

Necessary Wayleaves

Note for property owners and occupiers

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TRANSMISSION

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1. Introduction

Scottish Hydro Electric Transmission plc, operating and known as Scottish and Southern Electricity Networks Transmission (“we”/“SSEN Transmission”), owns, operates and develops the high voltage electricity transmission system (operating at 132kV and above) in the north of Scotland and remote islands. We hold a transmission licence under the Electricity Act 1989 (“1989



Act”). In terms of section 9(2) of the 1989 Act, we have statutory duties to develop and maintain an efficient, coordinated, and economical system of electrical transmission, and to facilitate competition between current and new generators of electricity. As part of those duties we plan, design, acquire land for and construct new or replacement electricity infrastructure operating at 132kV and above. To achieve that in appropriate cases we may be required to exercise our rights to seek the grant of necessary wayleaves.

This note has been prepared for landowners, tenants and occupiers who have property or businesses that are directly affected by proposed electricity infrastructure projects, and therefore might potentially be affected by necessary wayleave and compensation procedures. **Please note that receipt of this guidance does not necessarily mean that your property is or will be subject to an application for necessary wayleave. This guidance is being issued to help you understand what processes might occur if your property is affected.**

SSEN Transmission’s preference and aim is to secure the necessary land and rights in land that are required to deliver new infrastructure by way of voluntary agreement with landowners, tenants and occupiers. Where agreement cannot be reached, or where it is foreseeable that a voluntary agreement is not possible within reasonable timescales, or is impracticable, we may use our statutory powers to apply for necessary wayleaves. However, even where a necessary wayleave process has commenced, we will continue to engage with affected parties with a view to reaching a voluntary agreement where possible.

In a case where a property or a business is affected, or rights are needed on or over the property for an infrastructure project to be built, the land procedures in relation to the necessary wayleave process and to the eligibility for, and assessment of, compensation are complex. Of necessity, the information provided in this guidance note is a simplification of the process and cannot cover every circumstance. Guidance is also provided on the Scottish Government’s website, and we recommend you consult that guidance.

This note is not a substitute for professional advice, nor does it constitute legal advice. If any interest that you have in a property or business is affected by a necessary wayleave application being promoted by us, we strongly recommend that you seek advice from a professionally qualified person such as a solicitor or a surveyor. They can advise you on the rights that you have and represent you should you wish to be represented. SSEN Transmission will generally meet the legitimate and reasonable fees of a professionally qualified person that you appoint to negotiate your claim for compensation in relation to the grant of a

voluntary or necessary wayleave. However, SSEN Transmission will not meet the fees of any objection to, or advice and/or representation in relation to a necessary wayleave application and process. If you are in any doubt as to whether your professional costs will be met, you or your adviser should contact SSEN Transmission in the first instance, using the contact details at the end of this document.

1.1. Other processes

In addition to any necessary wayleave application, other statutory applications are likely to be made by SSEN Transmission in connection with our works. These might include: applications for consent to install overhead lines under section 37 of the 1989 Act; applications for planning permission or deemed planning permission under the Town and Country Planning (Scotland) Act 1997; and Compulsory Purchase Orders under Schedule 3 of the 1989 Act. This note is not intended to cover those processes as these are separate and distinct statutory processes to necessary wayleave applications. We have produced a separate note in relation to the compulsory purchase process.

2. Necessary wayleave process

Where SSEN Transmission has proposals to construct a new overhead line or other linear infrastructure, we carry out design and development work, often including environmental impact assessments, to bring the proposals to reality. When this initial design and development work has been completed to a level which enables us to determine the final alignment and/or position of the infrastructure, we are then in a position to identify the extent of the land and/or rights in land (which may include servitude rights) that requires to be acquired to deliver the project. We will consult on these proposals, in so far as is reasonably possible, with all stakeholders, including landowners, tenants and occupiers.

2.1. What is a necessary wayleave?

A necessary wayleave is a statutory grant of rights that confers powers on us to install electric lines and associated equipment on, over or under private land, to keep the electric line there and to have access to that land for the purposes of inspecting, maintaining, repairing, adjusting, altering, replacing, or removing the electric line or equipment.

