



An Coimisiún
um Rialáil Fóntais
Commission for
Regulation of Utilities

Special Order Applications under Section 47 of the Electricity Regulation Act, 1999

Guidance Note

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Glossary of Terms and Abbreviations

Abbreviation or Term	Definition or Meaning
1927 Act	Electricity (Supply) Act, 1927
1999 Act	Electricity Regulation Act, 1999
CER	Commission for Energy Regulation
CRU	Commission for Regulation of Utilities
ECHR	European Convention on Human Rights
The Board	Electricity Supply Board (ESB)

1. Introduction

This guidance note is intended to provide guidance to applicants in applying to the CRU for a special order under section 47 of the Electricity Regulation Act 1999 (1999 Act), which amended section 45 of the Electricity (Supply) Act 1927 (1927 Act).

This guidance note is designed to assist parties in completing and submitting an application to the CRU under section 47 of the 1999 Act. This guidance note is not intended to be exhaustive and should be read in conjunction with the relevant application form and the applicable legislation. This guidance note may be updated from time to time as necessary and published on our website.

The responsibility rests on the applicant to provide sufficient information to enable the CRU to properly assess the application. Any information or documents which the applicant deems relevant and appropriate should be included. Applicants are advised to take legal and other professional advice when making an application. At all times, the CRU reserves the right to request further information in respect of an application.

1.1 Legislative Background

Section 45 of the 1927 Act and section 47 of the 1999 Act provide for the granting of special orders to compulsorily acquire rights or interests over third party land. Section 45 of the 1927 Act sets out the legal basis for the Electricity Supply Board (the Board) to acquire compulsorily any land, easement, or other right over land, or to acquire or use compulsorily any right over land by special order. Section 45 of the 1927 Act established a procedure for exercising that compulsory acquisition power.

Section 45 of the 1927 Act¹ reads as follows:

45.—(1) If and whenever the Board thinks proper to acquire compulsorily any land or to acquire or use compulsorily any easement or other right over land or any right of impounding, diverting, or abstracting water for the purpose of the exercise of any of the powers or the performance of any of the duties or functions conferred or imposed on it by this Act, the Board may by special order declare its intention so to acquire such land or so to acquire or use such right, and every such special order shall operate to

¹ By virtue of section 43 of the 1999 Act, the powers under section 45 of the 1927 Act became exercisable by (in addition to the Board) the holder of an authorisation under section 16 of the 1999 Act.

confer on the Board full power to acquire compulsorily the land or to acquire or use compulsorily the right mentioned therein under and in accordance with this section.

(2) The Board shall not make a special order under this section in relation to the compulsory acquisition of a right of impounding, diverting, or abstracting water without previous consultation with the Minister for Fisheries.

(3) The Board shall not make a special order under this section in relation to the compulsory acquisition of a right of impounding, diverting, or abstracting water in or from any canal without previous consultation with the Minister.

(4) Before making a special order under this section, the Board—

(a) shall deposit and keep open for inspection in its principal office or some other suitable place such plans, specifications, and other documents as will show fully and clearly the land or right intended to be acquired or used by virtue of the order, and

(b) shall give notice, in such manner as it may consider best adapted for informing persons likely to be affected by the order, of its intention to consider the making thereof and of the manner in which representations and objections in respect of the order may be made, and

(c) shall, if it considers it expedient so to do, cause a public inquiry to be held in regard to the making of the order.

(5) A special order made under this section may incorporate—

(a) the Acquisition of Land (Assessment of Compensation) Act, 1919, with the modification that the expression “public authority” shall include the Board or a holder of an authorisation under section 16 of the Electricity Regulation Act, 1999, as the case may be, and

(b) the Lands Clauses Acts so far as the same are not inconsistent with the said Acquisition of Land (Assessment of Compensation) Act, 1919 or with this section.

(6) Nothing in this section shall authorise the Board to acquire use, or otherwise interfere with compulsorily under this section any land or water or any easement or

other right over land which at the date of the first publication of notice of the intention of the Board to consider the making of a special order in that behalf belongs to a gas or water undertaker and is used or authorised to be used by such undertaker for the purpose of his undertaking.

Section 47 of the 1999 Act amended section 45 of the 1927 Act (the Principal Act), by transferring the power to make a special order to the CER. The functions of the CER are now vested in the CRU.

47.—(1) Subject to subsection (2) the power to make a special order conferred on the Board by section 45(1) of the Principal Act shall be exercisable by the Commission and not by the Board on the application of the Board or a holder of an authorisation or a person who has applied for an authorisation and any references in that Act to the making of special orders shall be construed as references to the making of such orders by the Commission.

