

Business Guides



Electricity – Cables Across Land Business Guide Ref: 089

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Electricity – Cables Across Land

1. INTRODUCTION

This NFU Business Guide document covers the general principles underlying the acquisition of rights in land by electricity companies and the applicable compensation procedure. It does not replace professional advice which may be required.

The Electricity Act 1989 privatised the industry into three sectors - generation, transmission and distribution. The National Grid Company (NGC) operates the transmission system. The distribution systems are operated by the Regional Electricity Companies (recs). The recs have a statutory duty to supply electricity to consumers. For example, a REC will be statutorily required to connect an isolated dwelling in the countryside even if this involves new lines across land. For more information on this the NFU's Farm Energy Service can provide additional assistance through CallFirst on 0370 845 8458.

An electricity licence holder is a body authorised under the 1989 Act to supply electricity and they may seek powers to obtain land or rights over land from the Secretary of State. These powers are laid out in Schedules 3 & 4 of the Electricity Act 1989. The electricity licence holders, hereinafter called the companies, will generally seek to obtain the rights they need by agreement before seeking compulsory procedures. This is known as negotiating with compulsory or statutory powers in the background.

2. ACQUISITION OF RIGHTS IN LAND

Compulsory Purchase

Schedule 3 of the Act sets out the powers of the company to compulsorily acquire land or rights in land. Compulsory purchase will only usually be used to acquire land for substations or for permanent easements for underground cables. Many of the higher voltage lines are held under easements and the compensation procedures make specific allowance for the wider effects of the lines on the value of the property as a whole.

Wayleaves

A wayleave grants the company the right to hold its apparatus on the land in return for compensation. If new lines are proposed the company will serve a Wayleave Notice on the landowner and the occupier. If this notice is not returned within 21 days, the company is entitled to apply to the Secretary of State for a Necessary Wayleave.

In practice, companies will negotiate for longer than 21 days before applying to the Secretary of State. If the landowner or occupier will not sign a wayleave then the Secretary of State is obliged to grant them a hearing before making a decision to grant a wayleave to the company. A compulsorily granted wayleave will generally be for a term of 15 years, although this varies according to the individual case. A wayleave granted compulsorily removes the rights of the landowner or occupier to terminate the agreement for the

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stated period of years. Compensation will still be paid if the wayleave is granted under compulsory powers.

When a wayleave is granted voluntarily it is technically terminable. Any grantor of a wayleave can serve a notice requiring the company to remove its apparatus. The terms relating to termination must be complied with and will normally be found as part of the wayleave agreement. If the company does not respond within three months, the apparatus must be removed. A more likely result is that the company will serve a counter notice and if agreement cannot be reached, seek a compulsory wayleave involving a wayleave hearing as above. The only circumstance where the landowner or occupier is almost certain to avoid a compulsory wayleave is when planning permission has been granted for a dwelling and the presence of the lines prohibits construction. Otherwise each case will be considered on its merits.

3. CONVERTING TO AN EASEMENT

An easement in this case is the permanent interminable right to hold electricity apparatus on or over the land.

Many landowners and occupiers consider the capital sums of compensation granted for easements preferable to the annual wayleave payments. In these circumstances they are prepared to forego their rights to terminate a wayleave and grant a permanent easement. In some circumstances, companies will offer an easement settlement to secure their position.

Most companies operate a general rule assessing the easement compensation for lines at 20 times the annual wayleave payment. The NFU does not believe that 20 times the annual wayleave payment is the correct multiplier and Members are advised to take professional advice when considering taking an easement. The settlement should also take into account the effects on the value of the property as a whole. This might include, for example, the reduction in the value of a house which could amount to a considerable claim.

Often an easement is offered when the landowner has served a notice for the removal of the electricity apparatus. In order to avoid the administrative procedures and the risk of losing the lines the company will negotiate for an easement.

NFU AGREEMENT ON WAYLEAVE PAYMENTS

The NFU the Country Land & Business Association and the Farmers Union of Wales negotiate recommended annual wayleave payments. These are assessed under two headings:

- 1 Annual wayleave payment which addresses the right to hold the apparatus on the land.
- 2 Annual disturbance payment for the interference with agricultural operations. This payment, made to occupiers of land, is split into an arable, grassland and hedgerow rate. There are additional enhancements to this payment for such operations as cherry and cider orchards and members are

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advised to consult the supporting guidance notes. Timber growing losses, notably coppice, are not covered by any of the standard wayleave payments. The detailed points are addressed in the last section of this document, entitled "Principles of electricity wayleave payments".

