

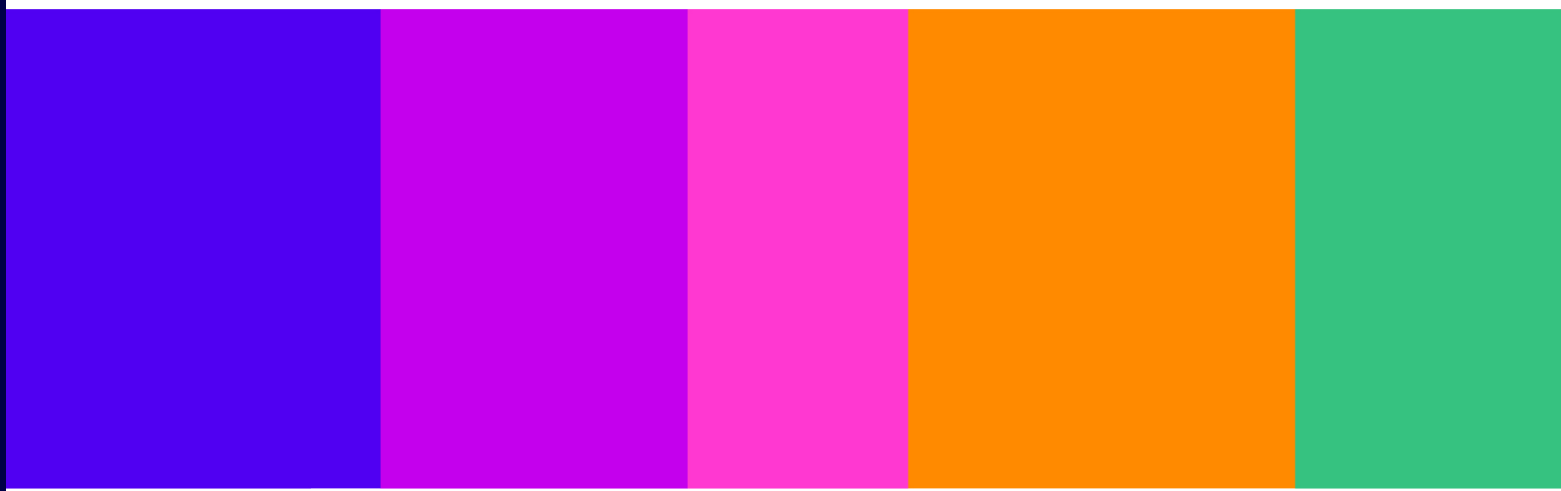


Electronic Communications Code

Code of Practice

Statement

Published: 15 April 2024



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1. Overview

- 1.1 The Electronic Communications Code ('the Code') confers certain rights on providers of electronic communications networks and on providers of systems of infrastructure (designated by Ofcom as 'Code Operators') to install and maintain electronic communications apparatus on, under and over land, including on public highways, and results in considerably simplified planning procedures. In the event that agreement cannot be reached with the owner or occupier of private land, the Code allows an operator to apply to the court to impose an agreement conferring the Code right being sought or for the Code to bind the landowner or occupier.
- 1.2 The Digital Economy Act 2017 ('DEA') reformed the Code by including a range of measures to make it easier for Code operators to roll out electronic communications apparatus. The reforms to the Code required Ofcom to publish, amongst other things, a Code of Practice concerning agreements for access to private land under the Code. In December 2017 Ofcom published a Code of Practice after consultation with industry.
- 1.3 At the time we noted that it would be necessary to monitor and review the Code of Practice over time to ensure that it remained fit for purpose, appropriate, and proportionate and continued to reflect best practice expectations for the conduct of parties in the interest of supporting the roll out and maintenance of communications infrastructure.
- 1.4 Since then, the Telecommunications Infrastructure (Leasehold Property) Act 2021 (TILPA) and the Product Security and Telecommunications Infrastructure Act 2022 (PSTIA) have introduced further changes to the Code to support the rollout of modern high-capacity networks in a way that balances the interests of landowners, telecoms operators, and the public.¹ To further these aims, in November 2022, the Department for Culture Media and Sport (DCMS²) established the National Connectivity Alliance (NCA), an alliance of telecommunications providers, infrastructure providers, landowners and their professional advisers.
- 1.5 In light of these developments, Ofcom decided it would be appropriate to review the Code of Practice and invited the NCA to contribute to its review by proposing a set of draft revisions to the Code of Practice.³
- 1.6 Having carefully considered the NCA's recommendations, Ofcom published a Consultation in September 2023 in which we set out our proposed amendments to the Code of Practice.⁴
- 1.7 Our proposed revisions to the Code of Practice did not include text relating to complaints handling as we anticipate the Government making regulations in relation to this. Our preference is to consider any such regulations before adding additional detail relating to complaints into the Code of Practice.

¹ [Access to land: consultation on changes to the Electronic Communications Code - government response - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/access-to-land-consultation-on-changes-to-the-electronic-communications-code)

² In February 2023, a reshuffle of Government departments led to the responsibility for the NCA moving from DCMS to DSIT (Department for Science, Innovation, and Technology).

³ <https://www.ncalliance.org.uk/>

⁴ https://www.ofcom.org.uk/data/assets/pdf_file/0034/267892/Consultation-Electronic-Communications-Code-of-practice.pdf

- 1.8 The Code of Practice Consultation closed on 7 November 2023 and we received 19 responses. Having considered responses to the Consultation we have now made a final decision on amendments to the Code of Practice, this Statement sets out these amendments and the updated Code of Practice. We have also published the Code of Practice as a separate document here https://www.ofcom.org.uk/_data/assets/pdf_file/0024/282732/Electronic-communications-code-code-of-practice.pdf
- 1.9 Alongside our Consultation on the Code of Practice we also published a Consultation⁵ in which we proposed amendments to Paragraph 20 and 33 Template Notices to reflect changes to the Code brought about by the Product Security and Telecommunications Infrastructure Act (PSTIA).⁶ This Consultation closed on 20 October 2023 and we subsequently published a Statement on this on 6 November 2023.⁷

What we have decided – in brief

Having reviewed responses to the Consultation, we have made a number of revisions to the Code of Practice. The primary aim of these changes was to improve clarity and reduce the chance of confusion or misinterpretation of the Code of Practice.

Ultimately, we have decided to adopt the version of the Code of Practice that is included in Annex 3 of this document.

⁵ https://www.ofcom.org.uk/_data/assets/pdf_file/0029/267815/ecc-notices-consultation.pdf

⁶ <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/policy/electronic-code/notices>

⁷ https://www.ofcom.org.uk/_data/assets/pdf_file/0032/270779/electronic-communications-code-statement.pdf

2. Introduction

Background

- 2.1 The Electronic Communications Code (“the Code”) confers certain rights on providers of electronic communications networks and on those that provide systems of infrastructure (designated by Ofcom as “Code Operators”) to install and maintain electronic communications apparatus (including poles or ducts) on, under and over land, including on public highways, and results in considerably simplified planning procedures. In the event agreement cannot be reached with the owner or occupier of private land, the Code allows an operator to apply to the court to impose an agreement conferring the code right being sought, or for the Code to bind the landowner or occupier.
- 2.2 The Code was originally enacted in 1984 under Schedule 2 of the Telecommunications Act to regulate the provision of landline telephony. It was later amended by Schedule 3 of the Communications Act 2003,⁸ to enable it to support the infrastructure which delivers broadband, mobile internet, and cable TV.
- 2.3 The Code was subject to changes in 2017 by the Digital Economy Act 2017 (“the DEA”), to speed up the roll out of communications apparatus. Amongst other things, the DEA included provisions to remove the previous Code set out in Schedule 2 of the Telecommunications Act 1984 (“the Old Code”) and replace it with a new Code set out in Schedule 3A to the Communications Act 2003 (“the Code”). The Code introduced a range of measures to make it easier for Code Operators to roll out electronic communications apparatus. For example, significant changes were made to the way land is valued and an automatic right for Code Operators to upgrade and share their telecommunications apparatus was introduced.
- 2.4 The Code also required Ofcom to publish:
 - a Code of Practice;
 - a number of template notices which may or must (depending on the circumstances) be used by Code Operators and Site Providers⁹; and
 - standard terms which may (but need not) be used by Code Operators and Site Providers when negotiating agreements to confer Code rights.

The 2017 Code of Practice

- 2.5 In December 2017, following consultation with industry, we published a statement in which we set out a Code of Practice.¹⁰
- 2.6 We recognised at the time that it may be necessary in the future to revisit the Code of Practice, to ensure that it remained appropriate and fit for purpose.

⁸ [Communications Act 2003, Section 106, Schedule 3: Amendments of Schedule 2 of the Telecommunications Act 1984](#)

⁹ For the purposes of this Code of Practice, we use the term “Site Provider” (as defined in paragraph 30(1) of the Code) wherever a reference is applicable to a Landowner or an Occupier, or both.

¹⁰ Electronic Communications Code: Code of Practice, Ofcom, December 2017
https://www.ofcom.org.uk/data/assets/pdf_file/0025/108790/ECC-Code-of-Practice.pdf.

Updating the Code of Practice

- 2.7 In recent years, stakeholders have raised concerns that the Code of Practice needed to be updated and suggested that now was an appropriate time to review the document. Ofcom shares this view, particularly in light of further changes to the Code that have resulted from the Telecommunications Infrastructure (Leasehold Property) Act 2021 (TILPA) and the Product Security and Telecommunications Infrastructure Act 2022 (PSTIA), and the establishment of the NCA by DCMS in November 2022.
- 2.8 Ofcom understands the latest set of changes to the Code are intended to support the rollout of modern high-capacity networks in a way that balances the interests of landowners, telecoms operators, and the public. The NCA was established to support this aim, bringing together infrastructure providers, landowners, and their professional advisers to ‘collaborate on areas of mutual interest with the goal of delivering world class connectivity for all in the UK’.
- 2.9 One area of particular focus for the NCA has been to contribute to Ofcom’s review of the ECC Code of Practice document, this is similar to the role an ad hoc cross-sector stakeholder group took when we were developing the original Code of Practice in 2017. To this end, Ofcom invited the NCA to produce a first draft of the revised Code of Practice, which it provided to Ofcom in March 2023. This document used the 2017 Code of Practice as a starting point and sought to update it to ensure it remained relevant and appropriate.
- 2.10 Having received this document from the NCA, we undertook a review of the draft Code of Practice, carefully considering NCA input, which Ofcom used as the starting point to carrying out its own analysis of what was required in accordance with its statutory obligations. The result, a proposed updated Code of Practice, formed the basis of our Consultation in September 2023 (Annex 2).

September 2023 Consultation

- 2.11 In September 2023 Ofcom published a Consultation in which we set out proposed amendments to the Code of Practice having taken account of the suggestions made by the NCA and having carried out our own review of the Code of Practice.
- 2.12 This Consultation closed on 7 November, and we received 19 responses. All non-Confidential responses were subsequently published.¹¹
- 2.13 We have considered these responses in reaching its final decision on the Code of Practice and address the points raised by respondents below.

Recent developments

- 2.14 In January 2023 Ofcom published a Statement setting out two new template notices resulting from the Telecommunications Infrastructure (Leasehold Property) Act 2021 (TILPA) amendments to the Code, and specifically the new provisions in Part 4A. The TILPA focussed on allowing Code Operators to install, upgrade, or maintain their equipment in Multi Dwelling Units (MDUs) where a tenant had requested an electronic communications service, but the landlord had been unresponsive to access requests.

¹¹ <https://www.ofcom.org.uk/consultations-and-statements/category-1/electronic-communications-code-of-practice>

- 2.15 In April 2023 Ofcom published a Statement introducing two new template notices resulting from the Product Security and Telecommunications Infrastructure Act 2022 (PSTIA) amendments to the Code. The PSTIA made various amendments to the Code, including a right for certain operators to upgrade or share apparatus installed below ground.
- 2.16 In September 2023 Ofcom published a Consultation¹² in which we proposed amendments to Paragraph 20 and 33 Template Notices. The amendments reflected changes to the Code brought about by the Product Security and Telecommunications Infrastructure Act (PSTIA).¹³ This Consultation closed on 20 October 2023 and Ofcom subsequently published a Statement on this on 6 November 2023.¹⁴

Impact Assessment

- 2.17 Impact assessments provide a valuable way of assessing different options for regulation and considering the potential effects of our proposals. They form part of best practice policy making. This section outlines our assessment of how our proposal may affect relevant stakeholders.
- 2.18 Overall, we consider that our decisions regarding amendments to the Code of Practice will benefit both Operators and Site Providers as they should allow for a smoother and more effective process for engagement. This in turn should benefit citizens and consumers as effective engagement between Operators and Site Providers should lead to the delivery of better communications services, or at the least, remove the barriers to delivering a service.

Impact on Operators and Site Providers

- 2.19 Our amendments are aimed at updating the Code of Practice to ensure that it remains appropriate and relevant to both Operators and Site Providers. The outcome of these amendments is to ensure that the Code of Practice is a useful document to guide the relationship between Operators and Site Providers and ensure effective engagement which in turn should reduce the time, effort and resources that need to be deployed.
- 2.20 Whilst we recognise that there may be some small additional costs associated with Operators and Site Providers amending their approaches, we consider that the benefits far outweigh any potential costs.

Impact on citizens and consumers

- 2.21 As stated above, our amendments aim to improve the engagement between Operators and Site Providers. This in turn should have a positive impact on citizens and consumers as improved engagement should lead to the delivery of a more effective communications service.

Equality impact assessment

- 2.22 Section 149 of the Equality Act 2010 (the “2010 Act”) imposes a duty on Ofcom, when carrying out its functions, to have due regard to the need to eliminate discrimination, harassment, victimisation and other prohibited conduct related to the following protected

¹² https://www.ofcom.org.uk/_data/assets/pdf_file/0029/267815/ecc-notices-consultation.pdf

¹³ <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/policy/electronic-comm-code/notices>

¹⁴ https://www.ofcom.org.uk/_data/assets/pdf_file/0032/270779/electronic-communications-code-statement.pdf

characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation. The 2010 Act also requires Ofcom to have due regard to the need to advance equality of opportunity and foster good relations between persons who share specified protected characteristics and persons who do not.

- 2.23 Section 75 of the Northern Ireland Act 1998 (the “1998 Act”) also imposes a duty on Ofcom, when carrying out its functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity and have regard to the desirability of promoting good relations across a range of categories outlined in the 1998 Act. Ofcom’s Revised Northern Ireland Equality Scheme explains how we comply with our statutory duties under the 1998 Act.
- 2.24 To help us comply with our duties under the 2010 Act and the 1998 Act, we assess the impact of our proposals on persons sharing protected characteristics and in particular whether they may discriminate against such persons or impact on equality of opportunity or good relations.
- 2.25 We do not consider that our amendments have equality implications under the 2010 Act or the 1998 Act.

3. Consultation Responses

Introduction

- 3.1 We received 19 responses to the Consultation, below we outline the key issues raised and provide our response to those issues.
- 3.2 In Annex 2 we have included a comprehensive list of all comments made on our proposed Code of Practice and how we have responded to those.

Scope/ Purpose

- 3.3 A number of respondents raised concerns that the Code of Practice does not go far enough in setting out the specifics of each issue and considering each scenario that could arise. Respondents also made suggestions for amending/making additions to the Code of Practice that would expand the scope of the document.
- 3.4 The Code of Practice is designed to complement the Code by suggesting best practice to facilitate positive and productive engagement between all parties across a range of issues, roles and responsibilities. Whilst the Code of Practice provides some examples of best practice these are not intended to be exhaustive.
- 3.5 We consider that many of the suggestions made by respondents would require the Code of Practice to go beyond what is set out in the Code itself. The purpose of the Code of Practice is not to introduce new rules or regulations beyond what is in the Code, it is intended to be a best practice guide.
- 3.6 As noted above, we address the specific comments relating to scope in Annex 2.

Clarity

- 3.7 A number of respondents made suggestions to the wording of the Code of Practice with the intention of making the documents clearer and easier to use. These suggestions ranged from including additional examples to simplifying language.
- 3.8 We are keen for the Code of Practice to be as clear and as useful as possible and have in many instances agreed to these suggestions, however some we do not consider to be necessary.
- 3.9 We address the specific comments relating to clarity in Annex 2.

Definition of Site Provider

- 3.10 As set out in the Consultation, we proposed to introduce the term 'Site Provider' (as defined in Paragraph 30(1) of the Code) throughout the document to encompass both 'Landowners' and 'Occupiers' where they have parallel interests to make it clear that the Code of Practice is applicable to both.

- 3.11 CityFibre, Joint response of AllPointsFibre, CityFibre, Glide, Hyperoptic and VMO2, UKCTA, and VMO2 all said that the move from ‘Landowner’ to ‘Site Provider’ was unhelpful and risked causing confusion given that this was not the term used in the Code.
- 3.12 As explained in the Consultation, the intention of switching from using the term ‘Landowner’ which was previously used in the Code of Practice, to ‘Site Provider’ was to reflect the role of ‘Occupiers’. Without this change, we consider there would be greater risk of confusion in the Code of Practice as to whether something applies to a ‘Landowner’, ‘Occupier’, or both. We also consider that from a practical perspective, grouping the terms ‘Landowner’ and ‘Occupier’ together is preferable to repeating both terms in every instance when something applies to both. We therefore consider the introduction of ‘Site Provider’ provides a greater degree of clarity and is sufficiently explained by text in the Code of Practice to minimise confusion. Where the interests of the parties do not overlap, the Code of Practice continues to refer individually to a ‘Landowner’ or ‘Occupier’, as appropriate to the context.
- 3.13 Cellnex consider that it should be made clear that the definitions used in the Code of Practice do not seek to interpret the meaning of the legislation or impose obligations that deviate from it. Openreach agreed that Site Provider is the right term to use but that it should be acknowledged that other terms are used in the Code.
- 3.14 We consider that the text already included in the draft Code of Practice sufficiently makes these points clear and therefore do not propose making any further changes to this effect.
- 3.15 A Confidential Respondent suggested the Code of Practice should make it clear that the term ‘Site Provider’ includes both potential and actual providers.
- 3.16 We consider that the text already included in the draft Code of Practice sufficiently makes these points clear and therefore do not propose making any further changes to this effect.
- 3.17 Vodafone suggested that the Code of Practice should include examples of what is meant by ‘an occupier’.
- 3.18 We agree with Vodafone’s suggestion and have added wording to this effect.

