

# Electronic Communications Code

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Proposed amendments to Paragraph 20 and  
33 Template Notices

## Consultation

Published 12 September 2023

Closing date for responses: 10 October 2023



# Contents

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## Sections

1. Overview .....	3
2. The PSTIA and our proposed changes to draft template notices.....	5

## Annexes

A1 Paragraph 20 Notice .....	7
A2 Paragraph 33 Notice- Code Operator .....	7
A3 Paragraph 33 Notice – Site Provider .....	18
A4 Responding to this consultation .....	23
A5 Ofcom’s consultation principles .....	29
A6 Consultation coversheet.....	30
A7 Consultation questions .....	31

# 1. Overview

- 1.1 The Electronic Communications Code (the Code) currently confers certain rights on operators to whom it has been applied (Code Operators) to install and maintain electronic communications apparatus on public land. In addition, Code Operators may apply for a court order to install and maintain apparatus on private land, if the operator has been unable to reach agreement with the landowner. The Code only has effect in the case of a person to whom it is applied by a direction given by Ofcom (or, in the case of the Secretary of State or any Northern Ireland department, where the Secretary of State or that department is providing or proposing to provide an electronic communications network). Following changes to the Code in 2017, Code Operators gained additional rights to access property when they are unable to reach agreement with landowners.
- 1.2 The exercise of these rights is subject to conditions and restrictions imposed under regulations made by the Secretary of State.<sup>1</sup> Ofcom has an enforcement role over compliance by Code Operators with any requirement imposed under the regulations. Ofcom is also required to prepare and publish a code of practice concerning agreements for access to private land under the Code<sup>2</sup>, standard terms which may (but need not) be used when negotiating agreements to confer Code rights<sup>3</sup>, and template notices<sup>4</sup> which must or may (depending on the circumstances) be used by operators and landowners or occupiers when they seek to exercise Code rights.
- 1.3 In December 2022 the Product Security and Telecommunications Infrastructure Act (PSTIA) introduced changes to the Code, including changes to certain template notices that Ofcom is required to prescribe under paragraph 90(1) of the Code.
- 1.4 Specifically, section 69 of the PSTIA contains provisions to encourage the use of Alternative Dispute Resolution (ADR) in the event that Code Operators and Site Providers are unable to reach an agreement. Section 69 amends the Code in respect of certain specified notices to require those notices to contain information about the availability of ADR and to include a new requirement on Code Operators to consider the use of ADR if reasonably practicable to do so before applying for a court order.
- 1.5 In anticipation of section 69 being brought into force, Ofcom is now consulting on our proposed changes to the notices required under paragraphs 20 and 33 to reflect the changes to the Code brought about by the PSTIA. Ofcom will then be in a position to publish the finally amended templates when the relevant Code changes come into effect.
- 1.6 While paragraph 90(3) of the Code does not require us to consult stakeholders where we propose to amend or replaced a form of notice, we have recently consulted in anticipation of making other changes to template notices resulting from both the PSTIA and the Telecommunications Infrastructure (Leasehold Property) Act 2021.<sup>5</sup> As we are also

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<sup>1</sup> <https://www.legislation.gov.uk/uksi/2003/2553/made>

<sup>2</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0025/108790/ECC-Code-of-Practice.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0025/108790/ECC-Code-of-Practice.pdf)

<sup>3</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/108791/ECC-Standard-Terms.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/108791/ECC-Standard-Terms.pdf)

<sup>4</sup> <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/policy/electronic-communications-code/notices>

<sup>5</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-2/electronic-communications-code-proposed-template-notices> and <https://www.ofcom.org.uk/consultations-and-statements/category-2/proposed-changes-to-standard-notices>

proposing to amend the paragraph 33 site provider notice for the reasons explained in the following section, we are taking this opportunity to invite operators and other interested parties to comment on the proposed changes. Ofcom will carefully consider any comments it receives before publishing any final version of each notice.

## Impact Assessment

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- 1.7 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.
- 1.8 Overall, we consider that our proposals regarding amendments to the notices will benefit both Operators and Site Providers as it makes clear the availability of the ADR process, the aim of which is to facilitate the resolution of disputes in a more effective way. This in turn should benefit citizens and consumers as fewer disputes should lead to smoother and more effective delivery of communications services.

## Equality impact assessment

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- 1.9 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 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.
- 1.10 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.
- 1.11 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.
- 1.12 We do not consider that our proposals have equality implications under the 2010 Act or the 1998 Act.

### What we are proposing – in brief

We are proposing to make amendments to the Paragraph 20 and Paragraph 33 notices for both Site Providers and Code Operators to reflect the changes made to the Code by the PSTIA in relation to ADR. The proposed amended notices can be found in Annexes 1 – 3, with proposed amendments highlighted in blue.

