



Electronic Communications Code

Code of Practice

Published: 15 April 2024



Contents

Section

Code of Practice	3
------------------------	---

Code of Practice

About

- 1.1 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.
- 1.2 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.
- 1.3 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'¹) can place their apparatus² on land or buildings.
- 1.4 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.
- 1.5 As a result of the changes made in 2017, the Code now includes obligations on Ofcom to publish:

¹ 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.

² '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.

- e) 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;
 - a) a number of template notices which may, or must (depending on the circumstances) be used by Code Operators and Site Providers; and
 - b) standard terms which may (but need not) be used by Code Operators and Site Providers when negotiating agreements to confer Code rights.
- 1.6 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

- 1.7 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.
- 1.8 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 Occupiers³ 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).
- 1.9 ‘Site’ in this Code of Practice is used in a broad sense⁴ 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.
- 1.10 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 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.

³ The meaning of ‘Landowner’, ‘Operator’, and ‘Occupier’ is as defined in the Code.

⁴ ‘Site’ is equivalent to the term ‘Land’ in the Code, as set out in paragraph 108.

Scope

- 1.11 This Code of Practice:
- f) 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;
 - g) 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);
 - h) Provides a framework for the process of coming to an agreement, and of maintaining an agreement, taking account of practical requirements of both parties;
 - i) Sets out clear lines of communication through which disputed matters can be escalated;
 - j) Does **not** address the financial aspects of the relationship between the Site Provider and the Operator
- 1.12 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.
- 1.13 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.
- 1.14 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

- 1.15 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

- 1.16 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:
- k) In the event of an emergency
 - l) For routine estate or management issues
 - m) To change or confirm access arrangements
 - n) For escalation of redevelopment/decommissioning issues
 - o) For raising a complaint
- 1.17 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

- 1.18 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.⁵
- 1.19 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.

Behaviours

- 1.20 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

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

⁵ 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.

- p) New customer requirements
 - q) To provide coverage and fibre connections to new areas
 - r) To provide additional network capacity
 - s) To provide new services
 - t) To replace obsolete sites or sites that are being redeveloped which may require fibre connections to be diverted.
- 1.22 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

- 1.23 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.
- 1.24 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.⁶ 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.
- 1.25 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 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

- 1.26 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.

⁶ Whilst we refer to 'Court' throughout this Code of Practice, we note that on occasion the correct forum may well be a 'tribunal'.

- 1.27 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.
- 1.28 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.
- 1.29 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:
- u) Who owns/occupies the site and details of any other parties with a known interest in land or access to it;
 - v) The current use of the site;
 - w) Whether there are any multiple occupancy management arrangements in place;
 - x) Land management agreements, such as environmental or natural capital related schemes;
 - y) Any planned change or intended change in ownership, occupation or use;
 - z) Any proposals there may be to change the use of or develop the land, including whether there are any existing planning permissions in place;
 - aa) Details of known pipes, drains, cables or structures...etc;
 - bb) 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;
 - cc) Any other rights of public access on the site or adjacent to the site;
 - dd) Details of any professional advisor or managing agent who will act on their behalf;
 - ee) Risk assessments, asbestos report surveys or any similar documents.
- 1.30 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

- 1.31 The type of apparatus that can be deployed on, over or under a site can vary enormously. It could include, for example:
- ff) A telegraph pole being placed in a field;
 - gg) A cable being laid in an existing duct in a shopping centre or a new duct and cable being laid under land;
 - hh) An antenna system for mobile coverage being installed on the roof of a building, such as an office block;
 - ii) A lattice tower being erected in a wood
- 1.32 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.
- 1.33 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 practice⁷.

- 1.34 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.
- 1.35 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.
- 1.36 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.
- 1.37 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 .
- 1.38 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.
- 1.39 In the absence of terms being agreed between the parties, Parts 4, 4A and 4ZA of the Code⁸ 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.

Stage 3: Deployment stage

- 1.40 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:

⁷ For example: Code of Best Practice on Mobile Network Development in England,

<http://www.mobileuk.org/codes-of-practice.html>

⁸ See Paragraph 20(3) for Part 4, Paragraph 27D(1) for Part 4A, and Paragraph 27ZE(1) for Part 4ZA.

- jj) 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;
 - kk) Drawings detailing the apparatus to be deployed with an accompanying written description of the works;
 - ll) Any requirement to be able to have access across other land (whether belonging to the Site Provider or a third party);
 - mm) Timing/ phasing of the works, including the estimated start date and duration of the works and the working hours;
 - nn) Procedures for safeguarding the Site Provider's property (e.g. livestock); and
 - oo) Where regulations require or when requested, a copy of the Risk Assessment and Method Statement.
- 1.41 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

- 1.42 Most wireless telegraphy licences issued by Ofcom include a condition⁹ 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.¹⁰
- 1.43 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 guidance¹¹ 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)¹².
- 1.44 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 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.

⁹ <https://www.ofcom.org.uk/spectrum/emf/policy>

¹⁰ <https://www.ofcom.org.uk/spectrum/emf/compliance-and-enforcement-guidance>

¹¹ <https://www.hse.gov.uk/radiation/nonionising/emf.htm>

¹² https://www.ofcom.org.uk/_data/assets/pdf_file/0022/214663/emf-implementation-update.pdf

Neighbours and other occupiers

- 1.45 Persons with an interest in land adjoining a proposed site may need to be consulted under national regulations, guidelines and any applicable Codes of Practice¹³.
- 1.46 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.
- 1.47 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

- 1.48 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.
- 1.49 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.
- 1.50 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.
- pp) 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;
- qq) The Operator should ensure that its Apparatus is maintained in a good state of repair;
- rr) 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
- ss) 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.

