

GUIDANCE NOTE

Process for Completion of Landowner Permissions and Other Useful Information on Consents Required for ICP Schemes

Background

Under the Competition in Connection (CiC) framework set out by Ofgem (the government appointed regulator of electricity distribution networks), someone requiring a new electricity connection in WPD's network area, can choose for either WPD (as the licensed Distribution Network Operator or DNO), an Independent Connection Provider (ICP) or an Independent Distribution Network Operator (IDNO) to carry out works to provide that connection. Either WPD or an IDNO will own and operate the connection once installed.

Where an IDNO is appointed to construct new electricity connections they will retain ownership of the network and therefore have their own land rights documents with the landowner (which may incorporate rights for any WPD equipment on the site). They will then be responsible for the future operation, repair and maintenance of the equipment installed, up to the point where they connect to WPD's electricity network. This guidance does not cover IDNO's.

Where WPD or an ICP installs the new connection, WPD will adopt the new equipment (assuming successful installation) and once adopted, the equipment will become part of WPD's electricity network and WPD will be responsible for future operation, maintenance, renewal and repair of the new equipment.

This guidance covers the scenario where an ICP designs and installs equipment under CiC and the equipment is to be adopted by WPD - it maps out a process for obtaining and completing WPD legal permissions and other consents (required for adoption), as well as reasonable timescales. These timescales are not binding on WPD but WPD will endeavour to meet them.

The typical process below only covers the scenario where an ICP has led the negotiation of routes/sites and agreed the preliminary terms with landowners.

*WPD also have a leaflet/guide called '**Information for landowners & customers – a guide to understanding legal permissions and consents to place equipment on land**' which should be read with this guidance. It is available on our website*

www.westernpower.co.uk/Connections/Competition-in-Connections/Legal-Permissions-and-Consents

Who Does What and When?

Where an ICP designs and installs equipment under CiC, the following is applicable to consents required from landowners:

- ❖ Where the ICP initially determines the position of equipment and negotiates the terms (e.g. for cables, overhead lines and substations) with landowners, the ICP will need to enter into a separate agreement with the landowner for the construction/installation stage, **taking on liability for matters such as reinstatement and damage. WPD will not be liable for this (or party to the agreement) and may not be able to adopt until any outstanding matters are resolved!**
- ❖ Where WPD carries out the initial discussions with landowners and terms are agreed in principle, WPD will inform landowners that an ICP will be responsible for installation of the equipment (including agreeing access, reinstatement, repairing damage etc). The ICP and landowner would then need to agree any separate terms to cover the installation of the equipment. Again WPD has no liability.
- ❖ An information leaflet for landowners summarising CiC and ICP's is available to cover this and **should be given to landowners (by the ICP or WPD as applicable) at an early stage in the process.**
- ❖ In addition to any installation agreement between the ICP and the landowner, **WPD will require legal documentation (Wayleave, Easement, Lease or Transfer as applicable to the site and current WPD policy) to be completed in WPD's name prior to adoption of the equipment by WPD.** These legal documents will govern the relationship between WPD and the landowners for post adoption access to and the maintenance and replacement of the equipment. Once the position/route for any equipment to be installed by an ICP are agreed in principle and approved by WPD, we will proceed to finalise the WPD agreements.
- ❖ Where any Statutory consents or other permissions (eg to work in protected sites, substation planning permission) are required for ICP works, these would be obtained by the ICP unless otherwise agreed with WPD or it's a consent which only WPD can obtain (e.g. Electricity Act section 37 consent from DECC for overhead lines). **Prior to adoption of any assets, WPD need to be satisfied that the correct permissions have been obtained** as this may affect the future operation and maintenance of the assets. This includes **providing WPD with a copy of any planning permission** necessary for the installation, by the ICP, of the substation where WPD equipment will be housed.
- ❖ CiC includes BOTH 'On Site' consents (the customer's site where they could be owner or tenant) and 3rd Party landowner consents or 'Off Site' consents.
- ❖ It is important at an early stage, that WPD know the requirements of the ICP / Customer in terms of landowner and other consents. i.e. What will WPD do or provide and what will the ICP/Customer provide. **Information should be sought from the ICP at the application stage, as this will ensure the correct costs and fees are included in the quote. The ICP should provide this information on the**

Application Form and the ICP will also need to provide landowner and other information to WPD at the appropriate stage (usually once agreement with landowners and third parties has been reached in principle) to allow WPD to complete the necessary WPD documentation and instruct solicitors where required.

