

Our Common Sense Plan for Planning

Land Rights and Consents for electricity infrastructure, proposals for reform from Energy Networks Association

December 2023

Introduction

Energy Networks Association (ENA) represents the companies that are responsible for the gas and electricity grid transmission and distribution network in the UK and Ireland, serving over 30 million customers.

Planning policy has been identified by bodies like the National Infrastructure Commission and Climate Change Committee as well as the Opposition and Government as a barrier to the deployment of green technologies, including electricity transmission and distribution infrastructure.

Approvals for planning and land rights and consents can take many years to be granted, and at a time of great transformation in the energy system, network companies cannot be held up by policies which were designed for a different time.

The term land rights and consents refers to the processes that electricity network operators must follow in order to gain:

- Consent to build and upgrade electricity network assets (typically referred to as planning permissions).
- The ability (rights) to access land in order to install and maintain such assets.

ENA has identified that the current statutory framework (including associated processes) is not fit for purpose to;

- Enable the delivery of new and upgraded electricity network infrastructure to achieve the Government's Net Zero targets, necessitating the rapid and large-scale increase in national electricity network capacity.
- Provide energy network security in the future.

Accordingly, ENA has undertaken an extensive consultation with its electricity members and has produced this report, setting out detailed proposals for procedural and systemic reforms to the current framework.

Crucially, the majority of the reforms we are proposing can be delivered at pace, speeding up the deployment of the power infrastructure we need now, and in the future.

Need Case for Reform

The Government's Net Zero targets include:

1. Decarbonising the electricity system by 2035.
2. A cross-sectoral infrastructure strategy by 2025, which include rapidly building and adapting the infrastructure for electricity.
3. Phasing out all new non-zero emission vehicles by 2035¹.
4. Installing 600,000 heat pumps per year by 2028, and up to 1.9 million by 2033.

The Government's *Powering Up Britain – Energy Security Plan* (March 2023) has also recognised the need to improve and accelerate the process for delivering connections in light of the expected doubling in demand for electricity by 2050. As we transition to a decentralised and decarbonised energy system, electricity networks are playing a critical role in providing timely new connections and upgrades to enable the uptake of low carbon technology in existing and new homes, commercial and industrial sites, and new power generation.

Unprecedented numbers of applications for electricity network connections have emerged in recent years, posing problems for the system as a whole. In several parts of the country, new connection dates for transmission connections are in the 2030s, and around half of contractual distribution connections are currently contingent on transmission upgrades.

Network companies, Ofgem, and DESNZ are collaborating under the auspices of ENA to advance both immediate fixes and longer-term reforms aimed at resolving these problems. ENA has published a report '[Rising to Britain's Net Zero Challenge](#)'² that outlines networks' plan that will deliver fair and fast access for all our customers.

In conjunction with the reform recommendations outlined in this report, it offers the comprehensive strategy required to effectively overcome these obstacles to delivering Net Zero.

The current statutory regime for electricity land rights and consents is inadequate to enable the delivery of the ambitious Net Zero targets. In particular, the current system is too costly, protracted, and does not provide time certainty for both electricity customers and electricity network licence holders in respect of the delivery of new, and retention of existing, apparatus³. The challenge to deliver an electricity network that is equipped to meet the Government's objectives is a national priority, requiring immediate action. Underpinning this challenge is the need for both distribution and

¹ Scotland seeks to decarbonise transport including phasing out the need to purchase new diesel and petrol cars by 2030.

² '[Rising to Britain's Net Zero Challenge](#)' published December 2023

³ In this Report, the term apparatus means electric lines and any associated apparatus including poles, towers and conductors unless the context indicates otherwise.

transmission network operators to secure land rights and consents for both new and existing electricity apparatus.

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ENA's Nine-Point Plan

To address the Government's Net Zero targets, ENA has prepared a 'Nine-Point Plan', detailing those areas of the current system that require procedural and systemic reform⁴. ENA's Nine-Point Plan is as follows:

1. **Point 1: Overhead Line Exemption Regulations 2013 and Section 37 Consents** - ENA proposes a widening of the categories of Permitted Development for which planning permission is not required, including the rebuilding of overhead power lines from single to three phase, and the alteration of the conductor type on low voltage networks.
2. **Point 2: Consents in Private Streets** - Reform is required to address the ambiguity in the current process for acquiring rights for apparatus in private streets under Section 10 and Schedule 4, Paragraph 1 Electricity Act 1989 (the "EA 1989").
3. **Point 3: Access Rights to Apparatus** - Reform is required to amend access powers under Schedule 6, Paragraph 9 EA 1989 so that such rights can be exercised by both electricity distribution and transmission owners. Currently these rights do not apply to the transmission network.
4. **Point 4: Felling and Lopping of Trees** - Reform is required to simplify the process for network operators to gain access to land to undertake safety/operational critical vegetation management works under Schedule 4, Paragraph 9 EA 1989.
5. **Point 5: Town and Country Planning Act – Permitted Development⁵** - ENA proposes amendments to the General Permitted Development Order to extend the size of substations above the existing 29 cubic metres that qualify as Permitted Development.
6. **Point 6: Retention of existing rights** - Reform is required to ensure that the process for acquiring rights to retain apparatus (Schedule 3 and Schedule 4, Paragraph 8 EA 1989) is fair and balanced.
7. **Point 7: Acquisition of new land rights** - Reforms are required to improve the process for acquiring land or permanent rights over land (Schedule 3, EA 1989) and the process for acquiring termed necessary wayleaves (Schedule 4, Paragraph 6 EA 1989).
8. **Point 8: Acquisition of Land** - Reform is required to speed up the process for network operators to acquire land compulsorily under Section 10, Schedule 3 EA 1989 (for example, for the delivery of new primary and distribution substations).
9. **Point 9: Code of Practice** - It is recommended that industry stakeholders develop a Code of Practice to include all changes to the current statutory framework.

This report sets out detailed reform proposals that are intended to address each of the aims highlighted in the Nine-Point Plan.

⁴ Unless otherwise stated, the measures listed and assessed apply within England, Wales and Scotland. Areas of divergence are separately addressed.

⁵ In Scotland, permitted development rights are set out in Class 40 of Schedule 1 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992.

The proposed reforms include a variety of measures, ranging from discreet changes to existing procedures through to strategic changes proposed to introduce new statutory rights to install certain categories of new electricity apparatus. The proposed reforms also identify areas for consolidation of existing measures into new streamlined processes.

Executive Summary

The existing regime for electricity licence holders to acquire consents for new or existing electricity apparatus requires urgent reform to increase certainty for both electricity licence holders and customers and to deliver the expansion of the existing electricity transmission and distribution network in order to meet the Government's Net Zero targets by, at the very latest, 2050.

ENA recognises that material improvements can be achieved through a range of reforms to the existing system, including:

- 1 Procedural reforms to improve the efficiency and balance of the existing necessary wayleave processes, and to provide certainty of electricity supply for customers.
- 2 Consolidation and streamlining of rights for both transmission and distribution licence holders to access property and land to undertake works, including tree felling and lopping.
- 3 Expansion of planning Permitted Development rights for a wider range of electricity apparatus.
- 4 Clarification of the process for acquiring rights for apparatus in private streets under Section 10 and Schedule 4, Paragraph 1 EA 1989.

The reforms proposed by ENA are intended to strike the right balance between the requirement to meet the Net Zero targets, the needs of electricity licence holders and the needs of customers and landowners.

Scoring: Assessment of Current System and Recommended Reforms

ENA recently commissioned an independent study by Fisher German to evaluate the effectiveness of the current statutory framework and to analyse the potential improvements that the specific reform proposals set out in this Report are anticipated to achieve if implemented, whether in whole or in part.

A survey (commissioned as part of the study) was undertaken to score each reform against various criteria. Those involved were asked whether the current system and the recommended reforms would be “*Suitable*” or “*Not Suitable*”, and whether there would be “*Potential Issues*” for achieving Net Zero targets.

The scoring system is set out below:

Sufficient to facilitate delivery of Net Zero 5-7 [Green]	Challenges in facilitating delivery of Net Zero 8-11 [Amber]	Significant barriers to facilitating delivery of Net Zero 12-15 [Red]
Sufficiently provides the consents and rights to allow Members to deliver the Nine Point Plan and statutory and regulatory obligations	Some challenges and risk present in being able to deliver statutory and regulatory obligations in accordance with the Nine Point Plan	Presents significant risk and challenges to being able to deliver statutory and regulatory obligations with a timely and cost-effective manner and likely subject to significant criticism in its operation

Overview of Current System

Set out below is an overview of the current statutory framework governing land rights and consents for electricity network infrastructure.⁶

Land Rights

Network operators have the power to acquire land or rights over land for new or existing apparatus under Schedule 3 (compulsory purchase powers) and Schedule 4 (rights to acquire necessary wayleaves, being fixed term statutory consents (typically 15 years in length)) of the EA 1989.

In absence of agreement with a landowner, operators are required to follow a legal process to acquire rights. In the majority of cases, operators elect to follow the process to acquire a necessary wayleave under Schedule 4 of the EA 1989.

Typically, the necessary wayleave process is protracted and can take between 2 to 4 years to conclude. For existing apparatus, there is no presumption in favour of retention. Neither the statutory provisions, nor procedural rules, require a landowner to participate in the process. Similarly, there is no entitlement for a network operator to recover any professional costs incurred in the process from the landowner.