## 2. The PSTIA and our proposed changes to draft template notices

### The PSTIA

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- 2.1 The Product Security and Telecommunications Infrastructure Act 2022 (“the PSTIA”) received Royal Assent on 6 December 2022. One of the purposes of the Act is to make changes to the electronic communications code, in part to further the expansion of mobile, full fibre and gigabit capable networks across the UK.
- 2.2 Section 69 of the PSTIA relates to Alternative Dispute Resolution (ADR) and amends the Code to refer to the availability and use of ADR when an operator and a site provider are unable to reach an agreement, and includes certain changes in respect of certain specified notices. Section 69 is not yet in force, but we are consulting on our proposed changes to the relevant template notices in advance of section 69 coming in to force so that we can publish the finally amended templates when the relevant Code changes come into effect.
- 2.3 Section 69 specifically makes changes to paragraphs 20, 32, 33, and 96 of the Code.
- 2.4 As set out in our Statement on the Code in December 2017<sup>6</sup> we have not prescribed the form of notices under paragraph 32 as we consider that they would be highly fact-specific and that Code Operators would be able to easily prepare these. Paragraph 96 does not correspond to a template notice.
- 2.5 This Consultation therefore only addresses the changes to paragraphs 20 and 33 and the corresponding notices. Following the Consultation, Ofcom will publish the finally amended templates to align as closely as possible with the date on which section 69 is eventually brought into force.

### Our proposed changes

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- 2.6 Code Operators are required to follow a prescribed process before they can apply to a court to access a landowner’s property. This includes the sending of notices by the Code Operator to the landowner to notify them of their request to access the land and outlines what their next steps are.
- 2.7 Paragraph 90(1) of the Code provides that, where a provision “requires a notice to be given”, Ofcom must prescribe the form of that notice.
- 2.8 Where the form of a notice is prescribed by Ofcom, paragraphs 88(2) and 89(2) of the Code require that, to be valid, notices given by Code Operators, and certain notices given by other parties, must be in the prescribed form.
- 2.9 In accordance with Section 69 of the PSTIA, we are proposing to make changes to the Paragraph 20 notices and the Paragraph 33 notices for both Site Providers and Code Operators. Ofcom notes that the requirement in paragraph 33 to include reference to ADR

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<sup>6</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0027/108792/ECC-Statement.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0027/108792/ECC-Statement.pdf) (see paragraph 5.7)

applies only to the Code Operator notice. However, as we explain below, we are also proposing to amend the Site Provider notice to include ADR-related information.

- 2.10 The PSTIA amends the Code to require that the Paragraph 20 and Paragraph 33 Code Operator notices must:
- a) contain information about the availability of alternative dispute resolution 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.
- 2.11 We are therefore proposing to amend the relevant Code Operator notices to reflect this change to the Code. As explained above, we are also proposing to amend the Site Provider notice under paragraph 33. We believe this will help to ensure the Site Provider is made aware of the associated ADR-related requirements on both parties before the template notice is served, including the potential cost-consequences of not reasonably engaging with ADR.
- 2.12 In preparing the proposed amendments to the notices we have been mindful of the need to ensure that they are as clear and concise as possible, as well as the need for operators to comply with the requirements of the Code when giving notice (i.e. that they explain the effect of the notice and the steps that may be taken by recipients).
- 2.13 We have also been mindful of the fact that, whilst existing Code Operators may be familiar with the Code, this may not necessarily be the case for operators who are not Code Operators, or for persons who are landowners/occupiers. We have therefore sought to provide helpful 'Notes' or guidance at the end of both notices. We are proposing to update these to explain the changes referred to above.
- 2.14 In Annexes 1 - 3 below we have included our proposed amended versions of the Paragraph 20 and Paragraph 33 notices.

Do you have any comments on the proposed changes to the template notice set out in Annex 1?

Do you have any comments on the proposed changes to the template notice set out in Annex 2?

Do you have any comments on the proposed changes to the template notice set out in Annex 3?

# A1 Paragraph 20 Notice

## STATUTORY NOTICE

### SEEKING AGREEMENT TO THE CONFERRAL OF RIGHTS UNDER THE ELECTRONIC COMMUNICATIONS CODE

Paragraph 20(2) **and Paragraph 27(1)** of Part 4 of Schedule 3A of the Communications Act 2003

#### IMPORTANT NOTICE

If you are willing to enter into a Code Agreement, you should respond within 28 days

1. This is a statutory notice pursuant to paragraph 20(2) **and paragraph 27(1)** of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “Code”).<sup>7</sup>
2. This notice has been issued by **[Name of Code operator]** (“we” or “us”) to you, **[Insert name]**, because we would like to **[insert brief description of rights sought, e.g. to install apparatus and carry out related works]** on land occupied by you for the purposes of our **[electronic communications network and/or infrastructure system]**. We are seeking your agreement to confer these rights on us.

**[OR - delete appropriate version of paragraph 2]**

2. This notice has been issued by **[Name of Code operator]** (“we” or “us”) to you, **[Insert name]**, because we have certain rights to **[insert brief description of rights already exercisable by operator in relation to the land, e.g. keep apparatus installed on land in relation to which you have an interest]** for the purpose of our **[electronic communications network and/or infrastructure system]**. We are seeking your agreement to be bound by these rights.

