

**DEPARTMENT FOR BUSINESS ENERGY AND INDUSTRIAL STRATEGY CALL FOR EVIDENCE IN
RELATION TO LAND RIGHTS AND CONSENTS FOR ELECTRICITY NETWORK INFRASTRUCTURE**

RESPONSE ON BEHALF OF THE COMPULSORY PURCHASE ASSOCIATION

The Compulsory Purchase Association (“**CPA**”) is a not for profit member organisation that promotes best and effective practice in the delivery of land for infrastructure, housing and regeneration through the use of compulsory purchase powers.

Its objective is to work for the public benefit in relation to compulsory purchase and compensation in all its forms. It seeks to promote the highest professional standards amongst practitioners at all levels, and to ensure that the legal framework for compulsory purchase and compensation is clear, fair and effective.

Its members represent both acquiring authorities and claimants affected by compulsory acquisition, including in the electricity and wider utilities sectors. The CPA welcomes the opportunity to respond to the current call for evidence.

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?

The Compulsory Purchase Association (the “CPA”) consider that the scope of the review should extend to include the suitability of existing land rights and consenting processes for both new/upgrading of electricity apparatus as well as for the protection of existing apparatus, under both Schedules 3 and 4 of the Electricity Act 1989 (the “EA 1989”).

Further, attention ought to be given to the functioning of powers of electricity licence holders to access land to undertake repair and other works (Paragraph 9, Schedule 6 of the EA 1989) and tree lopping/felling works (Paragraph 9, Schedule 4 of the EA 1989).

It is also considered important that the procedures underpinning the current legal processes are reviewed, with a focus on improving efficiencies and fair balance between the parties engaged in such processes. Further, guidance for licence holders and owners/occupiers of land affected relating to the statutory processes and conduct more generally should also be included in the review.

This is important to enable the review to properly scrutinise the fitness for purpose of current land rights and consents processes, together with existing powers to access land to maintain apparatus, for the future.

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?

The CPA is aware that from the perspective of electricity network operators, existing land rights and consenting processes under the EA 1989 are considered to be too slow and not cost effective, creating delays in the delivery of new and upgraded apparatus. In particular, the necessary wayleave process under Schedule 4 of the EA 1989 is often cited as being capable of being exploited by owners/occupiers of land having the ability to serve notice to remove existing apparatus without any requirement to justify or provide reasons for such action.

From the standpoint of owners and occupiers of land, the ability to serve notice to require the removal of existing apparatus can be regarded as an essential feature of the Schedule 4 process, particular in circumstances where the current owner/occupier has inherited existing apparatus as a successor in title to the property.

It is apparent that there is need for review of the current statutory processes, particularly with a focus on ensuring that the system functions efficiently and provides an effective mechanism for securing of consents, whilst balancing the interests of individual landowners.

Voluntary wayleaves and easements

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.

Voluntary negotiation of agreements is the primary method for the grant of consents and rights, with the vast majority of the electricity network secured under voluntary agreements, whether under private wayleaves or easements. For the existing system to function properly it is important that licence holders and landowners are able to negotiate terms on an equal footing. This has a wider implications for licence holders and landowners develop positive relationships for the ongoing operation of the electricity network in the long term.

The CPA is aware that licence holders have expressed concerns that the current statutory processes under both Schedule 3 (compulsory purchase) and Schedule 4 (necessary wayleaves) under the EA 1989 are inefficient and costly, which has led to an imbalance in negotiations with landowners. There has, for example, been an increasing trend of distribution licence holders being required to pursue the Schedule 4 necessary wayleave processes to protect existing apparatus, following receipt of notices to remove apparatus from landowners.

There is a need for electricity licence holders to have resort to statutory powers to acquire rights and consents for new and existing apparatus. However, the use of such powers is regarded as means of last resort where negotiations between the parties are not successful.

It is important that the system promotes and encourages licence holders and landowners to engage properly, and act reasonably, in the conduct of negotiations to ensure that voluntary agreements remain the primary method for securing consents for new and existing apparatus.

The CPA would support improvements in the current statutory processes that reduces inefficiencies and promotes effective negotiation between the parties to maintain the use of statutory powers to secure consents as a means of last resort.

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?

It is expected that the need for rapid increase in electricity network capacity as part of the drive to achieve decarbonisation in the energy sector will result in a significant increase in the need for consents or rights for new/upgraded and existing electricity apparatus.

Under the current system, licence holders require either a prior voluntary or statutory consent to be granted before works to install or keep installed apparatus can be carried out. There is no prior statutory authority for licence holders to undertake such works, in contrast to water undertakers in relation to pipe laying works in private land under the Water Industry Act 1991 for example.

This necessitates the need for voluntary negotiations between licence holders and landowners/occupiers as a starting point. The ability of licence holders to deliver on targets to increase network capacity will largely depend on the cooperation of landowners/occupiers in those negotiations, or, as a fall back, the efficiency of the statutory processes for consents or rights to be granted to licence holders.

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

The CPA is aware that licence holders have experienced delays in negotiating voluntary consents with landowners, often citing what they perceive as unreasonable financial demands by landowners as the primary factor in delaying negotiations. Licence holders have highlighted that the lengthy timescales involved in applying for and obtaining the grant of statutory consents (under both Schedules 3 and 4 of the EA 1989) together with the financial costs involved in doing so, are factors that directly impact on negotiations with landowners and can give rise to increased financial demands.

It is essential that landowners/occupiers receive fair compensation for the grant of consents to electricity licence holders and that the parties to voluntary negotiations are placed on an equal footing so far as is possible. In particular, it is important to ensure that undue delays and disproportionate financial costs of existing statutory processes to acquire consents are not material factors that provide leverage for one party or the other in voluntary negotiations.