Where SSEN Transmission is required to acquire rights over land for the installation of electricity infrastructure, we will use powers under Schedule 4 to the 1989 Act to make applications for necessary wayleaves in the event that voluntary agreements cannot be reached with landowners, or when reasonably foreseeable that voluntary agreement cannot be reached. The making of an application for a necessary wayleave follows the service of a notice under the 1989 Act, which calls upon the parties having an interest in that land to grant a voluntary wayleave, and if they fail to do so within a 21-day period, then we can apply to the Scottish Government's Energy Consents Unit for a necessary wayleave to be granted.

2.2. What happens when an application for necessary wayleave is made?

The grant of a necessary wayleave will follow a process whereby an application is submitted to the Energy Consents Unit (“ECU”). The ECU will notify the landowners/occupiers identified on the application that an application has been submitted. This will then be referred to the Scottish Government’s Department for Planning and Environmental Appeals (“DPEA”), which will be determined by a Reporter appointed by the Scottish Ministers. The DPEA will make contact with the landowners and/or occupiers to confirm whether they wish to be heard or whether they wish to make representation by way of written submissions. If the landowner/occupier does not respond to the DPEA, usually within 28 days of the date of this letter, then it may be assumed that the landowner/occupier does not wish to be heard. If the application is to be the subject of a hearing, parties are invited to appear, be represented and present evidence to support their case based on written submissions to be made in advance of the hearing. Following the hearing, the Reporter will prepare their report, making a recommendation to the Scottish Ministers as to whether or not a necessary wayleave should be granted.

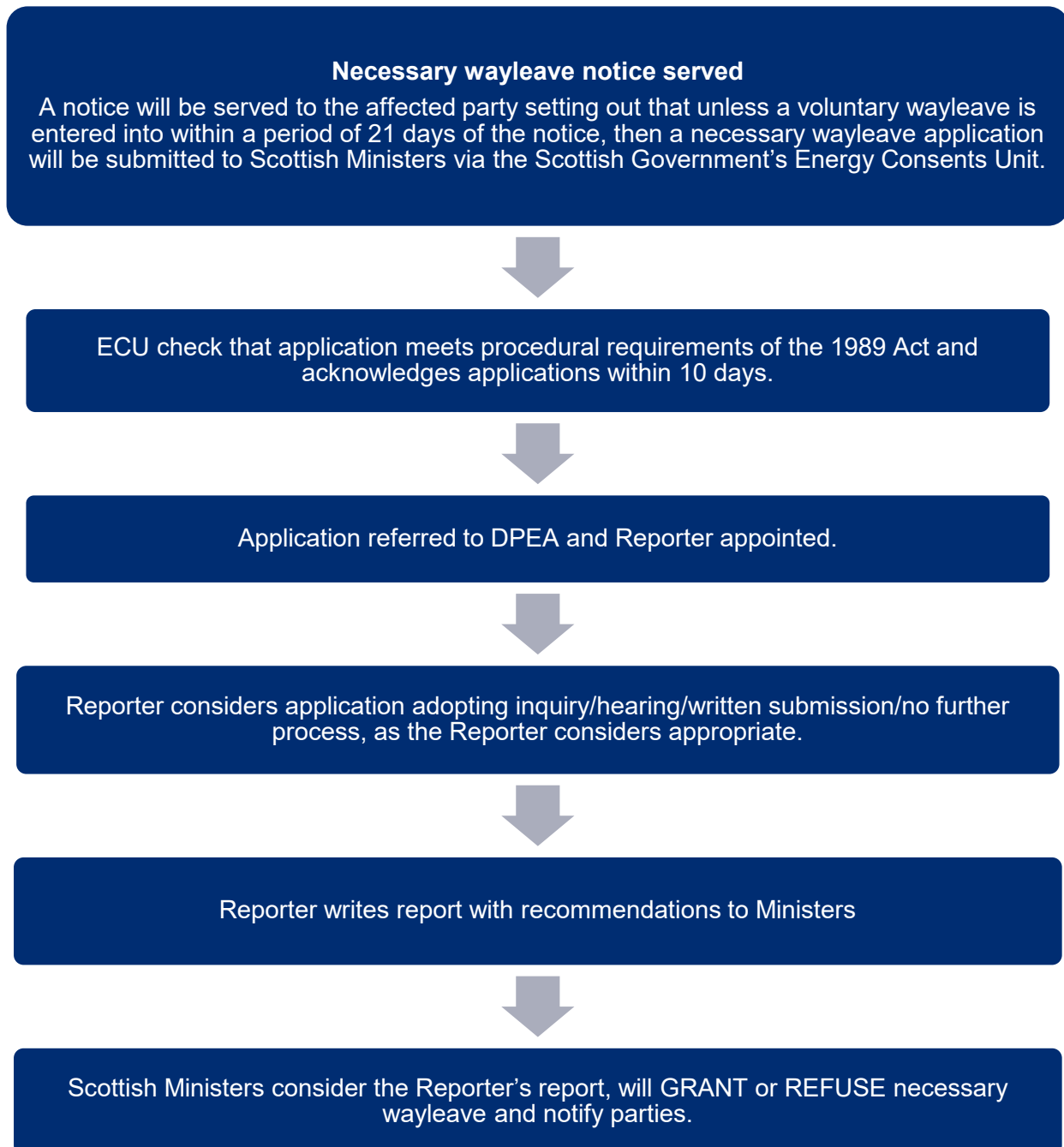
Alternatively, the matter can be determined by way of written submission. Both SSEN Transmission and the landowner or others having an interest in land are asked to submit their written submissions to support, in the case of SSEN Transmission, their application, or in the case of a landowner or other party, the basis for the refusal to grant a wayleave. The Reporter will consider the submissions by both parties and again prepare their report, making a recommendation to the Scottish Ministers as to whether or not a necessary wayleave should be granted.