Professional advice

- 3.19 Cellnex, WIG, MBNL, MIF, UKCTA, and Three all argued that the use of the term ‘fees policy’ in relation to when a Site Provider’s professional fees could be compensated was misleading as Operator’s do not maintain a fees policy and doing so would not be practicable. Instead, respondents suggested using the term ‘approach to fees’.
- 3.20 Having considered responses, we agree that using the term ‘fees policy’ is misleading and overly burdensome for Operators and did not reflect what we intended. We have therefore decided to amend the text in the Code of Practice to remove this and adopt the wording ‘approach to fees’.
- 3.21 WIG, MBNL, MIF, BT, Openreach, and Three all raised concerns around the inclusion of ‘the general principle is that a Site Provider should not be left out of pocket for its reasonably and properly incurred costs’. Respondents argued that the term ‘not be left out of pocket’ is misleading and the focus should be on reimbursement for their reasonably and properly incurred professional costs within pre-agreed parameters.
- 3.22 We have decided it is appropriate to remove the wording ‘should not be left out of pocket’ and replace it with wording to reflect that potential Site Providers should be advised that

they are responsible, in the first instance, for meeting their professional representatives' reasonable costs and that where relevant and appropriate to the nature of the application, Operators will reimburse a site provider for their reasonably and properly incurred professional costs within pre-agreed parameters.

New agreements for the installation of apparatus

- 3.23 WIG argued that the Code of Practice should include language to outline that 'In awarding costs in any application to the court, the behaviours of both parties will be taken into consideration by the relevant court or tribunal and a repeated failure of Site Providers to respond to a request for access in a timely manner may lead to an award of costs against the Site Provider.'
- 3.24 The Code does not state that the behaviours of the parties will be considered by the court in awarding costs. We therefore do not consider it appropriate to include the text suggested by WIG as this would amount to going beyond the scope of the Code.
- 3.25 AP Wireless raised concern that we had proposed to remove 'e.g. this may be a period of 7 days' from the draft Code of Practice in relation to within how long an Operator should request access is given when it is requested for a site survey.
- 3.26 We proposed removing the example of 7 days as we considered 7 days set expectations too high and, due to the variety and complexity of sites, 7 days was often likely not to be achievable. We have therefore decided to remove the 7 days example from the Code of Practice.

Electromagnetic Fields (EMF)

- 3.27 CityFibre and Joint response of AllPointsFibre, CityFibre, Glide, Hyperoptic and VMO2 noted that whilst including text on EMF in the Code of Practice was important, it should be made clear that this is not relevant to fixed line communications and fixed line operators should not face an additional burden.
- 3.28 A number of operators raised concerns that the draft Code of Practice could be interpreted in a way that suggests Site Providers have a requirement with regard to EMF compliance. In reality, the compliance requirement is on the Operator.
- 3.29 BTEE and MBNL raised concern that the Code of Practice conflated the policing of EMF compliance with the need for information sharing between Operators and Site Providers. The onus for EMF compliance is on the Operator, to be policed by external parties, with the Operator sharing information on this compliance with the Site Provider.
- 3.30 In light of the number of comments we received relating to the section on EMF and the risk of confusion, we have significantly redrafted this section of the Code of Practice.

The ongoing access to and operation, maintenance and upgrading of existing sites and apparatus

- 3.31 Vodafone suggested the Code of Practice be amended to include reference that a clear provision for when emergency or out of hours access is required should be agreed between operator and site provider.

- 3.32 We agree with this suggested change as we consider that it is important that both sides have agreement on access in relation to emergency and out of hours access as both may be required and could have significant repercussions if not agreed upon in advance.

Sharing and upgrading of overground apparatus

- 3.33 Cellnex and WIG suggested that we should include text to indicate that Paragraph 17 of the Code is intended to be the minimum expected for sharing and upgrading, not the ceiling for what should be expected.
- 3.34 We agree with WIG that the intention of Paragraph 17 is to illustrate a floor to what is expected and does not preclude going above that level.

Decommissioning sites and removal of redundant apparatus

- 3.35 Vodafone raised concern that A2.71 of the draft Code of Practice could be misleading in suggesting that removing ducts is the default or normal position, and that ducting should only be removed where there is a reasonable need.
- 3.36 We agree with Vodafone that specifically referencing ducts and cables could be misleading and have therefore removed specific reference to them in this section of the Code of Practice.

Repairs to a Site Provider's property

- 3.37 AP Wireless suggested that the term 'essential' should be removed from A2.80 of the draft Code of Practice so as to allow for preventative and reactive repairs to a site providers' property to qualify for the temporary moving of apparatus. AP Wireless also suggested that the Code of Practice should include reference to an appropriate timeframe for repairs, which could be 28 days.
- 3.38 We do not consider that the term 'essential' precludes preventative repairs facilitating the movement of apparatus so long as they can still be considered as 'essential' to the property. We also do not consider it appropriate to apply a timeframe for repairs to be completed and note that the Code of Practice already includes reference to negotiating in good faith and minimising disruption to telecommunications services, which should in itself lead to quick repairs.

Redevelopment by the Site Provider

- 3.39 Vodafone suggested that the Code of Practice should include reference to alignment with local plans, such as 'the London plan' in relation to redevelopment of sites.
- 3.40 We agree that including such a reference would be useful and have added it to the Code of Practice.

Resolving disputes

- 3.41 CityFibre, UKCTA, and Joint response of AllPointsFibre, CityFibre, Glide, Hyperoptic and VMO2 questioned why we had included ‘there may be occasions, though where either party may need to serve legal notices, while still continuing to pursue an informal resolution’ in the draft Code of Practice as this seems to undermine the intentions of the PSTIA to avoid litigation.
- 3.42 The decision to include this text was made in order to recognise that litigation through legal notices remains the ultimate recourse when agreements cannot be reached, and although every effort should be made to resolve any issues informally and through ADR processes, legal means do still exist and, in some instances, may still be required. We do not consider that the inclusion of this text undermines the intentions of the PSTIA, particularly given the heavy emphasis on engaging in ADR in the rest of the Code of Practice.
- 3.43 In response to a number of comments relating to the ADR section of the Code of Practice, we have made a number of amendments to the text to improve clarity.

Interaction with PIA remedy

- 3.44 CityFibre and Joint response of AllPointsFibre, CityFibre, Glide, Hyperoptic and VMO2 expressed concern that the Code of Practice insufficiently accounts for scenarios where overhead infrastructure is being shared to give effect to the PIA remedy and implies that all sharing is taking place within a framework of commercial agreement (as would be the case for mast sharing but not use of Openreach’s poles). CityFibre and Joint response of AllPointsFibre, CityFibre, Glide, Hyperoptic and VMO2 were concerned that our Code of Practice could undermine the PIA remedy.
- 3.45 We agree with CityFibre and Joint response of AllPointsFibre, CityFibre, Glide, Hyperoptic and VMO2 that the Code of Practice needs to be clear in this context and ensure that it does not cut across or undermine existing remedies (i.e. PIA). We have therefore amended the Code of Practice, specifically the ‘Sharing and Upgrading of overground Apparatus’ section to reflect this.

Conclusion

- 3.46 We have made a number of changes to the draft Code of Practice to address the comments outlined above. Annex 1 sets out the changes we consulted on and Annex 2 sets out a full summary of all of the comments made by respondents and our response to them.
- 3.47 In Annex 3 we have included the final version of the Code of Practice that is being brought into effect.

A1. Proposed Code of Practice from Consultation

About

- A1.1 This document contains the Code of Practice. The Code of Practice deals with
- the provision of information for the purposes of the **Electronic Communications Code set out in Schedule 3A of the Communications Act 2003 ('the Code')** ~~new Code~~ by operators to persons who occupy or have an interest in land;
 - the conduct of negotiations for the purposes of the Code between operators and such persons;
 - the conduct of operators in relation to persons who occupy or have an interest in land adjoining land on, under or over which electronic communications apparatus is installed; and
 - such other matters relating to the operation of the Code as Ofcom think appropriate.
- A1.2 The Code of Practice does not represent a guide to the new Electronic Communications Code nor does it replace or supplement its provisions by imposing any new rights or obligations on the respective parties. Instead, it is designed to complement the Code by suggesting best practice to facilitate positive and productive engagement between all parties across a range of issues, roles and responsibilities. Whilst the Code of Practice provides some examples of best practice these are not intended to be exhaustive.
- A1.3 Electronic communications services (such as landlines, mobile phones and internet services) are now regarded as essential services. In order that these services can be provided where they are needed, The ~~Electronic Communications Code ('Code')~~ provides a statutory basis whereby communications providers (known in this context as 'Operators'¹⁵) can place their apparatus¹⁶ on land or buildings ~~owned by another person or organisation~~.
- A1.4 **The Code was subject to changes in 2017 by the Digital Economy Act 2017 ("the DEA"), to speed up the roll out of communications apparatus. Amongst other things, the DEA included provisions to remove the previous Code set out in Schedule 2 of the Telecommunications Act 1984 ("the Old Code") and replace it with a new Code set out in Schedule 3A to the Communications Act 2003. The new Code introduced a range of measures to make it easier for Code Operators to roll out electronic communications apparatus. For example, significant changes were made to the way land is valued and an automatic right for Code Operators to upgrade and share their telecommunications apparatus was introduced.**
- A1.5 **As a result of the changes made in 2017, the Code now includes obligations on Ofcom to publish:**
- a Code of Practice to accompany the Code which was intended, among other things, to regulate the process for negotiations between Code Operators and Site Providers;**

¹⁵ An Operator is an organisation which has been granted Code Powers by Ofcom, for example, a communications provider that is providing a landline, broadband, cable or mobile network, or a person who provides infrastructure which supports such a network. A list of those with Code Powers is maintained by Ofcom.

¹⁶ 'Apparatus' is a broad term and refers to what is defined in the Code as electronic communications apparatus; it includes such items as antennae for mobile signals, masts, cabinets, cables, ducts and telegraph poles.

- b) a number of template notices which may, or must (depending on the circumstances) be used by Code Operators and Site Providers; and
- c) standard terms which may (but need not) be used by Code Operators and Site Providers when negotiating agreements to confer Code rights .

A1.6 The Code was then further amended by the Telecommunications Infrastructure (Leasehold Property) Act 2021 (TILPA 2021) and Product Security and Telecommunications Infrastructure Act 2022 (PSTIA 2022)) to make it more straightforward for Operators to gain access to the locations they need, to improve coverage, capability and capacity. In view of the ever-increasing and critical needs of local communities (and the UK economy as a whole) to have access to 21st century communications networks, such as high-speed broadband connection or a 4G mobile connection (and 5G in due course), the Code has been reformed under the Digital Economy Act 2017 so as to make it more straightforward for Operators to gain access to the locations they need, to improve coverage, capability and capacity.

Purpose of the Code of Practice

A1.7 The purpose of this Code of Practice, ~~which has also been established under the Digital Economy Act~~, is to set out expectations for the conduct of the parties to any agreement made or activities performed under the Code.

A1.8 This Code of Practice is also intended to assist parties in the various negotiations and stages leading up to any formal agreement, in the stages required to enter into a formal agreement and in the exercise of Code rights. It is not a guide to the Code powers or legislation, or the Code regulations, but it is intended to complement them and to make it simple for Operators, Landowners and Occupiers¹⁷ to come to agreement over a range of issues relating to the occupation of a site. ~~References to landowners should also be taken, where appropriate, to encompass Occupiers as defined in the Code~~ For the purposes of this Code of Practice, we use the term "Site Provider" (as defined in paragraph 30(1) of the Code) wherever a reference is applicable to a Landowner and an Occupier, or both. Where a reference applies only to a Landowner, or only to an Occupier, we use whichever of these is appropriate in the context of the relevant provision. It should also be noted that "Site Provider" may also refer more broadly to other persons who can be bound by Code rights (see paragraph 10 of the Code). Agreements under the Code are legally binding on the parties and so Site Providers ~~Landowners~~ may wish to consider seeking independent professional advice before entering into such an agreement (see below).

A1.9 'Site' in this Code of Practice is used in a broad sense¹⁸ as any relevant place to install Apparatus, such as on, under or over on top of open the land, the rooftop of a building, a tunnel or a lamp-post.

A1.10 All parties to whom this Code of Practice applies should treat each other professionally and with respect, remembering always that the goal is to improve and maintain essential communications services for all. Operators should take adequate steps to satisfy themselves that they are negotiating with a party who has a lawful right to grant the necessary agreement if not negotiating with the Site Provider. Site Providers and Operators must respect the needs and legitimate concerns of Occupiers of land when rights under the Code

¹⁷ The meaning of 'Landowner', 'Operator', and 'Occupier' is as defined in the Code.

¹⁸ 'Site' is equivalent to the term 'Land' in the Code, as set out in paragraph 108.

are exercised. Operators ought to be responsible for the behaviour and conduct of any contractors that they instruct to carry out work on their behalf.

Scope

A1.11 This Code of Practice:

- a) Provides a reference framework to support **Site Providers** and Operators to establish, develop and maintain effective working relationships, to the benefit of users of all communications services;
- b) Sets out what ~~Landowners~~ **Site Providers** and Operators should expect from each other, **for example**, in the context of:

- i) **Arranging site surveys for prospective installation of apparatus;**
- ii) **Establishing new agreements for the installation of apparatus;**
- iii) **Renewing existing agreements as and when required;**
- iv) **The ongoing access to and operation, maintenance and upgrading and sharing of existing sites and apparatus;**
- v) **The decommissioning of sites that are no longer required;**
- vi) **Site Providers wishing to redevelop sites that accommodate electronic communications equipment;**
- vii) **The requirement on both parties to consider the use of alternative dispute resolution (ADR);**

- ~~— Establishing new agreements for the installation of apparatus;~~
- ~~— The ongoing access to and operation, maintenance and upgrading of existing sites and apparatus;~~
- ~~— The decommissioning of sites that are no longer required;~~
- ~~— The redevelopment of sites;~~

- c) Provides a framework for **the process of** ~~site provision, whereby the commercial process of~~ coming to an agreement, and of maintaining an agreement, ~~can take~~ **inge** account of ~~all the~~ practical requirements of both parties;
- d) Sets out clear lines of communication through which disputed matters can be escalated;
- e) Does **not** address the financial aspects of the relationship between the ~~Landowner~~ **Site Provider** and the Operator

A1.12 While ~~the~~ **is** Code of Practice sets out some clear principles and expectations about how **Site Providers** and Operators should behave towards each other, it should be noted that there are some special regimes in place (e.g. transport land, public maintainable highway and tidal waters), where different specific considerations may apply.

A1.13 ~~This~~ **is** Code of Practice covers a wide range of scenarios, from the **initial survey through to** ~~the~~ construction of a **an electronic communications structure - full mobile mast to or** the installation of just one **piece of electronic communications apparatus or a line.** ~~telegraph pole or a very small length of cable and~~ it should be noted that not all the procedural elements ~~should~~ **will** be required in each and every case.

Communication and contact information

A1.14 Communication between parties is vital to facilitate effective working relationships. All communications must be kept clear, concise and carried out in a timely manner to ensure active, engaged dialogue. In any event, the Operator should ensure it communicates and keeps the Site Provider informed of its plans.

A1.15 Central to the purpose of this Code of Practice is the maintenance of good communications between the parties in order to facilitate good working relationships.

Keeping contact information up to date

A1.16 The Operator should ensure that the Landowner, Site Provider and any relevant Occupier of the site or of access routes to the site are provided with up-to-date site and contact information which may include details of the Operator but also those acting on their behalf. This ensures that the Site Provider is aware of who to contact in all the circumstances that may arise, such as:

available to them, so that the Landowner can easily assess which point of contact to use in all the circumstances which may arise, such as:

- a) In the event of an emergency
- b) For routine estate or management issues
- c) To change or confirm access arrangements
- d) For escalation of redevelopment/decommissioning issues
- e) For raising a complaint

A1.17 In turn, the Landowner, Site Provider and Occupier should provide its email address/contact details in writing directly to the registered office of the Operator. It is the responsibility of the Site Provider to notify the Operator of any changes to its contact details so they can be contacted, and ensure the Operator is notified of any changes so that the Operator knows which point of contact to use in all the circumstances which may arise.

Professional advice

A1.18 Landowners, Site Providers and Operators may choose to negotiate directly with each other. Alternatively, the parties may wish to seek professional advice from a suitably qualified and experienced person, such as a surveyor or valuer. This could also include taking legal advice before concluding an agreement⁴⁹.

A1.19 Where relevant, the Operator should provide information to the Site Provider on its fees policy to include the detail of when and under what circumstances Site Providers reasonably and properly incurred professional fees would be compensated. The general principle is that a Site Provider should not be left out of pocket for its reasonably and properly incurred costs.

