

## Company Directive

### STANDARD TECHNIQUE : EW1C/5

#### Relating to Obtaining Landowners' & Occupiers' Agreement for Overhead Lines & Cables

##### Policy Summary

This document describes the procedure to obtain Landowners' and Occupiers' agreement for the erection or maintenance of overhead lines or laying or maintenance of underground cables across land not in Western Power Distribution ownership. The document also sets out WPD procedure for dealing with Wayleave Termination and Removal Notices.

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**Implementation Date:** June 2017

**Approved by**



**Bruce Pollard**  
**Consents and Wayleaves Manager**

**Date:** 29<sup>th</sup> June 2017

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## **IMPLEMENTATION PLAN**

### **Introduction**

This document describes the procedure to obtain Landowners' and Occupiers' agreement for the erection or maintenance of overhead lines or laying or maintenance of underground cables across land not in Western Power Distribution ownership. The document also sets out WPD procedure for dealing with Wayleave Termination and Removal Notices.

### **Main Changes**

Amendment made to Map 3. New guidance matrix table for type of agreement (wayleave or easement) to be used for New Connections added.  
Hyperlinks updated

### **Impact of Changes**

Minor – formalises current practice and ensures consistent approach across WPD areas.

### **Implementation Actions**

Team Managers to brief staff of the changes.

### **Implementation Timetable**

This Standard Technique shall be implemented with immediate effect.

## REVISION HISTORY

Document Revision & Review Table		
Date	Comments	Author
June 2017	<ul style="list-style-type: none"><li>• Inclusion of reference to side letter agreement</li></ul>	Bruce Pollard
21.10.2014	<ul style="list-style-type: none"><li>• Amendment made to Map 3. New guidance matrix table for type of agreement (wayleave of easement) to be used for New Connections added.</li><li>• Hyperlinks updated in Section 3.0</li><li>• Other minor changes to tidy up document</li><li>• Map 1, Map 3 and Map 4 updated to reflect above changes.</li></ul>	Christian Hjelm

## **1.0 INTRODUCTION**

- 1.1 This document gives guidance as to the type of agreement to be sought with landowners and/or occupiers when seeking to erect or maintain overhead lines or to lay or maintain underground cables across land not in Western Power Distribution's ownership.

## **2.0 WHY AGREEMENT IS REQUIRED**

- 2.1 Western Power Distribution does not have a right to erect or maintain overhead lines or underground cables across land not in WPD's ownership without the agreement of the owner/occupier. WPD can make an application to the Secretary of State for Energy and Climate Change for a statutory right to erect or maintain overhead lines or underground cables across land not in WPD's ownership where it is not possible to reach agreement with the landowner/occupier, although all other options are first explored before proceeding with statutory powers.

## **3.0 TYPES OF AGREEMENT**

- 3.1 There are three types of Agreement:
1. Deed of Grant or easement - Solicitor's Draft
  2. Wayleave Agreement (Annual payment):-
  3. Termed (Irrevocable) Wayleave Agreement (Lump sum **capital** payment):-
- WPD has 4 separate licence areas and corresponding Wayleave Agreement and Termed Wayleave Agreement templates which are to be used.

#### **4.0 PROCESS DETAILS**

4.1 There are three process maps:

1. Types of agreement
2. Overhead line crossing a dwelling
3. Factors affecting choice of easement or wayleave

4.2 These are shown on the following pages.

4.3 Guidance Notes are also included which provide more general details regarding landowners' and occupiers' agreements.

## Map 1

### Types of Agreement

Deed of Grant or Easement	<ol style="list-style-type: none"><li>1. More secure than agreement secured by a Wayleave Agreement.</li><li>2. Provides Western Power Distribution with long-term rights. These cannot normally be terminated by the owners of the land or their successors in title.</li><li>3. They have a high initial capital cost.</li></ol>
Wayleave Agreement	<ol style="list-style-type: none"><li>1. A licence by the owner and/or occupier of land, which can be terminated by him at any time, that allows Western Power Distribution to:<ol style="list-style-type: none"><li>(a) Enter the land.</li><li>(b) Place its works on the land.</li></ol></li><li>2. Is subject to an annual payment.</li></ol>
Termed (Irrevocable) Wayleave Agreement	<ol style="list-style-type: none"><li>1. This agreement may be used in place of Deed of Grant to secure 11kV and LV apparatus where the consideration is less than £3000. The default term should be 99 years.</li><li>2. The benefit of using this agreement is that it saves the cost and time of acquiring a Deed of Grant.</li><li>3. The main drawback is that it does not automatically transfer on a change of ownership and could then be terminated. Not to be used where change of ownership in short term is likely, unless Map 3 applies (e.g. LV extensions on new housing sites).</li></ol>