After considering the Reporter’s recommendation, the Scottish Ministers will decide whether to grant the necessary wayleave. The Scottish Ministers may make a decision which is contrary to the Reporter’s recommendations. When the Scottish Ministers have reached their decision, they will inform all parties who appeared at the inquiry or, in the case where the matter has been dealt with by written submissions, those parties who participated, and the decision letter will be sent out with the reasons for the decision. Any party can request a copy of the Reporter’s report.

If granted, the necessary wayleave will remain in force for the period specified in the wayleave itself (this can be up to a period of 50 years, but the duration of the rights may vary depending on circumstances). Throughout the period that a necessary wayleave is in place, it is enforceable by the licence holder against any successors in title to the land if the land is sold, or occupiers if the occupant changes during the period. **It is important to note that SSEN Transmission will not meet your legal or other professional fees in objecting to the necessary wayleave application or the cost of representation during any procedure.**

2.3. Summary of necessary wayleave process

A summary of the necessary wayleave process is shown below:



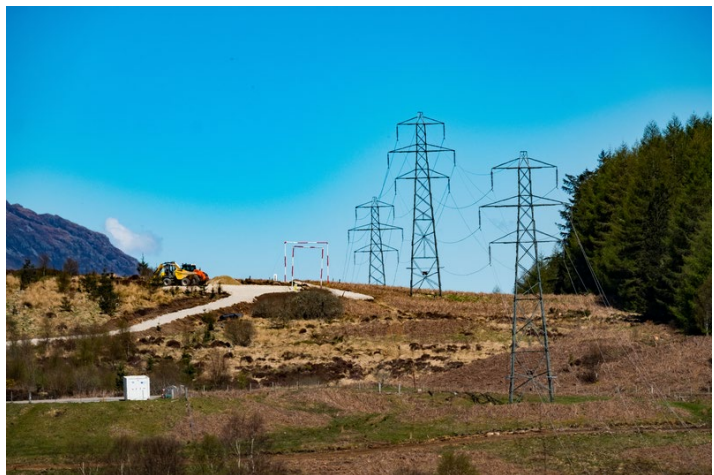
3. Compensation

Compensation may be payable where rights are acquired over property, which can include where a necessary wayleave is granted. Those entitled to claim compensation include owners and tenants. However, questions that solely relate to compensation in respect to the grant of a necessary wayleave **will not be** determined by the Reporter, or the Scottish Ministers during their consideration of the necessary wayleave application. In particular, the Scottish Ministers have no powers to attach financial conditions to any necessary wayleave or to determine the levels of compensation payable by SSEN Transmission to affected parties.

Financial compensation is a matter to be agreed between the parties or, if agreement cannot be reached, by either party referring the question of disputed compensation to the Lands Tribunal for Scotland within a certain timescale. Disputed compensation claims come under separate legal proceedings only after a necessary wayleave is granted and an entitlement to compensation has arisen.

3.1. How is Compensation measured?

As mentioned above, the grant of a necessary wayleave triggers your entitlement to a claim for compensation. The assessment and measurement of valuation for compensation is dependent on the particular circumstances of the acquisition. The valuation follows what is known as the "Compensation Code", which is a collective term used to describe the body of law (including various Acts of Parliament and case law) governing the



procedures for the entitlement to compensation following the grant of the necessary wayleave. The underlying principle of valuation and payment of compensation is to put you, in financial terms, in the same position as if the necessary wayleave had not been granted.