(2) A special order made by the Commission shall operate to confer on an applicant for an authorisation under section 16 the functions which such an order would confer on the Board.

(3) Where an application is made to the Commission for a special order under this section, section 45(2) to (6) of the Principal Act shall apply to the Commission as it does to the Board.

The CRU can only exercise the power to make a special order on the application of either the Board or the holder of/applicants for an authorisation granted under section 16 of the 1999 Act.

There may be instances where a special order is sought against another holder of (or applicant for) an authorisation/the Board. Section 9(3)(a) of the 1999 Act states that the CRU must not “discriminate unfairly between holders of licences, authorisations and the Board or between applicants for authorisations or licences” when carrying out their functions.

In making the decision as to whether to grant or refuse to grant the special order, the CRU must follow the procedures set out in section 45(2)-(6) of the 1927 Act. These procedures include requirements for consultation, inspection, notice, and the holding of a public inquiry (if it is considered expedient to do so).

This guidance note is designed to assist applicants in completing and submitting the application form. It is also intended to provide guidance to prospective applicants regarding the relevant documentary evidence or supporting information that should be provided as part of the application for a special order pursuant to section 47 of the 1999 Act. As stated, this guidance note is not exhaustive and further information may be required by the CRU during the course of a consultation or public inquiry (if it is deemed expedient to do so).

The application form may be found on our website.

2. What factors will the CRU consider?

As part of an application under section 47 of the 1999 Act, an applicant is asked to provide certain relevant information, including information regarding:

- The applicant's **eligibility** to apply for a special order,
- The precise nature and extent of the special order sought,
- The **purpose** for which the special order is sought (i.e., what the special order will be used for),
- Relevant planning permission or similar consents necessary for the project, and
- The rationale for the **appropriateness** of the special order being sought.

However, it is important to note that there are a variety of reasons why a party would be applying for a special order, and it is the responsibility of the applicant to provide sufficient information to enable the CRU to properly assess their application and ultimately decide whether it is proper to grant the special order(s) being sought. Any information or documents which the applicant deems relevant and appropriate should be included in their application. Applicants are advised to take legal and other professional advice when making an application.

While each application for a Special Order is unique, in order to consider an application and commence the section 47 process the CRU will need enough information to clearly understand:

- The **eligibility** of the applicant to seek a special order (section 1 of the application form);
 - The CRU can only exercise the power to make a special order on the application of either the Board or the holder of/applicants for an authorisation granted under section 16 of the 1999 Act;
 - Accordingly, the onus rests with the applicant to satisfy the CRU that they are eligible to bring the application;
- The precise nature and extent of the special order sought (section 4 of the application form);
 - The extent **of the interest(s) or right(s)** which the applicant is seeking. For example, will the application affect a single landowner, a particular community or a large group of individuals and what engagement has occurred;
 - The **nature of the interest(s) or right(s)** that the applicant is seeking i.e. an easement, outright acquisition etc.;
- The **purpose** of the special order being sought i.e. what the special order will be used for (section 5 of the application form);
 - Information describing the specific project or works for which the application is being submitted;
- Relevant planning permission or similar consents necessary for the project (section 6 of the application form). (Please note that these permissions or consents will not be reconsidered as part of the CRU assessment);
 - Details as to whether planning permission has been applied for, granted or is exempted;
 - Information relating to further licenses, consents, environmental assessments approvals or authorisations that may be applicable;
- The rationale for the **appropriateness** of the special order being sought. (section 7 of the application form);
 - The CRU will consider whether the making of a special order is proper.
 - An applicant should provide detailed submissions and supporting information as to why the acquisition of the right(s) or interest(s) sought is justified and may include the consideration of alternatives to the order being sought and policy or public interest considerations.

3. What information do I need to provide?

This section discusses the application form and the type of information that may be appropriate to provide to the CRU. To this end, this section goes through each section of the application form, identifying the documents to which the application form expressly refers, while also indicating additional documentation that may be helpful to include as part of an application. This guidance is not exhaustive, and again, it is the responsibility of the applicant to provide sufficient information to enable the CRU to properly assess their application and ultimately decide whether it is proper to grant the special order(s) being sought. Any information or documents which the applicant deems relevant and appropriate should be included as part of their application to the CRU. Such information may include providing separate documentation to expand on answers given in completing the application form; for example, where the applicant ran out of space in filling out the application form. Applicants are advised to take legal and other professional advice when making an application.