The use of statutory powers to deliver consents should be secondary to voluntary negotiations between licence holders and landowners/occupiers. Therefore, to positively impact the process of voluntary negotiations, it is important that statutory powers and related processes available to licence holders function well, encouraging parties to behave reasonably in negotiations in the knowledge that alternative legal process can be pursued as a viable last resort where sensible agreement cannot be reached.

Necessary wayleaves

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.

Under Schedule 4 of the EA 1989 licence holders can apply to the Secretary of State for necessary wayleaves to either install new apparatus or retain existing apparatus. Necessary wayleaves are essentially a form of statutory consent for a fixed term (typically 15 years) that bind both existing owners of land and successors in title.

The necessary wayleave process can be instigated either by a licence holder or, alternatively, by an owner/occupier of land service notice requiring the removal of existing apparatus from land. The service of a notice to remove by an owner/occupier of land necessitates a necessary wayleave application being made where a licence holder intends to retain existing apparatus.

The CPA is aware that there has been a large increase in the number of necessary wayleave applications that have been submitted to DBEIS in recent years. Electricity licence holders report that this is primarily due to an increase in the number of notices to remove existing apparatus received from landowners/occupiers.

There is considerable pressure on the system of administering and determining necessary wayleave applications, whether by written representations or hearing. As a result, the timescales for completion of the necessary wayleave process can be lengthy, in excess of 2 years in many cases.

It is apparent that steps to improve the efficiency and cost of the statutory process are necessary to ensure the current process functions properly.

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?

It is reasonable to assume that the need to deliver increased network capacity will result in a significant rise in the number of necessary wayleave applications. Concerns have been expressed that the current system is ill equipped to deal with increases in the volume of necessary wayleave applications, a concern that is heightened when considering the potential increase in the volume of consents for new and upgraded apparatus in the future.

8. How could the necessary wayleave process be improved?

The current necessary wayleave process applies no distinction between applications to install new apparatus or to retain existing apparatus. The same legal test and process applies equally to both, similarly there is no distinction drawn between applications relating to lower or higher voltage apparatus. At present the necessary wayleave process provides a 'one size fits all' approach to all cases, however consideration may be given to potential reforms to introduce a more flexible or streamlined approach to dealing with different categories of necessary wayleave applications, to improve the speed and cost effectiveness of the process.

Voluntary purchasing and leasing of land

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

N/A

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?

N/A

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

N/A

Compulsory purchase of land

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.

At present the use of compulsory purchase powers by licence holders to acquire land or permanent rights under Schedule 3 of the EA 1989 is relatively limited but plays an important part in the delivery of key network infrastructure.

The ability of licence holders to acquire land and permanent rights compulsorily is considered essential for delivery of project to deliver new and upgraded infrastructure, particularly in meeting future demand to deliver Net Zero targets.

It is important that the compulsory purchase process functions well and provides an efficient and cost effective system for acquisition of land and permanent rights for licence holders. At present, concerns over

the length of time the process can take and costs involved present the most pressing challenges of the existing system to licence holders seeking to deliver often time critical projects.

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

The CPA is actively engaged in considering current reform proposals and as part of that process would welcome the opportunity to consider further measures that aim to improve the overall efficiency of the compulsory purchase process both in respect of the electricity sector and more generally.

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

Section 37 requires a planning consent to be obtained for all new or existing overhead electric lines, unless works can be undertaken under Permitted Development rights or a specific statutory exemption applies .

The range of statutory exemptions is however at present is limited and in some instances does not enable licence holders to carry out routine upgrading works to existing network apparatus (e.g. increasing the voltage of an existing line, upgrading of a single phase line to a three phase lines and connections for more than one customer), without section 37 consent in each case, which can lead to increased costs and delays for the delivery of such projects.

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?

There is legitimate concern expressed by electricity network operators that the requirement to obtain section 37 planning consent in a wide range of cases may lead to increased delays and have a detrimental impact on the ability to deliver on targets for increasing network capacity.

16. How could the Section 37 process be improved?

Taking into account the interests of landowners and wider public interest, careful consideration to increasing the range of statutory exemptions from the requirements to obtain section 37 consent may be given as a means of delivering new and upgraded electricity apparatus efficiently and to address the increasing demand to expand existing network capacity.

Permitted development rights for substations

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?

N/A

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?

N/A

Comparison of land rights to other utility industries

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?

A striking feature of the comparable process available to water undertakers under the Water Industry Act 1991 is the power under section 159 to lay a water pipe, whether above or below the surface, in any land that is not a street, with ancillary rights of entry to maintain and repair. In contrast to electricity licence holder's powers under Schedules 3 and 4 of the EA 1989, water undertakers are able to give appropriate notice and commence works without the requirement to obtain a voluntary or statutory consent. In effect, water undertakers have statutory authority to undertake such pipe laying works, which enables projects to be undertaken with greater certainty and efficiency.

Similarly, the electronic communications code (the Code) provides a set of rights to operators with code powers, to facilitate the installation and maintenance of electronic communications networks. In absence of agreement, the Code enables either party refer the matter for the Courts or Tribunal to determine the terms of a code agreement, with such cases targeted to be determined within a six month timescale.

Both systems provide alternative examples of how the process of giving statutory consent for network infrastructure can be delivered with arguably greater efficiency and reduced legal process when compared with the existing processes under Schedules 3 and 4 of the EA 1989. Given the increasing demand for electricity network capacity, both the water and telecommunications systems provide informative examples that might be drawn upon in consideration of potential reforms to the current system under the EA 1989.

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

N/A