

Draft Terms of Reference for the Taskforce

Note that the terms of reference is still subject to change and will be agreed at the first meeting of the Taskforce.

Background

In the Electricity Transmission (Compensation) Act (the “Act”) 2023, which received Royal Assent on 24 May 2023, government committed to bringing forward proposals on alternative dispute resolution (ADR) processes in cases where land or land rights have been acquired for a purpose connected with the transmission of electricity (defined in the Act as electricity-related land acquisition cases) and there is a dispute about compensation. An "ADR process" is any process enabling the parties to a dispute to resolve the dispute out of court, in this case outside the determination processes of the Upper Tribunal (Lands Chamber).

Government committed in Parliament during the passage of the Act to establish an ADR Taskforce during 2023, which would be responsible for generating proposals. The Act sets out what the proposals must include.

Purpose

The ADR Taskforce has been established by the Department for Energy Security & Net Zero to develop proposals to encourage and facilitate the use of ADR where there are disputes about compensation in electricity-related land acquisition cases.

Scope

Within scope, as set by the Act, are electricity transmission projects that are Nationally Significant Infrastructure Projects (NSIP) and are subject to the Planning Act 2008 Development Consent Order (DCO) process.

Other electricity network cases (transmission or distribution network projects that do not use the DCO process) are out of scope of the Act. However, the taskforce should bear in mind when developing the proposals whether the proposals could or should apply to other non-NSIP cases. There is the potential for the scope of the proposals to expand beyond NSIP projects, subject to a decision by the Secretary of State.

Once the taskforce work has been completed and a final set of proposals decided upon, the taskforce can recommend to government whether to extend the scope to non-NSIP cases.

The Electricity Transmission (Compensation) Act 2023 requires that the proposals must ensure:

- that alternative dispute resolution processes are available for determining the amount of compensation to be paid to landowners in electricity-related land acquisition cases,

- that the processes are accessible to landowners without undue difficulty or expense,
- that the processes are operated, and determinations reached, in a way that is independent of the parties to the dispute, and
- that determinations are enforceable.

Structure of taskforce

A Chair will be appointed to lead the taskforce. The Chair will have overall responsibility for the progress of the ADR taskforce and will ensure the proposals put forward meet the objective of the Electricity Transmission (Compensation) Act 2023.

The Chair will be supported by an expert group with members drawn from bodies that represent both network operators and landowners, plus experts in acquisition of land and alternative dispute resolution. The taskforce will be made up of members drawn from both the legal and surveying professions, as well as other relevant disciplines. This expert group will input into the generation of ideas and review proposals.

A legal firm with expertise in compulsory purchase and alternative dispute resolution will be contracted by the Department to develop proposals for the ADR taskforce to consider, with input from the taskforce members. The legal consultants will carry out the detailed work and will be responsible for producing the final report to government.

Government officials will be in attendance to facilitate working group discussions and provide the secretariat function. Delivery and policy experts from DESNZ and other departments will provide support and input as required. Expertise from outside the taskforce may also be used if necessary and appropriate to achieve the taskforce aims.

Role of Chair

- To Chair meetings of the Taskforce and promote the work of the Taskforce.
- To oversee the activity of the Taskforce and review its progress. Listen and take account of the views of the Taskforce and bring members to a consensus on the proposals, or make the final decision, in consultation with Department officials and externally appointed solicitors, on a range of options where consensus is not possible.
- To be responsible for the delivery of the taskforce outputs, including a report setting out proposals and will be accountable to the Minister in DESNZ.

Role of Legal Consultants

- Producing a work plan for the development of proposals.
- Mapping the current landscape and identifying existing ADR mechanisms, schemes or policies that are in operation in the electricity sector or in other relevant sectors, for example other linear infrastructure projects or sectors where acquisition of land is necessary.
- Assessing how existing ADR processes might meet the criteria set out in the Act and identifying where there are gaps.
- Considering whether any new processes or policies (either new standalone processes or policies, new additions to existing processes or policies, or replication and / or adaptation of existing policies in other sectors) are required to meet the criteria set out in the Act.
- Developing a set of proposals to be made to Government that meet the requirements set out in the Act.
- Identifying implementation routes for recommended proposals.
- Ensuring engagement of all relevant stakeholders especially landowners or representatives of landowners in the development of the proposals.

Role of taskforce members

- Actively contribute to meetings providing evidence-based advice in their respective area(s) of expertise.
- Generate ideas to increase the use of ADR where compensation disputes arise in electricity-related land acquisition cases, and input into the development of proposals.
- Review and challenge recommendations put forward by the legal consultants.

Governance

The Chair is responsible for the delivery of the taskforce outputs and will be accountable to a senior internal DESNZ Board where progress will be monitored and there will be an opportunity for feedback. The chair will be supported by a secretariat, based in DESNZ. The Planning and Communities team will not be a member of the taskforce but will be responsible for the secretariat role. This will include arranging monthly meetings, circulating papers, recording minutes of meetings and monitoring progress.

The secretariat will be overseen by a senior civil servant (deputy director) with responsibility for ensuring that the meetings are effectively run, making efficient use of policy and delivery team resource, and external expertise as required.

Agendas and papers will be circulated at least 3 working days in advance of meetings. Minutes will be circulated and agreed within 2 weeks of meetings. The secretariat will also be responsible for maintaining and tracking progress of the agreed workplan.

Ways of Working

The Taskforce will meet approximately every 4 to 6 weeks. Meetings may be held entirely virtually, with no physical venue specified.

When discussing and agreeing solutions, the taskforce will work within the parameters of existing government policy, including the need to meet our statutory net zero targets, as well as the Public Sector Equality Duty.

The secretariat will monitor the effectiveness of the group in meeting its intended objectives and will regularly review with the chair whether there is a need to make changes to the structure, frequency and purpose of the meetings.

Reporting

The outcome of the taskforce will be a report containing recommendations on proposals for the use of ADR to determine compensation in electricity-related land acquisition cases. The final report will be shared with ministers. This report will inform the report that government is required to lay before Parliament.

Timeframe

The taskforce will inform establishment of a timeframe in collaboration with government, but not expected to take longer than 12 months.