⁴⁹ A list of such advisers can be provided by professional bodies such as Central Association of Agricultural Valuers, Law Society, Law Society for Scotland, Royal Institution of Chartered Surveyors and Scottish Agricultural Arbiters and Valuers Association

Behaviours

A1.20 ~~In all cases, both~~ Operators, Site Providers and professional advisors ~~Landowners~~ should act in a timely, respectful, consistent, fair and open manner when engaging with each other. ~~in relation to any proposed works.~~

New agreements for the installation of Apparatus

A1.21 An Operator may require new sites or to install additional apparatus on existing sites for a number of reasons, such as:

~~A1.22—Additional Apparatus can be required for a number of reasons, such as:~~

- a) New Customer requirements demand
- b) To provide coverage to new areas
- c) To provide additional network capacity
- d) To provide new services
- e) To replace obsolete sites or sites that are being redeveloped

A1.23 Where an Operator needs to deploy new apparatus on a new site (greenfield, rooftop, and/or street asset), ~~needs to be deployed on a new site,~~ the Operators will follow a sequence of steps, depending on the nature of the apparatus to be installed. For minor installations of apparatus (for example, the placement of a telegraph pole), it may be possible to reach an agreement on standard terms and conditions and without the need for a site visit. For more complex situations (such as a new mobile mast), a site visit may be required to assess the suitability of the location and to find out other background information.

Responding to a Request for Access by the Operator

A1.24 An Operator will notify the Site Provider with details of the proposed access request for the purposes of deploying electronic communications apparatus, and this will typically contain the information detailed in Schedule A, including the identity of the Operator, their contact details, the type of apparatus they intend to deploy and over what timescales.

A1.25 It is important for the Site Provider to respond to this request for access. Where the Operator requests access to land and the Site Provider fails to respond to repeated requests for access, the Operator must, if it is reasonably practicable to do so, consider the use of one or more alternative dispute resolution procedures to reach agreement with the Site Provider. After which, the Operator may apply, following the service of relevant notices to the Site Provider, to a court for an order which can impose an agreement between the parties which confers the relevant Code rights being sought or provides for the Code right to bind the Site Provider. Such an application to the court may have cost consequences for the Site Provider.

Stage 1: Site Survey

A1.26 Once it has been determined that new Apparatus is required in a given area, the Operator ~~should~~ may identify various options for new sites and survey possible solutions based on technical and planning considerations.

- A1.27 Although access to maps, satellite imagery, building plans etc. can enable much of the site feasibility to be conducted remotely, direct access to a potential site and the ability to discuss practical matters with ~~Landowners~~ **Site Providers is likely to** be required.
- A1.28 Where access is necessary, the Operator should request such access in writing, covering the matters set out in ~~Annex Schedule~~ **A**, where relevant. The Operator should generally request that access is given within a reasonable period **dependent of the use or type of building/ land or asset.** ~~(e.g. this may be a period of around 7 days).~~ The access request should set out the nature of the visit and a basic outline of the proposed installation/s.
- A1.29 To ensure the site survey is productive, the parties may ~~choose to~~ meet on site. At the appropriate moment in the assessment process, the ~~Landowner~~ **Site Provider**, on the Operator's request, should **assist where possible** to provide relevant information such as:
- a) **Who owns/occupies the site and details of any other parties with a known interest in land or access to it;**
 - b) The current use of the site;
 - c) Whether there are any multiple occupancy management arrangements in place;
 - d) **Land management agreements, such as environmental or natural capital related schemes;**
 - e) Any planned change or intended change in ownership, occupation or use;
 - f) Any proposals there may be to change the use of or develop the land, including whether there are any existing planning permissions in place;
 - g) Details of known pipes, drains, cables or structures...etc;
 - h) Whether there is/are any harmful materials, liquids, vegetation, sites of special scientific interest, protected flora, fauna, listed buildings, archaeological considerations or public rights of way on or adjacent to the site;
 - i) Any other rights of public access on the site or adjacent to the site;
 - j) **Details of any professional or managing agent who will act on their behalf.**
- A1.30 It is appreciated that not all Site Providers will have all of the information stated above and the Operator should also make its own enquiries and investigations and not rely solely on the information provided by the Site Provider.**

Stage 2: Consultation and agreement

- A1.31 The type of apparatus that can be deployed on, over or under a site can vary enormously. It could include, for example:
- a) A telegraph pole being placed in a field;
 - b) A cable being laid in an existing duct in a shopping centre;
 - c) An antenna system for mobile coverage being installed on the roof of a **building, such as an office block;**
 - d) A lattice tower being erected in a wood
- A1.32 Each of these examples could require a different consultation process due to the variety of impacts to land, different levels of agreement with the Site Providers.**
- A1.33 When a suitable location has been identified for the installation of apparatus, the Operator should proceed to secure any necessary consents for the site, in accordance with relevant

regulations, consulting with the Local Planning Authority, and other parties, where required, and any applicable guidelines or codes of practice²⁰.

- A1.34 Where a proposal is straightforward, ~~it may be appropriate for the Operator to send the Site Provider a simple written agreement along with an explanation of the requirement and a site diagram to demonstrate the location of the apparatus for their consideration.~~ ~~with standard apparatus, such as a single cabinet or pole, it may be appropriate for the Operator to send the Landowner a simple written agreement with a request to sign it and return.~~
- A1.35 ~~In cases of complex or impactful proposals, Where the proposal is less simple, a phone call or meeting could be offered where practicable.~~ It may be appropriate for the Operator to send a summary of the proposed terms of an agreement for the ~~Landowner~~ ~~Site Provider~~ to consider and review. In such cases the documentation might include, for example, a plan showing the proposed design, access routes and cable routes; loading calculations for rooftop sites; and proposals for electricity provision.
- A1.36 Before concluding an agreement, the ~~Landowner~~ ~~Site Provider~~ and Operator should ~~agree~~ ~~consider~~ access arrangements for construction, installation, ~~security~~, subsequent planned maintenance, upgrades, ~~provision for emergency generators where appropriate~~ and emergency maintenance to repair service affecting faults. The key points for access arrangements are covered in ~~Annex~~ ~~Schedule~~ B.
- A1.37 Although the Code provides a mechanism for the court to impose terms of occupation on the ~~Landowner~~ ~~Site Provider~~ and the Operator, ~~where an agreement cannot be reached~~, the parties should make every effort to reach ~~voluntary consensual~~ agreement first, ~~including potentially engaging with an ADR process.~~
- A1.38 Whilst some agreements should be expected to be completed within a matter of weeks, and some simple cases might potentially be signed on site during the survey stage, agreements for larger or more complex arrangements may generally take longer, but in all cases the parties should endeavour to respond ~~without undue delay to~~ ~~promptly to~~ correspondence from the other side and aim to complete the process as ~~soon as practicably~~ ~~swiftly as~~ possible.
- A1.39 In the absence of terms being agreed between the parties, ~~Parts Parts 4, 4A and 4ZA of the Code²¹ each provide for a process whereby the Operator can apply to the court for an order which imposes an agreement between the parties which confers the relevant code rights being sought or provides for the Code right to bind the Site Provider. However, prior to this, the Operator must, if it is reasonably practicable to do so, consider the use of one or more alternative dispute resolution procedures to reach agreement with the Site Provider. ~~in the circumstances described in paragraph 20(3) of the Code,, the Code provides for a process whereby a court can impose the terms of occupation and/or the conferring of code rights pursuant to paragraph 19 of the Code.~~ It must be emphasised, though, that one of the~~

²⁰ For example: Code of Best Practice on Mobile Network Development in England, <http://www.mobileuk.org/codes-of-practice.html>

²¹ See Paragraph 20(3) for Part 4, Paragraph 27D(1) for Part 4A, and Paragraph 27ZE(1) for Part 4ZA.

principal purposes of this Code of Practice is to establish a **voluntary consensual** process, which avoids recourse to the courts.

Stage 3: Deployment stage

A1.40 When the Operator is carrying out works on a **Landowner's Site Provider's** property it should endeavour to cause minimal disruption and inconvenience. The Operator should notify the Landowner of the following:

- a) Contact details for the Operator, the name and contact details of the contractor managing the scheme and **managing works on site and** also the person to whom the **Landowner Site Provider** can escalate any matters of concern;
- b) Drawings detailing the apparatus to be deployed with an accompanying written description of the works;
- c) Any requirement to be able to have access across other land (whether belonging to the **Landowner Site Provider** or a third party);
- d) Timing **/ phasing** of the works, including the estimated start date and duration of the works **and the working hours;**
- e) ~~Working times~~
- f) Procedures for safeguarding the **Landowner's Site Provider's** property (e.g. livestock); and
- g) **Where regulations require or when requested, a copy of the Risk Assessment and Method Statement.**

A1.41 Where applicable, the Operator should retain a dated photographic record of the condition of the site prior to the commencement of works and on completion of the works, **which should be made available to the Site Provider, where reasonably requested.**

Electromagnetic fields (EMF) exposure Compliance

A1.42 **Most wireless telegraphy licences issued by Ofcom include a condition²² requiring licensees to ensure compliance with the limits in Guidelines issued by ICNIRP (the International Commission for Non-Ionizing Radiation Protection) on exposure to electromagnetic fields (EMF) for the protection of the general public (the "EMF licence condition"). Ofcom refers to these limits as the "general public EMF limits". The EMF licence condition applies to licensees whose radio equipment is currently authorised to transmit at powers higher than 10 Watts EIRP or 6.1 Watts ERP. Operators that are subject to the EMF licence condition will generally be required to comply with the general public EMF limits and hold appropriate EMF records demonstrating their compliance taking into account Ofcom's Guidance on EMF Compliance and Enforcement.**²³

A1.43 **Health and safety law in the UK places separate duties on persons (including Operators and Site Providers) who create risks relating to work and the workplace including any risks related to EMF exposure. The Health and Safety Executive (HSE) has published guidance²⁴ on the requirements on employers to protect workers from EMF. Ofcom's EMF Update includes examples of the types of workers that may be exposed to EMF (see paragraphs 4.41 – 4.54)²⁵.**

²² <https://www.ofcom.org.uk/spectrum/emf/policy>

²³ <https://www.ofcom.org.uk/spectrum/emf/compliance-and-enforcement-guidance>

²⁴ <https://www.hse.gov.uk/radiation/nonionising/emf.htm>

²⁵ https://www.ofcom.org.uk/data/assets/pdf_file/0022/214663/emf-implementation-update.pdf

A1.44 When negotiating access to a site, Operators and Site Providers should consider how they will cooperate with each other in order to manage any EMF risks and ensure (i) the Operator complies with any EMF licence condition that may apply to it; and (ii) the Operator and Site Provider comply with relevant health and safety legislation. In doing so:

- a) Operators and Site Providers should, as soon as practicable, comply with any reasonable request to provide each other with information they hold that the other party may require to help them carry out an EMF assessment (e.g. site information and information on ICNIRP exclusion zones).
- b) Operators should, as soon as practicable, comply with any reasonable request to provide a Site Provider with EMF records that demonstrate the Operator's compliance with any EMF licence condition that may apply to it.

Neighbours and other occupiers

A1.45 Persons with an interest in land adjoining a proposed site may need to be consulted under national regulations, guidelines and any applicable Codes of Practice²⁶.

A1.46 Operators should ~~also~~ negotiate access arrangements with the owner and/or occupier of land adjoining a site, where use of that land is required for either constructing ~~and/or~~ maintaining the site. ~~If an agreement cannot be reached, the Operator may seek to exercise its Code rights.~~²⁷ (using Code powers, if no agreement can be reached).

A1.47 Any requirement for access by the Operator with respect to such adjoining land ought to cover the matters set out in ~~Annex~~ ~~Schedule~~ B (i.e. the same considerations as for the ~~Landowner~~ ~~Site Provider~~, where applicable).

The ongoing access to and operation, maintenance and upgrading of existing sites and apparatus

A1.48 All electronic communications sites are an integral part of a wider network. Individual sites ~~and infrastructure~~ variously provide coverage, capacity and functionality to that wider network and Operators require access to their apparatus in order to be able to maintain a quality of service to their customers. ~~In the case of service affecting faults, access should be required as soon as possible.~~

A1.49 As set out in Stage 2 Consultation Phase, any agreements between the Operator and the ~~Landowner~~ ~~Site Provider~~ should set out how to access sites for operational needs. ~~Annex~~ ~~Schedule~~ B sets out key points for access arrangements. Where necessary, Operators and ~~Landowners~~ ~~Site Providers~~ should meet, prior to entering into a contract, to discuss preferred access routes and processes and agree clear expectations as to what should happen when access is required.

A1.50 In the case of emergencies, such as where there is a service-affecting fault or the Apparatus is malfunctioning, Operators need to access the Apparatus without delay, in order to resolve the issue and maintain service for customers, including the ability to make calls to the emergency services. ~~However, this should not be utilised by Operators for routine access~~

²⁶ For example: Cabinet and pole siting Code of Practice, and The Code of Best Practice on Mobile Network Development in England, <http://www.mobileuk.org/codes-of-practice.html>

²⁷ See Paragraph 7 for relevant paragraphs.

/maintenance and should not override other access protocols that have been agreed between the parties.

- a) ~~Wherever possible, Operators should contact~~ When arriving at the appropriate access provisions the parties should seek to minimise their complexity, delay and burden whilst specifying what is reasonable and proper;
- b) The Operator should ensure that its Apparatus is maintained in a good state of repair;
- c) If a Site Provider becomes aware of any damage to the Operator's Apparatus it should make the Operator aware as soon as possible; and
- d) Any damage caused by the Operator during routine access (maintenance) and minor upgrades should be repaired without delay by the Operator and at the Operator's cost.

A1.51 Access for routine maintenance should be organised so that Operators can give sufficient notice where required in accordance with the access arrangements agreed with the Site Provider.

~~A1.52 Where Operators are physically sharing a site or using any apparatus on a site, and no additional consents are required under the Code, the Operators should nevertheless notify Landowners of the name and contact details of other sharers and users, so that the Landowner, for security purposes, can know who is in lawful occupation of the site.~~

A1.53 Where access may be required to other parts of the land owned or occupied by the Site Provider ~~Landowner~~, such as where an area of land is required to use a crane or cherry picker, the access arrangements should cover such scenarios and provide that the Operator should return the land to the condition it was in prior to the land being used or accessed.

A1.54 Operators should seek to ensure that anyone accessing a site on their behalf:

- a) Carries photographic identification;
- b) Can explain why they are there and for whom they are working; and
- c) Can advise ~~Landowners~~ Site Providers who to contact within the Operator for more information or to comment on any visit.

A1.55 Operators should, upon reasonable request, provide verification of which contractor was on site at any given point in time and confirmation of why they were there – e.g. to inspect, maintain and effect an emergency repair or physical upgrade etc.

A1.56 Operators should adhere to any legal or regulatory requirements for managing location specific risks. This might include notifiable diseases (such as Foot and Mouth, Avian Flu etc.). For sites at sensitive locations, it might include arranging accompanied access to secure areas. Operators should comply with any reasonable procedures implemented by ~~Landowners~~ Site Providers for these purposes. ~~Landowners~~ Site Providers should, so far as is possible, preserve the ability for Operators to access their apparatus, particularly in the case of operational emergency.

Sharing and Upgrading of overground Apparatus

A1.57 Sharing and upgrading telecommunications apparatus is an important part of enabling investment in digital communications infrastructure and ensuring universal access to fast digital communication services.

A1.58 The Code provides Operators with a right to upgrade and share their apparatus, so long as those changes have no adverse impact or no more than a minimal adverse impact on the

appearance of the apparatus and imposes no additional burden on the Site Provider. Such a burden might be to the Site Provider's enjoyment of the land or constitute some other loss, damage or personal expense.

A1.59 Whilst the Code provides Operators with the rights to upgrade and share their apparatus, they represent the minimum rights that an Operator is to have and it is open to the parties negotiating a Code agreement to agree more extensive rights if necessary.

A1.60 If an Operator wishes to secure more extensive rights, it is for them to explain why. The Operator and the Site Provider are encouraged to negotiate these points where possible to avoid the cost and burden of litigation. If agreement between the Operator and Site Provider is not possible on that point, an Operator is entitled to apply to the Court and ask that those rights be imposed.

A1.61 Operators should consider representations from Site Providers regarding any reasonable requests in respect of sharing or upgrading of the apparatus.

A1.62 Site Providers should not seek to delay the sharing and/or upgrading of Electronic Communications Apparatus (ECA) where either an existing agreement includes terms for sharing or upgrade or where Operators are seeking rights under the Code.

Sharing and Upgrading of Underground Apparatus between Operators

A1.63 The purpose of this section is to explain the more specific rights which relate to the sharing and upgrading of underground apparatus by Operators. It also explains what Site Providers can expect from Operators.

A1.64 The Code provides rights for Operators to upgrade and share apparatus under existing agreements entered into with Site Providers, however amendments introduced under the PSTI Act now include a right for an Operator to upgrade or share apparatus installed below ground where either the Operator:

- a) is a party to a 'subsisting agreement' made prior to the Digital Economy Act 2017 and 28th December 2017 and therefore made under the Old Code in Schedule 2 of the Communications Act;²⁸ or
- b) has existing ECA that was installed before 29 December 2003 and is not party to any written Code agreement.

What can Site Providers expect in relation to apparatus installed underground?

