

# Electronic Communications Code

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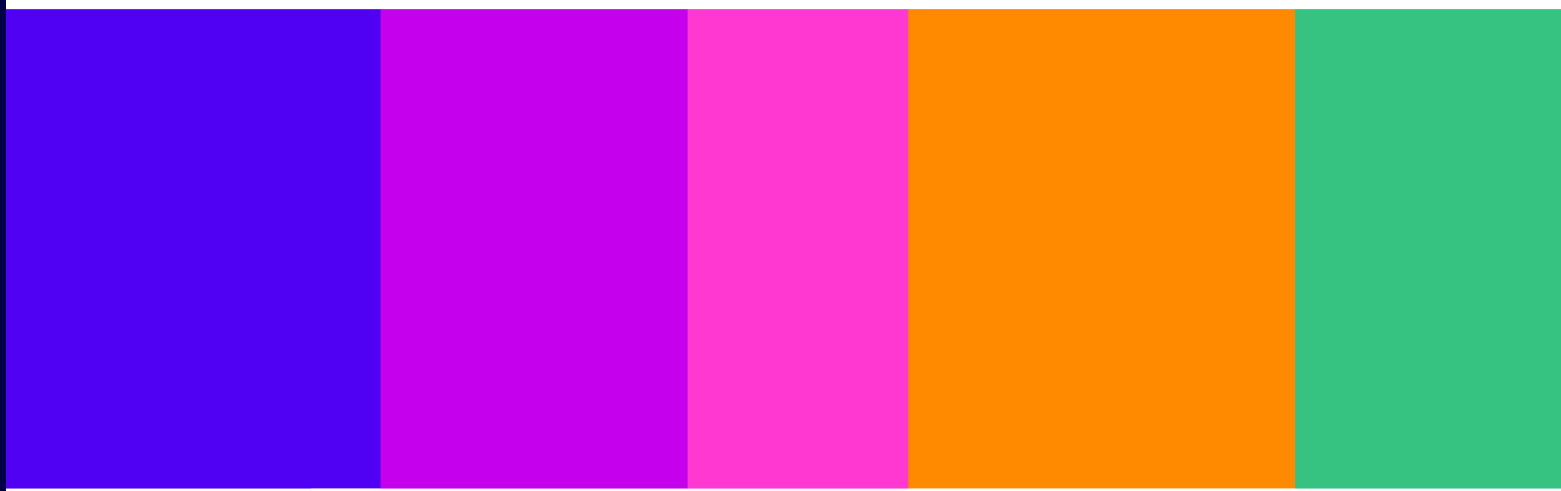
## Code of Practice

[Code of Practice](#) – Welsh overview available

### Consultation

Published: 12 September 2023

Closing date for responses: 7 November 2023



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# 1. Overview

- 1.1 The Electronic Communications Code ('the Code') confers certain rights on providers of electronic communications networks and on providers of systems of infrastructure (designated by Ofcom as 'Code Operators') to install and maintain electronic communications apparatus on, under and over land, including on public highways, and results in considerably simplified planning procedures. In the event that agreement cannot be reached with the owner or occupier of private land, the Code allows an operator to apply to the court to impose an agreement conferring the Code right being sought or for the Code to bind the landowner or occupier.
- 1.2 The Digital Economy Act 2017 ('DEA') reformed the Code by including a range of measures to make it easier for Code operators to roll out electronic communications apparatus. The reforms to the Code required Ofcom to publish, amongst other things, a Code of Practice concerning agreements for access to private land under the Code. In December 2017 Ofcom published a Code of Practice after consultation with industry.
- 1.3 At the time we noted that it would be necessary to monitor and review the Code of Practice over time to ensure that it remained fit for purpose, appropriate, and proportionate and continued to reflect best practice expectations for the conduct of parties in the interest of supporting the roll out and maintenance of communications infrastructure.
- 1.4 Since then, the Telecommunications Infrastructure (Leasehold Property) Act 2021 (TILPA) and the Product Security and Telecommunications Infrastructure Act 2022 (PSTIA) have introduced further changes to the Code to support the rollout of modern high-capacity networks in a way that balances the interests of landowners, telecoms operators, and the public.<sup>1</sup> To further these aims, in November 2022, the Department for Culture Media and Sport (DCMS<sup>2</sup>) established the National Connectivity Alliance (NCA), an alliance of telecommunications providers, infrastructure providers, landowners and their professional advisers.
- 1.5 In light of these developments, Ofcom decided it would be appropriate to review the Code of Practice and invited the NCA to contribute to its review by proposing a set of draft revisions to the Code of Practice.<sup>3</sup>
- 1.6 Having carefully considered the NCA's recommendations, this Consultation sets out Ofcom's proposals for amending the Code of Practice.
- 1.7 Our proposed revisions to the Code of Practice do not include text relating to complaints handling as we anticipate the Government making regulations in relation to this. Our preference is to consider any such regulations before adding additional detail relating to complaints into the Code of Practice.

