **Tribunal**). This provides the Affected Landowners and NGET with an independent process whereby the level of compensation can be independently determined.
- 2.8 There are two different procedures by which NGET may exercise powers of compulsory acquisition pursuant to the Order. These two procedures are subject to different limitation periods for a reference to the Tribunal. If NGET exercise powers of compulsory acquisition pursuant to the Order by:
- 2.8.1 making a general vesting declaration (**GVD**), then the limitation period for either party to make a reference to the Tribunal is established by section 10(3) of the Compulsory Purchase (Vesting Declarations) Act 1981 (the **1981 Act**). This is: “6 years from the date at which the person claiming compensation, or a person under whom he derives title, first knew, or could reasonably be expected to have known, of the vesting of the interest by virtue of Part III of this Act”; or
- 2.8.2 serving a notice to treat (**NTT**), then the limitation period for either party to make a reference to the Tribunal is established by section 9 of the Limitation Act 1980 (the **1980 Act**). This provides that: “an action to recover any sum recoverable by virtue of any enactment shall not be brought after the expiration of six years from the date on which the cause of action accrued”.
- 2.9 NGET expects that if it needs to exercise powers of compulsory acquisition pursuant to the Order to deliver the Project, then it would do so by making one or more GVDs. Therefore, the time limit for a reference to a tribunal is likely to be that pursuant to the 1981 Act. In practice, this will be 6 years after the vesting date on the basis that all Affected Landowners will have been notified of the vesting date when they are notified of the making of the GVD.
- 2.10 If NGET were to serve an NTT, then the cause of action would accrue from the date on which NGET took entry to the land pursuant to section 11 of the Compulsory Purchase Act 1965.
- 2.11 In either circumstance, the procedure is regulated by The Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 (the **Rules**).

### **3. HEADS OF COMPENSATION**

- 3.1 The overarching compensation principle is that of equivalence. This means that an Affected Landowner should be left no better or worse off in financial terms.
- 3.2 There are broadly four heads of compensation that can be claimed in respect of the compulsory acquisition of land or rights over land. Please see section 6 and in particular Paragraph 73 of the CPO Guidance (**CD B.6**). These four heads of compensation are:
- 3.2.1 the market value of the interest in the land taken;

- 3.2.2 disturbance payments for losses caused by reason of losing possession of the land and other losses not directly based on the value of land;
  - 3.2.3 loss payments for the distress and inconvenience of being required to sell and/or relocate from your property at a time not of your choosing; and
  - 3.2.4 severance/injurious affection payments for the loss of value caused to retained land by reason of it being severed from the land taken, or caused as a result of the use to which the land is put.
- 3.3 There are specific guides to compensation which set out how the Compensation Code applies in respect of these heads of compensation. In the context of the Order:
- 3.3.1 the market value of the interest in the land taken will be the compensation payable as a result of the acquisition of the Order land or rights over the Order land;
  - 3.3.2 disturbance claims or loss claims may be available to those parties who may need to make provision for relocation as a consequence of the Order. For example, this may provide an additional head of compensation in respect of the point made by objectors Obj14 to Obj17 (**CD D.25** to **CD D.28**) in respect of the potential requirement to relocate the car boot sale on a temporary basis; and
  - 3.3.3 severance/injurious affection claims may be available to those parties whose position is that there is, or may be, a loss of value to their retained land as a result of the Project (the retained land will include the Order land itself where rights are acquired). For example, this may provide an additional head of compensation in respect of any agricultural landowner whose position was that their retained land had been put into a worse position as a consequence of any damage or potential damage to field drainage.
- 3.4 It is important to note that in assessing compensation, the following two points apply:
- 3.4.1 any betterment as a result of the Project would also be taken into account. For example, if field drainage were in a poor state and as a consequence of new drainage to be installed as part of the Project that field drainage improves such that the value of the Order land and adjoining land was increased, then the entitlement to compensation may be as low as nil as a result of such betterment (there is no possibility to have negative compensation – nil is the lowest, even if the value of the land is increased); and
  - 3.4.2 each Affected Landowner is entitled to compensation for the full scope of the rights vested in the acquiring authority pursuant to the Order. This compensation is assessed as at the valuation date. For this reason, the rights required are drafted as precisely as possible. Ultimately, the Affected Landowner is protected because the Affected Landowner is entitled to compensation for the full scope of the rights, as drafted, which are vested.
- 3.5 The Compensation Code seeks to achieve equivalence: i.e., the Affected Landowner should be no worse off following the acquisition of rights in its land and the payment of compensation than it would be if the scheme did not proceed at all.
- 3.6 If the freehold title over land is sought, rather than a right in the land, then the compensation would reflect the fact that the acquiring authority would have all the unconditional rights of an owner over the plot and compensation will reflect this. If the acquiring authority takes a more

precise approach (as is the case here) and acquires rights where appropriate and possible<sup>1</sup>, then compensation will reflect the full scope of the right sought. The risk always sits with the acquiring authority because if a right is drafted more broadly than is required (e.g. there is flexibility in the drafting as to whether certain works or actions will be carried out), then Affected Landowners will always be entitled to compensation for the full scope of the right actually vested in the acquiring authority.

#### **4. DAMAGE**

- 4.1 If losses were caused as a result of disruption to services such as drainage through the construction of the scheme, then the Affected Landowners could seek damages for those losses.
- 4.2 This would likely be in the form of a claim in tort either in relation to the Order land or regarding any part of their wider property impacted by the works.
- 4.3 In this case, the limitation period would be six years from the date on which the damage occurred.
- 4.4 This is reflected by Paragraphs 75 and 76 of the Government's Compulsory purchase and compensation: guide 3 - compensation to agricultural owners and occupiers (**Compensation Guide 3**). Paragraph 76 of Compensation Guide 3 specifically identifies damage to services as a potential issue requiring compensation.
- 4.5 It is noted that to the extent that any loss is a necessary consequence of the exercise of the rights, the Affected Landowners would be compensated through the statutory Compensation Code (as described above). The possibility of a separate claim in damages would arise when something is done which goes beyond the necessary consequences of construction and operation of the scheme.

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<sup>1</sup> only certain CPO regimes allows for the acquisition of rights as opposed to freehold only  
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