**2A. [The agreement we seek relates to premises occupied under a lease and is for the purpose of providing an electronic communications service to a lessee in occupation of the premises.]**

3. **[We also require your agreement on a temporary basis in relation to electronic communications apparatus that is already installed on, under or over your land. This is in order to secure that the service provided by our [electronic communications network and/or infrastructure system] is maintained, and the apparatus is properly adjusted and kept in repair.]**

## BACKGROUND

4. We provide an **[electronic communications network and/or infrastructure system]** in the United Kingdom. This is used in order to provide consumers with **[insert a brief description of the retail**

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<sup>7</sup> A copy of the Communications Act 2003 is available online at [www.legislation.gov.uk](http://www.legislation.gov.uk).

*services which are dependent on this network and/or infrastructure system (e.g. fixed voice and broadband services)].*

5. For this purpose, the Office of Communications (OFCOM) has given a direction applying the Code to us. The Code regulates the relationships between us and occupiers of land, thereby facilitating the deployment of electronic communications apparatus.

#### INTERPRETATION

6. In this notice:
  - a. **“Apparatus”** means the electronic communications apparatus described in Annex 1;
  - b. **“Land”** means the *[land or target premises]* at *[Insert address / description of land, etc.]*;
  - c. **“Target Premises”** means premises within scope of Part 4A of the Code under paragraph 27B(2) of the Code; and
  - d. words used but not defined in this Notice shall have the meaning ascribed to them in the Code.

#### DETAILS OF THE AGREEMENT WE ARE SEEKING

7. In this notice, we are seeking your agreement *[to confer on us / to be bound by]* the following rights:
  - a. *[the right to install the Apparatus on, under or over the Land;*
  - b. *[the right to keep installed the Apparatus which is on, under or over the Land;*
  - c. *[the right to inspect, maintain, adjust, alter, repair, upgrade or operate the Apparatus which is on, under or over the Land;*
  - d. *[the right to carry out any works on the Land, for or in connection with the installation of the Apparatus on, under or over the Land, [or the installation of electronic communications apparatus elsewhere]];*
  - e. *[the right to carry out any works on the Land for or in connection with the maintenance, adjustment, alteration, repair, upgrading or operation of the Apparatus which is on, under or over the Land [or of electronic communications apparatus elsewhere]];*
  - f. *[the right to enter the Land to inspect, maintain, adjust, alter, repair, upgrade or operate the Apparatus which is on, under or over the Land [or any electronic communications apparatus elsewhere]];*
  - g. *[the right to connect the Apparatus to a power supply];*
  - h. *[the right to interfere with or obstruct a means of access to or from the Land (whether or not the Apparatus is on, under or over the Land); and*
  - i. *[the right to lop or cut back, or require another person to lop or cut back, any tree or other vegetation that interferes or will or may interfere with the Apparatus].*

(together, the **“Code Rights”**).

8. In addition to the Code Rights, we are also seeking in this notice your agreement to the additional terms set out in Annex 2.
9. *[As the electronic communications apparatus described in Annex 3 (the **“Existing Apparatus”**) is already installed on, under or over the Land, we are also seeking your agreement on a temporary basis to [confer/be bound by] the Code Rights set out at paragraph 7 above in respect of the Existing Apparatus (the **“Temporary Code Rights”**).][And, in addition to the Temporary Code Rights we are also seeking your agreement on a temporary basis to the additional terms set out in Annex 2].*



## CONSEQUENCES OF NOT REACHING AGREEMENT ON THE CODE RIGHTS

10. If either:

- a. you do not, before the end of 28 days beginning with the day on which this notice is given, agree **[to confer / to be bound by]** the Code Rights; or
- b. at any time after this notice is given, you give notice in writing to us that you do not agree **[to confer / to be bound by]** the Code Rights,

we will be entitled to apply to the court for an order under paragraph 20(4) of the Code.

11. For more information on the circumstances in which a court may impose such an order, and on the type of agreement that the court may impose, please see the supplementary information at the back of this notice.

## [CONSEQUENCES OF NOT RESPONDING WHERE THIS NOTICE SEEKS CODE RIGHTS IN RESPECT OF CONNECTED LAND]

11A. If you do not respond to this notice we will be entitled to apply to the court, as set out in paragraph 11B below, for an order under paragraph 27E(2) of the Code (“a Part 4A order”).

11B. We will be entitled to apply for a Part 4A order if:

- a. you do not, before the end of seven days beginning with the day on which this notice is given, respond in writing to this notice to agree to, refuse, or acknowledge the request; and
- b. we give you two warning notices under paragraph 27C(2) of the Code and a final notice under paragraph 27C(5) of the Code; and
- c. you do not, before the end of 14 days beginning with the day on which the final notice is given, respond to us in accordance with paragraph 27D(4) of the Code,

and we have satisfied any conditions specified in regulations made by the Secretary of State and have given you notice of an application for a Part 4A order.

11C. For more information on the circumstances in which a court may impose such an order and on the type of agreement the court may impose, please see the supplementary information at the back of this notice.