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

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

<sup>3</sup> <https://www.ncalliance.org.uk/>

- 1.8 Alongside this Consultation we have also published a Consultation in which we are proposing amendments to Paragraph 20 and 33 Template Notices to reflect changes to the Code brought about by the Product Security and Telecommunications Infrastructure Act (PSTIA).<sup>4</sup>

#### **What we are proposing – in brief**

We are proposing to amend the existing Electronic Communications Code: Code of Practice as described in section 3, where we set out the key proposed amendments, and in the table in Annex 1. The proposed updated Code of Practice can be found in Annex 2: proposed additions are set out in underlined red text and highlighted (e.g. example), and deletions are marked in strike-through (e.g. ~~example~~).

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

# 2. Introduction

## Background

- 2.1 The Electronic Communications Code ('the Code') confers certain rights on providers of electronic communications networks and on providers of systems of infrastructure (designated by Ofcom as 'Code Operators') to install and maintain electronic communications apparatus (including poles or ducts) on, under and over land, including on public highways, and results in considerably simplified planning procedures. In the event that agreement cannot be reached with the owner or occupier of private land, the Code allows an operator to apply to the court to impose an agreement conferring the code right being sought or for the Code to bind the landowner or occupier.
- 2.2 The Code was originally enacted in 1984 under Schedule 2 of the Telecommunications Act to regulate the provision of landline telephony. It was later amended by Schedule 3 of the Communications Act 2003,<sup>5</sup> to enable it to support the infrastructure which delivers broadband, mobile internet, and cable TV.
- 2.3 The Code was subject to changes in 2017 by the Digital Economy Act 2017 ("the DEA"), to speed up the roll out of communications apparatus. Amongst other things, the DEA included provisions to remove the previous Code set out in Schedule 2 of the Telecommunications Act 1984 ("the Old Code") and replace it with a new Code set out in Schedule 3A to the Communications Act 2003. The 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.
- 2.4 The new Code also required Ofcom to publish:
- a Code of Practice;
  - a number of template notices which may or must (depending on the circumstances) be used by Code Operators and Site Providers<sup>6</sup>; and
  - standard terms which may (but need not) be used by Code Operators and Site Providers when negotiating agreements to confer Code rights.

## The 2017 Code of Practice

- 2.5 In December 2017, following consultation with industry, Ofcom published a statement in which we set out a Code of Practice.<sup>7</sup>
- 2.6 We recognised at the time that it may be necessary in the future to revisit the Code of Practice to ensure that it remains appropriate and fit for purpose.

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<sup>5</sup> [Communications Act 2003, Section 106, Schedule 3: Amendments of Schedule 2 of the Telecommunications Act 1984](#)

<sup>6</sup> For the purposes of this Code of Practice, we use the term "Site Provider" (as defined in paragraph 30(1) of the Code) wherever a reference is applicable to a Landowner or an Occupier, or both.

<sup>7</sup> Electronic Communications Code: Code of Practice, Ofcom, December 2017  
[https://www.ofcom.org.uk/data/assets/pdf\\_file/0025/108790/ECC-Code-of-Practice.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0025/108790/ECC-Code-of-Practice.pdf).