A1.65 When an Operator wishes to either upgrade existing electronic communications apparatus under the ground or where another Operator has requested (or is allowed using a regulatory remedy introduced by Ofcom) to share that ECA, they will ensure the upgrading and sharing of the ECA:

- a) has no adverse impact on the land; and

²⁸ For transitional purposes, the statutory framework treats subsisting agreements as if they were agreements that had been made under the current Code, but subject to certain modifications that apply.

b) does not impose any burden on any person with an interest in the land (which includes anything that has an adverse effect on the enjoyment of the land or causes loss, damage or expense to the person).

A1.66 The sharing Operator will engage with the Site Provider within a reasonable time period prior to sharing the host Operator's ECA to:

- a) agree access rights to the land if access to the land is required; and
- b) provide any relevant notice (where applicable).

A1.67 In addition, a host Operator can agree to allow another Operator to install and keep lines attached to their poles if the conditions in (a) and (b) above and the relevant conditions under paragraph 74 and of the Code are followed. It is also incumbent on the sharing Operator to ensure they have the permission of the Site Provider to access the land.

A1.68 Where Operators are physically sharing a site or using any apparatus on a site, and no additional consents are required under agreement, the Operators should nevertheless notify Site Providers of the name and contact details of other sharers and users, so that the Site Provider, for security purposes, can know who is in lawful occupation of the site.

A1.69

Decommissioning sites and removal of redundant apparatus that are no longer required

A1.70 The Code makes provision for Landowners Site Providers to request the removal of apparatus, either where Code rights have come to an end, or if part or parts of the Code apparatus is no longer required for use on the site, if it is not being used and there is no prospect of it being so.

A1.71 As a general principle, Operators should ensure that redundant sites and apparatus are decommissioned within a reasonable period after use ceases. However, in the case of apparatus below ground (such as ducts for cables), it may be preferable to the parties for the Apparatus to be made safe and left in place. Operators should discuss decommissioning proposals with Landowners Site Providers in order to agree the way to proceed. Where a Site Provider requests that Code apparatus (including ducts and cables) are removed, the Operator should remove them and restore the land to its prior condition to the reasonable satisfaction of the Site Provider.

~~A1.72—When requested to remove redundant apparatus by a Landowner, the Operator should, within a reasonable time, respond, either by explaining that the apparatus will still be needed or by agreeing a date by when the apparatus will be made safe or removed, and the site reinstated, if relevant.~~

A1.73 Where apparatus has been installed by a utility provider, by virtue of a separate wayleave or easement (such as a dedicated electricity supply installed by a recognised statutory electricity undertaker) the Site Provider will need to contact that service provider to discuss its removal. Operators should provide (without charge) assistance and co-operation to Site Provider for the removal of third-party installations such as these.

A1.74—Other

Renewal of existing sites and the Code

- A1.75 ~~When an existing site agreement is due to expire, the~~ **The** parties should seek to agree terms for the continued use of the site before the existing agreement comes to an end.
- A1.76 Parties should commence negotiations sufficiently far in advance of the **term end date of expiry of** an existing agreement to allow adequate time for terms to be agreed.
- A1.77 **Following the contractual term end, the Operator's Code rights continue until a new agreement is entered into or Code rights are terminated (by either party) on grounds specified in the Code.**
- A1.78 **Either party may initiate discussions in advance of the expiry of the agreement and/or issue a statutory notice. Both parties should take reasonable steps to ensure any communication is issued properly in accordance with the contact details included in the existing agreement or as otherwise notified.**
- A1.79 **The intention of both parties should be to reach a consensual agreement. To progress these discussions the parties should respond in a timely manner.**

Repairs to a **Landowner's Site Provider's** property

- A1.80 From time to time, **Landowners/Occupiers Site Providers** will have to carry out essential repairs to their property and, where **reasonable possible**, it may be necessary for apparatus to be moved temporarily to effect such repairs. In such circumstances, the parties should negotiate in good faith ~~so as~~ to allow the works to be completed, **and for the Site Provider to minimise to avoid, so far as far as reasonably** possible, any resultant interruption to public communications services ~~and~~ to allow continuity of services. In relation to repairs to the **Landowner's Site Provider's** property, as part of the good faith negotiations, the parties should discuss the detail of the timings, duration and extent of the works.

Redevelopment by the **Landowner Site Provider**

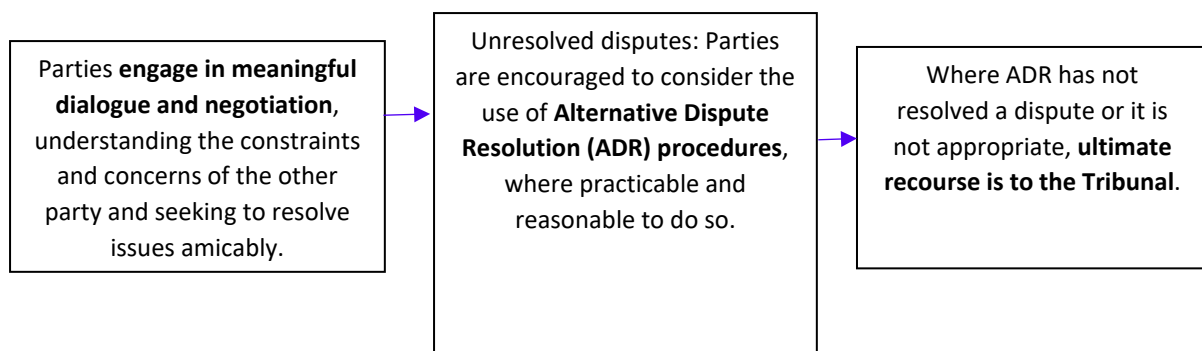
- A1.81 The Code makes provision for **Landowners Site Providers** to redevelop their property (Paragraphs 30-31), requiring that the **Landowner Site Provider** should give **a minimum of 18 months' notice of the intention to redevelop and amend or terminate Code rights.**
- A1.82 Paragraphs 30-31 of the Code are intended for use by **Landowners Site Providers** who genuinely intend to redevelop their property. **Landowners Site Providers** are encouraged to give Operators as much prior notice as possible, in order that adequate time can be afforded to allow the Operator to identify alternative suitable sites. **Early engagement between Site Provider and Operator is likely to best serve the interests of both parties.**
- A1.83 Operators may request to see evidence of the **Landowner's Site Provider's** intention to redevelop but they should act reasonably at all times, so as not to hinder the **Landowner's Site Provider's** progress where there is a genuine intention to redevelop. For example, Operators should act in a timely manner to locate suitable new sites with the principal aim that communications services in a locality can be maintained, with the minimum of disruption to the users.
- A1.84 Where a **Landowner Site Provider** is progressing a redevelopment opportunity, consideration should be given to the possibility of incorporating the communications

apparatus within the **Landowner's Site Provider's** property if this is a reasonable and practicable option.

Escalation procedures **Resolving Disputes**

A1.85 The Code sets out formal dispute resolution procedures.

A1.86 **Nevertheless, where disputes arise, the parties should seek to resolve them informally (i.e. without recourse to litigation). The Code encourages the parties to engage in meaningful and collaborative dialogue, with a view to resolving issues and mitigating disputes wherever possible including the use of Alternative Dispute Resolution Schemes if required. The diagram below illustrates the escalation procedures.**



A1.87 In certain cases, an Operator's notice²⁹ must:

- a) contain information about the availability of ADR in the event that the Operator and the relevant person are unable to reach agreement, and
- b) explain the possible consequences of refusing to engage in alternative dispute resolution.

A1.88 Operators are required to consider ADR, if it is reasonably practicable to do so, before making an application to the courts and must make occupiers and Site Providers aware that ADR is available, if a consensual agreement cannot be reached.

A1.89 Importantly, the courts may take into account any unreasonable refusal to engage in ADR when awarding costs in any dispute referred to them, once the dispute has been determined.

A1.90 To facilitate ADR, Operators and Site Providers should share contact details with each other to whom matters of dispute can be raised. Those matters may include failure to abide by this Code of Practice.

A1.91 There may be occasions, though, where either party may need to serve legal notices, while still continuing to pursue an informal resolution.

A1.92 There are a range of ADR solutions available, including independent expert determination, mediation and early neutral evaluation. The type of ADR most suitable will depend upon the nature of the dispute, amongst other factors.

²⁹ Note that this only applies to notices prescribed under Section 69 paragraphs 20 and 33.

~~A1.93 — Nevertheless, where disputes arise, the parties should seek to resolve them informally (i.e. without recourse to litigation) in the first instance. There may be occasions, though, where one party or the other may need to serve legal notices, while still continuing to pursue an informal resolution.~~

~~A1.94 — To facilitate this process, Operators and Landowners should make available to each other, and, where applicable, those with an interest in adjoining land, contact details for the relevant person, through whom matters of dispute can be raised. Those matters may include failure to abide by the Code of Practice.~~

Schedules to the Code of Practice

Schedule A – Process for the Site Survey

A1.95 There are several types of surveys that may be required to assess the suitability of any site:

A1.96 An initial site visit, usually by the Operator and/or their agent to assess initial suitability and to take a set of photographs of the proposed site,

A1.97 A Multi Skilled Visit (“MSV”) is a design visit at which the Operator’s representatives may complete a design survey of the site, which might include things such as:

- a) Surveying the site in order to produce drawings;
- b) Assessing the access route and whether any upgrade of the route may be required;
- c) Identification of a suitable power supply;
- d) Ground radar scans and/or test bore holes (although this may take place at subsequent survey stage);
- e) Intrusive survey of a building, for example, lifting roof material to examine the construction and structure; if this work is to be undertaken, prior agreement with the Site Provider to such work should be reached; and
- f) Take a set of panoramic photographs, which may include use of a drone.³⁰

A1.98 To ensure that the site survey is productive, the parties may choose to meet on site. This ensures that the site is designed to have the least impact on the Site Provider’s land and use of the land. The MSV also gives the Site Provider the ability to ask any questions or address any concerns they may have.

A1.99 Once the MSV has taken place, it is likely that the local power company and/or fibre Operator will require access to the property to assess the route for any cables required to provide the necessary services.

A1.100 These surveys, if required, will be arranged in advance with the Site Provider.

Requesting access for a survey

A1.101 At a minimum, the Operator or Operators are expected to provide the following information, except to the extent any item listed below has already been obtained by the Site Provider following an initial Survey carried out by or on behalf of the Site Provider.

³⁰ Any drone used is operated by a Civil Aviation Authority (CAA) registered and qualified person who carries public liability insurance and operates the drone in accordance with CAA Rules & Regulations

- a) Extent of search areas on the Potential Site Providers land for possible installation of apparatus.
- b) Requirements for initial survey: -
- c) What access is desired?
- d) With what apparatus?
- e) Over what timescale?
- f) General description of likely apparatus and any ancillary connections required, for example power or fibre connections.
- g) Confirmation of whether planning consent would be required (if known).
- h) Anticipated type of installation sought (e.g. whether it is of a temporary/short duration of occupation or longer-term nature).
- i) The letter may also include information about what action an Operator might take, in the event that the Potential Site Provider fails to respond.
- j) An assurance from the Operator to make good any damage to the Potential Site Provider's property.

A1.102 Operators should seek to ensure that anyone accessing property or land on their behalf:

- a) Carries photographic identification
- b) Can explain why they are there and for whom they are working
- c) Can advise Site Providers who to contact within the Operator for more information or to comment on any visit

A1.103 Certain land and property will have specific access requirements, particularly where there are operational constraints or sensitive security requirements and these should be followed, as appropriate. For example, these are likely to be sites run by utilities, defence, emergency services (such as police), transport, healthcare and other public sector authorities.

A1.104 Operators should, upon reasonable request, provide verification of which contractor was on site at any given point in time and confirmation of why they were there.

A1.105 Operators should adhere to any legal or regulatory requirements for managing location specific risks. This might include notifiable diseases (such as Foot and Mouth, Avian Flu etc.). For sites at sensitive locations, it might include arranging accompanied access to secure areas. Operators should comply with any reasonable procedures implemented by Site Providers for these purposes.

A1.106 During the survey visit, it may become apparent that an alternative site is more suitable. The Operator may attempt to make investigations with adjoining landowners on the suitability and to undertake a survey at that time.

~~1.1 — An Operator wishing to access land for the purpose of surveying its suitability for siting electronic communications apparatus should contact the Landowner of a potential site and provide the following information:~~

- ~~• Identity of operator, points of contact for operator and any agent~~
- ~~• Areas of search for possible installation of apparatus~~
- ~~• Requirements for initial survey:

 - ~~— What access is desired?~~
 - ~~— With what apparatus?~~
 - ~~— Over what timescale?~~~~

- Description of likely apparatus and any ancillary links required, for example power connections
- Confirmation of whether planning consent would be required
- Likely impact of apparatus on the site and/or adjoining land, for example line of sight requirements, possible interference with existing equipment etc.
- Type of agreement sort (e.g. temporary or long-term)
- Proposed timescale for construction/installation
- The letter may also include information about what action an Operator might take, in the event that the Landowner fails to respond

1.2 In some instances, though, when an Operator is surveying at a neighbouring property, and it becomes apparent that the Apparatus would be better suited on an adjoining property, it may be possible to agree with the Landowner to complete a survey immediately and then follow up in writing once the survey has been completed.

Schedule B – Key points for access arrangements

A1.107 Access arrangements should cover the following points, where appropriate³¹:

- i) Contact details (including in emergencies) for:
 - ii) The Operator
 - iii) The Landowner
 - iv) Any Occupier of the land, if different from the Landowner
 - v) Details of any other parties with a known interest in land or access to it
- b) Description of access arrangements (including any out of hours or weekend factors (e.g. for business premises that are closed at the weekend))
- c) Recovery of reasonable costs (e.g. if a supervisor is necessary at sensitive locations)
- d) Confirmation An undertaking from the Operator to make good any damage to the Landowner's Site Provider's property
- e) Notifying the Operator of any site-specific considerations, for example:
 - vi) Requirements for supervision at sensitive or hazardous sites
 - vii) Bio-security and any other appropriate security arrangements
 - viii) Any relevant environmental schemes (where care has been taken not to contravene the rules of the scheme)
- f) Parking and access routes across land or through buildings for construction and maintenance personnel, vehicles, equipment and apparatus
- g) Adherence to the Countryside Code, or the Scottish Outdoor Access Code where relevant

A1.108 The parties should agree, and set out within the agreement, what notice (if any) is required for the different types of access requirements. It can often help resolve access issues by acknowledging the difference between the need for emergency access (to fix or prevent service impacting faults) and planned access.

A1.109 Typically for major works (construction, significant upgrade, decommissioning) there may be a requirement for different notice than for a service impacting fault where no or minimal notice should be required.

³¹ Note: for many fixed line installations, this will be covered by an Operators standard wayleave

A1.110 The parties should agree when negotiating a new lease or renewal what necessary information (if any) is to be provided by the Operator or Agents to the Site Provider to accompany access requests.

A1.111 The parties and their agents should think about the respective business needs and treat each other's property with respect.

A2. Summary of responses to the Code of Practice Consultation

Respondent	Issue/ Relevant text ³²	Response
AP Wireless	The CoP needs to be more consistent on when imperative language such as 'should' and 'must' are used.	We have reviewed where imperative language is used and have revised where necessary.
AP Wireless	The CoP is inconsistent in its approach to 'general principles' and greater clarity is needed on the general principles for professional fees (1.19).	As explained at 3.20 – 3.23 above, we have revised 1.19 to make it clearer on the reimbursement of professional fees.
AP Wireless	The CoP should include text on the legislative intent of the PSTI Act.	We have now included text on this in the CoP at 1.6.
AP Wireless	The CoP should be clearer on the definition of Site Provider and it is used incorrectly at 1.10.	We explain our decision on the definition of Site Provider at 3.11 – 3.19 above. We agree that the reference to Site Provider in 1.10 should be 'Landowner' and have amended.

³² Note that all Code of Practice paragraph references included in the column 'issue/ relevant text' of this table relate to A1 above. All paragraph references included in the 'response' column of this table relate to A3 below. The paragraph numbering of the Code of Practice in A1 and A3 is slightly different, owing to changes we have made following the consultation e.g. removing paragraphs.

Respondent	Issue/ Relevant text ³²	Response
AP Wireless	Paragraphs 1.16 and 1.17 should be amended for clarity.	We do not consider that the suggested amends are necessary to improve clarity.
AP Wireless	Paragraph 1.19 can be reduced for clarity.	We do not consider that the suggested amends are necessary to improve clarity.
AP Wireless	Paragraph 1.25 should be amended for clarity.	We do not consider that the suggested amends are necessary to improve clarity.
AP Wireless	Paragraph 1.26 – the exchange of the word ‘should’ for ‘may’ is inappropriate.	We agree with the suggested change and have amended at paragraph 1.26.
AP Wireless	Paragraph 1.28 – concerned that we have removed the example of 7 days notice for a site survey.	We explain our decision on this at 3.26 – 3.27 above.
AP Wireless	Paragraph 1.41 should be amended for clarity.	We agree with some of the proposals for amending 1.39 to improve clarity and have adopted these, however, we consider that some of the suggestions were unnecessary.

Respondent	Issue/ Relevant text ³²	Response
AP Wireless	Paragraph 1.100 and 1.106 should have text added for clarity.	We agree with these suggested changes and have amended at 1.93 and 1.99.
AP Wireless	The name of the international body responsible for EMF should be 'International Commission on Non-ionizing Radiation Protection'.	We agree with this suggested change and have amended at 1.42.
AP Wireless	The CoP should make it clear that the onus for EMF compliance sits with the operator.	We explain our decision on this at 3.28 – 3.31 above.
AP Wireless	The ADR section should be amended to provide greater clarity (particularly to Site Providers) of what ADR is, when it can be used etc.	We explain our decision on this at 3.42 – 3.44 above and have made a number of amendments to the ADR section of the CoP to improve clarity.
AP Wireless	The CoP does not include anything on complaints.	We explain the absence of complaints from the CoP at paragraph 1.7 of the Statement above.
AP Wireless	The CoP lacks any formal enforcement.	This is outside the scope of this review.