## **[CONSEQUENCES OF NOT REACHING AGREEMENT ON THE TEMPORARY CODE RIGHTS]**

**12. If:**

- a. **you have the right to require the removal of the Existing Apparatus under paragraph 37 or 41(1) of the code, but we are not for the time being required to remove it; and**
- b. **either:**
  - i. **you do not, before the end of 28 days beginning with the day on which this notice is given, agree [to confer / to be bound by] the Temporary Code Rights; or**
  - ii. **at any time after this notice is given, you give notice in writing to us that you do not agree [to confer / to be bound by] the Temporary Code Rights,**

**we will have the right to apply to the courts for an order under paragraph 27(2) of the Code.**

**Further detail on these orders is provided in the supplementary information at the back of this notice.**

13. We consider that the agreement sought in this notice in relation to Temporary Code Rights is [not] a matter of urgency and therefore [do not] intend to apply for such an order prior to the end of the 28-day period referred to above.<sup>8</sup>

#### ALTERNATIVE DISPUTE RESOLUTION

13A. Before applying for an order under paragraph 20(4) [and paragraph 27(2)] of the Code, we must, if it is reasonably practicable to do so, consider the use of one or more alternative dispute resolution procedures to reach agreement with you.

13B. Either you or we may at any time give the other a notice in writing stating that you or we (as applicable) wish to engage in alternative dispute resolution with the other in relation to the agreement we are seeking under this notice. If either you or we unreasonably refuse to engage in such alternative dispute resolution before an application is made to the court, the court must have regard to this when deciding on the appropriate costs order or, in Scotland, expenses.

13C For more information on the availability of alternative dispute resolution, please see the supplementary information at the back of this notice.

#### YOUR OPTIONS

14. In response to this notice, you may:

- a. agree [to confer the Code Rights on us / to be bound by the Code Rights] [and/or to confer the Temporary Code Rights on us / to be bound by the Temporary Code Rights];
- b. give notice to us that you do not agree [to confer / to be bound by] the Code Rights [and/or the Temporary Code Rights]; or
- c. give us notice that you wish to engage in alternative dispute resolution in relation to this notice; or
- d. do nothing.

15. In deciding how to respond to this notice, you may wish to seek independent legal advice.

16. If you agree [to confer the Code Rights on us / to be bound by the Code Rights], [we will send you an agreement reflecting the terms set out in this notice and ask you to sign it] [we ask you to sign the agreement attached at Annex 2]. Similarly, if you agree [to confer the Temporary Code Rights on us / to be bound by the Temporary Code Rights], we will also send you an agreement reflecting the terms set out in this notice and ask you to sign it. You would be entitled to seek independent legal advice in relation to [this/these] agreement[s].

Alternatively, and as explained at paragraph[s] 10 [11A, 11B and 12] above, if you do nothing or give notice to us that you do not agree [to confer / to be bound by] the Code rights [and Temporary Code Rights], we will be entitled to apply to the court for an order under paragraph 20(4) [and an order under paragraph 27(2)] or under Part 4A of the Code.

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<sup>8</sup> In limited circumstances, where the court agrees that it is a matter of urgency for an order to be made under paragraph 27(5) of the Code, it may make such an order even though the 28-day period referred to at paragraph [12]a. above has not elapsed (and paragraph [12]b. does not apply).

17. Please submit any notification pursuant to paragraph 14a., b. or c. to us in writing as soon as possible and, in any event, before the end of 28 days beginning with the day on which this notice is given.
18. To be effective, such notification must be **delivered by hand** or sent by **registered post** or **recorded delivery** to the following address:  
*[Insert address details]*
19. If you have any questions about this notice, please do not hesitate to contact us via telephone (*Insert number*) or e-mail (*insert email address*).

*[INSERT DATE OF NOTICE]*

ANNEX 1  
THE APPARATUS

*[Insert a description of the electronic communications apparatus to which the notice relates]*

ANNEX 2

ADDITIONAL TERMS OF AGREEMENT SOUGHT

*[Insert description of the additional contractual terms sought or attach a draft agreement]*

ANNEX 3  
THE EXISTING APPARATUS

*[Insert a description of the electronic communications apparatus already installed on, under or over the Land and in respect of which you are seeking the Temporary Code Rights]*

SUPPLEMENTARY INFORMATION FOR THE RECIPIENT OF THIS NOTICE

Orders under paragraph 20(4) of the Code

1. An order under paragraph 20(4) of the Code is an order which imposes on us and you an agreement. The effect of such an agreement would be *[to confer the Code Rights on us / provide for the Code Rights to bind you]*. Before applying for an order, we are required to consider, to the extent it is reasonably practicable to do so, the use of one or more alternative dispute resolution procedures to reach an agreement with you (paragraph 20(5) of the Code).
2. The court may only make an order under paragraph 20(4) of the Code if it thinks that **both** of the following conditions are met:
  - a. the prejudice caused to you by the order is capable of being adequately compensated by money; and
  - b. the public benefit likely to result from the making of the order (having regard to the public interest in access to a choice of high quality electronic communications services) outweighs the prejudice to you.
3. The court may **not** make such an order if it thinks that you intend to redevelop all or part of the land to which the Code Rights would relate, or any neighbouring land, and could not reasonably do so if the order were made.
4. Paragraphs 23 and 24 of the Code contain further detail about the terms of the agreement that the court may impose. And paragraph 22 of the Code states that such an agreement takes effect for all purposes of the Code as an agreement under Part 2 of the Code between the Operator and the relevant person.
5. The court also has the power to order us to pay you compensation for any loss or damage that you have sustained or will sustain as a result of the exercise of the Code Rights. Paragraphs 25 and Part 14 of the Code contain further detail about this.

*[Orders under paragraph 27(2) of the Code*

6. *An order under paragraph 27(2) of the Code is an order which [confers on us/provides for you to be bound by] such temporary code rights as appear to the court reasonably necessary for securing the objective set out in paragraph 27(3) of the Code. This objective is that, until the proceedings under paragraph 20 and any proceedings under paragraph 40 of the Code are determined, the service provided by our network is maintained and the Existing Apparatus is properly adjusted and kept in repair. Before applying for an order, we are required to consider, to the extent it is reasonably practicable to do so, the use of one or more alternative dispute resolution procedures to reach an agreement with you (paragraph 20(5) of the Code).*
7. *Paragraphs 23 and 24 of the Code contain further detail about the terms of the temporary agreement that the court may impose.*

*The court also has the power to order us to pay you compensation for any loss or damage that you have sustained or will sustain as a result of the exercise of the Code Rights. Paragraphs 25 and 84 of the Code contain further detail about this.]*

SUPPLEMENTARY INFORMATION FOR THE RECIPIENT OF THIS NOTICE

Orders under Part 4A of the Code

1. An order under Part 4A of Schedule 3A of the Code is an order which imposes on us and you an agreement concerning rights in respect of land connected to leased premises (“connected land”). The effect of such an agreement would be **[to confer the Code Rights on us / provide for the Code Rights to bind you]**.
2. We may apply for an order under paragraph 27D(1) of the Code if you do not, before the end of seven days beginning with the day on which this notice is given, respond in writing to agree to, refuse, or acknowledge the request and:
  - a. we give you two warning notices and a final notice pursuant to paragraph 27C(1) of the Code; and
  - b. you do not, before the end of 14 days beginning with the day on which the final notice is given, respond in writing either to:
    - (i) agree or refuse to confer or otherwise be bound by the Code right specified in the request notice given pursuant to paragraph 20(2) of the Code on the terms we seek; or
    - (ii) otherwise acknowledge a warning notice or the final notice.
3. The court may **only** make an order under paragraph 27E(1) of the Code if it is satisfied that we have met the requirements under paragraph 27D(1)(a) and (d) of the Code for applying for an order **and** you have not objected to the making of the order.
4. Paragraphs 27E(4) and 27E(5) of the Code contain further detail about the terms of the agreement that the court may impose.
5. The court also has the power to order us to pay you compensation for any loss or damage that you have sustained or will sustain as a result of the exercise of the Code Rights. Paragraphs 27H and Part 14 of the Code contain further detail about this.



SUPPLEMENTARY INFORMATION FOR THE RECIPIENT OF THIS NOTICE

Alternative Dispute Resolution

1. Paragraph 20(5) of the Code sets out that the party seeking a Code Agreement must, if it is reasonably practicable to do so, consider the use of one or more alternative dispute resolution (“ADR”) procedures before applying for an order under paragraphs 20(4) [and 27(2)] of the Code.
2. If an operator fails to consider ADR before making an application to the courts, the courts can consider that failure when deciding on the appropriate costs order or, in Scotland, expenses.
3. Under paragraph 20(6) of the Code either party may at any time notify the other in writing stating that they wish to engage in ADR.
4. When deciding on the appropriate costs order or, in Scotland, expenses, the courts must have regard to any unreasonable refusal to engage in ADR by either party.

# A2 Paragraph 33 Notice- Code Operator

## STATUTORY NOTICE

### REQUIRING A CHANGE TO THE TERMS OF AN AGREEMENT UNDER THE ELECTRONIC COMMUNICATIONS CODE

Paragraph 33(1) of Part 5 of Schedule 3A of the Communications Act 2003

#### IMPORTANT NOTICE

If you agree to the changes we are requesting, you should respond within six months

1. This is a statutory notice pursuant to paragraph 33(1) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “Code”).<sup>9</sup>
2. The purpose of this notice is to require a change to the terms of an agreement between you, [Insert name of site provider] and [us], [Insert name of Code operator] under Part 2 of the Code. We are seeking your agreement to this change.

#### BACKGROUND

3. We have entered into an agreement under Part 2 of the Code (the “Agreement”). Under the Agreement, you [have conferred on us / become bound by] certain rights under the Code. The purpose of these rights is to facilitate the deployment by us of our [electronic communications network and/or system of infrastructure] at [Insert address].
4. Paragraph 33 of the Code explains how a party to a Code agreement may require a change to the terms of an agreement which has expired. It provides that, in the first instance, the party seeking the change should provide notice to the other party of the change that it is seeking and the date on which that change would take place.