## Updating the Code of Practice

- 2.7 In recent years, stakeholders have raised concerns that the Code of Practice needs to be updated and suggested that now was an appropriate time to review the document. Ofcom shares this view, particularly in light of further changes to the Code that have resulted from the Telecommunications Infrastructure (Leasehold Property) Act 2021 (TILPA) and the Product Security and Telecommunications Infrastructure Act 2022 (PSTIA), and the establishment of the NCA by DCMS in November 2022.
- 2.8 Ofcom understands the latest set of changes to the Code are intended to support the rollout of modern high-capacity networks in a way that balances the interests of landowners, telecoms operators, and the public. The NCA was established to support this aim, bringing together infrastructure providers, landowners, and their professional advisers to ‘collaborate on areas of mutual interest with the goal of delivering world class connectivity for all in the UK’.
- 2.9 One area of particular focus for the NCA has been to contribute to Ofcom’s review of the ECC Code of Practice document, this is similar to the role an ad hoc cross-sector stakeholder group took when we were developing the original Code of Practice in 2017. To this end, Ofcom invited the NCA to produce a first draft of the revised Code of Practice, which it provided to Ofcom in March 2023. This document used the 2017 Code of Practice as a starting point and sought to update it to ensure it remained relevant and appropriate.
- 2.10 Having received this document from the NCA, Ofcom undertook a review of the draft Code of Practice, carefully considering the NCA input, which we took as the starting point to carrying out our own analysis of what was required in accordance with our statutory obligations. The result, a proposed updated Code of Practice, can be found in Annex 2: proposed additions are set out in underlined red text and highlighted (e.g. example), and deletions are marked in strike-through (e.g. ~~example~~). In the following section, we explain the key proposed amendments and we summarise all the amendments in the table provided in Annex 1.

## Recent developments

- 2.11 In January 2023 Ofcom published a Statement setting out two new template notices resulting from the Telecommunications Infrastructure (Leasehold Property) Act 2021 (TILPA) amendments to the Code, and specifically the new provisions in Part 4A. The TILPA focussed on allowing Code Operators to install, upgrade, or maintain their equipment in Multi Dwelling Units (MDUs) where a tenant has requested an electronic communications service, but the landlord is unresponsive to requests for access.
- 2.12 In April 2023 Ofcom published a Statement introducing two new template notices resulting from the Product Security and Telecommunications Infrastructure Act 2022 (PSTIA) amendments to the Code. The PSTIA made various amendments to the Code, including a right for certain operators to upgrade or share apparatus installed below ground.

## Impact Assessment

- 2.13 Impact assessments provide a valuable way of assessing different options for regulation and considering the potential effects of our proposals. They form part of best practice policy making. This section outlines our assessment of how our proposal may affect relevant stakeholders.

- 2.14 Overall, we consider that our proposals regarding amendments to the Code of Practice will benefit both Operators and Site Providers as they should allow for a smoother and more effective process for engagement. This in turn should benefit citizens and consumers as effective engagement between Operators and Site Providers should lead to the delivery of better communications services, or at the least, remove the barriers to delivering a service.

### Impact on Operators and Site Providers

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

### Impact on citizens and consumers

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

## Equality impact assessment

- 2.18 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.
- 2.19 Section 75 of the Northern Ireland Act 1998 (the “1998 Act”) also imposes a duty on Ofcom, when carrying out its functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity and have regard to the desirability of promoting good relations across a range of categories outlined in the 1998 Act. Ofcom’s Revised Northern Ireland Equality Scheme explains how we comply with our statutory duties under the 1998 Act.
- 2.20 To help us comply with our duties under the 2010 Act and the 1998 Act, we assess the impact of our proposals on persons sharing protected characteristics and in particular whether they may discriminate against such persons or impact on equality of opportunity or good relations.
- 2.21 We do not consider that our proposals have equality implications under the 2010 Act or the 1998 Act.

## Responding to this Consultation

- 2.22 This consultation will be open for 8 weeks, closing on 7 November 2023. After the consultation closes, we will review all submitted responses and publish a final statement and finalised versions of the Code of Practice on Ofcom’s website.

# 3. Proposed amendments to the Code of Practice

## Introduction

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- 3.1 In this section we have outlined the key proposed amendments to the Code of Practice and invite stakeholders to comment on these proposals.
- 3.2 The list of proposed amendments included in this section is not exhaustive and a marked-up version of the Code of Practice can be found in Annex 2. The table in Annex 1 outlines every proposed change.

