

Appendix 5.2 ESB/IFA Code of Practice for Survey, Construction & Maintenance of Overhead Lines in relation to the Rights of Landowners

ESB/IFA Code of Practice

FOR SURVEY, CONSTRUCTION &
MAINTENANCE OF OVERHEAD LINES
IN RELATION TO THE
RIGHTS OF LANDOWNERS

OCTOBER 1985



Introduction

This Code of Practice, drawn up between the Electricity Supply Board and the Irish Farmers' Association is intended as guidelines for the various activities associated with the survey, construction and maintenance of overhead lines for voltages of 110kV and above, and sets out schedules of compensation which are payable to landowners in certain circumstances.

The agreement does not supplant or derogate from the Board's statutory rights and duties as laid down in the Electricity Supply Acts. The agreement may be amended from time to time by mutual agreement. It shall remain in force pending any negotiations on any revisions of the agreement or its schedules. The ESB undertakes to inform all landowners concerned of this Code of Practice and to provide a copy to each landowner on request.

Preliminary surveying

During the Preliminary Survey the Board's staff examine the terrain in a general manner to identify obstacles and to find the most suitable route. Contact with landowners is minimal. The Board staff responsible (Engineers or Surveyors) shall identify themselves if requested by landowners, who are met in the course of surveying and shall indicate the general nature of their business on the property.

Pre-survey visit

Following the agreement of the Planning Authorities to a line route, the ESB staff shall establish the identity of each

landowner along the route of the proposed transmission line. Survey notices and copies of Board Policy to Landowners shall then be served by post or by hand on all affected landowners (a copy of a typical survey notice is shown in Appendix 1). Serving of this notice shall be followed up by a visit from a member of the Board's staff who shall verify that survey notice was received, outline the Board's intentions re survey of line (and construction) and note any suggestions or complaints from the landowner. (A copy of check list is shown in Appendix 2). The Board Representative shall identify himself and leave the name and address of person to be contacted in the event of any queries arising out of the survey of the line. The check list shall show the name and address of the person to be contacted for survey. It shall be signed by the Board Representative and landowner and a copy shall be left with the landowners. The Board shall ensure that every effort is made to satisfy the landowners wishes with regard to pylon locations, bearing in mind the design parameters. In cases where a pylon is within 50 metres of a house, the landowner may seek further negotiation with the Board with a view to exploring all possible alternatives.

The wishes of the landowner shall take precedent over other interested parties. IFA regards the full observance of this pre-survey procedure as an essential requirement. ESB undertakes to ensure that this procedure is fully adhered to by the Board's staff.

Surveying

The detailed surveying work on the line shall then be carried

out by the Board's staff. The surveyor must call on the landowner before commencing survey work. The local IFA will provide, on request, assistance in locating landowners. Surveyors shall take great care to close all gates behind them and not to damage excessively fences or hedges. Any non-self-restoring damage done to fences or hedges shall be made good or paid for by the Board within one month of agreement and any damage which requires urgent attention shall be made good or rectified within one week of notification. Compensation shall be paid for any damage caused to land or crops within one month of agreement in accordance with the agreed rates which are adjusted annually.

Trial holes

Trial holes in advance of the main construction programme, where necessary, shall be opened only after consultation with the landowner. The method of carrying out this work, shall be such as to cause the least disturbance. The trial holes shall either be opened and filled in one the same day or made safe with fencing. The top soil shall be stacked to one side separately for reinstatement when refilling the hole. The subsoil shall be properly compacted and the top soil spread over it neatly. Rock and other debris thrown up by the excavation shall be removed off the site by the Board's staff. Stones thrown up by the excavation shall be removed from the surface. Compensation for loss or damage shall be payable within one month as provided for under the heading of Compensation and in accordance with the rates agreed with the IFA. The Board in addition to any

appropriate compensation shall pay the landowner compensation of £50 per trial hole.

Serving of wayleaves

When the line survey and design is completed, wayleave notices and schedules as well as maps showing the positions of poles or masts are served on all landowners.

A Board representative must call on each landowner and point out the position of the of the line on the ground and deal with any other queries he may have following the serving of the wayleave notices. If difficulty is encountered in finding the landowner the assistance and local knowledge of the IFA will be utilised. If it is still found impossible to locate the landowner the construction work will proceed.

Access routes and programme of work

Before construction work commences, a Board representative from the District involved shall call on each landowner, identify himself, discuss the entry routes for construction and as far as possible give the landowner the proposed programme of work and the date of commencement of work.