#### THE CHANGE WE ARE REQUESTING

5. We are asking you to agree, from the date set out in paragraph 6 below, that:
  - a. [the Agreement should have effect subject to the modified terms set out in Annex [X];]
  - b. [our existing Code right to [insert details of Code right] should no longer [be conferred by / bind] you;]
  - c. [the Agreement should also [confer on us / bind you to] [Insert details of additional Code right sought];]
  - d. [the Agreement should be terminated and a new agreement should have effect between us on the terms set out in Annex [X].]

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<sup>9</sup> A copy of the Communications Act 2003 is available online at [www.legislation.gov.uk](http://www.legislation.gov.uk).

6. The day from which we propose that:
  - a. [the modified terms should have effect;]
  - b. [the Code right referred to in paragraph 5 above should no longer [be conferred by / bind] you;]
  - c. [the additional Code right referred to in paragraph 5 above should [be conferred by / bind] you;]
  - d. [the Agreement should be terminated, and from which the new agreement set out in Annex [X] should have effect]is [Insert Date].<sup>10</sup>

#### CONSEQUENCES OF NOT REACHING AGREEMENT

7. If, after the end of six months beginning with the day on which this notice is given, we have not reached agreement with you on the proposals in this notice, we may apply to the court for an order under paragraph 34 of the Code.

7A. Before applying for an order under paragraph 34 of the Code, we must, if it is reasonably practicable to do so, consider the use of one or more alternative dispute resolution procedures to reach agreement with you.

7B. Either you or we may at any time give the other a notice in writing stating that you or we (as applicable) wish to engage in alternative dispute resolution with the other in relation to the agreement we are seeking under this notice. If either you or we unreasonably refuse to engage in such alternative dispute resolution before an application is made to the court, the court must have regard to this when deciding on the appropriate costs order or, in Scotland, expenses.

8. Further detail on these orders is provided in the supplementary information at the back of this notice. The supplementary information also provides more detail about the availability of alternative dispute resolution.

#### YOUR OPTIONS

9. In response to this notice, you may:
  - a. agree to the change requested above;
  - b. give notice to us that you do not agree to the change requested above; or
  - c. give us notice that you wish to engage in alternative dispute resolution in relation to this notice; or
  - d. do nothing.
10. In deciding how to respond to this notice, you may wish to seek independent legal advice.
11. If you agree to the change requested above, we will send you [a modified version of the Agreement reflecting the terms set out in this notice / a new agreement reflecting the terms set out in Annex [X] together with a notice of confirmation that you agree to termination of the

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<sup>10</sup> Regulation 33(3) of the Code requires that the date must fall: (a) after the end of the period of six months beginning with the day on which this notice is given; and (b) after the time at which, apart from paragraph 30, the Code right to which the existing Code agreement relates would have ceased to be exercisable or to bind the site provider or at a time when, apart from that paragraph, the Code agreement could have been brought to an end by the site provider.

**Agreement**]. We will ask you to sign [*this/these documents*]. You would be entitled to seek independent legal advice in relation to [*this/these*] document[s].

Alternatively, and as explained at paragraph 7 above, if you do nothing or give notice to us that you do not agree the change requested above, we will be entitled to apply to the court for an order under paragraph 34 of the Code after the end of six months beginning with the day on which this notice is given.

12. Please submit any notification pursuant to paragraph 9a. or b. to us in writing as soon as possible and, in any event, before the end of six months beginning with the day on which this notice is given.
13. To be effective, such notification must be **delivered by hand** or sent by **registered post or recorded delivery** to the following address:  
[*Insert address details*]
14. If you have any questions about this notice, please do not hesitate to contact us via telephone (*Insert number*) or e-mail (*insert email address*).

[**INSERT DATE OF NOTICE**]

SUPPLEMENTARY INFORMATION FOR THE RECIPIENT OF THIS NOTICE

Orders under paragraph 34 of the Code

8. The types of orders which the court may make under paragraph 34 include an order which has the effect of:
  - a. [modifying the terms of the Agreement;]
  - b. [modifying the terms of the Agreement so that one of the Code rights set out therein is no longer *[conferred by / binding on]* you;]
  - c. [modifying the terms of the Agreement so that it *[confers an additional Code right on you / provides that you are bound by an additional Code right]*;]
  - d. [terminating the Agreement and ordering you to enter into a new agreement which *[confers a Code right on us / provides for a Code right to bind you]*;]
9. In determining whether to make an order under paragraph 34, the court must have regard to all the circumstances of the case, and in particular to:
  - a. the operator's business and technical needs;
  - b. the use that the site provider is making of the land to which the existing code agreement relates;
  - c. any duties imposed on the site provider by an enactment; and
  - d. the amount of consideration payable by the operator to the site provider under the existing code agreement.
10. If the court makes an order under paragraph 34, it may also order the operator to pay the site provider consideration. See paragraph 34(14) for details of how the consideration should be calculated by the court in this case.

**SUPPLEMENTARY INFORMATION FOR THE RECIPIENT OF THIS NOTICE**

**Alternative Dispute Resolution**

1. Paragraph 33(6) of the Code sets out that the party seeking a Code Agreement must, if it is reasonably practicable to do so, consider the use of one or more alternative dispute resolution “ADR” procedures before applying for an order under paragraph 34 of the Code.

3. If an operator fails to consider ADR before making an application to the courts, the courts can consider that failure when deciding on the appropriate costs order or, in Scotland, expenses.

2. Under paragraph 33(7) of the Code either party may at any time notify the other in writing stating that they wish to engage in ADR.

4. When deciding on the appropriate costs order or, in Scotland, expenses, the courts must have regard to any unreasonable refusal to engage in ADR by either party.

# A3 Paragraph 33 Notice – Site Provider

## STATUTORY NOTICE

### REQUIRING A CHANGE TO THE TERMS OF AN AGREEMENT UNDER THE ELECTRONIC COMMUNICATIONS CODE

#### Paragraph 33(1) of Part 2 of Schedule 3A of the Communications Act 2003

1. This is a statutory notice pursuant to paragraph 33(1) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “Code”).<sup>11</sup>
2. The purpose of this notice is to require a change to the terms of an agreement between you, [Insert name of Code operator] and [us/me], [Insert name of site provider] under Part 2 of the Code. [I am/We are] seeking your agreement to this change.

#### BACKGROUND

3. We have entered into an agreement under Part 2 of the Code (the “Agreement”). Under the Agreement, [I/we] [have conferred on you / become bound by] certain rights under the Code. The purpose of these rights is to facilitate the deployment by you of your [electronic communications network and/or system of infrastructure] at [Insert address].
4. Paragraph 33 of the Code explains how a party to a Code agreement may require a change to the terms of an agreement which has expired. It provides that, in the first instance, the party seeking the change should provide notice to the other party of the change that it is seeking and the date on which that change would take place.

#### THE CHANGE WE ARE REQUESTING

5. [I/We] are asking you to agree, from the date set out in paragraph 6 below, that:
  - a. [the Agreement should have effect subject to the modified terms set out in Annex [X];]
  - b. [your existing Code right to [insert details of Code right] should no longer [be conferred by / bind] us;]
  - c. [the Agreement should also [confer on you / bind us to] [Insert details of additional Code right proposed];]
  - d. [the Agreement should be terminated and a new agreement should have effect between us on the terms set out in Annex [X].]
6. The day from which [I/we] propose that:
  - a. [the modified terms should have effect;]
  - b. [the Code right referred to in paragraph 5 above should no longer [be conferred by / bind] us;]
  - c. [the additional Code right referred to in paragraph 5 above should [be conferred by / bind] us;]

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<sup>11</sup> A copy of the Communications Act 2003 is available online at [www.legislation.gov.uk](http://www.legislation.gov.uk).

d. [the Agreement should be terminated, and from which the new agreement set out in Annex [X] should have effect]

is [Insert Date].<sup>[see note (a)]</sup>

### CONSEQUENCES OF NOT REACHING AGREEMENT

7. If, after the end of six months beginning with the day on which this notice is given and the time referred to in paragraph 33(3) of the Code, [I/we] have not reached agreement with you on the proposals in this notice, [I/we] may apply to the court for an order under paragraph 34 of the Code.

7A. Before applying for an order under paragraph 34 of the Code, we must, if it is reasonably practicable to do so, consider the use of one or more alternative dispute resolution procedures to reach agreement with you.

7B. Either you or we may at any time give the other a notice in writing stating that you or we (as applicable) wish to engage in alternative dispute resolution with the other in relation to the agreement we are seeking under this notice. If either you or we unreasonably refuse to engage in such alternative dispute resolution before an application is made to the court, the court must have regard to this when deciding on the appropriate costs order or, in Scotland, expenses.

For more information on the circumstances in which a court may impose such an order and on the type of agreement the court may impose, please see the supplementary information at the back of this notice. The supplementary information also provides more detail about the availability of alternative dispute resolution.

### NEXT STEPS

8. Any notification confirming that you agree or disagree to the change requested above should be provided to [me/us] in writing as soon as possible and, in any event, before the end of six months beginning with the day on which this notice is given.

9. To be effective, such notification must be **delivered by hand** or sent by **registered post** or **recorded delivery** to the following address:  
[Insert address details]

10. [If you have any questions about this notice, please do not hesitate to contact [me/us] via telephone (Insert number) or e-mail (insert email address).]

[INSERT DATE OF NOTICE]



## ANNEX [X]

### NOTES AND SUPPLEMENTARY INFORMATION FOR THE SENDER OF THIS NOTICE

You may wish to obtain independent legal advice before completing this notice.

- a) Paragraph 33(3) of the Code sets out rules about the earliest date on which you can request that a change to a Code agreement takes effect.