Respondent	Issue/ Relevant text ³²	Response
AP Wireless	Paragraphs 1.5 and 1.14 are insufficiently broad and should go beyond just 'Site Providers'	We have amended the wording of 1.5 to include 'persons who occupy or have an interest in land', we do not consider it necessary to repeat this at 1.14.
AP Wireless	Paragraph 1.18 should require Operators to advise Site Providers to seek legal advice in all correspondence.	We consider this to be an unnecessary burden on operators and note that the CoP does already include a section advising Site Providers on professional advice.
AP Wireless	1.50 (d) should be amended to allow for Site Providers to carry out repair works themselves and seek costs from the Operator if repairs are not carried out by the Operator in a reasonable time.	This would be going beyond the scope of this review/ what is included in the Code and we do not consider it appropriate to include in the CoP.
AP Wireless	1.73 – 'installations' should be replaced with 'infrastructure'	We agree with this suggested change and have amended at 1.69.
AP Wireless	1.80 should include preventative repairs as well as reactive repairs should not need to be essential and there should be an expectation that they are carried out within 28 days.	We explain our decision on this at 3.38 – 3.39 above. With regards to the 28 days timeframe, we do not consider it appropriate to include a specific timeframe and this goes beyond what is included in the Code.
AP Wireless	The CoP should include text on fire safety.	This would be going beyond the scope of this review/ what is included in the Code and we do not consider it appropriate to include in the CoP.

Respondent	Issue/ Relevant text³²	Response
BTEE	1.19 should be revised to provide clarity on the reimbursement of fees.	As explained at 3.20 – 3.23 above, we have revised 1.19 to make it clearer on the reimbursement of professional fees.
BTEE	Responsibility for EMF compliance sits with the Operator.	We explain our decision on this at 3.28 – 3.31 above.
BTEE	The section on ADR should extend to Site Providers as much as it does to Operators.	We explain our decision on this at 3.42 – 3.44 above and have made a number of amendments to the ADR section of the CoP to improve clarity.
CAAV	Footnote 5 of the draft CoP should be reinstated.	We agree, and have reinstated the footnote.
CAAV	1.58 should be amended to make it clear the right to share relates to apparatus, not land.	We think this is already made sufficiently clear in the draft CoP so have decided not to amend.
Cellnex UK	1.4 should include ‘...which is ultimately for the benefit of the public interest in ensuring a choice of high quality electronic communications services’.	We agree and have included this text at 1.4.

Respondent	Issue/ Relevant text ³²	Response
Cellnex UK	Ofcom should make it clear that the use of terminology such as Site Provider, occupier and landowner does not seek to interpret the meaning of the legislation or impose obligations that deviate from it.	We explain our decision on this at 3.11 – 3.19 above.
Cellnex UK	The CoP should refer to ‘an approach to fees’ rather than a ‘fees policy’.	We explain our decision on this at 3.20 – 3.23 above.
Cellnex UK	The CoP should include guidance on fee values that are reasonable, and principles which are unlikely to be reasonable.	We consider that including this level of detail is unnecessary and inappropriate for the CoP and should be determined by the parties involved.
Cellnex UK	The COP should explain that ADR is supported as a means of reaching agreement on long term rights but is not appropriate where the Operator is seeking access to survey whether a site is capable of hosting new electronic communications apparatus and encourage the use of ADR during the statutory period provided for negotiations in the code, in particular the use of ‘principal to principal’ discussions where disputes arise between advisors;	We explain our decision on this at 3.42 – 3.44 above and have made a number of amendments to the ADR section of the CoP to improve clarity.
Cellnex UK	Responsibility for EMF compliance sits with the Operator.	We explain our decision on this at 3.28 – 3.31 above.

Respondent	Issue/ Relevant text ³²	Response
Cellnex UK	1.59 unhelpfully considers access rights from the perspective of the bare minimum which is unlikely to provide sufficient flexibility for an <i>Operator</i> on an electronic communications site	We explain our decision on this at 3.34 – 3.35 above.
Cellnex UK	The CoP should reflect that more extensive/ flexible access rights are normal but that any concerns should be raised with the Operator during negotiations.	We do not consider it appropriate to include reference to what is normal in terms of contractual agreements.
Cellnex UK	The CoP should not include reference to the Operator having an obligation to ensure ‘upgrading and sharing has no adverse impact on the land or does not impose any burden’ unless the agreement it is entering into limits the rights in this way. Burden may be inevitable and is addressed through the consideration and compensation granted through the consideration and compensation granted to the landlord under paragraph 24 and 25 of the code.	We have amended the wording in 1.63 to more closely reflect the wording of the Code, i.e. ‘that any changes as a result of the upgrading or sharing have no adverse impact, or no more than a minimal adverse impact, on its appearance’ and ‘the upgrading or sharing imposes no additional burden on the other party to the agreement’.
Cellnex UK	1.67 should be moved to the ‘overground’ section.	We agree with this suggestion and have amended the CoP.
Cellnex UK	1.68 should be removed as requiring the Operator to notify the Site Provider and provide contact details for everyone accessing the site is too burdensome.	We have amended the text in 1.65 to include ‘where appropriate’ in recognition that in some instances will be a burden on Operators.

Respondent	Issue/ Relevant text ³²	Response
Cellnex UK	The wording in 1.86 should be amended so as not to exclude more informal means of resolving disputes.	We explain our decision on this at 3.42 – 3.44 above and have made a number of amendments to the ADR section of the CoP to improve clarity.
Cellnex UK	1.88 should encourage the use of ADR at an early stage not at the point the statutory time period has elapsed.	We explain our decision on this at 3.42 – 3.44 above and have made a number of amendments to the ADR section of the CoP to improve clarity.
Cellnex UK	1.91 is misleading in that it suggests that notices should be served only after attempts to negotiate have failed. This conflicts with the code which provides that an <i>Operator</i> should serve a statutory notice when requesting code rights; service of the notice explains the statutory effect of the code rights to the <i>Site Provider</i> and does not need to be a precursor to litigation.	We have amended paragraph 1.86 and consider that this addresses the suggestion made.
Cellnex UK	1.92 should include reference to the range of different dispute resolution options available.	We consider that this is already addressed by 1.87.
CityFibre	The CoP does not reflect that the PSTIA aimed to remove the need for negotiations where fixed fibre networks were using the PIA remedy.	We explain our decision on this at 3.45 – 3.46 above.

Respondent	Issue/ Relevant text ³²	Response
CityFibre	The CoP should not include the wording ‘ADR may not always be appropriate’ as this may undermine the use of ADR and the ultimate aim of the PSTIA.	We explain our decision on this at 3.42 – 3.44 above.
CityFibre	The move from ‘Landowner’ to ‘Site Provider’ is unhelpful and risks creating confusion.	We explain our decision on this at 3.11 – 3.19 above.
CityFibre	The CoP should not include the requirement for an Operator to set out their policy on fees at the outset. Operators will not have a ‘policy’ and it is unjustifiable to make Operator’s disclose their ‘hand’ during negotiations.	We explain our decision on this at 3.20 – 3.23 above.
CityFibre	The CoP should be clear that EMF exposure compliance only relates to wireless technologies and will not be relevant to fixed infrastructure.	We explain our decision on this at 3.28 – 3.31 above.
Joint response of AllPointsFibre, CityFibre, Glide, Hyperoptic and VMO2	The input into the draft CoP is too heavily skewed towards landowners with limited input from fixed broadband providers.	Initial input into the draft CoP was through the National Connectivity Alliance (NCA), a cross-industry group made up of landowners, fixed and mobile operators as well as interest groups. However, our Consultation on the CoP was also an opportunity for anyone, including those outside of the NCA, to feed into the CoP.

Respondent	Issue/ Relevant text ³²	Response
Joint response of AllPointsFibre, CityFibre, Glide, Hyperoptic and VMO2	<p>The CoP is too focused on large scale wireless apparatus to the exclusion of sharing of Openreach apparatus under the PIA remedy.</p>	<p>We explain our decision on this at 3.45 – 3.46 above.</p>
Joint response of AllPointsFibre, CityFibre, Glide, Hyperoptic and VMO2	<p>The CoP should not include the wording ‘ADR may not always be appropriate’ as this may undermine the use of ADR and the ultimate aim of the PSTIA.</p>	<p>We explain our decision on this at 3.42 – 3.44 above.</p>
Joint response of AllPointsFibre, CityFibre, Glide, Hyperoptic and VMO2	<p>The CoP should not include the requirement for an Operator to set out their policy on fees at the outset.</p>	<p>We explain our decision on this at 3.20 – 3.23 above.</p>
Joint response of AllPointsFibre, CityFibre, Glide, Hyperoptic and VMO2	<p>The move from ‘Landowner’ to ‘Site Provider’ is unhelpful and risks creating confusion.</p>	<p>We explain our decision on this at 3.11 – 3.19 above.</p>

Respondent	Issue/ Relevant text ³²	Response
Joint response of AllPointsFibre, CityFibre, Glide, Hyperoptic and VMO2	The CoP should reflect that site surveys are not always needed.	We agree with this suggestion and have amended the CoP at 1.26 to reflect this.
Joint response of AllPointsFibre, CityFibre, Glide, Hyperoptic and VMO2	The CoP should be clear that EMF exposure compliance only relates to wireless technologies and will not be relevant to fixed infrastructure.	We explain our decision on this at 3.28 – 3.31 above.
MBNL	The draft CoP is lengthy and overly complicated.	We have taken every step to ensure that the CoP is as simple and accessible as possible but note that this is a complex area. Following the Consultation, we have made a number of further amendments to the CoP aimed at improving its clarity.
MBNL	The words ‘in any event’ should be removed from 1.14 as, if read literally, would require an Operator to inform a Site Provider of any plans at any time that are relevant to the site, many of which will be of no interest to the Site Provider and achieve little more than creating resourcing and financial burden for the Operator.	We agree with the suggestion made by MBNL and have redrafted 1.15 to reflect this.
MBNL	Footnote 5 of the draft CoP should be reinstated.	We agree and have reinstated the footnote.

Respondent	Issue/ Relevant text ³²	Response
MBNL	The CoP should not include the requirement for an Operator to set out their policy on fees at the outset.	We explain our decision on this at 3.20 – 3.23 above.
MBNL	1.25 should be removed as it adds confusion in relation to ADR and ADR is already considered in its own section later in the document.	We do not consider including a reference to ADR in this section alongside having a dedicated ADR section, will cause confusion. We consider it appropriate to retain this text.
MBNL	An extra bullet point should be added to 1.29 referencing things like building plans, asbestos survey reports etc.	We have added wording to address this at 1.29.
MBNL	1.50 (b) and 1.50 (d) should be removed as they do not offer any material guidance and will be addressed contractually.	We disagree with MBNL, we consider including items such as this are important regardless of whether they will be dealt with via contracts.
MBNL	1.42 is too complex and risks rendering the paragraph inaccessible. Further, the reference to ‘public’ EMF limits are not relevant as Site Providers have no liability when it comes to the public and EMF.	We explain our decision on this at 3.28 – 3.31 above.

Respondent	Issue/ Relevant text ³²	Response
MBNL	The inclusion of the words ‘who create risks’ in 1.43 is inconsistent with duties such as those that arise out of The Control of Electromagnetic Fields at Work Regulations 2016 and the Management of Health and Safety at Work Regulations 1999. The inclusion of this wording is likely to confuse some Site Providers as to their statutory obligations, whilst blurring the boundaries between the discreet obligations of Operators and Site Providers.	We agree with the suggestion to remove this text and have therefore removed from the CoP.
MBNL	Responsibility for EMF compliance sits with the Operator.	We explain our decision on this at 3.28 – 3.31 above.
MBNL	1.58 – 1.60 should be removed as they paraphrase wider guidance provided by the Upper Tribunal and the Court of Appeal and do not give the whole picture. Further, if guidance was to change, this section of the CoP would become more inaccurate.	The wording included in this section reflects what is included in the Code itself. The section outlines the minimum Operator rights set out in the Code. “It is open to the parties negotiating a Code agreement to agree more extensive rights if necessary.”
MIF	The CoP should not include the requirement for an Operator to set out their policy on fees at the outset.	We explain our decision on this at 3.20 – 3.23 above.
MIF	Responsibility for EMF compliance sits with the Operator and the wording of the Draft CoP suggests Site Providers have a role to play in compliance.	We explain our decision on this at 3.28 – 3.31 above.

Respondent	Issue/ Relevant text ³²	Response
MIF	The Sharing and Upgrading section is at odds with Cornerstone v London and Quadrant Housing and is at odds with the disclaimer the CoP is not a guide to the ECC.	The wording included in this section reflects what is included in the Code itself. Further, we outline in this section that the rights set out in the Code 'represent the minimum rights that an Operator is to have and it is open to the parties negotiating a Code agreement to agree more extensive rights if necessary.'
MIF	The CoP should make it clear that the obligation is to 'consider' ADR.	We explain our decision on this at 3.42 – 3.44 above.
NFU	Concerns about the clarity and overall readability of the CoP.	We have made a number of amendments in response to comments on the draft Code of Practice which we consider will improve the clarity of the document.
NFU	The 'underground' and 'overground' sharing and upgrading sections should include the same information where relevant so as not to suggest that it is only required for one e.g. the provisions for additional Site Provider permissions regarding site access to apparatus are only included in the underground section when they are relevant to overground too.	We have amended the CoP to combine the underground and overground sections into one section, with an additional section that applies just to underground.
NFU	'Reasonably practicable' should be removed from 1.88 as ADR should always be considered.	We explain our decision on this at 3.42 – 3.44 above.

Respondent	Issue/ Relevant text ³²	Response
NFU	The CoP should make it clear that it is not a legally binding document, to manage Site Providers' expectations,.	We agree with this suggestion and have added wording to this effect at 1.7.
Openreach	The CoP should, in the Schedules set out the different requirements for fixed and mobile operators and should include an index and glossary for clarity.	We do not consider the level of detail proposed is necessary as consider the Code can be interpreted as necessary depending on whether fixed or mobile operators.
Openreach	The 'sharing and upgrading' section should explain the difference between the 'main operator' and the 'sharing operator' and the different obligations.	The CoP already refers to a 'sharing' operator and a 'host' operator and makes reference to the obligations of each party. We consider that additional detail would be overly complex.
Openreach	The CoP should include examples of what is meant by "minimal adverse impact on the land" and what type of activities could potentially be carried out as part of upgrading electronic communications apparatus.	We consider that the parties themselves are best placed to determine what is meant by "adverse impact". We do not consider the CoP needs to include this level of detail.
Openreach	'Site Provider' is the right term, but it should be acknowledged that other terms are used in the Code.	We explain our decision on this at 3.11 – 3.19 above.
Openreach	The CoP should include more details/ specifics on the communication and interaction between Operators and Site Providers based on whether there is a CP involved, the complexity of the site etc.	We do not consider it necessary for the CoP to include this level of detail.

Respondent	Issue/ Relevant text ³²	Response
Openreach	Amend 1.19 for clarity.	We explain our decision on this at 3.20 – 3.23 above.
Openreach	With regards to 1.25, Openreach said that legislation should have been brought in previously to allow Operators more flexibility to install apparatus if a Site Provider does not engage with them in a reasonable manner or within a reasonable time.	This is outside the scope of this review.
Openreach	There should be 2 schedules (replacing Schedule A), one for fixed operators and one for mobile operators detailing the different requirements both parties require for access.	We do not consider the level of detail proposed is necessary as consider the Code can be interpreted as necessary depending on whether fixed or mobile operators.
Openreach	1.24 should be amended to ‘An Operator will notify the Site Provider with details of the proposed access request for the purposes of deploying electronic communications apparatus, and this may include some of the information detailed in Schedule A. Relevant Operator contact information will be determined by the task and complexity of the services being requested of the Site Provider.’	We agree with this suggestion and have amended the CoP to include this at 1.23.

Respondent	Issue/ Relevant text ³²	Response
Openreach	There should be a new 1.26 – ‘It is important for the Site Provider to pass on relevant Code agreements when they exchange Land title to new occupiers / landowners. To ensure the new landowner is aware of the Operators rights to access their equipment. If a copy of the existing code agreement is required, the Site Provider can make a request under Para 39(1) to the Operator who will provide the necessary details.’	We agree with this suggestion and have amended the CoP to include this at 1.25.
Openreach	1.67 should be removed as it should be the sharing operator, not BT who should be required to meet Para 74 conditions (a) and (b).	We agree and have removed this paragraph from the CoP.
Openreach	The CoP is too geared towards mobile operators and therefore might be too complex for Site Providers dealing with fixed operators.	We have taken every step to ensure that the CoP is as simple and accessible as possible but note that this is a complex area. Following the Consultation, we have made a number of further amendments to the CoP aimed at improving its clarity.
Openreach	The CoP should include more environmental considerations.	There are many environmental considerations that would widely vary dependent on location. We consider this suggestion is out of scope of this review.
A Confidential Respondent	‘Site Provider’ should mean both potential and actual providers.	We explain our decision on this at 3.11 – 3.19 above.