This representative shall leave with the landowner the name and address of the person to be contacted in the event of any queries arising out of the construction of the line. When the entry routes have been agreed, if the landowner requires, the agreed route shall be outlined by posts placed at suitable intervals. The landowner shall give unhindered access to within the area so marked. These marking posts

shall not be required in the case of single entry, such as for wood-pole erection but must be provided, in the case of multiple entries such as concreting operations.

Tree and hedge cutting

The Board shall cut up trees that may be felled into transportable lengths and bring them to the farmyard or other adjacent storage place. The Board shall dispose of rubbish and all debris from hedge and tree cutting caused by its activities during line construction and maintenance operations. The landowner or his representative shall be notified in advance of entry by the Board for purposes of hedge trimming and tree cutting in connection with line construction and maintenance.

Fencing

Fences shall be provided by the Board as necessary for the protection of persons, animals or crops and to prevent trespass. It must conform to the reasonable requirements of the landowner.

The IFA will adjudicate in the event of a dispute.

The type of fencing should depend on its location, purpose and its expected stay in a particular location.

(a) Short-Term Wire Fencing Within a Single Holding

This shall consist of wooden posts, approximately 2m long, set up to 600mm deep and up to 4 metres apart with a minimum two strands of 3-inch barbed wire and sheep wire 3-feet high. This would be used for the temporary guarding of open excavations and it would not normally be left for more than one week unless with

the specific agreement of the landowner.

(b) Longer-Term Wire Fencing or Fencing on Boundaries of Farms

This shall consist of treated wooden posts, approximately 2m long, set up to 600mm deep and up to 4m apart with four strands of 3 inch barbed wire. This type of fencing shall be used on boundary fences or to protect rotovated and reseeded areas which have been heavily damaged during construction. It could be required to remain for up to one year depending on terrain.

- (c) Sheep wire shall be provided if required for either short term or long-term use in sheep farming areas.
- (d) On bloodstock farms, the Board shall provide temporary and permanent fencing around steel masts of type to be agreed, if required by the landowner.
- (e) Where required by the landowner, hedges shall be replaced by quicks protected by suitable fencing as indicated above.

Farm roadways

If a fenced off area crossed existing farm pathways or roadways, or other access routes required by the landowner, the Board shall provide a means of crossing them to the reasonable requirements of the landowner, for passage of persons, machinery and livestock.

All permanent pathways and roadways affected by the construction shall be restored to their original condition before construction started or alternatively an agreed payment in lieu shall be made.

Drinking troughs

If cattle drinking troughs come within the fenced off area, the troughs shall be moved or temporary drinking troughs of similar standard shall be provided at sites agreed with the landowner outside the fenced off area. At termination of the work, the troughs shall, at the discretion of the landowner, be replaced in their original position. Replacement troughs provided by the Board remain the property of the Board but may form part of compensation to landowner if the landowner requires.

Water and other services

Before construction work or trial boring operations commence, the landowner shall notify the Board insofar as he knows of the position, type and size of all underground services, pipelines, drains and wells.

All water courses and water supplies must be protected against pollution arising from the work. All proper steps shall be taken to avoid any interference with water supplies. In the event of a water pipe being severed or damaged, the Board shall effect immediate repair. If the service is not so repaired, the landowner can have it repaired at a reasonable cost and charged to the Board, and the Board shall reimburse the landowner within one month of agreement. In the event of a well or other private water supply in the vicinity of the construction area being permanently affected or destroyed by the proposed works, the Board shall construct an alternative equivalent supply immediately or as soon as possible.

Sewers, septic tanks

Where construction work interferes with drainage or septic tanks, these facilities shall be maintained by the Board with the minimum of interruption during the course of the work and the landowner shall provide all necessary access facilities to enable the Board to do so. They shall be subsequently restored to the satisfaction of the landowner or an alternative equivalent service provided.

Land drains

All ditches, open drains or watercourses interfered with by the works shall be maintained in effective condition during construction and finally restored to as good a condition as before the commencement of works. Particular care shall be taken to ensure that the minimum amount of damage or disturbance to land drains is caused. The position of all land drains cut or disturbed during construction shall be permanently marked by pegs at both sides of the trench immediately following their location. The methods to be employed in repairing damage to the field drain systems shall be agreed between the landowner and the Board. Before replacing drains, the excavation shall be filled and mechanically compacted to the level of the drain and a trench cut back on each side at a distance of not less than 12 inches to provide a good firm bed for the make-up piece. Care shall be taken during subsequent back-filling operations to ensure that no damage is sustained by the make-up piece. Where mole drains are damaged by the works/or by the passage of the Board's vehicles or plant, the area affected by

the damage shall be re-drained by the Board so as to restore it to an equivalent condition prior to entry by the Board.

