

Competition in Connections Guidance notes for Independent Connection Providers (ICPs) and Independent Distribution Network Operators (IDNOs)

Ofgem (Electricity North West's Regulator) has introduced a Competition in Connections (CIC) framework giving customers the option to choose an Independent Connection Provider (ICP), an Independent Network Operator (IDNO) or us to provide them with a new electricity connection. Once the connection is made either we or an IDNO will adopt the electricity equipment and take responsibility for its future operation, maintenance and replacement.

In addition to the guidance already provided in this booklet, here we explain what land rights are needed when an ICP installs electricity equipment for adoption, why they are needed, and who is responsible for securing them.

Criteria for Land rights

Land rights will need to be acquired where an ICP designs and installs equipment which we will adopt. These land rights provide us with legal security for the installed equipment. This means that we can retain the adopted assets on privately owned land and access that land for the future maintenance and repair of the equipment.

Land rights **are** needed when:

- An ICP installs equipment on land owned by a developer (Onsite Consents), and
- An ICP installs equipment on land outside of a developer's site (Offsite Consents).
- There are special requirements for planning, environmental or archaeological considerations which might be impacted by the installation (additional consents)
- An IDNO installs equipment which interfaces with our network (the IDNO must secure our rights to access the equipment on the network boundary along with their own rights to access)

We will not adopt equipment installed by the ICP until the land rights have been legally secured.

Land rights **are not** needed when:

- An ICP installs equipment in a public highway or in land laid out to form part of a public highway.

Land rights will normally be in the form of a deed (easement in perpetuity or freehold/leasehold transfer of land) but in certain cases may be a licence or wayleave agreement. It may also be necessary for other consents to be acquired to satisfy statutory constraints (see Additional Consents below).

Criteria for Onsite Consents

We need land rights when we adopt equipment installed by an ICP within a development site. The land rights contain the contractual obligations of the landowner/occupier and provide us with legal security so that we may access, repair and maintain the equipment in future.

When an ICP installs equipment on land owned by a developer, we will acquire the land rights directly from the site owner. However, **we recommend that the ICP does not start installation work until the required rights are legally in place.**

The land rights we acquire will relate to adopted assets only, will be specific to us and will not contain rights for the ICP.

The land rights will normally take the form of a deed of easement for cables. However we will need the site owner to transfer a small parcel of land to us by way of a freehold or long leasehold transfer for substation sites. The transfer will usually include a right of access and cables easement and will be transferred to us for nil consideration.

Land rights for onsite works are completed as a deed by solicitors acting on our behalf and on the behalf of the site owner.

We will not adopt equipment installed by an ICP until the land rights have been legally acquired from the site owner. Agreement of our heads of terms alone, are not sufficient.

Top tips for Onsite consents

- Check with us that we have the required rights before you start installation work, to avoid delays in final adoption and energisation
- If you want us to provide a Point of Connection for you, send us all contact and title details for the site owner when you apply– so we can start as soon as possible
- Make sure you have made provisions for your own access and rights requirements, as our land rights are personal to us alone
- Remember – heads of terms are not legally sufficient to provide rights of access

Criteria for Offsite Consents

ICPs may need to install equipment on land outside of a development site (owned and/or occupied by a third party) in order to make a connection to our network. This will usually involve installing an underground cable on land owned by a third party.

In these situations, the ICP (or their appointed agent) will need to enter into an installation agreement directly with the third party landowner, together with any occupiers of the land. ENWL will not be party to this agreement. The installation agreement will contain terms and conditions that the developer is legally obliged to adhere to, relating to the ICP's installation. This may include any financial considerations required by the third party landowner to facilitate the installation.

At this stage the ICP should to undertake title searches to identify any restrictions on the land which may make it difficult or even impossible for us to acquire our land rights. These might include restrictive covenants/encumbrances, third party easements with obligations to indemnify, or land charges.

Although we are not party to the installation agreement, we will need land rights to access, repair and maintain the equipment in future. The land rights we require are usually incorporated into a tripartite deed of easement between the developer, the third party and us.

The ICP should agree the heads of terms on behalf of the developer with the third party landowner and submit them to us with the details of the solicitors' acting for both the developer and third party landowner. At the same time, the ICP should let us know whether any restrictions affect the land.

We will then instruct our solicitors to complete the deed and provide a template deed of easement to the ICP to simplify matters for the other parties involved.

In certain circumstances we will accept a tripartite wayleave agreement as opposed to a deed of easement. In such cases the ICP will need to obtain the consent of the third party landowners, and the developer/customer on the tripartite wayleave agreement.

Once agreed, the ICP will need to send this to us for our agreement and signature. Once all relevant parties have agreed to the tripartite wayleave agreement, the equipment can be installed on the third party land.

We also recommend that ICPs do not begin their installation works until our land rights are in place. This will ensure that there is nothing to delay or prevent us from adopting the equipment in a timely manner.

Top Tips for Offsite consents

- Make sure you enter into a separate installation agreement with land owner and occupiers
- Undertake 'title searches' to identify any issues which might make it difficult for us to acquire land rights – and let us know as soon as possible
- Remember – heads of terms are not legally sufficient to provide rights of access and finally,
- Do not start installation works until land rights are in place, to avoid delays in final adoption and energisation

Additional Consents

The ICP is responsible for acquiring all licences or assents required to comply with any relevant planning, environmental or archaeological statutory constraints impacted by the installation of the equipment. This will include deemed planning consent for the installation of overhead electric lines.

IDNOs

We don't always adopt new electricity networks installed by ICPs. Sometimes these networks are adopted by IDNOs and they are responsible for acquiring the land rights they need to access, repair and maintain their equipment within a development site. This usually applies to underground cables that will be adopted by an IDNO.

We do need land rights when an IDNO adopts a substation installed on a development site by an ICP, unless the substation is located immediately next to the public highway.

On these occasions the IDNO will require the site owner to transfer land to them for the substation site (together with a right of access and also an easement for underground cables). We require land rights for equipment installed within a development site that will not be adopted by the IDNO. We will also require a right of access from the development boundary to the high voltage switch located within the IDNO's substation.

The land rights we require will usually take the form of an easement for underground cables installed between the boundary of the development site and the IDNO substation.

The land rights we require may be incorporated into the transfer document completed between the solicitor's acting on behalf of the owner of the development site and the IDNO.

A summary of the process is below.

Incorporated Rights Process for IDNOs

1. ICP/IDNO designer will send the legal drawing to our designer together with the design approval pack (The legal drawing must be Land Registry compliant and must coordinate with the legal document).
2. Our designer will confirm approval of the legal plan to ICP/IDNO designer
3. In the meantime, the IDNO's solicitor may write to the landowner with new template legal document that incorporates both the IDNO and our requirements for approval (a copy of this is available on request).
4. If there are no changes made to the wording of the document that will affect our land rights, then the solicitor's acting on behalf of the IDNO and development site owner will complete the transaction without our involvement.
5. If the development site owner insists on major changes to the document that affect our land right provisions, the IDNO will inform our Estates and Wayleaves team directly via wayleaveenquiries@enwl.co.uk. This will allow us to instruct our solicitors to negotiate the wording of the transfer with the solicitors acting on behalf of the site owner.
6. On legal completion of the transfer, the IDNO's solicitor will send an electronic copy of the completed legal document to our Estates and Wayleaves team directly via wayleaveenquiries@enwl.co.uk.