A review of the assessment of the disturbance element is currently being undertaken by the NFU Wayleaves group.

The NFU and CLA periodically negotiate these payments taking into account the legislation and recent Lands Tribunal or other Court cases. It is intended that payments are appropriate to most agricultural situations and they are commended on that basis. There will be individual situations where payments do not fully reflect the losses. For example, intensive vegetable growing, double cropping and cropping involving irrigation is not specifically covered under interference with agricultural operations. In these circumstances the Wayleave Officer of the company should be contacted for individual assessment. The company should meet the reasonable fees of a valuer when this occurs.

The current disturbance payment rate is based on a detailed study carried out by ADAS on behalf of the Electricity Industry in consultation with the NFU and CLA. Payments are drawn from five separate headings:

- 1 Time spent manoeuvring around structures
- 2 Loss of crop on the area occupied by the structure
- 3 Yield loss surrounding the structure
- 4 Wasted inputs due to the presence of the structure
- 5 Weed control around and under the structure

These payments are based on typical national crop rotations and stocking patterns. The figures are updated annually to reflect altered factors, for example, changes in the price of the various commodities and labour. It is felt that the payments being offered by ENA (Energy Networks Association Estates and Wayleaves Committee) do not cover costs and losses incurred through disturbance from a pole or pylon. The original survey looking at time spent in regard to the five headings was carried out in the field in 1994. It was decided in Policy Board that further research is needed to look at whether the time calculations conducted in 1994 are still relevant. The research is looking at the payments highlighted in the table below. These payments have not been approved by the NFU.

For further information on the Owner and Occupier Wayleave Compensation 2016-2017 England and Wales:-

<http://www.energynetworks.org/info/faqs/who-is-my-wayleaves-contact.html>

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Wayleave Compensation Rates to 31 March 2017	Owner's Payment	Occupier's Payment			combined Owner/Occupier Payment		
		arable	grassland	hedgerow	arable	grassland	hedgerow
Single pole	£7.61	£22.33	£2.28	£0.70	£29.94	£9.89	£8.31
Single pole and stay	£9.47	£30.36	£5.03	£2.45	£39.83	£14.50	£11.92
A or H (double) pole	£9.68	£25.75	£3.26	£1.57	£35.43	£12.94	£11.25
Stay or strut	£1.86	£9.80	£2.75	£1.75	£11.66	£4.61	£3.61
Additional stay	£1.86	£4.84	£1.37	£0.86	£6.70	£3.09	£2.72
Lines only (tower lines)	£2.17	£0.00	£0.00	£0.00	£2.17	£2.17	£2.17
Lines only (pole lines)	£1.53	£0.00	£0.00	£0.00	£1.53	£1.53	£1.53
TOWERS: less than 2.6m x 2.6m (T1)	£24.41	£45.57	£8.69	-	£69.98	£33.10	-
from 2.6m x 2.6m less than 3.8m x 3.8m (T2)	£28.19	£50.61	£10.52	-	£78.80	£38.71	-
from 3.8m x 3.8m less than 4.6m x 4.6m (T3)	£32.97	£54.05	£11.74	-	£87.02	£44.71	-
from 4.6m x 4.6m less than 5.3m x 5.3m (T4)	£44.12	£57.05	£12.81	-	£101.17	£56.93	-
from 5.3m x 5.3m less than 6.9m x 6.9m (T5)	£48.06	£63.92	£15.25	-	£111.98	£63.31	-
from 6.9m x 6.9m less than 7.6m x 7.6m (T6)	£51.94	£66.93	£16.31	-	£118.87	£68.25	-
from 7.6m x 7.6m less than 9.1m x 9.1m (T7)	£63.92	£73.37	£18.60	-	£137.29	£82.52	-
from 9.1m x 9.1m less than 10.7m x 10.7m (T8)	£77.64	£80.24	£21.04	-	£157.88	£98.68	-
from 10.7m x 10.7m less than 12.2m x 12.2m (T9)	£97.63	£86.68	£23.33	-	£184.31	£120.96	-
from 12.2m x 12.2m less than 13.7m x 13.7m (T10)	£110.32	£93.13	£25.62	-	£203.45	£135.94	-
from 13.7m x 13.7m less than 15.2m x 15.2m (T11)	£131.82	£99.57	£28.14	-	£231.39	£159.96	-
from 15.2m x 15.2m less than 16.8m x 16.8m (T12)	£143.11	£106.44	£31.03	-	£249.55	£174.14	-
from 16.8m x 16.8m (T13)	£163.26	£112.88	£32.64	-	£276.14	£195.90	-
PB single unstayed	£8.07	£22.33	£2.28	£0.70	£30.40	£10.35	£8.77
PB double - unstayed	£36.70	£41.45	£7.16	£3.14	£78.15	£43.86	£39.84
PB - multi stayed	£61.96	£133.07	£39.81	-	£195.03	£101.77	-