Respondent	Issue/ Relevant text ³²	Response
Three	The CoP needs to be clearer on its role.	We have made a number of amendments to the CoP which we consider improve the clarity of both the document itself and the purpose of the document.
Three	Remove/ replace the word 'regulate' in 1.5 (a) as it is inaccurate.	We agree with this suggestion and have amended.
Three	The CoP needs to be clearer on the role of the parties involved.	We have made a number of amendments to the CoP which we consider make the roles of each party clearer.
Three	The words 'in any event' should be removed from 1.14 as, if read literally, would require an Operator to inform a Site Provider of any plans at any time that are relevant to the site, many of which will be of no interest to the Site Provider and achieve little more than creating resourcing and financial burden for the Operator.	We agree with the suggestion made by Three and have redrafted 1.14 to reflect this.
Three	The CoP should include reference to bodies such as MBNL who act on behalf of some operators in negotiations. MBNL handle queries for these operators so requiring the operator's contact details add an extra step (as the query will just be passed to MBNL anyway).	We have amended the contact details section at 1.17 to refer to an organisation working on behalf of the operator.

Respondent	Issue/ Relevant text ³²	Response
Three	The CoP should not include the requirement for an Operator to set out their policy on fees at the outset.	We explain our decision on this at 3.20 – 3.23 above.
Three	Three raised concerns around the inclusion of ‘the general principle is that a Site Provider should not be left out of pocket for it’s reasonably and properly incurred costs’ as the term ‘not be left out of pocket’ is misleading and the focus should be on reimbursement for their reasonably and properly incurred professional costs within pre-agreed parameters.	We explain our decision on this at 3.20 – 3.23 above.
Three	The CoP should include reference to basic visual surveys not requiring formal contracts.	We consider that it is up to the parties involved to determine instances whereby a contract may or may not be needed for a survey, based on the input of their legal advisors. We have therefore not included text relating to this in the CoP.
Three	1.25 should be removed as it adds confusion in relation to ADR and ADR is already considered in it’s own section later in the document.	We consider it important to keep the text in place, but have amended to reflect that there is no legal requirement to consider ADR in the instance of non-responsive Site Providers.
Three	The EMF section is too complex and ambiguous.	We explain our decision on this at 3.28 – 3.31 above and have redrafted parts for clarity.

Respondent	Issue/ Relevant text ³²	Response
Three	1.58 – 1.60 should be removed as they paraphrase wider guidance provided by the Upper Tribunal and the Court of Appeal and do not give the whole picture.	The wording included in this section reflects what is included in the Code itself. Further, we outline in this section that the rights set out in the Code ‘represent the minimum rights that an Operator is to have and it is open to the parties negotiating a Code agreement to agree more extensive rights if necessary.’
Three	The CoP goes too far in requiring ADR and the language is too imperative.	We explain our decision on this at 3.42 – 3.44 above and have redrafted parts for clarity.
Three	The CoP puts too much emphasis on the responsibility of Operators and not Site Providers and is unclear on who should bear the costs.	We explain our decision on this at 3.42 – 3.44 above and have redrafted parts for clarity.
UKCTA	The input into the draft CoP is too heavily skewed towards landowners with limited input from Operators.	Initial input into the draft CoP was through the National Connectivity Alliance (NCA), a cross-industry group made up of landowners, fixed and mobile operators as well as interest groups. However, our Consultation on the CoP was also an opportunity for anyone, including those outside of the NCA, to feed into the CoP.
UKCTA	The CoP does not reflect that the PSTIA aimed to remove the need for negotiations where fixed fibre networks were using the PIA remedy.	We explain our decision on this at 3.45 – 3.46 above.

Respondent	Issue/ Relevant text ³²	Response
UKCTA	The CoP should not include ‘there may be occasions, though where either party may need to serve legal notices, while still continuing to pursue an informal resolution’ as this seems to undermine the intentions of the PSTIA to avoid litigation.	We explain our decision on this at 3.42 – 3.44 above.
UKCTA	The CoP should not include the requirement for an Operator to set out their policy on fees at the outset.	We explain our decision on this at 3.20 – 3.23 above.
UKCTA	The revision to the definition of ‘landowner’ and ‘Site Provider’ should be removed as it could cause confusion.	We explain our decision on this at 3.11 – 3.19 above.
UKCTA	The CoP should acknowledge the varied nature and requirements of site surveys and that further surveys on top of those featured as part of PIA might not be required.	We agree with this suggestion have added wording to this effect at 1.66.
UKCTA	The EMF section should be clear that this is only relevant to mobile services.	We explain our decision on this at 3.28 – 3.31 above.
VMO2	The revision to the definition of ‘landowner’ and ‘Site Provider’ should be removed as it could cause confusion.	We explain our decision on this at 3.11 – 3.19 above.

Respondent	Issue/ Relevant text ³²	Response
VMO2	The words ‘in any event’ should be removed from 1.14 as, if read literally, would require an Operator to inform a Site Provider of any plans at any time that are relevant to the site, many of which will be of no interest to the Site Provider and achieve little more than creating resourcing and financial burden for the Operator.	We agree with the suggestion made by VMO2 and have redrafted 1.14 to reflect this.
VMO2	The CoP should not include the requirement for an Operator to set out their policy on fees at the outset.	We explain our decision on this at 3.20 – 3.23 above.
VMO2	The CoP should include timeframes for responding to access requests.	The Code itself does not include any timeframes for responding to access requests. We therefore do not consider it appropriate to go beyond what is included in the Code as part of the CoP.
VMO2	The EMF section has the risk of confusing Site Providers and the responsibility for EMF compliance sits with the Operator and the wording of the Draft CoP suggests Site Providers have a role to play in compliance.	We explain our decision on this at 3.28 – 3.31 above.
VMO2	The CoP should not comment on sharing and upgrading of apparatus given that this is a complex and developing area of law.	The sharing and upgrading of apparatus is set out within the Code and the purpose of the CoP is to provide best practice surrounding the Code and support effective relationships. We therefore consider it appropriate to include text on the sharing and upgrading of apparatus in the CoP.

Respondent	Issue/ Relevant text ³²	Response
VMO2	Including the lines 'ADR may not always be appropriate' and 'there may be occasions, though, where either party may need to serve legal notices, while still continuing to pursue an informal resolution' has the potential to undermine the aims of the PSTIA in promoting the use of ADR.	We explain our decision on this at 3.42 – 3.44 above.
Vodafone	In 1.8 'Code rights' should be replaced with 'the rights granted by the Site Provider to the Operator in the agreement'	We agree with this suggestion and have added wording to this effect at 1.8.
Vodafone	In 1.7 there should be an example of what an 'occupier' is.	We do not consider it necessary to expand on the definition of 'Occupier' by providing an example, we consider the definition of an 'Occupier' to be clear.
Vodafone	In 1.11 it should be made clear why a survey may be needed and that decommissioning and vacating sites are separate activities.	We agree with this suggestion and have added wording to this effect at 1.11.
Vodafone	1.12 should outline that Clarity that the Code of Practice should be read in conjunction with (and not instead of) any specific guidance relating to transport land/public maintainable land etc.	We agree with this suggestion and have added wording to this effect at 1.12.

Respondent	Issue/ Relevant text ³²	Response
Vodafone	1.13 should be made less mobile-centric by including clearer fixed examples.	We have amended 1.13 slightly to highlight that there are many more examples that have not been listed.
Vodafone	1.14 should clarify why good communication is vital.	We do not consider it necessary to expand on why these behaviours are important.
Vodafone	1.17 should be amended to reflect that contact details should be kept up to date and communicated as quickly as possible and why this is necessary.	We agree with this suggestion and have added wording to this effect at 1.17.
Vodafone	The CoP should remove reference to a 'fees policy' and outline that Potential Site Providers should be advised that they are responsible, in the first instance, for meeting their professional representatives' reasonable costs. Where relevant and appropriate depending upon the nature of application, Operators will reimburse a site provider for their reasonably and properly incurred professional costs within pre-agreed parameters.	We explain our decision on this at 3.20 – 3.23 above.
Vodafone	1.20 should explain why acting in a timely, respectful and open manner is important.	We do not consider it necessary to expand on why these behaviours are important.

Respondent	Issue/ Relevant text ³²	Response
Vodafone	1.21 – 1.24 should be amended to be less mobile-centric.	We agree with this suggestion and have made multiple edits to address this at 1.21 – 1.24.
Vodafone	1.25 should include a reference to proposed timescales by including ‘without delay’	We agree with this suggestion and have added wording to this effect at 1.24.
Vodafone	1.30 should be amended to reflect that the Site Provider should be the first port of call and the Operator should only make further enquiries if the Site Provider does not have all the information required.	We do not consider it necessary to include this level of detail.
Vodafone	1.31 should include a further example so as not to be seen as an exhaustive example.	We have made a small change to the wording of 1.31 to improve clarity.
Vodafone	1.34 should include reference to any access requirement as these are an important factor.	We agree with this suggestion and have added wording to 1.34 to this effect.
Vodafone	1.35 should include reference to the required characteristics of access routes.	We agree with this suggestion and have added wording to 1.35 to this effect.

Respondent	Issue/ Relevant text ³²	Response
Vodafone	1.37 should include 'professional advisors' as well as Operators and Site Providers.	We agree with this suggestion and have added wording to 1.37 to this effect.
Vodafone	The wording 'some simple cases might potentially be signed on site during the survey stage in 1.38 is misleading and should be removed. As the person being met on site is rarely an authorized signatory for the site provider, this is a very rare occurrence.	We agree with the suggestion made by Vodafone and have removed this wording.
Vodafone	1.39 should make clear that Code rights can bind a Site Provider even when the Site Provider objects to apparatus on its land.	We agree with this suggestion and have added wording to 1.39 to this effect.
Vodafone	1.40 should be clear that it relates to installing apparatus.	We consider this to be an unnecessary level of detail.
Vodafone	<p>The CoP should make it clear that the onus is not on Site Providers to police EMF compliance. 1.44 should be amended to include examples of managing EMF risks.</p> <p>The current text mischaracterises the situation. EMF Ofcom licence conditions apply to those Operators that hold an Ofcom Spectrum licence and as such, there should not be a situation where the Operator needs to supply the Site Provider with compliance information</p>	We explain our decision on this at 3.28 – 3.31 above.

Respondent	Issue/ Relevant text ³²	Response
Vodafone	1.46 should clarify that an Operator may seek to exercise its code rights ‘against that adjoining landowner’.	We agree with this suggestion and have added wording to 1.45 to this effect.
Vodafone	1.49 should include reference to ‘balancing the needs of both the Site Provider and the Operator’	We agree with this suggestion and have added wording to 1.48 to this effect.
Vodafone	1.50 should include reference to ‘including clear provision for when emergency or out of hours access is required so there is no ambiguity or delay’	We agree with this suggestion and have added wording to 1.49 to this effect.
Vodafone	1.51 should also include reference to agreeing emergency access arrangements.	We consider this to be addressed by the changes made to 1.49.
Vodafone	1.53 should clarify that access to other parts of the land is ‘for the period of any works’.	We consider this to be an unnecessary level of detail.
Vodafone	1.58 – 1.68 should be revisited by the NCA as the current text strays into acting as a guide to the ECC.	We do not agree with Vodafone that this texts simply acts as a guide to the Code and therefore consider that it should be kept in the CoP.

Respondent	Issue/ Relevant text ³²	Response
Vodafone	At present, 1.71 could be read as to assume that removing redundant ducting is the normal approach and encourages such an approach, when in reality ducting is usually left in place.	We have amended the wording of 1.68 to remove reference to both ducts and cables.
Vodafone	1.73 should state that it is preferable for the Site Provider to deal with the utility provider in disconnecting the site.	We do not consider it appropriate to add this to the CoP, this is something that should be agreed upon between the relevant parties depending on the circumstance.
Vodafone	1.79 should include reference to reaching an agreement 'without undue delay', not just progressing discussions 'in a timely manner'.	We consider this to be an unnecessary level of detail.
Vodafone	1.80 should include text to cover the scenario where space needs to be made available for a temporary mast.	We agree with this suggestion and have added wording to 1.75 to this effect.
Vodafone	1.81 should be clear that the notice period must expire after the end of the term in the Code Agreement.	We do not consider it appropriate to include this in the CoP and note that this is set out in the Code itself.
Vodafone	1.82 should clarify that the 18-month termination period still applies.	We do not consider it appropriate to include this in the CoP and note that this is set out in the Code itself.

Respondent	Issue/ Relevant text³²	Response
Vodafone	1.83 should highlight the benefits of early disclosure of evidence.	We consider this to be an unnecessary level of detail.
Vodafone	1.84 should refer to local plans (such as the London Plan).	We agree with this suggestion and have included wording at 1.12 to this effect.
Vodafone	1.88 should include the caveat that Operators are required to consider ADR if it is reasonably practicable to do so 'and likely to be constructive'.	We do not agree with Vodafone's suggestion to add 'and likely to be constructive' as this would require an Operator to make a decision on the likely outcome of ADR in advance.
West Sussex County Council	The CoP lacks any acknowledgement for existing trees (or any environmental considerations).	The Code covers the need to lop or remove trees but does not extend to environmental considerations. We do not consider, therefore, that this is within the scope of the CoP.
A Confidential Respondent	The CoP should refer to a Court or Tribunal (not just Court).	We agree and have amended 1.81.
A Confidential Respondent	1.50 (d) should clarify that the damage being referred to is to the Site Provider's site.	We agree and have amended 1.49 (d).

Respondent	Issue/ Relevant text ³²	Response
A Confidential Respondent	The CoP should include text on the handling of complaints.	We explain the absence of complaints from the CoP at 1.7 above.
A Confidential Respondent	The CoP should remove reference to a 'fees policy' and outline that Potential Site Providers should be advised that they are responsible, in the first instance, for meeting their professional representatives' reasonable costs. Where relevant and appropriate depending upon the nature of application, Operators will reimburse a site provider for their reasonably and properly incurred professional costs within pre-agreed parameters.	We explain our decision on this above.
A Confidential Respondent	1.25 should include 'In awarding costs in any application to the court, the behaviours of both parties will be taken into consideration by the relevant court or tribunal and a repeated failure of Site Providers to respond to a request for access in a timely manner may lead to an award of costs against the Site Provider.'	We consider that including this text would be going beyond what is included in the Code, as the Code does not state that behaviours will be taken into consideration when awarding costs. We have therefore decided not to include this proposed text.
A Confidential Respondent	The CoP should make it clear that EMF compliance is not for Site Providers to police.	We explain our decision on this above.
A Confidential Respondent	The CoP should clarify that Paragraph 17 rights are a floor, not a ceiling.	We consider that this has already been outlined in 1.57 of the Code of Practice.

A3. Final Code of Practice

About

- A3.1 This document contains the Code of Practice. The Code of Practice deals with
- a) the provision of information for the purposes of the Electronic Communications Code set out in Schedule 3A of the Communications Act 2003 ('the Code') by operators to persons who occupy or have an interest in land;
 - b) the conduct of negotiations for the purposes of the Code between operators and such persons;
 - c) the conduct of operators in relation to persons who occupy or have an interest in land adjoining land on, under or over which electronic communications apparatus is installed; and
 - d) such other matters relating to the operation of the Code as Ofcom think appropriate.
- A3.2 The Code of Practice does not represent a guide to the new Electronic Communications Code, nor does it replace or supplement its provisions by imposing any new rights or obligations on the respective parties. Instead, it is designed to complement the Code by suggesting best practice to facilitate positive and productive engagement between all parties across a range of issues, roles and responsibilities. Whilst the Code of Practice provides some examples of best practice these are not intended to be exhaustive.
- A3.3 Electronic communications services (such as landlines, mobile phones and internet services) are now regarded as essential services. In order that these services can be provided where they are needed, The Code provides a statutory basis whereby communications providers (known in this context as 'Operators'³³) can place their apparatus³⁴ on land or buildings.
- A3.4 The Code was subject to changes in 2017 by the Digital Economy Act 2017 ("the DEA"), to speed up the roll out of communications apparatus which is ultimately for the benefit of the public interest in ensuring a choice of high quality electronic communications services . Amongst other things, the DEA included provisions to remove the previous Code set out in Schedule 2 of the Telecommunications Act 1984 ("the Old Code") and replace it with a new Code set out in Schedule 3A to the Communications Act 2003. The new Code introduced a range of measures to make it easier for Code Operators to roll out electronic communications apparatus. For example, significant changes were made to the way land is valued and an automatic right for Code Operators to upgrade and share their telecommunications apparatus was introduced.
- A3.5 As a result of the changes made in 2017, the Code now includes obligations on Ofcom to publish:

³³ An Operator is an organisation which has been granted Code Powers by Ofcom, for example, a communications provider that is providing a landline, broadband, cable or mobile network, or a person who provides infrastructure which supports such a network. A list of those with Code Powers is maintained by Ofcom.

³⁴ 'Apparatus' is a broad term and refers to what is defined in the Code as electronic communications apparatus; it includes such items as antennae for mobile signals, masts, cabinets, cables, ducts and telegraph poles.

- a) a Code of Practice to accompany the Code which was intended, among other things, to guide the process for negotiations between Code Operators, Site Providers, and persons who occupy or have an interest in land;
- b) a number of template notices which may, or must (depending on the circumstances) be used by Code Operators and Site Providers; and
- c) standard terms which may (but need not) be used by Code Operators and Site Providers when negotiating agreements to confer Code rights .

A3.6 The Code was then further amended by the Telecommunications Infrastructure (Leasehold Property) Act 2021 (TILPA 2021) and Product Security and Telecommunications Infrastructure Act 2022 (PSTIA 2022)) to make it more straightforward for Operators to gain access to the locations they need, to improve coverage, capability and capacity and to facilitate more collaborative negotiations between Operators and Site Providers.