As a result, it is possible for landowners to compel operators to pursue the necessary wayleave process as a means of leveraging compensation negotiations. This has led to an increase in necessary wayleave cases which has placed pressure on DESNZ who administer necessary wayleaves, leading to delay and lack of certainty for operators.

The current process also creates a risk, for electricity customers, of ransom from neighbours and third parties, where rights are required over third-party land and those third-party landowners refuse to grant access to electricity network operators.

Land Rights – Scotland

In Scotland, there are differences with the processes and position set out above:

⁶ The position in Scotland, in so far as it diverges from that which applies in England and Wales, is also set out in Section 6 of this Report.

- Schedule 4 – necessary wayleaves are normally granted for 40 years. Scottish Ministers⁷ consider that this period is equitable and provides a balance between the need for certainty in the electricity network and the interests of landowners/occupiers who may wish to have their necessary wayleave re-examined. It is important to note that the landowner/occupier cannot serve a notice to remove the electricity apparatus until the expiry of that period.

In absence of agreement with a landowner, licence holders are required to follow the same statutory processes as in England and Wales under either Schedule 3 or Schedule 4 of the EA 1989.

In Scotland, the necessary wayleave process often takes between 6 and 14 months to conclude. The continued use of the Electricity (Compulsory Wayleaves) (Hearings Procedure) Rules 1967 (the “1967 Rules”) (repealed in England and Wales in 2013) creates a very formal and unsuitable necessary wayleave process. As with England and Wales, there is no presumption in favour of retention of the lines, nor is there an obligation on the landowner to justify removal or to take part in the process.

Planning Consents

Planning approval for new or existing apparatus is required either under:

- **Permitted Development** – rights to enable certain types of work to be undertaken without the need to apply for planning permission; or
- **Planning Consent** – application under section 37 of the EA 1989 relating to installing and keeping installed overhead lines.

Access Powers

Existing rights to access land under the EA 1989 include:

Access – there are powers under Paragraph 9, Schedule 6 of the EA 1989 for distribution operators to access existing apparatus on giving written notice (save for emergencies) to carry out essential works. These powers do not currently apply to transmission electricity licence holders.

Tree Lopping and Felling – there are powers under Paragraph 9, Schedule 4 of the EA 1989 to access land to carry out essential tree lopping and felling works.

Comparison to Other Statutory Undertakers

⁷ [Applications to the Scottish Ministers for the grant of a Necessary Wayleave in Scotland: Guidance for applicants, landowners and occupiers \(www.gov.scot\)](http://www.gov.scot)

A comparison exercise has been undertaken by ENA, which compares the current rights and powers of other statutory undertakers (water, telecoms and gas networks) with the current rights and powers of electricity distribution and transmission network operators, as set out below:

Statutory undertaker	Water	Gas	Telecoms	Electricity
Relevant Legislation	Water Industry Act 1991	Gas Act 1986	Electronic Communication Code - Digital Economy Act 2017	Electricity Act 1989
Effective Powers to Acquire Rights or Land	Yes – Section 155 and Schedule 11 A water undertaker may be authorised by the Secretary of State to purchase compulsorily any land anywhere in England and Wales which is required by the undertaker for the purposes of, or in connection with, the carrying out of its functions	Yes – Schedule 3 The Secretary of State may authorise the compulsory purchase of any land.	Yes – ‘Code Rights’ - Schedule 3A Code Rights include comprehensive rights in relation to telecoms apparatus, including to install and keep installed the apparatus on, under or over the land.	No – Schedule 3 & 4 Current powers to acquire land or rights (inc. necessary wayleaves) are ineffective, requiring lengthy and costly legal processes to be followed in every case.
Powers to carry out works on private land for new apparatus	Yes – Section 159 Rights to install new apparatus exercisable after giving reasonable notice. If the landowner refuses to comply with the notice, water	No Need landowner agreement or the use of compulsory purchase powers for new apparatus.	Yes – Schedule 3A Code Rights exercisable in relation to private land, including to install apparatus on under or over land.	No – Electricity distribution licence holders have powers to access existing apparatus to carry out works (Sched 6, Para 9 EA 1989), but do not have powers to install

	companies are able to apply to court for warrant of entry.			new apparatus without prior consent.
Risk of termination of rights and removal of apparatus	No Statutory powers to lay and keep pipe apparatus in place (s.159 WIA 1991).	Limited Termination dependent on terms of consent agreed with landowner or acquired by compulsory purchase	Limited Termination of Code Agreements subject to notice (min. 18 months) and satisfying statutory grounds.	High Right for landowners to serve notice to remove in relation to apparatus on giving 3 months' notice.

In particular, it should be noted that there is a large risk of termination of rights and removal of apparatus in the electricity industry (with limited and no risk in the telecoms, gas and water industries) which is counterproductive to achieving the Government's Net Zero and decarbonisation targets. This risk of easy termination of rights also creates uncertainty in respect of the reliability of electricity supply for customers.