4. WHERE NEW LINES ARE PROPOSED

When new electricity lines are proposed, the company has to obtain a consent from the Department of Trade and Industry except for certain low voltage lines. The company will also require planning permission.

Where a local planning authority objects to the proposal a Public Inquiry will be held which can be attended by all objectors to the proposal. It may require the electricity company to submit an environmental impact assessment on the effects of the new proposals. The environmental impact assessment must show the likely significant effects of the proposal on human beings, flora, fauna, soil, water, air, climate and cultural heritage. Where the effects are significant the statement must suggest measures to avoid or remedy the negative effects.

At present consent can be granted for the construction of new power stations before the effects of emanating electricity lines and pipelines are taken into account. The NFU is lobbying to change this; in the meantime landowners and occupiers within striking distance of new power station proposals should take an interest in the initial planning application.

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Countryside Rights of Way Act

The introduction of the CROW Act has seen the emphasis on conservation and enhancement of the landscape given a higher priority. All statutory undertakers are now required to ‘...have regard to the purpose of conserving and enhancing the natural beauty of an area of outstanding natural beauty.’ For the electricity industry this could have significant implications and members with land in an AONB with electrical apparatus are advised to seek clarification on what this may mean with your professional adviser.

Surveys

A person authorised by a licensed operator can enter land after giving 14 days' notice. The survey could entail the sinking of boreholes subject to compensation for damage caused.

Payments for Damage During Construction

Considerable damage can be caused during the construction of new electricity lines so it is important to be clear about the proposals. Some of the problems of construction are not obvious. For example, there will be areas where cables are pulled into place, which can involve long runs across fields with heavy machinery. Erecting scaffold to cross major roads or railways often involves heavy traffic across fields.

Affected areas may need fencing off while construction takes place or re-seeding is carried out. The type of fencing used is important so is the maintenance of access to any severed portions of fields. Contractors will often want to use private farm tracks and damage may be caused. It is important that a Record of Condition (including photographs) is prepared before construction commences so that disputes over reinstatement can be minimised.

5. FELLING AND LOPPING TREES

Where trees interfere with lines, the electricity company can serve a notice requiring the owner or occupier to fell or trim trees so as to prevent this. If the owner or occupier serves a counter notice within 21 days objecting to the requirements, the matter will be referred to the Secretary of State. In the absence of a counter notice, the company is empowered to enter the land and carry out the work themselves.

Where the owner or occupier completes the work, he is entitled to recover expenses and losses incurred. If the electricity company carries out the work the landowner or occupier can still recover losses and damages.

6. MAINTENANCE SURVEYS

It is essential to the maintenance and integrity of the pylons and cables that regular inspections are made of the apparatus by helicopter. Where grantors are concerned about the presence of helicopter flights close to livestock, they should contact their local wayleave officer, to ensure that they are contacted ahead of inspections and given the chance to move stock.

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7. MINIMUM HEIGHTS OF OVERGROUND ELECTRICITY SUPPLY LINES

Minimum heights are restricted by statute depending on the age of the installation as follows:

Voltage of lines	Minimum height
11-33 kv	5.2m
33-66 kv	6.0m
66-132 kv	6.7m
132-275 kv	7.0m
More than 275 kv	7.3m

8. PROFESSIONAL ADVICE

Members are advised to seek professional advice from a solicitor, valuer or both if an electricity company makes proposals which affect their land. In most circumstances the electricity companies are required to settle the reasonable fees of these professionals. However, obtain confirmation on this point before incurring fees.