Purpose of the Code of Practice

- A3.7 The purpose of this Code of Practice is to set out expectations for the conduct of the parties to any agreement made or activities performed under the Code. The Code of Practice is not a legally binding document, but a common reference point for both parties in a negotiation.
- A3.8 This Code of Practice is also intended to assist parties in the various negotiations and stages leading up to any formal agreement, in the stages required to enter into a formal agreement and in the exercise of Code rights granted by the Site Provider to the Operator in the agreement. It is not a guide to the Code powers or legislation, but it is intended to complement them and to make it simple for Operators, Landowners and Occupiers³⁵ to come to agreement over a range of issues relating to the occupation of a site. For the purposes of this Code of Practice, we use the term “Site Provider” (as defined in paragraph 30(1) of the Code) wherever a reference is applicable to a Landowner and an Occupier, or both. Where a reference applies only to a Landowner, or only to an Occupier, we use whichever of these is appropriate in the context of the relevant provision. It should also be noted that “Site Provider” may also refer more broadly to other persons who can be bound by Code rights (see paragraph 10 of the Code). Agreements under the Code are legally binding on the parties and so Site Providers may wish to consider seeking independent professional advice before entering into such an agreement (see below).
- A3.9 ‘Site’ in this Code of Practice is used in a broad sense³⁶ as any relevant place to install Apparatus, such as on, under or over the land, the rooftop of a building, a tunnel or a lamp-post.
- A3.10 All parties to whom this Code of Practice applies should treat each other professionally and with respect, remembering always that the goal is to improve and maintain essential communications services for all. Operators should take adequate steps to satisfy themselves that they are negotiating with a party who has a lawful right to grant the necessary agreement if not negotiating with the Landowner. Site Providers and Operators must respect the needs and legitimate concerns of Occupiers of land when rights under the Code

³⁵ The meaning of ‘Landowner’, ‘Operator’, and ‘Occupier’ is as defined in the Code.

³⁶ ‘Site’ is equivalent to the term ‘Land’ in the Code, as set out in paragraph 108.

are exercised. Operators ought to be responsible for the behaviour and conduct of any contractors that they instruct to carry out work on their behalf.

Scope

A3.11 This Code of Practice:

- a) Provides a reference framework to support Site Providers and Operators to establish, develop and maintain effective working relationships, to the benefit of users of all communications services;
- b) Sets out what Site Providers and Operators should expect from each other, for example, in the context of:
 - i) Arranging site surveys for prospective installation of apparatus so that Operators can determine if a site is suitable for such installation;
 - ii) Establishing new agreements for the installation of apparatus;
 - iii) Renewing existing agreements as and when required;
 - iv) The ongoing access to and operation, maintenance and upgrading and sharing of existing sites and apparatus;
 - v) The decommissioning of and removal of equipment from sites that are no longer required;
 - vi) Site Providers wishing to redevelop sites that accommodate electronic communications equipment;
 - vii) The requirement on both parties to consider the use of alternative dispute resolution (ADR);
- c) Provides a framework for the process of coming to an agreement, and of maintaining an agreement, taking account of practical requirements of both parties;
- d) Sets out clear lines of communication through which disputed matters can be escalated;
- e) Does **not** address the financial aspects of the relationship between the Site Provider and the Operator

A3.12 While this Code of Practice sets out some clear principles and expectations about how Site Providers and Operators should behave towards each other, it should be noted that there are some special regimes in place (e.g. transport land, public maintainable highway and tidal waters), where different specific considerations may apply; this Code of Practice should be read in conjunction with any other guidance that is issued in relation to special regimes. It should also be noted that specific local plans exist (e.g. the London Plan) which parties should also take into consideration.

A3.13 This Code of Practice covers a wide range of scenarios, from the initial survey through to the construction of an electronic communications structure or the installation of just one piece of electronic communications apparatus or a line and more scenarios that are not listed here. It should be noted that not all the procedural elements will be required in each and every case.

A3.14 It should also be noted that many aspects of the relationship between Operators and Site Providers will fall under contractual agreements between the parties and this Code of

Practice does not replace those agreements. Instead, this Code of Practice should be read in conjunction with those agreements.

Communication

A3.15 Communication between parties is vital to facilitate effective working relationships. All communications should be kept clear, concise and carried out in a timely manner to ensure active, engaged dialogue. The Operator should also ensure it communicates and keeps the Site Provider informed of its plans, and should do so in a timely manner.

Contact information

A3.16 The Operator should ensure that the Site Provider of the site or of access routes to the site are provided with up-to-date site and contact information which may include details of the Operator but also those acting on their behalf. This ensures that the Site Provider is aware of who to contact in all the circumstances that may arise, such as:

- a) In the event of an emergency
- b) For routine estate or management issues
- c) To change or confirm access arrangements
- d) For escalation of redevelopment/decommissioning issues
- e) For raising a complaint

A3.17 In turn, the Site Provider should ensure that the Operator, or an organisation working on their behalf, is provided with their up to date contact details as well as those of third parties acting on behalf of the Site Provider where relevant. It is the responsibility of the Site Provider to notify the Operator of any changes to its contact details as soon as possible after any such change so they can be contacted without delay in case of an emergency.

Professional advice

A3.18 Site Providers and Operators may choose to negotiate directly with each other. Alternatively, the parties may wish to seek professional advice from a suitably qualified and experienced person, such as a surveyor or valuer. This could also include taking legal advice before concluding an agreement.³⁷

A3.19 Where relevant, the Operator should provide information to the Site Provider on its approach to fees to include the detail of when and under what circumstances Site Providers reasonably and properly incurred professional fees would be compensated. Potential Site Providers should be advised that they are responsible, in the first instance, for meeting their professional representatives' reasonable costs and that where relevant and appropriate to the nature of the application, Operators will reimburse a site provider for their reasonably and properly incurred professional costs within pre-agreed parameters.

³⁷ A list of such advisers can be provided by professional bodies such as Central Association of Agricultural Valuers, Law Society, Law Society for Scotland, Royal Institution of Chartered Surveyors and Scottish Agricultural Arbiters and Valuers Association.

Behaviours

A3.20 Operators, Site Providers and professional advisors should act in a timely, respectful, fair and open manner when engaging with each other.

New agreements for the installation of Apparatus

A3.21 An Operator may require new sites or to install additional apparatus on existing sites for a number of reasons, such as:

- a) New customer requirements
- b) To provide coverage and fibre connections to new areas
- c) To provide additional network capacity
- d) To provide new services
- e) To replace obsolete sites or sites that are being redeveloped which may require fibre connections to be diverted.

A3.22 Where an Operator needs to deploy apparatus on a new site (greenfield, rooftop, and/or street asset), the Operator will follow a sequence of steps, depending on the nature of the apparatus to be installed. For minor installations of apparatus (for example, the placement of a telegraph pole), it may be possible to reach an agreement on standard terms and conditions and without the need for a site visit. For more complex situations (such as a new mobile mast or fibre connection), a site visit may be required to assess the suitability of the location and to find out other background information.

Responding to a Request for Access by the Operator

A3.23 An Operator will notify the Site Provider with details of the proposed access request for the purposes of deploying electronic communications apparatus or the proposed route of a new fibre connection across the land, and this may include some of the information detailed in Schedule A. Relevant Operator contact information will be determined by the task and complexity of the services being requested of the Site Provider.

A3.24 It is important for the Site Provider to respond to this request for access without undue delay. Where the Operator requests access to land and the Site Provider fails to respond to repeated requests for access, the Operator should, if it is reasonably practicable to do so, consider the use of one or more alternative dispute resolution procedures to reach agreement with the Site Provider. After which, the Operator may apply, following the service of relevant notices to the Site Provider, to a court for an order which can impose an agreement between the parties which confers the relevant Code rights being sought or provides for the Code right to bind the Site Provider.³⁸ Such an application to the court may have cost consequences for the Site Provider, which is why it is important for a Site Provider to respond to the request for access without delay.

A3.25 It is important for the Site Provider to pass on relevant Code agreements when they exchange Land title to new occupiers / landowners to ensure the new Site Provider is aware of the Operators' rights to access their equipment. If a copy of the existing code agreement

³⁸ Whilst we refer to 'Court' throughout this Code of Practice, we note that on occasion the correct forum may well be a 'tribunal'.

is required, the Site Provider can make a request under Para 39(1) to the Operator who will provide the necessary details.

Stage 1: Site Survey

- A3.26 Once it has been determined that new Apparatus is required in a given area, the Operator should identify such options as are practicable for new sites and, where necessary, survey possible solutions based on technical and planning considerations.
- A3.27 Although access to maps, satellite imagery, building plans etc. can enable much of the site feasibility to be conducted remotely, direct access to a potential site and the ability to discuss practical matters with Site Providers is likely to be required.
- A3.28 Where access is necessary, the Operator should request such access in writing, covering the matters set out in Schedule A, where relevant. The Operator should generally request that access is given within a reasonable period dependent of the use or type of building/ land or asset. The access request should set out the nature of the visit and a basic outline of the proposed installation/s.
- A3.29 To ensure the site survey is productive, the parties may meet on site. At the appropriate moment in the assessment process, the Site Provider, on the Operator's request, should assist where possible to provide relevant information such as:
- a) Who owns/occupies the site and details of any other parties with a known interest in land or access to it;
 - b) The current use of the site;
 - c) Whether there are any multiple occupancy management arrangements in place;
 - d) Land management agreements, such as environmental or natural capital related schemes;
 - e) Any planned change or intended change in ownership, occupation or use;
 - f) Any proposals there may be to change the use of or develop the land, including whether there are any existing planning permissions in place;
 - g) Details of known pipes, drains, cables or structures...etc;
 - h) Whether there is/are any harmful materials, liquids, vegetation, sites of special scientific interest, protected flora, fauna, listed buildings, archaeological considerations or public rights of way on or adjacent to the site;
 - i) Any other rights of public access on the site or adjacent to the site;
 - j) Details of any professional advisor or managing agent who will act on their behalf;
 - k) Risk assessments, asbestos report surveys or any similar documents.
- A3.30 It is appreciated that not all Site Providers will have all of the information stated above and the Operator should also make its own enquiries and investigations and not rely solely on the information provided by the Site Provider.

Stage 2: Consultation and agreement

- A3.31 The type of apparatus that can be deployed on, over or under a site can vary enormously. It could include, for example:
- a) A telegraph pole being placed in a field;
 - b) A cable being laid in an existing duct in a shopping centre or a new duct and cable being laid under land;
 - c) An antenna system for mobile coverage being installed on the roof of a building, such as an office block;
 - d) A lattice tower being erected in a wood

- A3.32 Each of these examples could require a different consultation process due to the variety of impacts to land, different levels of agreement with the Site Providers.
- A3.33 When a suitable location has been identified for the installation of apparatus, the Operator should proceed to secure any necessary consents for the site, in accordance with relevant regulations, consulting with the Local Planning Authority, and other parties, where required, and any applicable guidelines or codes of practice³⁹.
- A3.34 Where a proposal is straightforward, it may be appropriate for the Operator to send the Site Provider a simple written agreement along with an explanation of the requirement and a site diagram to demonstrate the location of the apparatus and any access requirements for their consideration.
- A3.35 In cases of complex or impactful proposals, a phone call or meeting could be offered where practicable. It may be appropriate for the Operator to send a summary of the proposed terms of an agreement for the Site Provider to consider and review. In such cases the documentation might include, for example, a plan showing the proposed design, access routes and requirements, and cable routes; loading calculations for rooftop sites; and proposals for electricity provision.
- A3.36 Before concluding an agreement, the Site Provider and Operator should consider access arrangements for construction, installation, security, subsequent planned maintenance, upgrades, provision for emergency generators where appropriate and emergency maintenance to repair service affecting faults. The key points for access arrangements are covered in Schedule B.
- A3.37 Although the Code provides a mechanism for the court to impose terms of occupation on the Site Provider and the Operator, the parties and their respective professional advisors should make every effort to reach agreement first, including potentially through the use of ADR where appropriate.
- A3.38 Whilst some agreements should be expected to be completed within a matter of weeks, agreements for larger or more complex arrangements may generally take longer, but in all cases the parties must endeavour to respond without undue delay to correspondence from the other side and aim to complete the process as soon as practicably possible.
- A3.39 In the absence of terms being agreed between the parties, Parts 4, 4A and 4ZA of the Code⁴⁰ each provide for a process whereby the Operator can apply to the court for an order which imposes an agreement between the parties which confers the relevant code rights being sought or provides for the Code right to bind the Site Provider even where the Site Provider does not want such apparatus on its land. However, prior to this, the Operator must, if it is reasonably practicable to do so, consider the use of one or more alternative dispute resolution procedures to reach agreement with the Site Provider. It must be emphasised, though, that one of the principal purposes of this Code of Practice is to establish a consensual process, which avoids recourse to the courts.

³⁹ For example: Code of Best Practice on Mobile Network Development in England, <http://www.mobileuk.org/codes-of-practice.html>

⁴⁰ See Paragraph 20(3) for Part 4, Paragraph 27D(1) for Part 4A, and Paragraph 27ZE(1) for Part 4ZA.

Stage 3: Deployment stage

- A3.40 When the Operator is carrying out works on a Site Provider's property it should endeavour to cause minimal disruption and inconvenience. The Operator should notify the Landowner of the following:
- a) Contact details for the Operator, the name and contact details of the contractor managing the scheme and managing works on site and also the person to whom the Site Provider can escalate any matters of concern;
 - b) Drawings detailing the apparatus to be deployed with an accompanying written description of the works;
 - c) Any requirement to be able to have access across other land (whether belonging to the Site Provider or a third party);
 - d) Timing/ phasing of the works, including the estimated start date and duration of the works and the working hours;
 - e) Procedures for safeguarding the Site Provider's property (e.g. livestock); and
 - f) Where regulations require or when requested, a copy of the Risk Assessment and Method Statement.
- A3.41 Where applicable, the Operator should retain a dated photographic record of the condition of the site prior to the commencement of works and on completion of the works, which should be made available to the Site Provider, where requested.

Electromagnetic fields (EMF) exposure Compliance

- A3.42 Most wireless telegraphy licences issued by Ofcom include a condition⁴¹ requiring licensees to ensure compliance with the limits in Guidelines issued by ICNIRP (the International Commission on Non-Ionizing Radiation Protection) on exposure to electromagnetic fields (EMF) for the protection of the general public (the "EMF licence condition"). Ofcom refers to these limits as the "general public EMF limits". The EMF licence condition applies to licensees whose radio equipment is currently authorised to transmit at powers higher than 10 Watts EIRP or 6.1 Watts ERP. Operators who are subject to the EMF licence condition will generally be required to comply with the general public EMF limits and hold appropriate EMF records demonstrating their compliance taking into account Ofcom's Guidance on EMF Compliance and Enforcement.⁴²
- A3.43 Health and safety law in the UK places separate duties on persons (including Operators and Site Providers) relating to work and the workplace including any risks related to EMF exposure. The Health and Safety Executive (HSE) has published guidance⁴³ on the requirements on employers to protect workers from EMF. Ofcom's EMF Update includes examples of the types of workers that may be exposed to EMF (see paragraphs 4.41 – 4.54)⁴⁴.
- A3.44 Responsibility for the management of EMF exposure compliance sits with the Operator. However, when negotiating access to a site, Operators and Site Providers should consider how they will cooperate with each other in order to manage any EMF risks and ensure (i) the

⁴¹ <https://www.ofcom.org.uk/spectrum/emf/policy>

⁴² <https://www.ofcom.org.uk/spectrum/emf/compliance-and-enforcement-guidance>

⁴³ <https://www.hse.gov.uk/radiation/nonionising/emf.htm>

⁴⁴ https://www.ofcom.org.uk/_data/assets/pdf_file/0022/214663/emf-implementation-update.pdf

Operator complies with any EMF licence condition that may apply to it; and (ii) the Operator and Site Provider comply with relevant health and safety legislation.

Neighbours and other occupiers

- A3.45 Persons with an interest in land adjoining a proposed site may need to be consulted under national regulations, guidelines and any applicable Codes of Practice⁴⁵.
- A3.46 Operators should negotiate access arrangements with the owner and/or occupier of land adjoining a site, where use of that land is required for either constructing on, accessing, or maintaining the site or any equipment or apparatus on the site. If an agreement cannot be reached, the Operator may seek to exercise its Code rights against that adjoining land owner.
- A3.47 Any requirement for access by the Operator with respect to such adjoining land ought to cover the matters set out in Schedule B (i.e. the same considerations as for the Site Provider, where applicable).