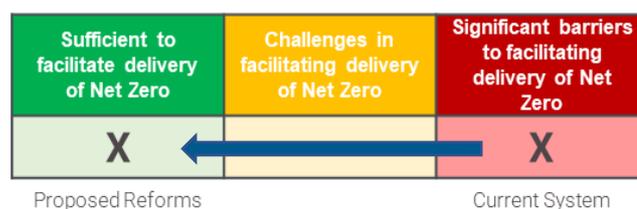
Proposed Reform Options

ENA has proposed reforms that are targeted at addressing the deficiencies in the current statutory framework for both new and existing electricity infrastructure, which are split into two categories:

- **Procedural reforms** – to consolidate and improve the existing land rights and consenting regime; and
- **Systemic reforms** that would introduce (a) new powers to install new apparatus; and (b) fundamental changes to the necessary wayleave consenting process to promote resolution without recourse to formal legal proceedings.

Procedural Reforms

Overhead Line Exemption Regulations 2013⁸ and Section 37 Consents



Recommendations

Amendment to Overhead Line Exemption Regulations 2013 (the “OHL Exemption Regulations”) to allow the following works on existing overhead lines:

1. Upgrade existing lines from single to three phase (i.e., two to three wires). The apparatus will remain in the same location, with the only change being the number of wires oversailing between each pole. The proposed change would allow for greater flexibility in carrying out reinforcement to networks to provide additional capacity needed for EV charging and heat pumps.
2. Alteration of conductor type (i.e., open wire to bundled conductor). The level of impact on the landowner would be limited.
3. Increase in pole height, so as to maintain minimum ground clearances in accordance with The Electricity Safety, Quality and Continuity Regulations 2002 (the “ESQC Regulations”). This will allow for greater clearances from the ground/objects.
4. Amendment to Section 37 Consents - increase nominal voltage to a maximum of 33kV (increased from 20kV) including related increase in pole heights, for up to four customers, without the need for Section 37 consents.
5. Upgrade existing apparatus. In most cases, such a change will not be discernible to a landowner or to the public. The change will remain subject to other controls such as the conditions applicable to the existing line which are contained in a consent under Section 37(1) of EA 1989 and the obligations within the ESQC Regulations.

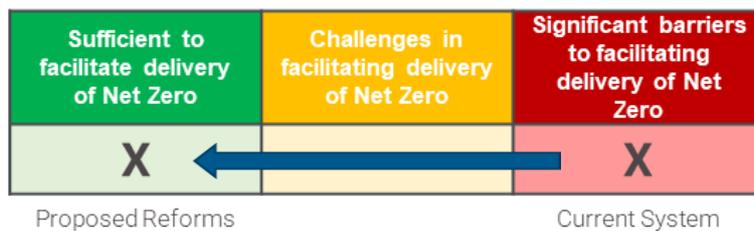
How will the reform recommendations facilitate achieving Net Zero targets?

⁸ In Scotland the Overhead Lines (Exemption) (Scotland) Regulations 2013 apply and amendments are addressed below.

The reform is critical to achieving quicker connections in the delivery of reinforcement/new connections on existing overhead lines and will maintain protection of landowner rights; and

The reform will retain Local Planning Authority referral and the requirement for full Section 37 consents on all new, and alterations to existing, overhead lines within highest protected landscapes.

Consents in Private Streets



Current System

There remains ambiguity in the process for acquiring rights in private streets under Section 10 and Schedule 4, Paragraph 1 EA 1989. As a result, network operators do not often exercise these rights.

Recommendation

Seek alignment of Schedule 4 EA 1989 with Schedule 3 Gas Act 1986, so as to allow for a general right to install cables within any street “*which has been laid out but not dedicated to the public use only for the purpose of conveying electricity to any premises which abut on the street*”.

The reform should address ambiguity in the application of the current process for acquiring rights for apparatus in private streets under Section 10 and Schedule 4, Paragraph 1 EA 1989.

How will the reform recommendations facilitate achieving Net Zero targets?

The reform will ensure the delivery of new connections and provide unrestricted access for customers to the distribution network.

Access rights to apparatus

	Sufficient to facilitate delivery of Net Zero	Challenges in facilitating delivery of Net Zero	Significant barriers to facilitating delivery of Net Zero
D = Distribution T = Transmission			
Tree Lopping	D, T	D (Current)	T (Current)
Access & Maintenance	D, T	D (Current)	T (Current)

Proposed Reforms



Current System

Currently, only distribution licence holders can access existing apparatus on written notice to carry out essential works. Landowners can object to the exercise of tree lopping rights, which requires a formal hearing process where a counter-notice is served. The procedure typically takes 18-24 months to conclude.

