
Electronic Communications Code

Code of Practice

STATEMENT:

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About this document

This document contains the Code of Practice. The Code of Practice deals with

- a) the provision of information for the purposes of the new Code by operators to persons who occupy or have an interest in land;
- b) the conduct of negotiations for the purposes of the new 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 new Code as Ofcom think appropriate.

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 new 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.

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1. Code of Practice

Introduction

- 1.1 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'¹) can place their Apparatus² on land or buildings owned by another person or organisation.
- 1.2 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

- 1.3 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 under the Code. It is not a guide to the Code or the Code regulations, 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. References to landowners should also be taken, where appropriate, to encompass Occupiers as defined in the Code. Agreements under the Code are binding and so Landowners may wish to consider seeking independent professional advice before entering into such an agreement (see below).
- 1.4 'Site' in this Code of Practice is used in a broad sense⁴ as any place to install Apparatus, such as under or on top of open land, the rooftop of a building, a tunnel or a lamp-post.
- 1.5 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. Landowners and Operators must respect the needs and legitimate concerns of Occupiers of land when rights under the Code are

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.

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.

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

1.6 This Code of Practice:

- Provides a reference framework to support Landowners and Operators to establish, develop and maintain effective working relationships, to the benefit of users of all communications services;
- Sets out what Landowners and Operators should expect from each other in the context of:
 - 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;
- Provides a framework for site provision, whereby the commercial process of coming to an agreement, and of maintaining an agreement, can take account of all the practical requirements of both parties;
- Sets out clear lines of communication through which disputed matters can be escalated;
- Does **not** address the financial aspects of the relationship between the Landowner and the Operator

1.7 While the Code of Practice sets out some clear principles and expectations about how Landowners 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.

1.8 The Code of Practice covers a wide range of scenarios, from the construction of a full mobile mast to the installation of just one telegraph pole or a very small length of cable and it should be noted that not all the procedural elements should be required in each and every case.

Communication and contact information

1.9 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

1.10 The Operator should ensure that the Landowner and any relevant Occupier of the site or of access routes to the site have **up-to-date site and contact information** 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:

- In the event of an emergency
- For routine estate or management issues

- To change or confirm access arrangements
- For escalation of redevelopment/decommissioning issues

1.11 In turn, the Landowner and Occupier should provide email address/contact details in writing directly to the registered office of the Operator, 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

1.12 Landowners 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 agreement⁵.

1.13 In all cases, both Operators and Landowners should act in a consistent, fair and open manner with each other in relation to any proposed works.

New agreements for the installation of Apparatus

1.14 Additional Apparatus can be required for a number of reasons, such as:

- Customer demand
- To provide coverage to new areas
- To provide additional network capacity
- To provide new services
- To replace obsolete sites or sites that are being redeveloped

1.15 Where new apparatus 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.

Stage 1: Site Survey

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

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

- 1.17 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 may be required.
- 1.18 Where access is necessary, the Operator should request such access in writing, covering the matters set out in Annex A, where relevant. The Operator should generally request that access is given within a reasonable period (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.
- 1.19 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, on the Operator's request, should seek to provide relevant information such as:
- Who owns/occupies the site;
 - The current use of the site;
 - Whether there are any multiple occupancy management arrangements in place
 - Any planned change or intended change in ownership, occupation or use;
 - Any proposals there may be to change the use of or develop the land, including whether there are any existing planning permissions in place;
 - Details of known pipes, drains, cables or structures...etc;
 - 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
 - Any other rights of public access on the site or adjacent to the site

Stage 2: Consultation and agreement

- 1.20 The type of apparatus that can be deployed on, over or under a site can vary enormously. It could include, for example:
- A telegraph pole being placed in a field;
 - A cable being laid in an existing duct in a shopping centre;
 - An antenna system for mobile coverage being installed on the roof of an office block;
 - A lattice tower being erected in a wood
- 1.21 Each of these examples could require different consultation processes.
- 1.22 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 practice⁶.

- 1.23 Where a proposal is straightforward, 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. Where the proposal is less simple, it may be appropriate for the Operator to send a summary of the proposed terms of an agreement for the Landowner 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.
- 1.24 Before concluding an agreement, the Landowner and Operator should agree access arrangements for construction, installation, subsequent planned maintenance, upgrades and emergency maintenance to repair service affecting faults. The key points for access arrangements are covered in **Annex B**.
- 1.25 Although the Code provides a mechanism for the court to impose terms of occupation on the Landowner and the Operator, the parties should make every effort to reach voluntary agreement first.
- 1.26 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 promptly to correspondence from the other side and aim to complete the process as swiftly as possible.
- 1.27 In the absence of terms being agreed between the parties 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 principal purposes of this Code of Practice is to establish a voluntary process, which avoids recourse to the courts.