## Clarity

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### Proposal

- 3.3 Throughout the document we are proposing to make a number of small changes to the text to aid in the overall clarity of the document. This includes the removal or addition of words, additional explanations, and the addition of examples. The intention of these changes is to remove any ambiguity and to ensure that both Site Providers and Operators have the same understanding of the meaning of the Code of Practice.
- 3.4 Given the number of minor changes we are proposing to make, this section focuses on the key proposed changes. The full set of proposed changes is summarised in Annex 1 and can be seen in a mark-up of the Code of Practice in Annex 2.

Consultation Question 1: Do you have any comments on our proposals relating to improving the clarity of the Code of Practice?

## Legislative changes

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### Proposal

- 3.5 Since the publication of the Code of Practice in 2017, there have been a number of legislative changes that have impacted the Code and the Code of Practice, in particular, changes resulting from TILPA and PSTIA. We are therefore proposing a number of additions to the Code of Practice to explain these developments and the associated changes.

Consultation Question 2: Do you have any comments on our proposals relating to including legislative changes in the Code of Practice?



## Definition of Site Provider

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### Proposal

- 3.6 We are proposing to introduce the term 'Site Provider' (as defined in Paragraph 30(1) of the Code) throughout the document to encompass both 'Landowners' and 'Occupiers'. This is to make it clear that the Code of Practice is applicable to both and that often the interests of 'Landowners' and 'Occupiers' are the same and therefore should be grouped together.

Consultation Question 3: Do you have any comments on our proposals relating to the definition of 'Site Provider' in the Code of Practice?

## Contact information

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### Proposal

- 3.7 We are proposing to amend and expand the sections of the Code of Practice related to communication between Operators and Site Providers. This includes specifying that an Operator should provide the Site Provider with their own contact details, as well as anyone working on their behalf. We have also removed text that the Site Provider should provide their contact information to the head office of the Operator.
- 3.8 These changes are aimed at making communication between the Site Provider and the Operator easier and more effective, given the importance of clear communication between parties.

Consultation Question 4: Do you have any comments on our proposals relating to contact information in the Code of Practice?

## Professional fees

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### Proposal

- 3.9 We are proposing to add text to the Code of Practice (Para 1.16) that, where relevant, Operators should provide information to Site Providers on when their professional fees would be compensated.
- 3.10 The aim of this change is to give Site Providers clarity at an early stage on what professional fees they are likely to incur and which fees they will be able to claim from the Operator, thus ensuring that the Site Provider is fully aware of the likely costs associated with access to their site.

Consultation Question 5: Do you have any comments on our proposals relating to professional fees in the Code of Practice?

3.11

## Responding to a request for access

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### Proposal

- 3.12 We are proposing to include two new paragraphs (1.20 – 1.21) which outline the process for an Operator requesting access to a site, and the importance of the Site Provider responding to such a request. These paragraphs are aimed at encouraging engagement between the parties at an early stage and communication between the parties to prevent the need for an Operator to apply for a court order for access.

Consultation Question 6: Do you have any comments on our proposals relating to responding to a request for access in the Code of Practice?

## Electromagnetic fields exposure

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### Proposal

- 3.13 We are proposing to add three new paragraphs (A2.42 – A2.44) which address potential electromagnetic fields exposure. The purpose of these paragraphs is to outline the importance of engagement between the Operator and Site Provider to consider and manage any electromagnetic fields exposure.

Consultation Question 7: Do you have any comments on our proposals relating to electromagnetic fields exposure in the Code of Practice?

## Sharing and upgrading apparatus

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### Proposal

- 3.14 We are proposing to include an entire new section in the Code of Practice relating to the sharing and upgrading of apparatus. We have added this section for 2 reasons:
- This has been a contentious area between Operators and Site Providers which has highlighted the need for greater clarity in this specific area of the Code of Practice;
  - The PSTIA 2022 made a number of changes to the Code<sup>8</sup> which we have now reflected in the Code of Practice.

Consultation Question 8: Do you have any comments on our proposals relating to the sharing and upgrading of apparatus in the Code of Practice?

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<sup>8</sup> See sections 57 to 59, PSTIA 2022.