The current process to obtain access rights to make lines safe whilst trees and vegetation continue to grow is protracted. Whilst inspections are carried out and threats identified, electricity operators are expected to seek consent to remove this threat by agreement with the landowner, whose objective can often be to seek removal of the line by compromising safety. For example, in a recent case, an electricity licence holder sought an order for trees to be cut to allow for 5 years growth, to minimise the requirement for future applications. However, the Inspector awarded only 2 years. In light of the timescales involved in the process, the order was of limited use and ultimately led to the licence holder negotiating a voluntary agreement with the landowner to divert/underground the apparatus at an increased cost.

Recommendations

Consolidate access rights:

1. ENA proposes to create a single set of provisions for access rights to repair, maintain, replace etc. including tree felling / lopping for safety / operational critical vegetation management works in line with ESQC Regulations.
2. ENA proposes a revised approach to necessary wayleave applications to retain apparatus, by amending the Electricity (Necessary Wayleaves and Felling and Lopping of Trees) (Hearing Procedures) (England and Wales) Rules 2013 (the "Procedural Rules") to provide that all applications will be determined by written representations by default, subject to a right of either party to make an application for the case to be determined at a hearing on reasonable grounds.
3. The Procedural Rules are intended to enshrine the requirement for necessary wayleave applications to be determined in set timescales, for example within 6 months in written representations cases and 12 months in cases requiring a hearing. It is suggested that there should also be set timescales for the determination of applications for tree lopping orders.
4. ENA propose that a new provision is put into the Procedure Rules to allow either party to claim an award of costs. This will be based upon similar principles to those applied in planning appeals, i.e., unreasonable behaviour (and therefore will be familiar to the Inspectors dealing with necessary wayleave applications). Examples of unreasonable behaviour may include:

5. Failure to co-operate with the other party or DESNZ/PINS.
6. Missing deadlines imposed by the Procedure Rules/Inspector.
7. Failure to attend the hearing/submit evidence.
8. Unmeritorious cases with no reasonable prospect of success.
9. A successful costs award could be granted in whole or in part and would relate to work for preparing for written representations or the hearing, attending the hearing, and costs for any expert witnesses/legal advice and support.

Transmission – extend access rights to include transmission licence holders.

Third Party Land – extend access rights across third-party land where ancillary works are required.

How will the reform recommendations facilitate achieving Net Zero targets?

The reforms will:

- Provide certainty of process timescales for both electricity distribution and transmission operators, and customers.
- Allow electricity distribution and transmission operators to upgrade and restore power more quickly, leading to more reliable supplies for operators and customers.
- Provide the ability to remove ‘risks’ from the network, such as safety issues (a key recommendation of the Ofgem Storm Arwen Report dated June 2023 was that the resilience of overhead networks must be improved to cope “under abnormal weather conditions using a risk-based methodology”).
- Usage of low carbon technologies (LCT) is increasing the need for reliable supplies, and contested vegetation cuts are a threat to the provision of the same; as the usage of LCT increases, so does the need to reinforce the electricity distribution network and reform the current process (specifically in respect of tree and vegetation management) to cope with the additional load. The above proposed reforms will allow electricity operators to access land and undertake vegetation management works in order to provide an on-time and reliable supply of electricity to all customers.

- Provide uniform access rights for both transmission and distribution network operators.

Planning and Permitted Development



Current Position

It is highly likely that loads on distribution networks, which will result from the widespread adoption by customers of LCT technologies (such as EV charging and heat pumps), will drive the need for an increase in the standard size of package substation enclosures so that larger apparatus can be installed. It is currently not possible to accurately predict the size of future apparatus and therefore the enclosures which will be needed to accommodate it, but the logic of such a change being needed is compelling.

Recommendation

A mechanism should exist to enable the size threshold for Permitted Development Rights in respect of substation enclosures to be changed in the future without the need for a change in primary legislation.

How will the reform recommendations facilitate achieving Net Zero targets?

This reform is important to enable a future increase in the standard size of substations to deliver capacity upgrades and achieve connection targets without unnecessary delay.

Systemic Reforms

Powers for new infrastructure



Recommendations

Powers are required where a landowner refuses permission to install apparatus in private land, and those powers need to deliver that new apparatus within a time period which reflects customers' (and DESNZ's) ambitions for the connection to deliver the required power. The intention is for the landowner and the electricity licence holder to consult to find solutions to issues relating to the installation of new apparatus.

The following reforms are proposed:

1. Introduce statutory powers to install and keep installed certain categories of apparatus in private land.
2. Written notice to be given – called a “Notice to Install”.
3. A notice period is given to the landowner for installation of the apparatus. The notice period would/is to be determined by the Government. The notice periods for underground apparatus and overhead apparatus may differ.
4. A Notice to Install must enclose:
 - a. A plan(s) showing the intended position of the apparatus.
 - b. Specification of the works to be undertaken to install the apparatus, including details of the timescales for completing the works.
5. Grant of a voluntary wayleave or permanent easement within 12 months of serving the Notice to Install. In absence of agreement, a licence holder can apply for a necessary wayleave or permanent easement under new Schedule 4 as detailed below.