The ongoing access to and operation, maintenance and upgrading of existing sites and apparatus

- A3.48 All electronic communications sites are an integral part of a wider network. Individual sites and infrastructure variously provide coverage, capacity and functionality to that wider network and Operators require access to their apparatus in order to be able to maintain a quality of service to their customers.
- A3.49 As set out in Stage 2 Consultation Phase, any agreements between the Operator and the Site Provider should set out how to access sites for operational needs. Schedule B sets out key points for access arrangements. Where necessary, Operators and Site Providers should meet, prior to entering into a contract, to discuss preferred access routes and processes and agree clear expectations as to what should happen when access is required, to balance the needs of both the Site Provider and the Operator.
- A3.50 In the case of emergencies, such as where there is a service-affecting fault or the Apparatus is malfunctioning, Operators need to access the Apparatus without delay, in order to resolve the issue and maintain service for customers, including the ability to make calls to the emergency services. However, this should not be utilised by Operators for routine access /maintenance and should not override other access protocols that have been agreed between the parties.
- a) When arriving at the appropriate access provisions the parties should seek to minimise their complexity, delay and burden whilst specifying what is reasonable and proper including clear provision for when emergency or out of hours access is required so there is no ambiguity or delay ;
 - b) The Operator should ensure that its Apparatus is maintained in a good state of repair;
 - c) If a Site Provider becomes aware of any damage to the Operator's Apparatus it should make the Operator aware as soon as possible; and

⁴⁵ For example: *Cabinet and pole siting Code of Practice, and The Code of Best Practice on Mobile Network Development in England*, <http://www.mobileuk.org/codes-of-practice.html>

- d) Any damage caused to the Site Provider's land or buildings by the Operator during routine access (maintenance) and minor upgrades should be repaired without delay by the Operator and at the Operator's cost.
- A3.51 Access for routine maintenance should be organised so that Operators can give sufficient notice where required in accordance with the access arrangements agreed with the Site Provider.
- A3.52 Where access may be required to other parts of the land owned or occupied by the Site Provider, such as where an area of land is required to use a crane or cherry picker, the access arrangements should cover such scenarios and provide that the Operator should return the land to the condition it was in prior to the land being used or accessed.
- A3.53 Operators should seek to ensure that anyone accessing a site on their behalf:
- a) Carries photographic identification;
 - b) Can explain why they are there and for whom they are working; and
 - c) Can advise Site Providers who to contact within the Operator for more information or to comment on any visit.
- A3.54 Operators should, upon reasonable request, provide verification of which contractor was on site at any given point in time and confirmation of why they were there – e.g. to inspect, maintain and effect an emergency repair or physical upgrade etc.
- A3.55 Operators must adhere to any legal or regulatory requirements for managing location specific risks. This might include notifiable diseases (such as Foot and Mouth, Avian Flu etc.). For sites at sensitive locations, it might include arranging accompanied access to secure areas. Operators should comply with any reasonable procedures implemented by Site Providers for these purposes. Site Providers should, so far as is possible, preserve the ability for Operators to access their apparatus, particularly in the case of operational emergency.

Sharing and Upgrading of Apparatus

- A3.56 Sharing and upgrading telecommunications apparatus is an important part of enabling investment in digital communications infrastructure and ensuring universal access to fast digital communication services.
- A3.57 The Code provides Operators with a right to upgrade and share their apparatus, so long as those changes have no adverse impact or no more than a minimal adverse impact on the appearance of the apparatus and imposes no additional burden on the Site Provider. Such a burden might be to the Site Provider's enjoyment of the land or constitute some other loss, damage or personal expense.
- A3.58 Whilst the Code provides Operators with the rights to upgrade and share their apparatus, they represent the minimum rights that an Operator is to have and it is open to the parties negotiating a Code agreement to agree more extensive rights if necessary.
- A3.59 If an Operator wishes to secure more extensive rights, it is for them to explain why. The Operator and the Site Provider are encouraged to negotiate these points where possible to avoid the cost and burden of litigation. If agreement between the Operator and Site Provider is not possible on that point, an Operator is entitled to apply to the Court and ask that those rights be imposed.

- A3.60 Operators should consider representations from Site Providers regarding any reasonable requests in respect of sharing or upgrading of the apparatus.
- A3.61 Site Providers should not seek to delay the sharing and/or upgrading of Electronic Communications Apparatus (ECA) where either an existing agreement includes terms for sharing or upgrade or where Operators are seeking rights under the Code.

Sharing and Upgrading of Underground Apparatus between Operators

- A3.62 The purpose of this section is to highlight the more specific rights which relate to the sharing and upgrading of underground apparatus by Operators and what Site Providers can expect from Operators in relation to apparatus installed underground.
- A3.63 The Code provides rights for Operators to upgrade and share apparatus under existing agreements entered into with Site Providers, however amendments introduced under the PSTI Act now include a right for an Operator to upgrade or share apparatus installed below ground where either the Operator:
- a) is a party to a 'subsisting agreement' made prior to the Digital Economy Act 2017 and 28th December 2017 and therefore made under the Old Code in Schedule 2 of the Communications Act;⁴⁶ or
 - b) has existing ECA that was installed before 29 December 2003 and is not party to any written Code agreement.

What can Site Providers expect in relation to apparatus installed underground?

- A3.64 When an Operator wishes to either upgrade existing electronic communications apparatus under the ground or where another Operator has requested (or is allowed using a regulatory remedy introduced by Ofcom) to share that ECA, they will ensure the upgrading and sharing of the ECA:
- a) has no adverse impact or no more than minimal impact on the land; and
 - b) does not impose any additional burden on any person with an interest in the land (which includes anything that has an adverse effect on the enjoyment of the land or causes loss, damage or expense to the person).
- A3.65 The sharing Operator will engage with the Site Provider within a reasonable time period prior to sharing the host Operator's ECA to:
- a) agree access rights to the land if access to the land is required; and
 - b) provide any relevant notice (where applicable).
- A3.66 Where Operators are physically sharing a site or using any apparatus on a site, and no additional consents are required under agreement, the Operators should nevertheless notify Site Providers, where appropriate, of the name and contact details of other sharers and

⁴⁶ For transitional purposes, the statutory framework treats subsisting agreements as if they were agreements that had been made under the current Code, but subject to certain modifications that apply.

users, so that the Site Provider, for security purposes, can know who is in lawful occupation of the site.

- A3.67 The above is only relevant where commercial negotiations are required between parties and it should be noted in relation to the sharing of apparatus that under the Physical Infrastructure Access (PIA) remedy imposed by Ofcom, Operators have the right to share Openreach's ducts and poles in order to facilitate the deployment of their own fixed networks. The PSTIA also removed the need for the sharing operator to apply for a separate wayleave when using Openreach ducts and poles located on private land. In instances whereby infrastructure is being shared under the PIA remedy, the above is therefore not relevant.

Decommissioning sites and removal of redundant apparatus

- A3.68 The Code makes provision for Site Providers to request the removal of apparatus, either where Code rights have come to an end, or if part or parts of the Code apparatus is no longer required for use on the site.
- A3.69 As a general principle, Operators should ensure that redundant sites and apparatus are decommissioned within a reasonable period after use ceases. However, in the case of apparatus below ground (such as ducts for cables), it may be preferable to the parties for the Apparatus to be made safe and left in place. Operators should discuss decommissioning proposals with Site Providers in order to agree the way to proceed. Where a Site Provider requests that Code apparatus are removed, the Operator should remove them and restore the land to its prior condition to the reasonable satisfaction of the Site Provider.
- A3.70 Where apparatus has been installed by a utility provider, by virtue of a separate wayleave or easement (such as a dedicated electricity supply installed by a recognised statutory electricity undertaker) the Site Provider will need to contact that service provider to discuss its removal. Operators should provide (without charge) reasonable assistance and co-operation to Site Provider for the removal of third-party infrastructure such as these.

Renewal of existing sites and the Code

- A3.71 The parties should seek to agree terms for the continued use of the site before the existing agreement comes to an end.
- A3.72 Parties should commence negotiations sufficiently far in advance of the term end date of an existing agreement to allow adequate time for terms to be agreed.
- A3.73 Following the contractual term end, the Operator's Code rights continue until a new agreement is entered into or Code rights are terminated (by either party) on grounds specified in the Code.
- A3.74 Either party may initiate discussions in advance of the expiry of the agreement and/or issue a statutory notice. Both parties should take reasonable steps to ensure any communication is issued properly in accordance with the contact details included in the existing agreement or as otherwise notified.

A3.75 The intention of both parties should be to reach a consensual agreement. To progress these discussions the parties should respond in a timely manner.

Repairs to a Site Provider's property

A3.76 From time to time, Site Providers will have to carry out essential repairs to their property and, where reasonable, it may be necessary for apparatus to be moved temporarily to effect such repairs. In such circumstances, the parties should negotiate in good faith to allow the works to be completed, and for the Site Provider to minimise, as far as reasonably possible, any resultant interruption to public communications services to allow continuity of services. In relation to repairs to the Site Provider's property, as part of the good faith negotiations, the parties should discuss the detail of the timings, duration and extent of the works, including whether a temporary location is available for the Operator during the Site Providers' works and if so, who bears the cost.

Redevelopment by the Site Provider

A3.77 The Code makes provision for Site Providers to redevelop their property (Paragraphs 30-31), requiring that the Site Provider should give a minimum of 18 months' notice of the intention to redevelop and amend or terminate Code rights.

A3.78 Paragraphs 30-31 of the Code are intended for use by Site Providers who genuinely intend to redevelop their property. Site Providers are encouraged to give Operators as much prior notice as possible, in order that adequate time can be afforded to allow the Operator to identify alternative suitable sites. Early engagement between Site Provider and Operator is likely to best serve the interests of both parties.

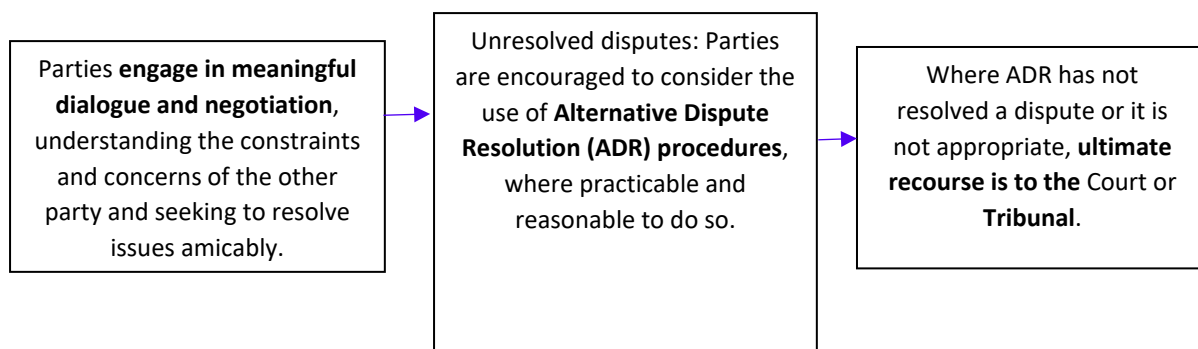
A3.79 Operators may request to see evidence of the Site Provider's intention to redevelop but they should act reasonably at all times, so as not to hinder the Site Provider's progress where there is a genuine intention to redevelop. For example, Operators should act in a timely manner to locate suitable new sites with the principal aim that communications services in a locality can be maintained, with the minimum of disruption to the users.

A3.80 Where a Site Provider is progressing a redevelopment opportunity, consideration should be given to the possibility of incorporating the communications apparatus within the Site Provider's property if this is a reasonable and practicable option.

Resolving Disputes

A3.81 The Code sets out formal dispute resolution procedures.

A3.82 Nevertheless, where disputes arise, the parties should seek to resolve them informally (i.e. without recourse to litigation). The Code encourages the parties to engage in early, meaningful, and collaborative dialogue, with a view to resolving issues and mitigating disputes wherever possible including the use of Alternative Dispute Resolution Schemes if required. The diagram below illustrates the escalation procedures.



A3.83 In certain cases, an Operator’s notice⁴⁷ must:

- a) contain information about the availability of ADR in the event that the Operator and the relevant person are unable to reach agreement, and
- b) explain the possible consequences of refusing to engage in alternative dispute resolution.

A3.84 Operators are required to consider ADR, if it is reasonably practicable to do so, before making an application to the courts and must make occupiers and Site Providers aware that ADR is available, if a consensual agreement cannot be reached. In turn, Site Providers should consider and respond to offers of ADR and can initiate ADR proceedings themselves.

A3.85 Importantly, the courts may take into account any unreasonable refusal to engage in ADR when awarding costs in any dispute referred to them, once the dispute has been determined.

A3.86 To facilitate ADR, Operators and Site Providers should share contact details with each other to whom matters of dispute can be raised. Those matters may include failure to abide by this Code of Practice.

A3.87 There may be occasions, though, where either party may need to begin legal proceedings, while still continuing to pursue an informal resolution.

A3.88 There are a range of ADR solutions available, including independent expert determination, mediation and early neutral evaluation. The type of ADR most suitable will depend upon the nature of the dispute, amongst other factors.

Schedules to the Code of Practice

Schedule A – Process for the Site Survey

A3.89 There are several types of surveys that may be required to assess the suitability of any site:

A3.90 An initial site visit, usually by the Operator and/or their agent to assess initial suitability and to take a set of photographs of the proposed site,

A3.91 A Multi Skilled Visit (“MSV”) is a design visit at which the Operator’s representatives may complete a design survey of the site, which might include things such as:

- a) Surveying the site in order to produce drawings;

⁴⁷ Note that this only applies to notices prescribed under Section 69 paragraphs 20 and 33.

- b) Assessing the access route and whether any upgrade of the route may be required;
- c) Identification of a suitable power supply;
- d) Ground radar scans and/or test bore holes (although this may take place at subsequent survey stage);
- e) Intrusive survey of a building, for example, lifting roof material to examine the construction and structure; if this work is to be undertaken, prior agreement with the Site Provider to such work should be reached; and
- f) Take a set of panoramic photographs, which may include use of a drone.⁴⁸

A3.92 To ensure that the site survey is productive, the parties may choose to meet on site. This ensures that the site is designed to have the least impact on the Site Provider's land and use of the land. The MSV also gives the Site Provider the ability to ask any questions or address any concerns they may have.

A3.93 Once the MSV has taken place, it is likely that the local power company and/or fibre Operator will require access to the property to assess the route for any cables required to provide the necessary services.

A3.94 These surveys, if required, will be arranged in advance, with the Operator advising the Site Provider, or their agent, as to the party concerned and contact details.

Requesting access for a survey

A3.95 At a minimum, the Operator or Operators are expected to provide the following information, except to the extent any item listed below has already been obtained by the Site Provider following an initial Survey carried out by or on behalf of the Site Provider.

- a) Extent of search areas on the Potential Site Providers land for possible installation of apparatus.
- b) Requirements for initial survey: -
- c) What access is desired?
- d) With what apparatus?
- e) Over what timescale?
- f) General description of likely apparatus and any ancillary connections required, for example power or fibre connections.
- g) Confirmation of whether planning consent would be required (if known).
- h) Anticipated type of installation sought (e.g. whether it is of a temporary/short duration of occupation or longer-term nature).
- i) The letter may also include information about what action an Operator might take, in the event that the Potential Site Provider fails to respond.
- j) An assurance from the Operator to make good any damage to the Potential Site Provider's property.

A3.96 Operators should seek to ensure that anyone accessing property or land on their behalf:

- a) Carries photographic identification
- b) Can explain why they are there and for whom they are working

⁴⁸ Any drone used is operated by a Civil Aviation Authority (CAA) registered and qualified person who carries public liability insurance and operates the drone in accordance with CAA Rules & Regulations

- c) Can advise Site Providers who to contact within the Operator for more information or to comment on any visit
- A3.97 Certain land and property will have specific access requirements, particularly where there are operational constraints or sensitive security requirements and these should be followed, as appropriate. For example, these are likely to be sites run by utilities, defence, emergency services (such as police), transport, healthcare and other public sector authorities.
- A3.98 Operators should, upon reasonable request, provide verification of which contractor was on site at any given point in time and confirmation of why they were there.
- A3.99 Operators should adhere to any legal or regulatory requirements for managing location specific risks. This might include notifiable diseases (such as Foot and Mouth, Avian Flu etc.). For sites at sensitive locations, it might include arranging accompanied access to secure areas. Operators should comply with any reasonable procedures implemented by Site Providers for these purposes.
- A3.100 During the survey visit, it may become apparent that an alternative site is more suitable. The Operator may attempt to make investigations with adjoining landowners on the suitability and to undertake a survey at that time and this should be communicated to the Site Provider or their representatives, who should be offered the opportunity to be in attendance.

Schedule B – Key points for access arrangements

- A3.101 Access arrangements should cover the following points, where appropriate⁴⁹:
- i) Contact details (including in emergencies) for:
 - ii) The Operator
 - iii) The Landowner
 - iv) Any Occupier of the land, if different from the Landowner
 - v) Details of any other parties with a known interest in land or access to it
 - a) Description of access arrangements (including any out of hours or weekend factors (e.g. for business premises that are closed at the weekend)
 - b) Recovery of reasonable costs (e.g. if a supervisor is necessary at sensitive locations)
 - c) Confirmation from the Operator to make good any damage to the Site Provider's property
 - d) Notifying the Operator of any site-specific considerations, for example:
 - i) Requirements for supervision at sensitive or hazardous sites
 - ii) Bio-security and any other appropriate security arrangements
 - iii) Any relevant environmental schemes (where care has been taken not to contravene the rules of the scheme)
 - e) Parking and access routes across land or through buildings for construction and maintenance personnel, vehicles, equipment and apparatus
 - f) Adherence to the Countryside Code, or the Scottish Outdoor Access Code where relevant
- A3.102 The parties should agree, and set out within the agreement, what notice (if any) is required for the different types of access requirements. It can often help resolve access issues by

⁴⁹ Note: for many fixed line installations, this will be covered by an Operators standard wayleave

acknowledging the difference between the need for emergency access (to fix or prevent service impacting faults) and planned access.

A3.103 Typically for major works (construction, significant upgrade, decommissioning) there may be a requirement for different notice than for a service impacting fault where no or minimal notice should be required.

A3.104 The parties should agree when negotiating a new lease or renewal what necessary information (if any) is to be provided by the Operator or Agents to the Site Provider to accompany access requests.

A3.105 The parties and their agents should think about the respective business needs and treat each other's property with respect.