## Map 2

### Overhead Line Crossing a Dwelling

Does the existing overhead line cross a dwelling?	YES	Secretary of State for Business, Energy and Industrial Strategy (BEIS) <b>can</b> grant a necessary wayleave to retain an existing line.
If planning permission already in force is acted upon, will the proposed overhead line cross a dwelling (see General Notes)?	YES	Secretary of State for BEIS <b>cannot</b> grant consent to a Necessary Wayleave.
Has notice to terminate Wayleave Agreement been received followed by a notice to remove after the required period of time (or a notice to remove in isolation if a notice to terminate was not required)?	YES	Before expiry of notice period to remove (i.e. 3 months) Western Power Distribution must either: <ol style="list-style-type: none"><li>1. Remove the offending works, or</li><li>2. Apply to the Secretary of State for BEIS for a Necessary Wayleave.</li></ol>

### Map 3

#### Factors Affecting Choice of Easement or Wayleave (Preferred form of consent for new overhead lines and underground cables)

#### MATRIX of 'TYPICAL' LAND RIGHTS (EASEMENTS v WAYLEAVES) FOR NEW WPD CABLES & OVERHEAD LINES (INTERNAL USE ONLY)

On next page is the matrix table to be used for new connections. Principles from the matrix can also be used when securing existing lines (eg converting wayleaves to easements) but for existing lines or wayleave terminations, each case can have its own unique circumstances or commercial position and the best outcome for WPD, balancing costs and property rights secured should be taken into account.

It is recognized that a landowner may not want an easement and only agree to a Wayleave and this should be taken into account – **the priority is to secure consent and not push a landowner into something he/she does not want.**



VOLTAGE	ASSOCIATED with SUBSTATION ACQUISITION	LOCATION / DEVELOPMENT TYPE	CIRCUIT TYPE	NORMAL LAND RIGHTS DOCUMENT	COMMENTS / CONSIDERATIONS
LV	NO	RESIDENTIAL/ HOUSING	u/g or o/h	<b>TERMED WAYLEAVE</b>	Payment is typically a nominal £1. Easement over £3k. Assumes only LV assets being installed
LV	YES	ANY – mainly RESIDENTIAL/ HOUSING	u/g or o/h	<b>FREEHOLD / LEASE</b>	Cables/lines form part of wider land acquisition doc
LV	NO	OTHER LOAD / GENERATION	u/g or o/h	<b>TERMED WAYLEAVE or EASEMENT</b>	<b>Easement over £3k. ANNUAL WAYLEAVE</b> ok if landowner choses this agreement type
HV	NO	RESIDENTIAL/ HOUSING	u/g or o/h	<b>EASEMENT</b>	Termed Wayleave is only an option in highway sections due to be adopted
HV	YES	ANY – mainly RESIDENTIAL/ HOUSING	u/g or o/h	<b>FREEHOLD / LEASE</b>	Cables/lines form part of wider land acquisition doc
HV	NO	OTHER LOAD / GENERATION	u/g or o/h	<b>TERMED WAYLEAVE or EASEMENT</b>	<b>Easement over £3k. ANNUAL WAYLEAVE</b> ok if landowner choses this agreement type
<b>EHV (33kV or 66kV)</b>	NO	ANY	u/g or o/h	<b>EASEMENT</b>	If Land Owner is also Customer (i.e. not a tenant) a Termed Wayleave can be used
<b>EHV (33kV or 66kV)</b>	YES	ANY	u/g or o/h	<b>FREEHOLD / LEASE</b>	Note – many sites need no lease if WPD CB in Customer room and not feeding others
<b>132kV</b>	NO	ANY	u/g or o/h	<b>EASEMENT</b>	No exceptions. Applies whether WPD customer is landowner or tenant
<b>132kV</b>	YES	ANY	u/g or o/h	<b>FREEHOLD / LEASE</b>	Note – most 132kV metered sites need WPD land acquisition as WPD compound needed

## NOTES

1. **THE ABOVE ARE ILLUSTRATIVE EXAMPLES ONLY OF TYPICAL SITUATIONS.** The list is not exhaustive and the 'Normal Agreement' types shown assume a typical situation without complications. Often site specific factors may alter the type of land rights document WPD obtains and in certain situations an easement may be warranted instead of a Wayleave to cater for those factors.
2. WPD will balance the land rights it requires against network risks and other factors such as speed and cost of completing documents and its licence obligation to operate and develop an economic and efficient network for electricity distribution.
3. **TERMED WAYLEAVE:** Means a Wayleave for 99 years (or if specific circumstances justify it, a lesser term to be agreed) in exchange for a one off consideration between £1 and £3k.
4. **EASEMENTS:** WPD requires EASEMENTS (instead of Termed Wayleaves) in the situations listed in the table or where the consideration is over £3k or if specific site risks warrant this (below £3k).
5. **SOLICITORS:** Wayleaves are simple Licence agreements and not registered against a land Title. Landowners or their agents are normally able to sign wayleaves without reference to a conveyancing solicitor, making for an efficient process. WPD will consider whether the use of a Termed Wayleave is still appropriate in cases where legal conveyancing is necessary or whether an easement should be acquired instead.
6. The above is only applicable for NEW WPD ASSETS
7. **MIXTURE OF ASSETS:** Where a site has a mixture of assets or voltages, WPD would look to secure one agreement and the agreement type would be chosen on basis of the highest voltage or risk (eg a development site where an easement is secured to underground an 11kV overhead line but that also has LV mains to be laid, should be secured on an easement.
8. **SIDE LETTER AGREEMENT:** WPD recognises that circumstances will arise where terms have been agreed for an easement, Transfer or Lease, but there is no possibility of the document being completed in time for a customer's connection. With this in mind, WPD has developed a document called the *Side Letter Agreement* which, in certain circumstances, can be used to enable a connection to proceed in advance of completion of a deed of grant, transfer or lease. The process relating to use of the Side Letter Agreement is described in Standard Technique: EW1H.