- ❖ Where the ICP has negotiated a consent with a landowner, the best way to complete the legal consent WPD needs, is for WPD to complete the admin/paperwork/consent etc (this can be done following Design Approval of the scheme by WPD). This is because WPD's template land rights documents are set out on the basis that WPD is a Statutory Undertaker with rights associated with this and it may not be possible for a land rights agreement between the ICP and the landowner to be assigned or transferred to WPD. It also avoids complex and time consuming tri-party agreements between the ICP's client, landowner and WPD. This is different to iDNO sites where the iDNO will own and operate assets and need to secure legal rights with the landowner. Here access to WPD assets will be secured in the majority of cases via reserved rights in the legal agreement between the iDNO and the landowner.
- ❖ Where more than a wayleave is needed with a landowner, WPD's legal advisors (Geldards LLP) need to be instructed by the WPD Wayleave Specialist or Planner. **It is important that the 'Instruction' to Geldards LLP contains all the required and correct information to allow Geldards LLP to proceed without delay** (i.e. the name/address of the actual owner/occupier of the land (this is normally **not the ICP**), the details of their solicitor (including references if available) and enough detail/plans on the asset to be acquired). The ICP will normally provide this with the Design Approval information. NOTE – it is the landowner details (NOT the ICP's details) that Geldards LLP need to allow them to proceed.
- ❖ To enable WPD (or Geldards LLP) to complete its legal document with the landowner, a number of checks and investigations may be needed on the land where legal rights are being acquired (see list in next bullet point). The ICP may need to confirm similar matters before they can complete their own installation agreement with the landowner or before they can start works. WPD would recommend to ICP's, that WPD complete the land rights agreements needed to enable WPD to adopt the equipment (on successful completion), prior to the ICP starting its installation works. If the ICP chooses to start works prior to WPD completing these agreements, it is recommended that the ICP satisfy themselves that WPD are able to complete the required land rights agreements with the landowners and therefore are able to adopt the equipment.
- ❖ To assist WPD in completing its legal rights over the land in a timely manner and therefore enable adoption of the equipment by WPD, the ICP's should provide WPD with information on any of the following at an early stage (these matters will also assist the ICP in determining the risk of starting works ahead of completion of WPD's separate legal documentation) :-
 - Other rights affecting the land (eg gas, oil or telecoms easements with obligations to enter into indemnities or Deeds with third parties) which will take time to resolve or agree
 - Restrictions, land title issues or encumbrances on the land preventing the landowner entering into a Deed with WPD
 - Restrictive covenants affecting the land
 - Legal Charges affecting the land (such as a mortgage charge)

❖ **There are 2 scenarios for negotiating third party or 'Off Site' consents;**

1. The most common is that the ICP determines site requirements (routes etc), negotiates consent/terms with landowners in principle, agree their own installation terms and submits the 'design' to WPD for approval, whereupon WPD completes its own legal documentation (which will apply following adoption of the ICP installed assets); OR
2. WPD negotiates initial consents/routes with landowners and the ICP then agrees separate terms for the installation of the equipment. This scenario is not covered in this guidance as it would not be the norm and WPD would initially proceed with negotiations for consents/routes in the normal way. Where this scenario occurs, WPD will need to explain to landowners 'who does what' at an early stage and provide them with the Information Leaflet summarising liabilities and CIC.

Legal Plans

WPD staff should agree with the ICP who will produce the legal plans for the separate WPD legal documentation required. An ICP can produce WPD's plans if they meet WPD's specifications and colours and are of sufficient standard for Geldards LLP and Land Registry purposes. The process below assumes that the ICP will produce the WPD legal plans.

WPD 'Specimen' Legal Templates

Specimen examples of WPD landowner legal documents (easements, leases and wayleaves) are available from WPD on request **and a sample are also available on our website. These can be given by ICP's to landowners as examples of the terms WPD will require to adopt any equipment an ICP installs.** However, WPD are unable to enter into discussion with the ICP or the landowner over the content (including any alterations) of these legal documents until the ICP scheme has been design approved by WPD and we have either involved our Wayleave Specialist or instructed Geldards LLP to complete the WPD legal documentation needed prior to adoption.