Where it can be established that any land outside the construction area is affected as a result of the interference during the duration of the works with either the natural or artificial drainage, compensation shall be paid or the damage rectified by the Board. The compensation shall, in default of agreement, be determined by arbitration in manner hereinafter provided.

Blasting

Where blasting is necessary, chains or mats or other suitable material shall be used to contain the broken rock. All pieces of blast debris on arable land in excess of 100mm diameter, and on cultivated grassland blast debris in excess of 50mm shall be picked up by the Board's workmen before the blasting crew leaves the site.

Back filling and soil removal

In excavation where rock has been removed from the foundations, priority shall be given to the removal off site of broken rock where it is surplus to back filling requirements, if required by the landowner. Where broken rock must be returned to the excavation as back filling, it shall not be placed within 0.5m of the finished surface level except in the case where the surrounding ground surface is exposed rock. Sub-soil shall be adequately compacted by mechanical means and back filling shall not be done during wet weather or when soil is waterlogged, if possible. Surplus soil shall be removed from sites on arable land, if

required by the landowner and the site left in neat, level condition.

Reinstatement of land

The Board is responsible for restoring all ground within the construction area to a condition equivalent to that existing before works or for compensation the landowner for any temporary or permanent loss of crop. The permanent loss of crop (either partial or complete) in the vicinity of mast is included in the mast interference payments.

- (a) The access route shall, where required by the landowner, be sub-soiled with suitable equipment to eliminate compaction.
- (b) Previously existing soil shall be spread evenly on the site. If top soil has been lost or damaged in appreciable quantities the Board shall import top soil to make good the quantity lost.
- (c) The ground shall be levelled off so as to present a neat and level appearance (the working area must follow the contours of the undisturbed surrounding ground one year after restoration is completed).
- (d) All stones on arable land in excess of 100mm measured in any direction and for cultivated grassland stone in excess of 50mm measured in any direction arising out of the construction shall be removed from the surface.
- (e) Permanent grassland which has suffered heavy damage shall be reseeded in consultation with the landowner. The rate of seeding, type of seed, fertilisers and methods used should be such as to restore the affected area to the level of the surrounding grassland.

- (f) Where it is established that permanent damage results in excess of what the mast interference payments envisage, a further payment shall be made, based on an assessment by an Agronomist nominated by IFA, as agreed beforehand by the ESB. The reasonable professional fees will be paid by the ESB.

Completion of works

On completion of works, the Board shall remove all temporary buildings, roadways, surplus soil, stones or gravel and any debris such as trees, brush woods and any material that does not naturally belong on the site and was brought there through the operations of the Board.

The Board shall restore that site generally to its condition prior to construction. Trees cut to provide electrical clearance from conductor or masts shall not be replaced. Compensation sufficient to replace shelter belt or amenity services, e.g. driveways, decorative fencing, shall be paid within one month of agreement where a shelter belt is removed or disturbed or where trees or shrubs of an amenity value to a dwelling house are removed. The landowner must notify the Board in advance of designated shelter belts or trees and shrubs of amenity value.

Straying stock

The Board, after consultation with the landowner, shall take all necessary precautions to prevent the straying of livestock and shall compensate the landowner of such livestock for all loss, damage or claims arising from the loss of such animals and pay compensation for injury to or death of/or loss of the

animals where such straying is clearly due to any act or omission on the part of the Board. In default of agreement, the compensation payable, if any, shall be determined by arbitration in the manner hereinafter provided.

Animal disease

The Board shall comply with any regulation which may be necessary in connection with any Department of Agriculture Disease Eradication Scheme. The Board shall ensure that the local District Veterinary Officer is informed of the entry of ESB vehicles on farm with a disease problem and that the Epidemiology Unit of the Department of Agriculture is made aware of ESB activities in a TB-affected area.

Where possible the Board shall not drive machinery through farmyards or other places where there is an accumulation of animal manure. If this is necessary, the Board shall take adequate precautions to disinfect vehicles before and after entering the land, especially on farms with a disease problem (or with neighbouring farms having a disease problem), or where the ESB vehicles have recently been in a farm with a disease problem.

Indemnification

The Board shall indemnify and keep indemnified the landowner, his servants, agents, licensees and invitees against all sums in respect of loss or damage, claims, demands, costs and expenses which the landowner shall become legally liable to pay as compensation for any illness or accidental bodily injury or accidental loss of or damage to property where such injury or damage is caused by, arises

from, is traceable or connected with the works or equipment other than in consequence of any malicious act or omission on part of the landowner.