How will the reform recommendations facilitate achieving Net Zero targets?

The introduction of statutory powers for licence holders to install certain categories of new apparatus would remove the requirement to obtain voluntary or statutory consents in advance. This will

inevitably speed up the process for installing new apparatus, which is essential to achieving the targets set for increasing network capacity.

The proposed measures seek to balance the interests of landowners by imposing a duty on licence holders to obtain the agreement of the landowner or, in absence of agreement, statutory consent (i.e., a necessary wayleave) to retain apparatus in the longer term and to undertake that process within 12 months of the exercise of the powers to install.

Consolidated land rights process



Current System

At present, an application for a necessary wayleave for existing apparatus can only be sought in response to a Notice to Remove. There are circumstances in which it would be useful for a licence holder to be able to seek a necessary wayleave for existing apparatus to provide more secure rights/operational resilience or enhanced rights. These may be desirable in advance of an upgrading of apparatus, for example.

Recommendations

1. **Consolidation of the process for granting permanent rights and necessary wayleaves -**
Recommend jurisdiction to be given to DESNZ to grant both necessary wayleaves and permanent easements in relation to both new and existing apparatus under the proposed consolidated process.
2. **New process for the grant of rights – Notice to Review (retention or removal).**
 - (a) ENA proposes that Notices to Remove become “Notices to Review”. This would be served by the landowner or licence holder in relation to any existing apparatus.
 - (b) Statutory grounds – a Notice to Review must specify whether the retention of the apparatus is opposed or unopposed. The statutory grounds for removal could include:

- (A) Significant/material breaches of the existing agreement, subject to a right of the licence holder to be given a reasonable period to remedy such breaches following service of the notice.
 - (B) The landowner intends to undertake works to redevelop the property that cannot be reasonably completed without removal of the apparatus.
 - (C) The apparatus is not necessary and expedient to be retained.
- (c) In absence of agreement, either party may refer the matter to DESNZ for determination of (a) the nature of the agreement to be granted – i.e., necessary wayleave or easement; and (b) the terms of the relevant agreement. It is suggested that standard terms and conditions be published by DESNZ as a starting point for negotiation, or determination, of terms in each case.
- (d) Landowners should then be entitled to compensation under Paragraph 7 of Schedule 4 of the EA 1989 on the date of grant of the new wayleave or easement, to be determined by the Upper Tribunal (Lands Chamber) if not agreed between the parties.

Streamlined Process

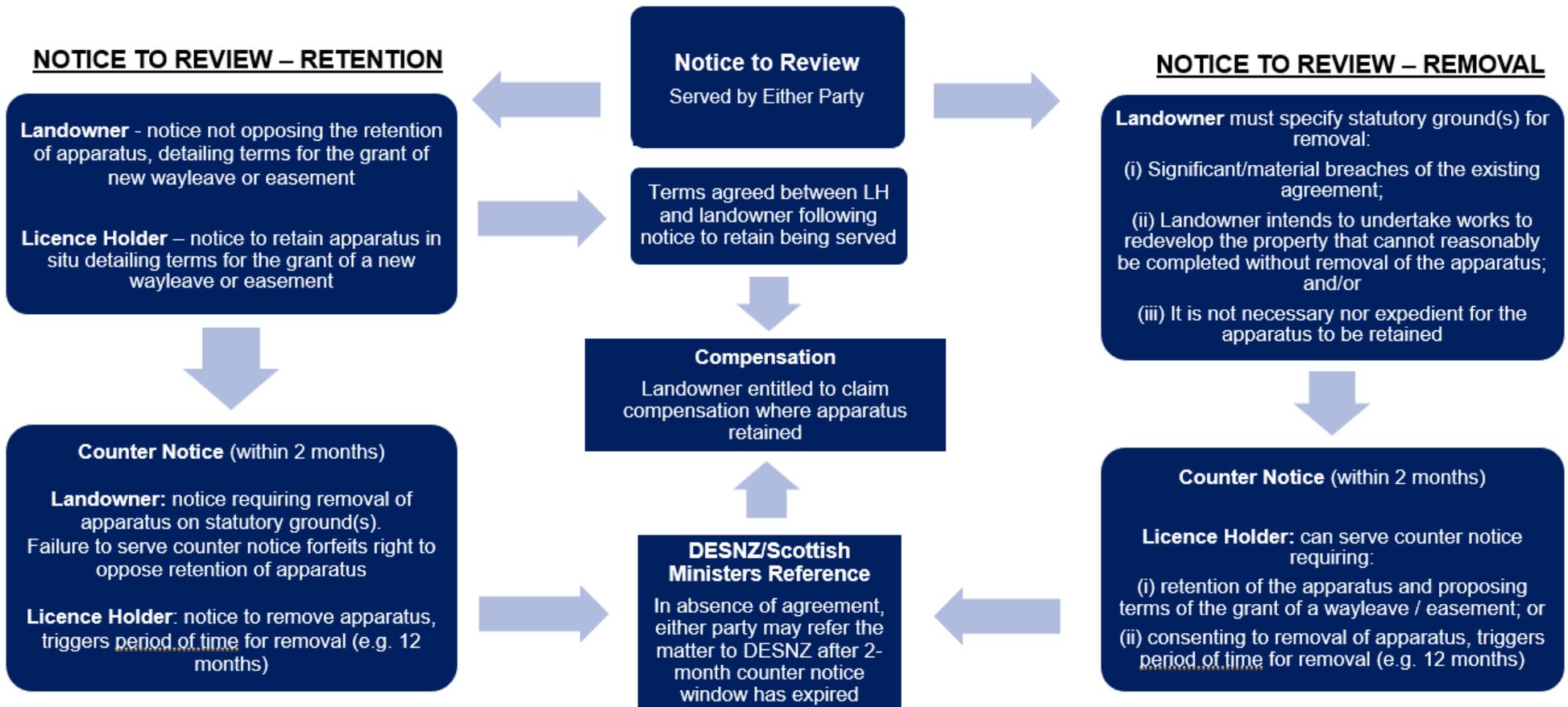
1. Case management – ENA proposes that applications are determined by the written representations procedure by default and that set timescales for determination (e.g., 6 months for written representations and 12 months for cases requiring a hearing) are put in place.
2. Cost awards - ENA proposes reform to allow parties to claim an award of costs in the necessary wayleave hearing process, limited to circumstances where there is unreasonable behaviour (such as failure to co-operate and missing deadlines, and failure to attend hearings).