Section 1 - Eligibility to Apply:

Section 45(1) of the 1927 Act and section 47(1) of the 1999 Act set out who is eligible to apply for a special order. Section 1 of the application form seeks to acquire all relevant information to establish the legal basis upon which the applicant is eligible to apply for a special order under section 47 of the 1999 Act. The questions contained in section 1 are set out below. These questions refer to documents that must be provided by an applicant to demonstrate their eligibility. These documents must be included as part of your application.

1.1 Please set out the eligibility of the applicant to apply for a special order pursuant to section 47 of the 1999 Act.	
1.2 Please list, and include a true copy of all authorisations, applications, or other documents verifying the applicant's eligibility to apply for a special order pursuant to section 47 of the 1999 Act.	

Figure 1. Questions relating to an applicant's eligibility to apply to the CRU for a special order included in the application form.

Sections 2 and 3 – Contact Details

Sections 2 and 3 of the application form request the applicant's details and the specific point of contact with whom the CRU would engage in relation to the submitted application. The questions contained in sections 2 and 3 do not specifically request any supporting documentation.

Section 4 – Special Order Sought

Section 4 seeks information as to the precise nature of the special order(s) being sought by the applicant. These questions are set out below. The questions call for, *inter alia*, maps and information pertaining to the lands and rights affected / being sought and the parties that will be impacted by the granting of the requested special order(s). Appendix 1 to the application form provides an indicative template to assist applicants in providing the information sought. The template takes the following format and includes a plot reference number (Plot Ref No.) which should be included in any maps submitted with the application form.

Plot Ref No.	Townland, Barony, County	Area (if known) (in Ha)	Owner(s), Occupier(s) and persons likely to be affected	Address	Right(s) or Interest(s) sought
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Figure 2. Headings contained in Appendix 1 to the application form

<p>4.1 Please confirm what right(s) or interest(s) are sought.</p>	<p><input type="checkbox"/> Outright acquisition</p> <p><input type="checkbox"/> Easement</p> <p><input type="checkbox"/> Water rights</p> <p><input type="checkbox"/> Other right(s)</p>
<p>4.2 Please give further details of the nature of the right(s) or interest(s) sought.</p>	
<p>4.3 Please identify in the table in Appendix 1 (or provide a separate document containing such a table) all lands to which the application relates and identify by reference to each plot, the area of the plot, the nature of the right(s) or interest(s) (as described above) sought in respect of that plot, and the owner(s), occupier(s) and persons likely to be affected by the special order.</p>	
<p>4.4 Please include a map or maps with plot references as included in Appendix 1.</p>	

Figure 3. Questions regarding the precise nature of the special order(s) sought included in section 4 of the application form.

Section 5 – Purpose of the Special Order Sought

Section 5 requests information regarding the reason(s) for which a special order(s) is being sought or, in other words, what the purpose of the requested special order(s) is. This information should clearly set out what the applicant is aiming to achieve or deliver by

obtaining a special order(s). The information provided should include a detailed description of any infrastructure that the applicant intends to deliver. Any documentation provided as part of the response to the questions contained in section 5 should be clearly linked back to the information provided in answering the questions contained in section 4, for example, it would be expected that any maps provided would identify the individual plots of land that are identified in the response to the questions contained in section 4 and include the relevant “Plot Ref No”.

5.1 Please state in summary the purpose(s) for which the special order or consent is required.	
5.2 Please list and include all plans, drawings, specifications and other documents describing the purpose for which the rights(s) or interest(s) sought are being sought.	

Figure 4. Questions regarding the purpose of the special order(s) sought included in question 5 of the application form.

Section 6 – Planning and Other Consents for the Purpose of the Special Order Sought

A special order(s) under section 47 of the 1999 Act does not authorise the carrying out of any works or change of use of land, nor does it dispense with the requirement to obtain any regulatory consents or approvals. It is the responsibility of the applicant to ensure that they have obtained all necessary planning permissions, approvals, and consents for the purpose for which the special order(s) is being sought. Section 6 requests information to confirm the extent to which the applicant has already acquired all relevant permissions, etc. Question 6 of the application form seeks information on what the necessary planning permissions, approvals and consents are for the proposed purposes of the special order(s) being sought and the status of each.

<p>6.1 Please confirm whether all necessary grants of planning permission have been made in respect of any development for the purpose for which the Special Order is sought.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>6.2 If not, please state when it is expected that any such necessary grant(s) of planning permission will be made, and identify what stage of the planning process any application(s) for such grant(s) of planning permission has reached.</p>	
<p>6.3 Please state whether, in addition to planning permission or an exemption from planning permission, the purpose for which the special order or consent is required, is subject to any other licensing / consent / approval procedure(s).</p>	

Figure 5. Questions pertaining to planning permission and other consents for the purpose of the special order(s) being sought included in section 6 of the application form.