The Board shall pay compensation to the landowner, his servants, agents, licensees and invitees in respect of any illness or bodily injury or loss or damage to material property suffered by him or them (together with all consequential loss arising therefrom) where that same is caused by, arises from, is traceable to or connected with the works, or equipment other than in consequence of any malicious or criminally reckless act or omission of the landowner and except insofar as the same has been made good by the Board without loss to the landowner.

The above is without prejudice to the Board's and Landowners' Statutory and Common Law rights.

Illness in this context is understood to mean damage to the personal health and well being of the landowner or his animals or his agents, servants, licensees and invitees.

It is noted and agreed that the ESB will issue, to any individual landowner requiring same, a letter of acknowledgement that the Board's wayleave over his land is subject to the provisions of the code of practice, including specifically the indemnity clause.

Rates and taxes

The landowner shall not be responsible for any taxes which may be imposed in respect of Board pylons or installations.

Inspection and maintenance

Except in the case of emergency, notice shall be given where

possible to the landowner of any subsequent vehicle entry for purposes of maintenance or inspection of the pylons. The landowner shall be consulted as to the means of access. Such works shall be suspended or restricted other than in case of emergency to comply with the requirements of the Department of Agriculture and the occupier of the land if declared infected on account of foot-and-mouth disease, fowl pest, swine fever, brucellosis or other notifiable disease. On notifying the landowner, the Board may inspect the route and all representatives of the Board entering on the land for the purpose of inspection, maintenance or execution of the works or any subsequent works shall carry and produce on request adequate means of identification. Warning signs shall be installed by the ESB where necessary. Proper maintenance checks shall be made with regard to the overhanging cable, which shall include atmospheric testing (magnetic field strength test and dielectric field strength test). On reasonable request, these tests will be carried out for individual landowners.

Landowners' time

Where, with the written agreement of the Board or its agents, the landowner on a pylon route shall properly spend time on work in connection with operations on his/her land, payment shall be made by the Board on an agreed basis.

Arbitration

If at any time hereafter any dispute, difference or question shall arise between the landowner and the Board, or the heirs, executors, administrators or assigns of the Board or

any of them touching the construction, meaning or effect of these present, or any Clause or thing herein contained, or the rights or liabilities, of the said parties respectively or the heirs, executors, administrators or assigns of the landowner or the successors or assigns of the Board or any of them under these presents or otherwise howsoever in relation to the premises, then every such dispute, difference or question shall be referred to the Arbitration of a person to be agreed upon between the parties or (if the parties fail to appoint an Arbitrator within one calendar month of either party serving on the other party a written notice to concur in the appointment of an Arbitrator) a person to be appointed on the application of either party by the President for the time being of the Society of Chartered Surveyors in the Republic of Ireland. If an Arbitrator declines the appointment or after appointment is removed by order of a competent Court or is incapable of acting or dies and the parties do not within one calendar month of the vacancy arising fill the vacancy, then the President for the time being of the Royal Institution of Chartered Surveyors may on the application of either party appoint an Arbitrator to fill in vacancy. Any such reference to Arbitration shall be deemed to be a submission to Arbitration within the meaning of the Arbitration Act 1954 or any statutory re-enactment or amendment thereof for the time being in force. The award of the Arbitrator shall be final and binding on the parties.

Loss of development rights

- (i) If in the future the line interferes with any viable development of land other than cultivation of the soil and the Board is so satisfied, the Board shall either:

- raise or otherwise alter the line to permit the development in full, or
- pay at current prices for the loss caused by interference of the line with the development including Architects Fees and costs incurred with Planning Application.
- raise or otherwise alter the line to permit partial development and pay at current prices for the loss caused by interference of the altered line with the development.

If despite these provisions the landowner still claims a loss then the Board are open to further negotiations in conjunction with the IFA.

- (ii) The agreement of the Board to alter the line or make a payment is subject to the reasonable cooperation of the landowner with the Board in devising an arrangement of the line and of the development which reduce the overall cost to a minimum. This necessitates an approach to the Board at the earliest stage to ascertain the limits for development of the kind envisaged near the particular part of the line in question and to discuss the possibility of altering the line and the probable time required to carry out an alteration. The Board shall give every assistance in planning the layout of a development which impinges on the line as it stands or on any feasible alteration to it.
- (iii) The total cost of the Board of altering the line and/or of payment is limited to that for the arrangement which gives minimum cost subject to the reasonable wishes of the landowner at the wayleave stage. If the landowner

prefers an unreasonably expensive arrangement the question of reasonableness shall be referred to arbitration.