**OVERHEAD LINES AND CABLES ACROSS OR ALONGSIDE RIVERS WATERCOURSES, TIDAL & FLOOD DEFENCES, EMBANKMENTS, RIVER BANKS AND WORK IN FLOODPLAINS ETC.**

**Note: Certain rivers and watercourses belong to the Crown Estate and their consent is required before proceeding with any works.**

There are special requirements under the Water Resources Act governing consultation with and obtaining permissions from the Environment Agency. (EA) Some long time scales are involved.

See POL GE19 and ST GE19A for details of this process.

Section 110 of the Water Resources Act specifies that the EA's consent or approval to the works shall not unreasonably be withheld, and is deemed to have been given if it is neither given nor refused within the relevant period. The relevant period is two months from either the date of application for approval or consent, or the date on which the £50 application fee is paid, whichever is the later.

Section 110 of the Act further specifies that a consent may be given subject to any reasonable conditions as to the time at which and the manner in which any work is to be carried out.

The Environment Agency (EA) receive no wayleave payment as they are not the landowner.

EA has issued a "Guide for Developers" in which they claim control of the area "within nine metres (or other locally agreed width) of main river banks". They have also agreed Design Guides for the "Erection of overhead lines across or in close proximity to rivers and watercourses" which require "poles or pylons and any stay wires" to "be sited not less than 7 metres from the edge of the bank of the river." Together, these suggest that poles should be sited approximately eight metres from the edge of the river bank to satisfy the EA and to avoid intruding into an adjacent field or other area controlled by the landowner.

The EA Design Guides also require that "the conductor shall not be less the 7.6 metres above the level of the bank on each side of the river, or where a flood bank has been constructed, above the level of the flood bank."

The EA have to be consulted over works in floodplains. Unfortunately some EA Guidance on this varies between Regions and "floodplain" may not be defined within that Guidance. WPD thus take the definition of floodplain as that in PPS 25 and defined as flood zone 3b "Functional floodplain" – land where "water has to flow or be stored in times of flood, specifically this land would flood with an annual probability of 1 in 20 or greater, or is designed to flood in an extreme ( 1 in 100 ) flood.

Discussions with the Health and Safety Executive suggest that the Construction Design and Maintenance Regulations do not apply to the construction of overhead lines and F10 forms are not required for individual projects. However, design parameters for the distribution system relating to the safety of persons other than employees are set out in the Electricity Supply Regulations 1988, as amended.

## APPENDIX B

### SUPERSEDED DOCUMENTS

This document supersedes ST:EW1C/4 dated November 2011 which should now be withdrawn.

## APPENDIX C

### ANCILLARY DOCUMENTS

The Electricity Act 1989 (Schedule 4).

Joint Circular: Department of the Environment Circular 14/90.  
Welsh Office Circular 20/90.  
Department of Energy Circular 1/90.

Statutory Instrument 1990 No. 442 - The Electricity and Pipe-line Works (assessment of Environmental Effects) Regulations 1990.

The Distribution Code of the Public Electricity Suppliers of England and Wales (Distribution Code).

Standard Technique ST:NC2B - New Connections - Allocating Costs.

Water Resources Act 1991.

- POL GE19 - Works near Watercourses and Flood Defences – Legal Duties to Consult with the Environment Agency
- ST GE 19A - Works near Watercourses and Flood Defences – Legal Duties to Consult with the Environment Agency
- ST EW 1H - Relating to the use of a Wayleave to Easement or Site Acquisition Side Letter Agreement

## APPENDIX D

### IMPACT ON COMPANY POLICY

This is an update to the Standard Technique to reflect issue of new suite of wayleave templates for WPD Midlands, a policy change to require notification (and monitoring) of wayleave terminations to the Records Team and new process for registration with DECC, as well as other editorial changes only. Relevant to all staff involved with obtaining and implementing Wayleave Agreements and Deeds of Grants of Easement.

## APPENDIX E

### IMPLEMENTATION OF POLICY

This Standard Technique shall be implemented with immediate effect. Team Managers shall ensure that copies of this Policy are provided to all staff who are involved with obtaining permissions/consents from land owners or occupiers.

## APPENDIX F

### KEY WORDS

Deed of Grant of Easement, Easement, Grantor, Landowner, National Rivers Authority (NRA), Necessary Wayleave, Occupier, Section 37 Consent, Wayleave Agreement.