Section 7 – Appropriateness of the Special Order Sought

Section 7 asks the applicant to justify the special order(s) sought. The application form is not prescriptive in respect of how the applicant might set out the justification(s). The legal tests applicable to the granting of compulsory acquisition of land and rights or interests in land, including under the 1927 Act, have been subject to judicial consideration by the Courts, and the application of the relevant legal principles (e.g. *inter alia*, relating to community need, public policy, consideration of alternatives, proportionality) to the facts of any given application is a matter requiring careful consideration. As with all sections of the application form, the applicant is advised to take legal and other professional advice to assist in providing responses to this section.

Again, it is important that the applicant provides a clear link back to the information provided elsewhere in this application; including the maps and land details provided when answering sections 4 and 5). The applicant should also include details regarding any alternatives to a special order that were considered prior to submitting this application, as well as alternative designs to the infrastructure that the applicant proposes to construct.

<p>7.1 Please provide a statement justifying the acquisition of the right(s) or interest(s) sought having regard to the purpose (the applicant is advised to take legal and other professional advice in answering this question).</p>	
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Figure 6. Questions pertaining to the appropriateness of the special order(s) being sought as included in section 7 of the application form.

4. When should I apply?

Applicants can apply as soon as they have undertaken all of the steps necessary to fully complete the application form.

5. Processing of Applications

There are no legislative timelines for processing an application. The Commission will process any application received in a timely and efficient manner. The amount of time required will be influenced by, *inter alia*, the scale, nature, extent and complexity of the application as well as the nature and number of submissions and observations received. The Commission will provide updates on progress in a transparent and straightforward way, for example by publishing updates on our website.

5.1 Initial assessment period

The CRU will acknowledge receipt of an application in writing. The CRU will carry out an initial review of the submitted application to ascertain whether, on the face of it, relevant information has been provided by the applicant. Following this initial review, if the CRU deems the application to be sufficiently complete, it will commence its substantive assessment of the application. This assessment may result in additional documentation, etc., being requested from the applicant. Where the application is deemed incomplete it will not be accepted for assessment. The applicant will be informed of the reasons why their application has failed the completeness check in order to support their reapplication.

5.2 Consultation process

In accordance with the relevant legislation and CRU policy, it is necessary to give notice to the public and persons likely to be affected by a special order of an application and seek representations or observations. This will include:

Consultation with Ministers: Under section 45(2) of the 1927 Act, if the special order application concerns “*acquisition of a right of impounding, diverting, abstracting water*”, the CRU must consult with the Minister for Agriculture, Food and the Marine. Section 45(3) of the 1927 Act requires the CRU to consult with the Minister for Enterprise, Trade and Employment where a special order application concerns “*acquisition of a right of impounding, diverting, or abstracting water in or from any canal*”.

Information to be made available for inspection: The CRU must make available for inspection any “plans, specifications and other documents as will show fully and clearly the land or right intended to be acquired or used by virtue of the order”, in accordance with section 45(4)(a) of the 1927 Act. This information will be displayed in a suitable place and on the CRU’s website.

Notice requirements: Section 45(4)(b) of the 1927 Act requires the CRU to inform persons who are likely to be affected by the order, informing them how representations or objections may be made.

Where the applicant considers information is confidential and should not be published without redaction they should (i) clearly mark the relevant information in their application as such and (ii) provide reasons to the CRU why it considers such information to be confidential. The CRU shall also independently consider if it believes any information is confidential prior to its publication.

5.3 Public Inquiry

Based on the representations or observations made during the consultation period, or other considerations, the CRU may hold a public inquiry if it is considered expedient to do so. The findings of any such inquiry will then be submitted to the CRU to assist in arriving at its final decision. Information on the public inquiry will be published on the CRU website at the end of the decision-making process.

A need for a public inquiry will be informed by the scale, nature, extent and complexity of the application, the nature of submissions and observations received, and is entirely at the discretion of the CRU.

5.4 Inactive Applications

Where the CRU has not received a response to a request for additional information or has had no contact from the applicant for a period of **six months**, the CRU will write to inform the applicant that their application is deemed to be expired. If the applicant subsequently wishes to reapply, they must submit a new application form and associated documentation.

6. Further information and assistance

If an administrative or procedural query arises in relation to the completion and submission of an application, the CRU may be contacted to clarify requirements in advance of formal lodgement of an application.

Contact details are:

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