

Much of the UK's electrical network and telecommunications poles and cables are located on private land. To ensure these networks remain operational and to minimise outages, energy suppliers and telecoms companies have to be able to access land to build networks and carry out maintenance. This document outlines the consultation and acquisition process for new electricity cables.

Under section 38 of the Electricity Act 1989, the electricity authority has a duty in formulating proposals for new development to *"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 shall do what [it] 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."*

The selection of any new electricity line route should balance all the various factors or constraints. In selecting a route electricity authorities should seek to reduce the visual effect of the line in terms of the number of people affected and the degree to which they are affected. The nature and topography of the landscape and any statutory protection afforded to an area has to be taken into account.

Scottish Ministers expect licence holders seeking to instal new infrastructure to engage with the general public with regard to proposals that will affect them. Ministers expect the licence holder to listen to and engage with the people affected before, during and after the necessary wayleave process.

Early engagement helps to identify and address difficulties and may save time and money by reducing objections to the grant of a necessary wayleave. It informs routeing strategy and the siting of electric lines and supporting structures and has the potential to reduce the timescale associated with the acquisition of the rights and assist in the delivery of the project

Planning application process

To construct a new overhead line formal consent, under section 37 of the Electricity Act 1989 ("1989 Act") will be required from the Scottish Ministers. Local planning authorities within whose areas the new line is proposed are consulted and if they maintain an objection to

the proposal then the Ministers are required to convene a public inquiry.

The construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 kilometres will require an Environmental Impact Assessment to be lodged as part of any planning application.

Necessary wayleave process

Electricity undertakers usually seek voluntary agreements with landowners. However, when these are not forthcoming, they have compulsory powers and can apply to the Scottish Ministers for a 'necessary wayleave' for the overhead line route, or compulsory purchase of the land occupied by the cable route.

A licence holder must first serve a notice on the landowner and/ or occupier of the relevant land requiring him to provide a necessary wayleave. If a wayleave is not either granted on the terms requested, or on terms and conditions acceptable to the electricity company, then the licence holder may make an application for a necessary wayleave to the Scottish Ministers.

Before determining an application for a necessary wayleave, the Scottish Ministers must afford the occupier and, if different, the landowner of the land an opportunity of being heard.

The application will be considered by an independent Reporter appointed by Scottish Ministers. Before granting a necessary wayleave, the Scottish Ministers must be satisfied that it is either (i) necessary or (ii) expedient to install and to keep the electric line installed and the Reporter will examine evidence to make a recommendation to the Ministers regarding these two tests. This may be conjoined with the section 37 consent.

If the landowner and/ or occupier wishes be heard, either a hearing or a public local inquiry will be held. In all cases, the Reporter will set out a timetable to be followed for people to provide the information relevant to the consideration of the application.

337 North Deeside Road, Cults, Aberdeen, AB15 9SN

Tel: 01224 860710 | Fax: 01224 869023 | aberdeen@galbraithgroup.com | galbraithgroup.com

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The Reporter's consideration of a necessary wayleave is more focused on establishing the effect of private land interests, rather than matters of a more general planning nature. Following his consideration, the Reporter will submit a written report to the Scottish Ministers with conclusions and recommendations as to whether or not the necessary wayleave applied for should be granted. The Scottish Ministers will then consider the report before reaching a decision on the necessary wayleave application. Ministers do not have to agree with the Reporter's recommendation and may either grant a necessary wayleave on such terms and conditions as they think fit or may refuse to grant a necessary wayleave.

Compulsory Purchase Orders have been used to acquire land at power station sites for example but can also be used, where appropriate, for the installation and retention of electric lines, more usually when underground cables are involved. In such cases, the electricity company will make an Order and then seek confirmation from the Scottish Ministers. Where statutory objections are raised (i.e. objections from owners, lessees and occupiers) the Ministers are required to hold a public inquiry before making a decision on the Order.

Compensation

First find out as much as you can about the proposed infrastructure.

Then should decide whether your property is likely to be affected. If it is, you should consider as quickly as possible the options open to you.

Questions of compensation in respect of a necessary wayleave will not be addressed by the Reporter when making a recommendation on whether consent for a project should be granted. The Scottish Ministers have no power under Schedule 4 to the 1989 Act to prescribe financial conditions in any necessary wayleave case. Compensation will fall to be settled by agreement between the parties or, failing agreement, determined separately by the Lands Tribunal for Scotland at the request of either party.

In order to obtain all the information necessary to lodge an application the Electricity Authority will need to carry out investigative works. They have rights to do this under the 1989 Act upon giving at least five working days' formal notice has to be given to the occupier of any premises (or to the owner of the premises if they are unoccupied).

Such notice requires the electricity company to make good, or pay compensation for, any damage caused. Without such notice (or a formal agreement) there may not be any right to compensation. Consideration should be given to biosecurity etc as part of any access permission.

Properties may be affected but have no right to claim for compensation because there is no requirement for a necessary wayleave. To qualify for payment, the equipment has actually to be on your property, not just near it or run directly running over it. The main issue tends to be loss of amenity or view which cannot be compensated in this manner; this should be taken into account as part of the planning process. There are discretionary powers to require an authority to buy property that is badly affected by projects where no land is taken from the owner by a Blight Notice.

Costs

There is no legal entitlement for either party to make a claim for expenses associated with a public Inquiry or the necessary wayleave process. Everybody who participates in the necessary wayleave process will be expected to cover their own expenses. The procedures support parties being able to make a case to the Reporter by themselves.

Generally acquiring authorities will reimburse agents fees where it will assist in the delivery of the project.

At early stages strategic advice may be required which generally involves more experienced agents. It may be that small claims for damage etc may arise out of investigative works where lower charge out rates may apply. The fee basis and terms of engagement are for the claimant and the valuer to agree initially and once agreed should be shared with the acquiring authority and an agreement on the fee basis and any caps on hourly rate or overall charge.

In the first instance, please telephone or email a member of the Galbraith Energy team for a free discussion.

Ian Thornton-Kemsley TD MRICS DipFBOM ACI Arb

Tel: 07951 536 351

E-mail: ian.thornton-kemsley@galbraithgroup.com

337 North Deeside Road, Cults, Aberdeen, AB15 9SN

Tel: 01224 860710 | Fax: 01224 869023 | aberdeen@galbraithgroup.com | galbraithgroup.com

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