9. ELECTRIC AND MAGNETIC FIELDS

Electric and magnetic fields (emfs) have understandably caused widespread concern following their links with childhood leukaemia, some cancers and other effects on human health. The NFU does not have the expertise to comment with authority on such detailed scientific areas.

The NFU advises concerned members to contact the Health Protection Agency, Centre for Radiation, Chemical and Environmental Hazards. The Agency can provide comparisons with common domestic appliances which also give off these fields. Members can have readings carried out to check that the level of each field is within the specified safety limits. Many Chartered Surveyors now measure electric and magnetic fields as part of their standard house surveys.

10. FURTHER INFORMATION ON ELECTRIC AND MAGNETIC FIELDS

Health Protection Agency
 Centre for Radiation, Chemical & Environmental Hazards
 Radiation Protection Division
 Chilton
 Didcot
 Oxon OX11 0RQ
 Tel: 01235 831 600
 Fax: 01235 833 891
 Email: rpd@hpa.org.uk

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ELECTRICITY INDUSTRY

Principles of Electricity Wayleave Payments

Electricity wayleave payments represent compensation for annual losses for interference on agricultural land caused by the presence of electricity lines in England and Wales. Commercial horticultural land has not been included in the assessment of compensation. The payments are reviewed by the Electricity Industry with the National Farmers' Union, Country Land and Business Association and the Farmers' Union of Wales. The following guidelines will be used by Electricity Companies when applying wayleave payments. It is really important that the wayleaves payments received are checked to make sure that the right payment has been received for the crops which have been disturbed. An enhanced standard rate should be applied for from the local utility company.

- 1 Where a support obstructs agricultural operations the appropriate compensation rates will be applied.
- 2 Arable includes grass leys of up to and including five years' duration and intensively managed grassland.
- 3 Permanent pasture is grassland on which agricultural operations take place but it excludes rough grazing and moorland.
- 4 The rate for an H Pole assumes a gap between the two limbs at the pole centres up to and including three metres.
- 5 Payment for an isolated stay will apply where the annexed pole is outside the cultivated area or where an extra stay is installed at more than 45° to an adjacent stay. Payments for additional stays will be applied where the adjacent stay is within 45° of the initial stay. Where an isolated stay causes a significant problem owing to its position in relation to the field boundary, the electricity companies will consider individual claims on their own merits.
- 6 Measurements of towers will be taken from the exterior angle of concrete bases at ground level. If part of the tower extends into a field then a pro-rata payment will be applied. For each tower category the following land area has been used to calculate compensation:-

Tower size

Tower 1	2.6 metres square
Tower 2	3.8 metres square
Tower 3	4.6 metres square
Tower 4	5.3 metres square
Tower 5	6.9 metres square
Tower 6	7.6 metres square
Tower 7	9.1 metres square
Tower 8	10.7 metres square
Tower 9	12.2 metres square
Tower 10	13.7 metres square
Tower 11	15.2 metres square

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Tower 12 16.8 metres square
 Tower 13 18.3 metres square

- 7 The lines only payment is to apply to any length of line where no supports are located upon the grantors land.
- 8 Rates for PB (Painter Brothers design) single unstayed are the same as poles. A double-unstayed assumes a double limb structure with a gap between the two limbs up to and including six metres and the multi-stay payment is up to and including 12 stays based on a ground area of 23 metres square.
- 9 Where supports of two separate electricity lines are within 30 metres of each other in the same enclosure the occupier compensation payment for those supports will be increased by 50%. This only applies to supports for which annual wayleave payments are made.
- 10 Enhanced payments for orchards and hop gardens where supports interfere with the movement of machinery are to be paid as follows:

Hop Gardens	- 150% arable rate
Commercial Apple and Pear	- 150% arable rate
Commercial Cherry, Cider and Plum	- 150% permanent pasture rate
- 11 Farming systems which include crops involving exceptionally intense and multiple cultivations, field irrigation or other special factors may be considered for enhancement of standard rates on merit. Any such claims should be sent to the relevant electricity company.

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