- (iv) Before commencing any alteration the Board shall need proof that that proposed development shall proceed and it may require security for repayment of the cost of the alteration if the development is not carried out within a reasonable time by reason of the default of the landowner. Any planning permission granted prior to the Board's planning permission shall be accepted as proof of the proposed development
- (v) The basis of payment shall be agreed in advance but payment shall be made in stages linked to the progress of development, i.e. half on foundations, half on completion of walls.

Where the landowner purchases a completed building as an alternative to a development affected by the ESB line, the compensation shall be paid immediately on completion of a genuine contract of sale.

- (vi) When a development is totally prevented, payment shall be made only when there is clear proof, e.g. planning permission and the absence of other suitable development land, to the satisfaction of the Board that a genuine and viable development has in fact been prevented solely by the presence of the line. A line shall not be taken as preventing development if it could reasonably be carried out on other suitable land subject to payment for any consequent increase in cost. Where a landowner has planning permission for development at the time that the Board announces their intention to

construct a line which would interfere with that development, the Board shall pay compensation if the development has to be abandoned or relocated to facilitate the Board, including professional fees.

- (vii) Payment for the full loss may not be made if the Board had not been formally consulted in advance of construction or if the land had been purchased at a reduced price.
- (viii) A decision to alter the line or make a payment may be subject to obtaining an easement in respect of the land affected. Payment shall be made within one month of obtaining such an easement.
- (ix) Any disagreement as to the amount of payment shall be referred to arbitration.

Note The development implications shall be discussed with the landowner by the Board's representatives at the pre-survey stage and at the wayleave notice stage.

It should be noted that the Board must ensure that there is no risk of injury to anyone from a proposed development either directly because of its proximity to the wires or by weakening of the line. The Board shall give its decision expeditiously as to whether or not there is such danger, on receipt of full particulars of any proposal. Anyone who intends to erect a building or structure within 25 yards on either side of any transmission wire is statutorily bound under penalty to give at least two months notice in writing to the Board and to state all relevant particulars of such building/structure.

Compensation

The Board shall reinstate the affected lands at its own expense or as an alternative pay a sum to be agreed between the Board and the landowner, with reference to the schedule of cost agreed with the IFA.

The Board shall also pay compensation for crop loss and physical disturbance in the fenced off area excluding the area catered for by mast interference payments. In the case of tillage land the compensation shall be calculated according to the profit per acre that the appropriate crop could be expected to yield for each year that the affected land is out of production. In the case of grassland, compensation shall be paid for at least one year after the affected lands have been re-seeded and until the land can be grazed by heavy cattle.

Compensation for crop loss and physical disturbance shall be paid by the Board within one month of agreement. The basis for compensation shall be in accordance with standard scale of crop yields agreed with the IFA and the crop values shall be agreed on a yearly basis. Compensation shall also be paid for any agreed reduction in crop yield which occurs in the restored ground in following years – where claimed before removal of crop and proven.

In the event of construction being phased over a period of

time in distinct separate operations, e.g. construction of foundations, erection of pylons, stringing of wires, each operation shall be assessed as a separate activity for the purposes of compensation.

Where land is let the compensation for crop loss disturbance and restoration, where applicable shall be paid to the tenant only.

In the event of any payment under this Agreement having been agreed but remain unpaid within the appropriate time periods set out, interest shall be payable at "AA" bank rates.

Interference payments for the existence of poles and pylons on farming land shall be the subject of a separate agreement between the Board and the Irish Farmers' Association.

Payments shall be due annually on 1st January in each year and shall be made by way a credit to the appropriate ESB bill. Where construction commences between 1st January and 30th September in any year the first payment shall be made at the full annual rate on 1st January next following.

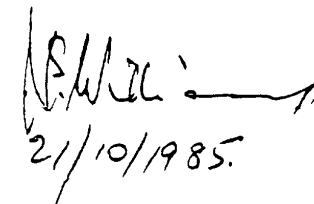
In special cases, subject to prior agreement with the Board, the landowner reserves the right to employ on a consultancy basis from time to time as may be deemed necessary any Engineer(s), Surveyor(s), Solicitor(s), Economist(s), Consultant(s), or Agronomist(s), to assess, measure or quantify any loss, damage, claim or cost such as may be the subject of negotiation between the Board and landowner

from the date of the pre-survey visit to a date 12 clear months after the completion of the work including the fixing of cables, and the reasonable costs incurred by such a transaction shall be borne entirely by the Board.

TV/Radio interference

The ESB undertakes to investigate any reasonable complaint of interference with television or radio reception due to the presence of a transmission line. If the transmission line is proved to be interfering with reception, the ESB shall undertake to rectify the cause of the interference.

Signed on behalf of Electricity Supply Board:



Signed on behalf of the Irish Farmers' Association:

