

ELECTRICITY TRANSMISSION (COMPENSATION) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Electricity Transmission (Compensation) Bill as brought from the House of Commons on 27 February 2023 (HL Bill 108).

- These Explanatory Notes have been prepared by the Department for Energy Security and Net Zero, with the consent of Lord McLoughlin, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice and provide background information on the development of policy.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The aim of the Electricity Transmission (Compensation) Bill is to require the Secretary of State to lay proposals before Parliament for the use of alternative dispute resolution (ADR) processes to determine compensation in electricity-related land acquisition cases.
- 2 The intention is that proposals would encourage and facilitate the use of ADR processes, thereby helping parties to a dispute avoid having to take a case to the Upper Tribunal (Lands Chamber). The Bill provides that there should be proposals for ensuring that any determinations are enforceable, so that the outcome is binding on an electricity network operator.
- 3 The Bill also requires that there should be proposals for ensuring that ADR processes operate independently, and that they are accessible to landowners without undue difficulty or expense.

Policy background

- 4 Electricity network operators need access to private land to install network infrastructure, such as overhead lines, towers and underground cables. Network operators also need access to private land to maintain, repair and replace that infrastructure. This can be done by either purchasing the land or gaining access rights.
- 5 In the first instance, network operators should attempt to reach a voluntary agreement. However, if voluntary agreement cannot be reached, network operators can compulsorily acquire the land or land rights by either making a Compulsory Purchase Order (CPO) or, if they are applying for development consent for their project, seeking Compulsory Acquisition rights to be included in an application for a Development Consent Order (DCO) under the Planning Act 2008.
- 6 Where land or land rights are subject to compulsory acquisition, affected landowners will have the right to compensation for the value of their land and other losses which may occur.
- 7 The laws around compensation are sometimes referred to collectively as the 'compensation code' and the compensation code applies to all situations where compulsory acquisition of land or land rights occurs. Any dispute relating to the compensation that should be paid for compulsory acquisition can be determined by the Upper Tribunal (Lands Chamber) in England and Wales, or the Lands Tribunal for Scotland. Any claim needs to be referred to the Tribunal within six years of the relevant date (which differs depending on the type of claim).
- 8 The claim will be determined against the statutory compensation code and not against any discretionary policies that an acquiring authority (such as a network operator) has put in place for the project.
- 9 Various processes exist to resolve disputes without recourse to, or outside of, litigation (i.e. without having to go to court, or in the land compensation context, the Tribunal). These are known as ADR mechanisms. The parties to a dispute can choose whether they want to use a binding process, meaning that the outcome can be enforced, or a non-binding process to facilitate settlement. A non-binding approach enables the parties to still commence or continue with litigation to resolve the dispute if settlement is not achieved through ADR, whether completely or in part.
- 10 As with any tribunal or court, use of ADR to resolve the disputes or narrow the issues that are outstanding is encouraged before a reference to the Tribunal is made.

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- 11 There is currently no legal or procedural requirement in land compensation cases to compel parties to pursue ADR; however, there is an increasing expectation from professional bodies and the Tribunal that parties have considered and, where appropriate, engaged in ADR in land compensation cases before a formal hearing.
- 12 Failure by a party to pursue ADR without good reason can have cost implications in Tribunal proceedings, for example limiting the ability of a party to recover costs or potentially leading to an adverse costs order being made against the refusing party.
- 13 The Upper Tribunal has discretion in the award of costs incurred in the referral of the dispute to it. The usual position for the award of costs is that where an acquiring authority has made an offer to the affected landowner that exceeds the awarded compensation, then the affected landowner will have to bear their own costs and those of the acquiring authority after the offer was made. Conversely if the awarded compensation is more than any offer from the acquiring authority, the acquiring authority will have to bear their own costs and those of the affected landowner. Reference to the Upper Tribunal therefore does have a cost risk to an affected landowner that they will have to consider carefully when assessing any offer made and determining whether to make a reference.
- 14 Between August and September 2022, the Government published a call for evidence on whether current land rights and consenting processes for electricity network infrastructure¹ are fit to accommodate the transformation needed to transition to Net Zero. Evidence from respondents suggests that action is needed to increase the use of ADR mechanisms where relevant and to raise awareness of options. The Government expects to publish a response to the call for evidence in 2023.

Legal background

- 15 The Planning Act 2008 (PA 2008) was introduced with the intention of reducing the amount of time taken for approving major new infrastructure projects. Development Consent Orders (DCOs) were introduced to simplify and speed up the process of obtaining planning permission for projects designated as Nationally Significant Infrastructure Projects.
- 16 Sections 122 to 134 of the PA 2008 are the main relevant provisions in relation to DCOs.
- 17 Before a decision on compulsory acquisition powers can be made, the Secretary of State must be satisfied with the merits of a project. Sections 122 and 123 of the PA 2008 set out the substantive and procedural tests which must be met for a DCO to include powers for compulsory acquisition.
- 18 There must be compelling evidence from documentation required that the public benefits of the project for which the DCO, and the compulsory acquisition, is required, outweigh the private loss suffered by those whose interests are being acquired.
- 19 The examination process of the compulsory acquisition provisions is set out in the Infrastructure Planning (Compulsory Acquisition) Regulations (IPCAR) 2010. This includes a series of questions and answers between the examining authority and the applicant, and those who submitted representations.
- 20 A hearing will generally always be held if compulsory acquisition powers are sought, even

¹<https://www.gov.uk/government/consultations/land-rights-and-consents-for-electricity-network-infrastructure-call-for-evidence>

where there is no request from an affected person to do so. Landowners are always given opportunity to speak at hearings.

- 21 Under section 134 of the PA 2008, if a DCO is granted with compulsory acquisition powers, the applicant is under an obligation to:
 - a. serve notice on all owners, lessees and occupiers of land included in the Book of Reference. Guidance from the Department for Levelling Up, Housing and Communities advises that this notice should enclose a copy of the statement of reasons and a plan showing how that person's land is affected by the compulsory acquisition proposals;
 - b. affix a notice to conspicuous objects on or near the DCO land;
 - c. publish a notice in one or more local papers; and
 - d. make a copy of the DCO available for inspection by the public at all reasonable hours at a place in the vicinity of the DCO land.
- 22 Notices must comply with section 134(7) (prescribed form of notice) and local notices must be kept in place for 6 weeks beginning with the date on which the DCO is published.
- 23 Section 125(2) of the PA 2008 provides that Part 1 of the Compulsory Purchase Act 1965 applies to a compulsory acquisition of land under such an order as it applies to a compulsory purchase to which Part 2 of the Acquisition of Land Act 1981 applies, and as if the order were a compulsory purchase order under that Act.
- 24 Part 1 of the Compulsory Purchase Act 1965, which applies via the mechanism described above, sets out a process whereby the would-be acquirer of land issues landowners with a "notice to treat" (section 5) containing, among other things, an offer of compensation.
- 25 The amount of compensation is determined according to principles applying generally to compulsory purchase, commonly referred to as the compensation code, drawn principally from section 5 of the Land Compensation Act 1961 .
- 26 Section 5(2D) of the Compulsory Purchase Act 1965 provides that the amount of compensation payable shall, in the default of agreement, be determined by the Upper Tribunal.
- 27 Section 6 of the Compulsory Purchase Act 1965 provides that any disputes around compensation following a notice to treat are to be referred to the Upper Tribunal.

Territorial extent and application

- 28 Clause 2(1) sets out that the Bill extends to England and Wales, and Scotland.
- 29 The Bill extends to Scotland as a matter of law, but in practice, Scotland has its own planning system. Development Consent Orders made under the PA 2008, as referred to in clause 1(3)(a), do not apply to Scotland except in some very limited circumstances.
- 30 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions.

Commentary on provisions of Bill

Clause 1: Resolution of compensation disputes in electricity-related land acquisition cases

- 31 Subsection (1) requires the Secretary of State to draw up proposals for the use of ADR processes in electricity-related land acquisition cases.
- 32 Subsection (2) clarifies the definition of an ADR process as any process that enables the parties to a dispute to resolve the dispute out of court.
- 33 Subsection (3) explains what constitutes an electricity-related land acquisition case. These are cases where a network operator has sought and has been granted a Development Consent Order under the PA 2008, and when the terms of that agreement authorise the acquisition of land or rights to access land for the purposes connected with electricity transmission (with “transmission” here taking its meaning from section 4(4) of the Electricity Act 1989).
- 34 Subsection (4) sets out what the proposals must address in particular. Subsection (4)(a) and (b) require that proposals must ensure that there are ADR processes available that could determine the amount of compensation to be paid to landowners and that these processes are accessible and affordable for landowners.
- 35 Subsection (4)(c) requires that proposals must ensure the process is independent i.e. conducted by a third party that is independent of the landowner and network operator.
- 36 Subsection (4)(d) requires that proposals must ensure determinations from any ADR processes are enforceable. This means any decisions should be binding on an electricity transmission owner or a landowner.
- 37 Subsection (5) requires the Secretary of State to publish these proposals in a report to Parliament.
- 38 Subsection (6) requires the Secretary of State to consult anybody that the Secretary of State considers appropriate before laying the proposals before Parliament.

Clause 2: Extent, commencement and short title

- 39 Subsection (1) states that the Bill extends to England and Wales, and Scotland.
- 40 Subsection (2) provides that the Bill will come into force two months after Royal Assent.
- 41 Subsection (3) states the Act’s short title as ‘the Electricity Transmission (Compensation) Act 2023’.

Commencement

- 42 The provisions in the Bill will come into force at the end of the period of two months after Royal Assent.

Financial implications of the Bill

- 43 There is no funding currently allocated to this Bill. An Impact Assessment will be carried out on any proposals that government intends to take forward.

Parliamentary approval for financial costs or for charges imposed

- 44 The Bill does not require a money resolution or a ways and means resolution. A money resolution is required where a Bill authorises new charges on the public revenue – broadly speaking, new expenditure. A money resolution is not generally required where, as in this case, a Bill will only give rise to minor administrative costs. A ways and means resolution is required where a Bill authorises new charges on people – broadly speaking, new taxation or other similar charges. This is not the case for this Bill.

Compatibility with the European Convention on Human Rights

- 45 As this is a Private Members' Bill, the Secretary of State does not make a statement under section 19(1)(a) of the Human Rights Act 1998. However, the government has examined the compatibility of the provisions of the Bill with the European Convention on Human Rights and has concluded that those provisions, which include duties on the Secretary of State to lay proposals before Parliament and to consult, do not engage any Convention rights and are therefore compatible with those rights.

Annex A – Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1	Yes	Yes	No	No	No	No	No
Clause 2	Yes	Yes	No	No	No	No	No

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