How will the reform recommendations facilitate achieving Net Zero targets?

This reform would improve overall speed and efficiency of the process by promoting engagement between parties, increasing the rate of voluntary agreements, and reducing the number of applications to be determined by DESNZ/Scottish Ministers.

The premise is that this reform would put the onus on the parties to seek to negotiate terms for the retention of apparatus unless a landowner has a legitimate basis to seek removal of the apparatus on one or more statutory grounds. This will limit Notices to Remove being given as a means of leverage to increase wayleave payments and ultimately will reduce the volume of notices issued (and subsequently reduce the number of necessary wayleave applications being made thereafter).

It has the advantage of placing greater onus on landowners to justify the basis on which apparatus is required to be removed from land. However, it is recognised that the scope of any statutory grounds will need to be carefully considered; the downside to this is that it has the potential to expand the basis on which landowners can seek removal of apparatus and it could also increase the number of cases that require dispute resolution.



Code of Practice

Recommendation

ENA acknowledges that a Code of Practice would be valuable to the scope and extent of the provisions being consulted on with industry stakeholders.

The Code of Practice would apply to licence holders and landowners in relation to land rights and compensation matters.

How will the reform recommendations facilitate achieving Net Zero targets?

A Code of Practice will promote best practice and cooperation in conduct of land rights and compensation negotiations by both licence holders and landowners.

It would also improve the speed and efficiency of the system by encouraging amicable resolution of matters without recourse to formal legal proceedings, promoting use of alternative dispute resolution processes (e.g., mediation) where appropriate, and reducing an adversarial approach to negotiations.

Harmonisation - Legislation in Scotland and Wales

Land rights and consenting processes should be consistent across the United Kingdom, extending to all aspects of the Nine-Point Plan.

In Scotland:

- There is a need to replace the 1967 Rules that currently govern the necessary wayleave process and impede the delivery of reliable connections and the Government's Net Zero targets.
- Replacement regulations should reflect a reformed version of the Procedural Rules.

The Electricity (Compulsory Wayleaves) (Hearings Procedure) Rules 1967

The 1967 Rules have not been revised since 1967 and are no longer suitable for use. For example, they place onerous requirements upon the license holder (and landowner) by requiring a full oral hearing in all cases.

In practice and because of the limitations in the Rules, the procedure adopted in terms of necessary wayleaves normally proceeds with the agreement of all parties and relies on the use of regulations which apply to planning appeals.

The 1967 Rules should be amended to provide for a more certain and proportionate approach which:

- 1 Leaves the decision on the procedure to be adopted to the reporter (having sought the views of parties). This would, for example, formally allow hearings to proceed by way of the written representations procedure.
- 2 Provides a more balanced and efficient process which formally requires landowners to properly set out their case.
- 3 Provides procedural rules to enshrine the requirement for necessary wayleave applications to be determined in set timescales, for example within 6 months in written representations cases and 9 months in cases requiring a hearing. It is suggested that there should also be set timescales for the determination of applications for tree lopping orders under Paragraph 9 of Schedule 4 EA 1989.