In particular, paragraph 33(3) provides that the day on which you propose that any change has effect must fall:

- after the end of the period of 6 months beginning with the day on which the notice is given; and
  - after the time at which, apart from paragraph 30 of the Code, the Code right to which the existing Code agreement relates would have ceased to be exercisable or to bind you or at a time when, apart from that paragraph, the Code agreement could have been brought to an end by you.
- b) The types of orders which the court may make under paragraph 34 of the Code include an order which has the effect of:
- modifying the terms of the Agreement;
  - modifying the terms of the Agreement so that one of the Code rights set out therein is no longer conferred by or binding on you;
  - modifying the terms of the Agreement so that it confers an additional Code right on the operator or provides that you are bound by an additional Code right;
  - terminating the Agreement and ordering the operator to enter into a new agreement which confers a Code right on that operator or provides for a Code right to bind you.
- c) In determining whether to make an order under paragraph 34, the court must have regard to all the circumstances of the case, and in particular to:
- the operator's business and technical needs;
  - the use that you are making of the land to which the existing code agreement relates;
  - any duties imposed on you by an enactment; and
  - the amount of consideration payable by the operator to you under the existing code agreement.
- d) If the court makes an order under paragraph 34, it may also order the operator to pay the site-provider consideration. See paragraph 34(14) for details of how the consideration should be calculated by the court in this case.

SUPPLEMENTARY INFORMATION FOR THE RECIPIENT OF THIS NOTICE

Alternative Dispute Resolution

5. Paragraph 33(6) of the Code sets out that the party seeking a Code Agreement must, if it is reasonably practicable to do so, consider the use of one or more alternative dispute resolution “ADR” procedures before applying for an order under paragraph 34 of the Code.
6. If a site-provider fails to consider ADR before making an application to the courts, the courts can consider that failure when deciding on the appropriate costs order or, in Scotland, expenses.
7. Under paragraph 33(7) of the Code either party may at any time notify the other in writing stating that they wish to engage in ADR.
8. When deciding on the appropriate costs order or, in Scotland, expenses, the courts must have regard to any unreasonable refusal to engage in ADR by either party.

# A4 Responding to this consultation

## How to respond

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- A4.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 10 October 2023.
- A4.2 You can download a response form from [www.ofcom.org.uk/consultations-and-statements/category-3/consultation-ecc-proposed-amendments-template-notices](http://www.ofcom.org.uk/consultations-and-statements/category-3/consultation-ecc-proposed-amendments-template-notices). You can return this by email or post to the address provided in the response form.
- A4.3 If your response is a large file, or has supporting charts, tables or other data, please email it to [ECCOP@ofcom.org.uk](mailto:ECCOP@ofcom.org.uk) as an attachment in Microsoft Word format, together with the cover sheet.
- A4.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Jack Gaches  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- A4.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files; or
  - upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A4.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A4.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt of a response submitted to us by email.
- A4.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A4.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 7. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.
- A4.10 If you want to discuss the issues and questions raised in this consultation, please contact Jack Gaches by email to [jack.gaches@ofcom.org.uk](mailto:jack.gaches@ofcom.org.uk).

## Confidentiality

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- A4.11 Consultations are more effective if we publish the responses before the consultation period closes. This can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish responses on the Ofcom website at regular intervals during and after the consultation period.
- A4.12 If you think your response should be kept confidential, please specify which part(s) this applies to and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A4.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A4.14 To fulfil our pre-disclosure duty, we may share a copy of your response with the relevant government department before we publish it on our website.
- A4.15 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our Terms of Use.

## Next steps

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- A4.16 Following this consultation period, Ofcom plans to publish a statement in XXXX 20xx.
- A4.17 If you wish, you can register to receive mail updates alerting you to new Ofcom publications.

## Ofcom's consultation processes

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- A4.18 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 5.
- A4.19 If you have any comments or suggestions on how we manage our consultations, please email us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A4.20 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:
- A4.21 Corporation Secretary  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA  
Email: [corporationsecretary@ofcom.org.uk](mailto:corporationsecretary@ofcom.org.uk)

# A5 Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

## Before the consultation

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A5.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

## During the consultation

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A5.2 We will be clear about whom we are consulting, why, on what questions and for how long.

A5.3 We will make the consultation document as short and simple as possible, with an overview of no more than two pages. We will try to make it as easy as possible for people to give us a written response.

A5.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.

A5.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.

A5.6 If we are not able to follow any of these seven principles, we will explain why.

## After the consultation

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A5.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish the responses on our website at regular intervals during and after the consultation period. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

# A6 Consultation coversheet

## Basic details

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Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

## Confidentiality

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Please tick below what part of your response you consider is confidential, giving your reasons why

- Nothing
- Name/contact details/job title
- Whole response
- Organisation
- Part of the response

If you selected 'Part of the response', please specify which parts:

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If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

Yes  No

## Declaration

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I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom aims to publish responses at regular intervals during and after the consultation period. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

## A7 Consultation questions

Do you have any comments on the proposed changes to the template notice set out in Annex 1?

Do you have any comments on the proposed changes to the template notice set out in Annex 2?

Do you have any comments on the proposed changes to the template notice set out in Annex 3?

The overview section in this document is a simplified high-level summary only. The proposals we are consulting on and our reasoning are set out in the full document.