The valuation will generally ignore the effect of the project on the affected parties' loss that is being compensated, i.e. any increase or decrease in value of the property due to the suitability of the property for the project will be disregarded. The valuation will also assume the affected parties will take reasonable steps to mitigate their loss and that the compensation payable cannot exceed the affected parties' total loss in monetary terms, i.e. any buildings or other developments will not be taken into account if they are put in place for the sole reason of increasing compensation.

We will act reasonably in assessing any claim for compensation, however we would strongly recommend that you seek your own independent advice if your property or business is affected by a necessary wayleave. The legitimate and reasonable costs of obtaining valuation advice and negotiating compensation will generally be met by SSEN Transmission.

3.2. What about disputed compensation?

Where possible, SSEN Transmission aims to agree on compensation with you on a negotiated basis, even after a necessary wayleave has been granted. However, where it is not possible to reach an agreement, an application to the Lands Tribunal for Scotland for determination of compensation is made and the Tribunal will assess the claim and take evidence from all parties before making their decision which is binding on both parties. The Tribunal is independent and made up of legal members and surveyor members. Please note that you must make any application to the Tribunal within a strict time limit following the grant of a necessary wayleave. We recommend you seek professional advice about this as if a claim for disputed compensation is not submitted within the time-limit, no compensation may be payable. Generally, if you win in the Tribunal your expenses are payable by us, but you should note that the amount awarded in expenses may be significantly less than you have actually spent. If you do not win each party normally meets their own costs, although in certain circumstances we may ask the Tribunal to make an award of expenses against you (for example if we consider you have unreasonably refused an unconditional offer).

4. Voluntary negotiations continue where possible

Notwithstanding the fact that SSEN Transmission is exercising necessary wayleave powers for a project, nothing prevents us from agreeing on a wayleave for a project on a voluntary basis where possible. We will continue to attempt to reach a voluntary agreement for as long as reasonably possible.

5. Contact

If you require further information on the necessary wayleave process or wish to discuss any aspect in more detail, please get in touch using the contact details noted below. In any correspondence, please ensure that you quote the project to which your enquiry relates and provide as much detail as you can. We cannot, however, provide you with specific advice on your claim.

Write to:

SSEN Transmission
Grampian House
200 Dunkeld Road
Perth
PH1 3AQ

Website:

Contact details for the relevant project, including the SSEN Transmission representative's email and telephone number, can be found at <https://www.ssen-transmission.co.uk/>

If you think you will require special assistance in receiving information and communications, please contact us as soon as possible to discuss how we can help.