Stage 3: Deployment stage

- 1.28 When the Operator is carrying out works on a Landowner's property it should endeavour to cause minimal disruption and inconvenience. The Operator should notify the Landowner of the following:
- Contact details for the Operator, the name and contact details of the contractor managing the scheme and also the person to whom the Landowner can escalate any matters of concern

⁶ For example: Code of Best Practice on Mobile Network Development in England, <http://www.mobileuk.org/codes-of-practice.html>

- Drawings detailing the apparatus to be deployed with an accompanying written description of the works
 - Any requirement to be able to have access across other land (whether belonging to the Landowner or a third party)
 - Timing of the work, including the estimated start date and duration of the works
 - Working times
 - Procedures for safeguarding the Landowner's property (e.g. livestock)
- 1.29 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.

Neighbours and other occupiers

- 1.30 Persons with an interest in land adjoining a proposed site may need to be consulted in accordance with national regulations, guidelines and any applicable Codes of Practice⁷.
- 1.31 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 (using Code powers, if no agreement can be reached).
- 1.32 Any requirement for access by the Operator with respect to such adjoining land ought to cover the matters set out in Annex B (i.e. the same considerations as for the Landowner, where applicable).

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

- 1.33 All electronic communications sites are an integral part of a wider network. Individual sites 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.
- 1.34 As set out in Stage 2 Consultation Phase, any agreements between the Operator and the Landowner should set out how to access sites for operational needs. Annex B sets out key points for access arrangements. Where necessary, Operators and Landowners 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.
- 1.35 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

⁷ 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>

the issue and maintain service for customers, including the ability to make calls to the emergency services. Wherever possible, Operators should contact the Landowner to explain when and why access is required and Landowners should seek to cooperate with the restoration of service.

- 1.36 Access for routine maintenance should be organised so that Operators can give sufficient notice in accordance with the access arrangements agreed with the Landowner.
- 1.37 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.
- 1.38 Where access may be required to other parts of the land owned by the 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.
- 1.39 Operators should seek to ensure that anyone accessing a site on their behalf:
- Carries photographic identification
 - Can explain why they are there and for whom they are working
 - Can advise Landowners who to contact within the Operator for more information or to comment on any visit
- 1.40 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.
- 1.41 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 for these purposes. Landowners should, so far as is possible, preserve the ability for Operators to access their apparatus, particularly in the case of operational emergency.

Decommissioning sites that are no longer required

- 1.42 The Code makes provision for Landowners to request the removal of apparatus, if it is not being used and there is no prospect of it being so.
- 1.43 As a general principle, Operators should ensure that redundant sites 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 in order to agree the way to proceed.

- 1.44 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.

Other

Renewal of existing sites and the Code

- 1.45 When an existing site agreement is due to expire, the parties should seek to agree terms for the continued use of the site before the existing agreement comes to an end.
- 1.46 Parties should commence negotiations sufficiently far in advance of the expiry of an existing agreement to allow adequate time for terms to be agreed.

Repairs to a Landowner's property

- 1.47 From time to time, Landowners/Occupiers will have to carry out essential repairs to their property and where 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 to avoid, so far as possible, any resultant interruption to public communications services and to allow continuity of services. In relation to repairs to the Landowner'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

- 1.48 The Code makes provision for Landowners to redevelop their property (Paragraphs 30-31), requiring that the Landowner should give 18 months' notice of the intention to redevelop. Paragraphs 30-31 of the Code are intended for use by Landowners who genuinely intend to redevelop their property. Landowners 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.
- 1.49 Operators may request to see evidence of the Landowner's intention to redevelop but they should act reasonably at all times, so as not to hinder the Landowner'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.
- 1.50 Where a Landowner is progressing a redevelopment opportunity, consideration should be given to the possibility of incorporating the communications apparatus within the Landowner's property if this is a reasonable and practicable option.

Escalation procedures

- 1.51 The Code sets out formal dispute resolution procedures.

- 1.52 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.
- 1.53 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 – Requesting access for a survey

- 1.54 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
- 1.55 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 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

- 1.56 Access arrangements should cover the following points, where appropriate⁸:
- Contact details (including in emergencies) for:

⁸ Note: for many fixed line installations, this will be covered by an Operators standard wayleave

- The Operator
- The Landowner
- Any Occupier of the land, if different from the Landowner
- Description of access arrangements (including any out of hours or weekend factors (e.g. for business premises that are closed at the weekend))
- Recovery of reasonable costs (e.g. if a supervisor is necessary at sensitive locations)
- An undertaking from the Operator to make good any damage to the Landowner's property
- Notifying the Operator of any site-specific considerations, for example:
 - Requirements for supervision at sensitive or hazardous sites
 - Bio-security and any other appropriate security arrangements
 - Any relevant environmental schemes (where care has been taken not to contravene the rules of the scheme)
- Parking and access routes across land or through buildings for construction and maintenance personnel, vehicles, equipment and apparatus
- Adherence to the Countryside Code, or the Scottish Outdoor Access Code where relevant