Section 37 DECC Consent (Short new Overhead Lines) - Wayleaves

Many schemes in rural areas require short sections of new overhead line, even if the main connection is to be made via underground cable. Where a section 37 planning consent from DECC is needed prior to construction, this can take some time to come through. WPD need to apply for the DECC consent and will need as a minimum a completed WPD Wayleave (on WPD's template) for the overhead section, even if an easement is needed prior to adoption of the equipment. WPD and the ICP should agree upfront who completes the line survey.

Where a scheme requires section 37 consent from DECC and an ICP/Customer has negotiated with landowners and the position of new overhead assets have been surveyed and finalised, in the interest of expediency, the ICP can request that WPD prepare a wayleave agreement (even if this is temporary to allow section 37 consent to be granted) for just the overhead line element and the ICP can obtain the landowners signature direct (there is no hard and fast rule on this so to be decided between WPD and the ICP locally). On return of the wayleave, the WPD Wayleave Specialist should however counter sign the agreement and send the final paperwork direct to the landowner (as it is a WPD agreement). WPD and the ICP will decide locally who prepares the accompanying plan for this situation.

TYPICAL PROCESS FOR COMPLETING WPD LAND OWNER LEGAL PERMISSIONS

(where the ICP has agreed routes and terms with the landowners and is producing the legal plan)

WPD will endeavour to meet the timescales in the examples below:

A – **NO 3rd PARTY LAND OWNERS (ONLY 'ON SITE' Consents needed)**

1. Design Submitted by ICP along with landowner Information for Legal Paperwork
2. Design Approved by WPD Planner
3. Legal Plan:
 - a. Prepared by ICP and submitted to WPD (unless agreed otherwise)
 - b. Approved by WPD
4. WPD Planner (or Wayleave Specialist where relevant) compiles (**within 10 working days** from design / legal plan approval):
 - a. Work pack for WPD construction team
(*to incl pre-construction information/requirements such as outstanding consents*)
 - b. Legal pack ready for issuing/instructing Geldards LLP
5. WPD Planner confirms to ICP work pack and legal instruction has been undertaken/completed and details of construction engineer/technician
6. Geldards issues draft documentation to developer's landowner's solicitor (**within 5 working days** from instruction from WPD) and informs WPD Planner/Wayleave Specialist
7. WPD Planner confirms to ICP that draft legal documents have been issued by Geldards LLP

Total time to initiate (NOT COMPLETE) process – 15 working days

(Assumes WPD and Geldards LLP have all the required and correct information to proceed within the timescales)

B – **3rd PARTY LANDOWNERS INVOLVED / 'OFF SITE' CONSENTS (assumes ICP has carried out and completed 3rd Party landowner Negotiations)**

1. Design Submitted by ICP along with landowner Information for Legal Paperwork
2. Design Approved by WPD Planner
3. Legal Plan(s):
 - a. Prepared by ICP and submitted to WPD (unless agreed otherwise)
 - b. Approved by WPD
4. WPD Planner (or Wayleave Specialist where relevant) compiles (**within 10 working days** from design / legal plan approval):
 - a. Work pack for WPD construction team
(*to incl pre-construction information/requirements such as outstanding consents*)
 - b. Legal pack ready for issuing/instructing Geldards LLP **AND**
 - c. Instructs Wayleave Specialist or Planner (to be decided locally within team) to make contact with 3rd Party landowners (where required) to confirm ICP details submitted (ahead of instructing solicitors) or to make arrangements to complete WPD Wayleave (where applicable)
5. WPD Planner confirms to ICP work pack and legal instruction has been undertaken/completed and details of construction engineer/technician

6. Wayleave Specialist/Planner confirms contact with the third party landowners(within 10 working days from instruction from WPD Planner)
7. Wayleaves Specialist (where involved) informs WPD Planner of contact with third parties
8. WPD Planner confirms to ICP that third parties have been contacted
9. Geldards LLP issues draft documentation to developer's landowner's solicitor (**within 5 working days** from instruction from WPD) and informs WPD Planner/Wayleave Specialist
10. WPD Planner confirms to ICP that draft legal documents have been issued by their solicitor

Total time to initiate (NOT COMPLETE) process – 15 working days or up to 25 working days where contact with a third party is involved

(Assumes WPD and Geldards LLP have all the required and correct information to proceed within the timescales and that WPD are not required to negotiate with any third parties)

4th October 2014