¹³ 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](http://www.mobileuk.org/codes-of-practice.html)

- 1.51 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.
- 1.52 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.
- 1.53 Operators should seek to ensure that anyone accessing a site on their behalf:
- tt) Carries photographic identification;
 - uu) Can explain why they are there and for whom they are working; and
 - vv) Can advise Site Providers who to contact within the Operator for more information or to comment on any visit.
- 1.54 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.
- 1.55 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

- 1.56 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.
- 1.57 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.
- 1.58 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.
- 1.59 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.
- 1.60 Operators should consider representations from Site Providers regarding any reasonable requests in respect of sharing or upgrading of the apparatus.

- 1.61 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

- 1.62 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.
- 1.63 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:
- ww) 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;¹⁴ or
 - xx) 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?

- 1.64 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:
- yy) has no adverse impact or no more than minimal impact on the land; and
 - zz) 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).
- 1.65 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).
- 1.66 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 users, so that the Site Provider, for security purposes, can know who is in lawful occupation of the site.
- 1.67 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

¹⁴ 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.

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

- 1.68 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.
- 1.69 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.
- 1.70 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

- 1.71 The parties should seek to agree terms for the continued use of the site before the existing agreement comes to an end.
- 1.72 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.
- 1.73 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.
- 1.74 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.
- 1.75 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

- 1.76 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

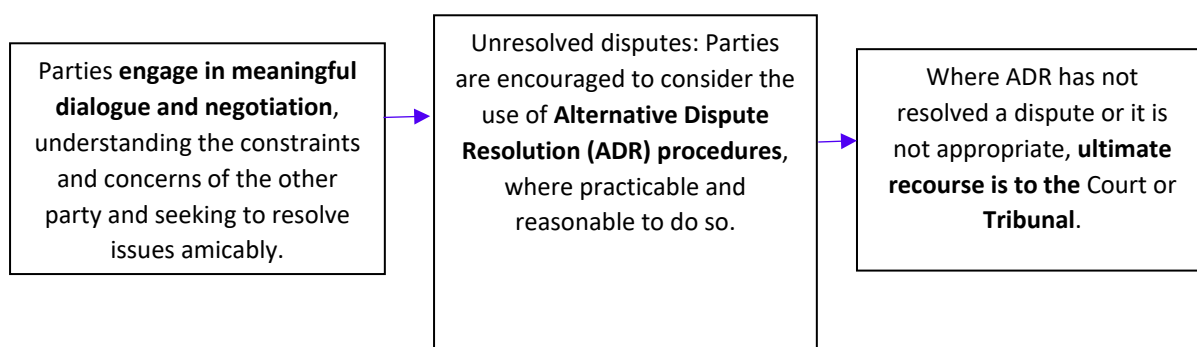
such repairs. In such circumstances, the parties should negotiate in good faith to allow the works to be completed, and for the Site Provider to minimise, as far as reasonably possible, any resultant interruption to public communications services to allow continuity of services. In relation to repairs 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

- 1.77 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.
- 1.78 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.
- 1.79 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.
- 1.80 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

- 1.81 The Code sets out formal dispute resolution procedures.
- 1.82 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.



- 1.83 In certain cases, an Operator's notice¹⁵ must:
- c) contain information about the availability of ADR in the event that the Operator and the relevant person are unable to reach agreement, and
 - d) explain the possible consequences of refusing to engage in alternative dispute resolution.
- 1.84 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.
- 1.85 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.
- 1.86 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.
- 1.87 There may be occasions, though, where either party may need to begin legal proceedings, while still continuing to pursue an informal resolution.
- 1.88 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

- 1.89 There are several types of surveys that may be required to assess the suitability of any site:
- 1.90 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,
- 1.91 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:
- aaa) Surveying the site in order to produce drawings;
 - bbb) Assessing the access route and whether any upgrade of the route may be required;
 - ccc) Identification of a suitable power supply;
 - ddd) Ground radar scans and/or test bore holes (although this may take place at subsequent survey stage);
 - eee) 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
 - fff) Take a set of panoramic photographs, which may include use of a drone.¹⁶
- 1.92 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

¹⁵ Note that this only applies to notices prescribed under Section 69 paragraphs 20 and 33.

¹⁶ 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

of the land. The MSV also gives the Site Provider the ability to ask any questions or address any concerns they may have.

- 1.93 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.
- 1.94 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

- 1.95 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.
- ggg) Extent of search areas on the Potential Site Providers land for possible installation of apparatus.
 - hhh) Requirements for initial survey: -
 - iii) What access is desired?
 - jjj) With what apparatus?
 - kkk) Over what timescale?
 - lll) General description of likely apparatus and any ancillary connections required, for example power or fibre connections.
 - mmm) Confirmation of whether planning consent would be required (if known).
 - nnn) Anticipated type of installation sought (e.g. whether it is of a temporary/short duration of occupation or longer-term nature).
 - ooo) The letter may also include information about what action an Operator might take, in the event that the Potential Site Provider fails to respond.
 - ppp) An assurance from the Operator to make good any damage to the Potential Site Provider's property.
- 1.96 Operators should seek to ensure that anyone accessing property or land on their behalf:
- qqq) Carries photographic identification
 - rrr) Can explain why they are there and for whom they are working
 - sss) Can advise Site Providers who to contact within the Operator for more information or to comment on any visit
- 1.97 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.
- 1.98 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.
- 1.99 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.

1.100 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

1.101 Access arrangements should cover the following points, where appropriate¹⁷:

- viii) Contact details (including in emergencies) for:
 - ix) The Operator
 - x) The Landowner
 - xi) Any Occupier of the land, if different from the Landowner
 - xii) 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

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

1.103 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.

1.104 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.

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

¹⁷ Note: for many fixed line installations, this will be covered by an Operators standard wayleave