

Briefing Note: **Telecommunication Apparatus and the Electronic Communications Code**

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Date Issued: 16<sup>th</sup> November 2017

*This new Briefing Note is based on current legislation but following an Ofcom consultation we are anticipating that this guidance may be updated imminently and we will revise accordingly.*

## **Introductory observation and caveat**

In preparing and researching this paper it was confusing as to what ‘current’ legislation was, however it appears this observation is not new. In the House of Commons Library<sup>1</sup> briefing paper of June 2016 on ‘Reforming the Electronic Communications Code’ the introduction quotes from Mr Justice Lewison, who in a relevant 2013 court case said;

*“The Code is not one of Parliament’s better drafting efforts. In my view it must rank as one of the least coherent and thought through pieces of legislation on the statute book.”*

This note aims to clarify the information for lay users but it must be stressed that the briefing note relies on interpretation of many different pieces of legislation. The Code of Practice referred to later should though, be viewed as the reliable guidance document.

## **Purpose of Briefing Note**

During the Connecting Devon and Somerset Phase One contract with BT there was only a limited amount of new apparatus<sup>2</sup> installed, by and large limited to new green cabinets often located in close proximity to existing cabinets. As the solution was based on fibre to the cabinet (FTTC) and then through existing copper cables to the premises, there has been little in the way of new cabling or poles to premises required.

Under Phase 2 of the CDS roll-out, and with other commercial suppliers entering the market to provide fibre to the premises (FTTP), there will be an increasing need to install new infrastructure beyond the existing BT system. As such in addition to new ducts there will be visible apparatus such as cabinets, poles and overhead cabling.

<sup>1</sup> <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7203>

<sup>2</sup> ‘Apparatus’ is a broad term and refers to what is defined in the Electronic Communications Code (ECC) as electronic communications apparatus; it includes such items as antennae for mobile signals, masts, cabinets, cables, ducts and telegraph poles

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In certain parts of the area this has already commenced and this briefing note is to inform Parish Council, individuals and community groups about the current legislation and what, as communities, they should expect from both the local authorities/statutory bodies and the Code Operator (the Telecoms contractor) regarding new apparatus.

A 'Code Operator' is a company approved by Ofcom to provide electronic communications within a nationally agreed framework for the construction, management and operation of electronic communications. All the companies operating locally are approved Code Operators and are named in the current Register of Persons with Powers under the Electronic Communications Code<sup>3</sup> and therefore bound by the code.

### **Achieving Balance**

It is important to note that the right balance must be struck between peoples and communities desire and right for reliable and fast broadband connectivity, alongside the desire for the minimisation of visual amenity (the new apparatus' impact on its setting, the landscape or buildings) and the desire of the Code Operator to carry out the installation economically, efficiently and with minimum disruption.

This is a difficult circle to square for communities, Code Operators and statutory bodies but to assist in the process there is an agreed Code of Practice which must be used and adhered to.

### **Code of Practice**

The Electronic Communications Code (Conditions and Restrictions) Regulations 2003<sup>4</sup> contains guidance and information for code operators on lines, installation of apparatus, conservation areas, listed buildings and ancient monuments, protected areas and records. Our understanding is that these regulations still apply with amendments, despite more recent legislation. This is the basis on which the Code of Practice has been developed.

The new Digital Economy Act 2017<sup>5</sup> is a wide-ranging piece of legislation which updates certain parts of the 2003 Act and is provided with a useful Explanatory Note<sup>6</sup> in addition to links through to a straightforward 10-page Code of Practice for cabinet and pole siting<sup>7</sup> updated in November 2016. The original 2003 & 2013 Conditions and Restrictions regulations still apply.

The key points from the [Code of Practice](#) (with the relevant paragraph number) are;

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<sup>3</sup> [https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/policy/electronic-comm-code#accordion\\_target-86913](https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/policy/electronic-comm-code#accordion_target-86913)

<sup>4</sup> [http://www.legislation.gov.uk/ukxi/2003/2553/pdfs/ukxi\\_20032553\\_en.pdf](http://www.legislation.gov.uk/ukxi/2003/2553/pdfs/ukxi_20032553_en.pdf)

<sup>5</sup> [http://www.legislation.gov.uk/ukpga/2017/30/pdfs/ukpga\\_20170030\\_en.pdf](http://www.legislation.gov.uk/ukpga/2017/30/pdfs/ukpga_20170030_en.pdf)