- 4 Allow hearings and pre-hearing meetings to be conducted by modern methods of communication, such as remotely on MS Teams.

Updated guidance could also indicate the circumstances in which either the written representations procedure or a hearing is likely to be appropriate.

Duration

In terms of the duration of a necessary wayleave, the position in Scotland has been, since 2014, that a necessary wayleave will normally be granted for a period of 40 years (although the guidance also envisages a longer period if the circumstances exist). A necessary wayleave granted for say, 40 years cannot be terminated until that period has expired. This provides a welcome degree of certainty and security for apparatus, particularly new apparatus with an asset life of between 40 and 80 years.

Terms and Conditions

Scottish Government Guidance updated in 2022⁹ makes clear that any necessary wayleave which is granted by Scottish Ministers will be based upon the standard terms included within Appendix 3 to the document. This approach provides certainty to all parties on the likely form and content of wayleaves, if granted, and improves consistency.

The Overhead Lines (Exemption) (Scotland) Regulations 2013

Scotland has its own set of Overhead Exemption Regulations (the “Scottish Exemption Regulations”). For example, the Scottish regulations currently allow the height of replacement supports to be up to 20% more than the existing support, providing greater flexibility¹⁰.

ENA proposes amendments to the Exemptions Regulations are made as follows:

- 1 Regulation 3 to be revised by the addition of a new paragraph (g) to allow for the upgrade of existing electric lines from single phase to three phase (i.e., two to three wires).

⁹ [Applications to the Scottish Ministers for the grant of a Necessary Wayleave in Scotland: Guidance for applicants, landowners and occupiers \(www.gov.scot\)](https://www.gov.scot/publications/consultations/2022/01/16/applications-to-the-scottish-ministers-for-the-grant-of-a-necessary-wayleave-in-scotland-guidance-for-applicants-landowners-and-occupiers/16-jan-2022/html)

¹⁰ See regulation 4(1)(d)

- 2 Regulation 3 to be revised by the addition of a new paragraph (h) to allow licence holders to alter the conductor type (i.e., open wire to bundled conductor).
- 3 Regulation 3(c)(ii) to be revised to increase the temporary period for the placing of an electric line from 6 months to 24 months; 6 months is too short when lines are required to be moved. A consequent change to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (**PDO**) also needed and this is addressed below.
- 4 Regulation 4(1)(a) to be revised to allow for the nominal voltage to be increased to a maximum of 132kV.
- 5 Regulation 4(1)(e)(i) to be revised to permit an electric line to be installed in a different position up to 60 metres from the existing line.
- 6 Regulation 4(3)(b) to be revised such that “*small support*” is defined as a support not exceeding 12 metres in height.

Permitted Development Rights – substations and temporary lines

Substations

DNOs require a larger building footprint to enable safe movement around apparatus; an increase in permitted development rights is required. A threshold of 39m³ is a more suitable limit.

Buildings to protect plant

At present, permitted development rights exist for the erection on operational land of a building solely for the protection of plant or machinery (under Class 40(1)(e) of Schedule 1 to the PDO). However, before commencing development, the licensee is obliged to apply to the planning authority for a determination as to whether its prior approval is required for the siting, design and external appearance of the building. This seems anomalous as there is no similar requirement for ‘other development’ being carried out under Class 40(1)(f).

The following changes should be made:

- Class 40(1)(a) of Schedule 1 to the PDO to be amended to allow substations of up to 39m³ to be installed without the need for planning permission.
- Class 40(3)(d) of Schedule 1 to the PDO to be excised i.e., the requirement to seek prior approval regarding the siting, design and external appearance of the building.

Installation of a Temporary Line

In line with the suggested change to the temporary placing of an electric line under the Scottish Exemption Regulations, the reference to 6 months within Class 40(3)(b) of Schedule 1 to the PDO should be replaced with 2 years.

Conclusions

The current system is not fit for purpose for the timely delivery of Net Zero targets, primarily due to the length of time it takes for processes to conclude, and the overall cost and high level of uncertainty for customers and licence holders within those processes.

It is critical that the recommend reforms are delivered to:

- **New Apparatus** – enable fast delivery of new apparatus through the introduction of new statutory powers to install.
- **Existing Apparatus** – streamline the process for acquiring rights to retain apparatus, encouraging agreement between parties and minimising the use of legal processes.
- **Planning & Consents** – reduce burden and delay by expanding exemptions and permitted development rights for key apparatus. Create certainty in the process for carrying out works in private streets.
- **Access Rights** – consolidate access rights for both transmission and distribution licence holders to enable fast access for the maintenance of apparatus in order to deliver network efficiency and security.

ENA's Nine Point Plan provides the road map for delivery of effective reform so that electricity licence holders can seek to achieve all Government Net Zero targets by the target date of 2050.