<sup>6</sup> [http://www.legislation.gov.uk/ukpga/2017/30/pdfs/ukpgaen\\_20170030\\_en.pdf](http://www.legislation.gov.uk/ukpga/2017/30/pdfs/ukpgaen_20170030_en.pdf)

<sup>7</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/590272/Revised\\_Cabinet\\_and\\_Pole\\_Siting\\_COP\\_Nov\\_16.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/590272/Revised_Cabinet_and_Pole_Siting_COP_Nov_16.pdf)

1. The code operator must establish with the local planning authority at the outset whether the infrastructure deployment is proposed in a protected or non-protected area and which bodies require consultation or notification (3.1)
2. Appropriate authorities to be consulted or notified will vary but will involve the local planning authority and the highway authority but in protected areas consultees will extend to include the local Parish Council, Natural England, the relevant National Trust regional office or the relevant AONB Partnership (3.1)
3. Besides the notifications/approvals/consents stated, written agreement will be required from the owner and/or occupier as appropriate of the land where a cabinet or new pole is installed in any land which does not form part of a publicly maintained highway (2.7)
4. Code Operators should initially offer to discuss the application of this Code of Practice with relevant planning authorities in relation to their proposed network deployment programme with a view to identifying opportunities to avoid and minimise adverse landscape impact of proposals for new poles and cabinets (3.2)
5. Once detailed proposals are prepared, and in addition to the required documentation, some authorities may then request site visits to discuss apparatus location, others may additionally request a drawing showing proposed apparatus locations (3.2)
6. Any additional dialogue should be in line with the existing **one month noticing period** as stated in the Electronic Communications Code (Conditions and Restrictions) Regulations
7. It is expected that in any network rollout of Next Generation Access (NGA) apparatus that the Code Operators will engage in dialogue between themselves and other infrastructure providers to ensure any opportunities for sharing infrastructure are explored and utilised where possible (1.2) and
8. The sharing of pole structures should be considered at the design stage in order to reduce unnecessary duplication and visual impact (5.1)
9. Where new poles are to be installed the Code Operator should place a site notice in as close proximity as possible to the proposed apparatus indicating to nearby residents the intention to install a pole, and the proposed location (5.3)
10. Notices should state the name and contact details of the Code Operator (5.3)
11. In Areas of Outstanding Natural beauty, the Code Operator should discuss new pole locations with the relevant AONB Partnership at an early stage to identify opportunities to minimise any adverse landscape impact (5.3)
12. The siting of poles adjacent to any listed building and/or Scheduled Monument should be avoided (5.7)
13. All new poles should be sited, so far as is practicable, so as to minimise their impact on their setting, including the landscape and any buildings (5.8)

14. Additional care is to be taken when siting poles in Conservation Areas and/or World Heritage Sites. For particularly sensitive parts of Conservation Areas and World Heritage Sites, identified in dialogue with the local planning authority, and where there is no alternative to siting a pole in a location deemed unacceptable by the local planning authority, then consideration should be given to using underground service feeds (5.8)
15. To ensure that all infrastructure deployments are compliant with this Code of Practice a Code Operator as a matter of good practice should have a complaints procedure to handle complaints from members of the public and other stakeholders that refer to infrastructure deployment (6.1)
16. The code operator operators must attach notices to any apparatus, within three days, beginning with the day after installation. The notice must be legible, secure and provide the name and address of the operator to which an objector can send notice of objection under Part 12 of the code (see page 12 for example). Enforcement provides that it is a criminal offence for an operator to breach the notice requirements (*paragraph 75 Digital Economy Act 2017*<sup>8</sup>).

This [Code of Practice](#) is the primary reference regarding the installation of apparatus, but as the reference made at the beginning of this briefing paper, it's not quite as straightforward when looking at the detail of the legislation.

### **Electronic Communications Code (Conditions and Restrictions) Regulations 2003 amended 2013**

The relevant sections of the code have been reproduced at the end of this briefing however following the Growth and Infrastructure Act<sup>9</sup> (section 9) these were amended to make the installation of apparatus simpler under “*the need to promote economic growth in the United Kingdom*”. These amendments in general, changed the need for the Code Operator to gain ‘approval’ for their proposals to ‘notify and consult’. Additionally, these relaxations had a ‘sunset clause’ applied which means that after 5<sup>th</sup> April 2018 the legislation reverts back to its original form (with some exceptions).

### **Concluding remarks**

The aim of this briefing note is to raise awareness of the Code of Practice amongst Parish Councils and other local community organisations to equip them with the necessary information and resources to effectively challenge Code Operators to ‘notify and consult’ when installing new apparatus in their communities.

We will share this information with the other partners and statutory organisations but it is key for Parishes to be aware of the existence of the Code of Practice and to hold Code Operators and Statutory Partners to account in its use and implementation.

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<sup>8</sup> <http://www.legislation.gov.uk/ukpga/2017/30/schedule/1/enacted>

<sup>9</sup> <http://www.legislation.gov.uk/ukpga/2013/27/section/9>

Extract from;

**The Electronic Communications Code (Conditions and Restrictions) Regulations 2003<sup>10</sup>**

incorporating amendments from

**The Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2013<sup>11</sup>**

*NOTE: The 2013 amendments to the Regulations [shown in Blue] continue to have effect after 5th April 2018 in relation to the installation of fixed-line broadband electronic communications apparatus where **one** of conditions A or B, and condition C are satisfied.*

- *Condition A is that on or before 5th April 2018 the installation of such apparatus has begun.*
- *Condition B is that on or before 5th April 2018 the proposed installation of such apparatus has been notified (where required) by a code operator to each person entitled to be notified of a proposed installation in accordance with the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 (as amended by the Schedule).*
- *Condition C is that the installation of such apparatus is completed before 31 May 2018.*

#### **4. Lines**

- (1) A code operator shall install all lines underground unless—
- a) the line is flown from a pole in an area where service lines are already flown from poles;
  - b) the line is—
    - i. affixed to and lying on the exterior surface of a building or other permanent structure and is either used as a service line or terminates at a service line distribution point;
    - ii. a service line flown from the eaves of one building or other permanent structure to those of another where the distance between them is less than 8 metres; or
    - iii. a feeder cable connecting equipment for the provision of services by wireless telegraphy; and is neither affixed to a building shown as grade 1 or category A in the statutory list of buildings nor located in a conservation area;
  - c) the line is attached to or supported by poles or pylons which are used in connection with the transport of electricity at a nominal voltage of at least 6000 volts;
  - d) the line is installed for the purpose of providing a temporary electronic communications network under regulation 15; ~~or~~

<sup>10</sup> [http://www.legislation.gov.uk/uksi/2003/2553/pdfs/uksi\\_20032553\\_en.pdf](http://www.legislation.gov.uk/uksi/2003/2553/pdfs/uksi_20032553_en.pdf)

<sup>11</sup> <http://www.legislation.gov.uk/uksi/2013/1403/made>

- (da) the line is a fixed-line broadband line and is not in any of the protected areas referred to in regulation 8(1)(b); or
  - e) it is not in all the circumstances reasonably practicable to do so.
- (2) A code operator shall ensure that any lines installed over the carriageway of—
- a) a maintainable highway or, in Scotland, a public road are placed at least 5.5 metres above the surface of the highway or road; and
  - b) a maintainable highway or, in Scotland, a public road which is a high load grid route are placed at least 6.5 metres above the surface of the highway or road.
- (3) If requested by any person to relocate a line which is already installed above the ground, a code operator must relocate that line unless—
- a) he determines either that the request is unreasonable or that the person making the request will not pay the costs of the relocation; and
  - b) he notifies that person of that determination within 56 days of the receipt of the request.

## 5. Installation of electronic communications apparatus

- 1) A code operator must give one calendar month's notice, in writing, to the planning authority for the area in question where—
- (a) the code operator has not previously installed electronic communications apparatus in the area and (subject to paragraph (1A)) is intending to install such apparatus in that area;
  - ~~(a) he has not previously installed electronic communications apparatus in the area and is intending to install electronic communications apparatus, other than lines, in that area; or~~
  - (b) he intends to install a cabinet, box, pillar, pedestal or similar apparatus for the installation of which he is not required to obtain planning permission under the Town and Country Planning Act 1990(a) or
  - (c) the code operator intends to install in that area any fixed-line broadband pole, fixed-line broadband cabinet or overhead fixed-line broadband line which is not a service line.
- (1A) A code operator is not required to give notice in relation to apparatus in paragraph (1)(a) where the apparatus is—
- a) an underground line;
  - b) a service line; or
  - c) a line permitted to be installed above ground pursuant to Regulation 4(1)(a) to (d) or 4(1)(e).
- 2) The notice to be given under paragraph (1) must state the code operator's intention to install electronic communications apparatus and must describe that apparatus and identify the location where it is proposed to install it.

- 2A) The description required in paragraph (2) shall include whether or not the apparatus is fixed-line broadband electronic communications apparatus.
- 3) Where a code operator has given notice under paragraph (1), the planning authority may, within one calendar month of the receipt of that notice, give the code operator written notice of conditions with which the planning authority wishes him to comply in respect of the installation of the apparatus, but he is not obliged to comply with those conditions to the extent that they are unreasonable in all the circumstances.
- 4) A code operator is exempt from paragraph (1) if—
- d) the electronic communications apparatus he intends to install is to be installed inside a building or other permanent structure;
  - e) the apparatus is to be installed for the purpose of providing a temporary electronic communications network under regulation 15; or
  - f) the apparatus he intends to install is to be attached to or supported by poles or pylons which are used for the transport of electricity at a nominal voltage of at least 6000 volts.
- 5) Where a code operator installs electronic communications apparatus underground in a maintainable highway or a street or, in Scotland, a public road or a road he shall place that apparatus in the verge or footway rather than the carriageway unless it is not reasonably practicable to do so.

## 6. Conservation areas

- (1) In conservation areas, electronic communications apparatus installed by a code operator shall be installed underground unless the conditions in paragraph (2) or regulation 6A are met or unless it is—
- a) a line flown between poles or pylons which are used for the transport of electricity at a nominal voltage of at least 6000 volts;
  - b) a replacement pole or replacement line, the installation of which does not increase the environmental impact of the apparatus located in the area compared with the apparatus as it was before the replacement;
  - c) a service line flown from a pole where that pole was installed prior to the area being designated as a conservation area;
  - d) a service line—
    - i. which is flown from a building or other permanent structure in an area where there are already service lines flown from buildings or other permanent structures or poles, and
    - ii. which does not, by reason of its installation, increase the environmental impact of the apparatus located in the area compared with the apparatus as it was before the service line was installed;
  - e) a service line—

- i. which is affixed to and lying on the exterior surface of a building or other permanent structure, and
    - ii. which does not, by reason of its installation, increase the environmental impact of the apparatus located in the area compared with the apparatus as it was before the service line was installed;
  - f) apparatus which forms part of emergency works where the code operator has provided the planning authority with an expected date of completion and a statement of the grounds for the need to execute the works; or
  - g) apparatus which forms part of a temporary electronic communications network which the code operator is providing under regulation 15.
- (2) Electronic communications apparatus installed by a code operator in a conservation area is not required to be installed underground where a code operator has given the planning authority written notice and—
- a) the planning authority has not objected in writing to the installation of the apparatus within 56 days of the notice being given; or
  - b) if the planning authority has previously objected to the installation of the apparatus, it has given written notice of the withdrawal of its objection; or
  - c) in Great Britain, the Secretary of State, after consulting with the planning authority, so directs.
- (3) The notice to be given under paragraph (2) must state the code operator's intention to install electronic communications apparatus and must describe that apparatus and identify the location where it is proposed to install it.
- (4) For the purposes of paragraph (1), the environmental impact of apparatus is to be assessed having regard, in particular, to—
- a) its visual impact on the landscape,
  - b) its effect on plant and animal life, and
  - c) its impact on the visual amenity of properties.
- 6A. (1) Electronic communications apparatus installed by a code operator in a conservation area is not required to be installed underground where—
- a) the apparatus comprises fixed-line broadband lines, fixed-line broadband cabinets or fixed-line broadband poles; and
  - b) the code operator has given the planning authority one month's notice in writing that the code operator intends to install such apparatus in the area in question.
- (2) Regulation 5(2), 5(2A) and 5(3) apply in respect of a notice given under paragraph (1).
- (3) A code operator is not required to give notice under paragraph (1) where the electronic communications apparatus is a fixed-line broadband service line.

## 7. Listed buildings and ancient monuments

- (1) [Subject to regulation 7A](#), a code operator may install electronic communications apparatus in proximity to a building shown as grade 1 or category A in the statutory list of buildings only if he gives written notice to the planning authority and—
  - a) the planning authority has not objected in writing to the installation of the apparatus within 56 days of the notice being given; or
  - b) if the planning authority has previously objected, it has given written notice of the withdrawal of its objection; or
  - c) in Great Britain, the Secretary of State, after consulting with the planning authority, so directs.
- (2) The notice to be given under paragraph (1) must state the code operator's intention to install electronic communications apparatus and must describe that apparatus and identify the location where it is proposed to install it.
- (3) A code operator is exempt from paragraph (1) if—
  - a) the apparatus is to be installed for the purpose of providing a temporary electronic communications network under regulation 15; or
  - b) he is undertaking emergency works and he has provided the planning authority with an expected date of completion and a statement of the grounds for the need to execute the works.

**7A** (1) [A code operator may install fixed-line broadband lines, fixed-line broadband cabinets, and fixed-line broadband poles in proximity to, or in the case of a fixed-line broadband service line affixed to, a building shown as grade 1 or category A in the statutory list of buildings only if the code operator gives one month's notice in writing to the planning authority.](#)

- (2) [Regulations 5\(2\), 5\(2A\) and 5\(3\) apply in respect of a notice given under paragraph \(1\).](#)
- (3) [A code operator is not required to give notice under paragraph \(1\) where the apparatus is installed pursuant to regulation 7\(3\).](#)

## 8. Protected areas

- (1) When a code operator intends to install electronic communications apparatus in—
  - a) a national park, the Broads, the New Forest or a limestone pavement area he must give written notice to the planning authority;
  - b) a national nature reserve, site of special scientific interest, area of special scientific interest or marine nature reserve he must give written notice to—
    - i. English Nature, in England;

- ii. Scottish Natural Heritage, in Scotland;
    - iii. the Countryside Council for Wales, in Wales; or
    - iv. the planning authority, in Northern Ireland (in the case of a national nature reserve, area of special scientific interest or marine nature reserve);
  - c) a natural heritage area or national scenic area he must give written notice to Scottish Natural Heritage; or
  - d) any land which the National Trust or the National Trust for Scotland has notified the code operator that it owns, or holds any interest in, he must give written notice to its relevant regional office.
- (2) The notice to be given under paragraph (1) must state the code operator's intention to install electronic communications apparatus and must describe that apparatus and identify the location where it is proposed to install it.
- (3) Where a code operator has given notice under paragraph (1), he may install the electronic communications apparatus only if—
- a) within 56 days the person notified has not objected in writing; or
  - b) if the person notified has previously objected, he has given written notice of the withdrawal of his objection; or
  - c) in Great Britain, the Secretary of State, after consulting with the person notified, so directs;
- and only if he also complies with any direction given to him by the Secretary of State, or, in Northern Ireland, the Department of the Environment, requiring him to give written notice to and consider representations from any other person exercising functions specified in that direction.
- (4) A code operator shall not be required to give notice under paragraph (1) where the electronic communications apparatus to be installed is—
- a) a service line—
    - i. which is affixed to and lying on the exterior surface of a building or other permanent structure, and
    - ii. which does not, by reason of its installation, increase the environmental impact of the apparatus located in the area compared with the apparatus as it was before the service line was installed;
  - b) a replacement pole or replacement line the installation of which does not increase the environmental impact of the apparatus located in the area compared with the apparatus as it was before the replacement;
  - c) a replacement line in an existing conduit, if the installation of the replacement line does not entail enlarging the conduit or altering its position;
  - d) apparatus required for the provision of a temporary electronic communications network under regulation 15; or
  - e) apparatus which forms part of emergency works, where the code operator has provided the person who would otherwise be notified under paragraph (1) with an

expected date of completion and a statement of the grounds for the need to execute the works.

- (5) For the purposes of paragraph (4), the environmental impact of apparatus is to be assessed having regard, in particular, to—
  - a) its visual impact on the landscape,
  - b) its effect on plant and animal life, and
  - c) its impact on the visual amenity of properties.
  
- (6) This regulation does not apply to fixed-line broadband electronic communications apparatus—
  - (a) except in any of the protected areas referred to in regulation 8(1)(b); or
  - (b) where the apparatus is installed pursuant to regulation 8(4).
  
- 8A.** (1) When a code operator intends to install fixed-line broadband lines, fixed-line broadband cabinets or fixed-line broadband poles in—
  - a) a National Park, the Broads, a limestone pavement area or an area of outstanding natural beauty, he must give notice in writing to the planning authority;
  - b) a national scenic area, he must give notice in writing to Scottish Natural Heritage; or
  - c) any land which the National Trust or the National Trust for Scotland has notified the code operator that it owns, or holds any interest in, he must give notice in writing to its relevant regional office.
  
- (2) Regulations 5(2), 5(2A) and 5(3) shall apply in respect of a notice given under paragraph (1) as though references to a planning authority include any other person entitled to receive a notice under paragraph (1).
  
- (3) A code operator is not required to give notice under paragraph (1) where the electronic communications apparatus is a fixed-line broadband service line;
  
- (4) This regulation does not apply in any of the protected areas referred to in regulation 8(1)(b).”



Example of a notice fixed to telegraph pole with the details missing location and reference number missing (possibly due to having weathered off).