## Alternative Dispute Resolution

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### Proposal

- 3.15 We are proposing to add text and amend previous text to address the ADR provisions included in the PSTIA 2022.<sup>9</sup> Whilst section 69 of the PSTIA 2022 is not yet in force, we are making these proposals in anticipation of into coming into effect. The intention of these changes has been to set out the behaviours of the parties, as well as providing an overview of what ADR is and when parties may wish to consider it. ADR will not always be appropriate either on its own or running in parallel with the service of a formal notice to refer to Tribunal (e.g. for interim rights).

Consultation Question 9: Do you have any comments on our proposals relating to ADR in the Code of Practice?

Consultation Question 10: Do you have any overarching comments on our proposals for the Code of Practice (included in its entirety in Annex 2 below)?

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<sup>9</sup> See section 69, PSTIA 2022.

# A1 Summary of proposed changes to the Code of Practice

Topic/ Section	Proposed Change	Explanation
Introduction	Addition of legislative changes since 2017	To bring the Code of Practice up to date with legislative changes that have come into effect since we published the Code of Practice in 2017.
	Minor text changes	Clarity
Purpose of the Code of Practice	Clarification of the intention of the Code of Practice	Clarity
	Replaced 'Landowner' and 'Occupier' with 'Site Provider'	To highlight that the Code of Practice applies to both and that they can be classed together.
	Minor text changes	Clarity
Scope of the Code of Practice	We have added more examples of what Site Providers and Operators should expect from each other	Clarity
Communication	We have amended and expanded on the sections of the Code of Practice related to communication between Operators and Site Providers, this includes specifying that an Operator should provide the Site Provider with their own contact details, as well as anyone working on their behalf. We have also removed text that the Site Provider should provide their contact information to the head office of the Operator.	To facilitate/ encourage easy and effective communication between Site Providers and Operators.
	We have added text around Site Providers ensuring that Operators have their up-to-date contact information.	To ensure ongoing communication is possible and disruption from being unable to communicate is reduced.
	Minor text changes	Clarity

Topic/ Section	Proposed Change	Explanation
<b>Professional advice</b>	We have removed the examples of 'qualified or experienced person'.	There is a wide range of persons a party may wish to consult and listing a couple of examples would not necessarily be helpful.
	We have added text on Operators providing information to Site Providers on the professional fees that can be reimbursed by the Operator.	This is to give Site Providers sight of the costs/ fees they can expect to incur and claim back from the Operator.
<b>Behaviours</b>	Minor text changes	Clarity
<b>New agreements for the installation of apparatus</b>	We have added examples of what would be considered a 'new site'.	Clarity
<b>Responding to a request for access by the operator</b>	We have included two new paragraphs (1.20 – 1.21) which outline the process for an Operator requesting access to a site, and the importance of the Site Provider responding to such a request.	These paragraphs are aimed at encouraging engagement between the parties at an early stage and communication between the parties to prevent the need for an Operator to apply for a court order for access.
	Minor text changes	Clarity
<b>Stage 1: Site survey</b>	Minor text changes	Clarity
<b>Stage 2: Consultation and agreement</b>	We have added references to ADR and clarified the process for court orders.	Clarity
	Minor text changes	Clarity
<b>Stage 3: Deployment stage</b>	We have added three new paragraphs (A2.42 – A2.44) which address any electromagnetic fields exposure.	The purpose of these paragraphs is to outline the importance of engagement between the Operator and Site Provider to consider and manage any electromagnetic fields exposure.
	Minor text changes	Clarity
<b>Neighbours and other occupiers</b>	Minor text changes	Clarity
<b>The ongoing access to and operation,</b>	We have added a list of steps for Operators and Site Providers to undertake in relation to access.	To be more explicit in what is expected from each party. Previously, this was potentially ambiguous.

Topic/ Section	Proposed Change	Explanation
<b>maintenance and upgrading of existing sites and apparatus</b>	Minor text changes	Clarity
<b>Sharing and upgrading (both overground and underground)</b>	We have included an entire new section in the Code of Practice relating to the sharing and upgrading of apparatus.	<p>3.16 We have added this section for 2 reasons:</p> <ul style="list-style-type: none"> <li>This has been a contentious area between Operators and Site Providers which has highlighted the need for greater clarity in this specific area of the Code of Practice;</li> <li>Sections 57 to 59 of the PSTIA 2022 made a number of changes to the Code which we have now reflected in the Code of Practice.</li> </ul>
<b>Decommissioning sites and removal of redundant apparatus</b>	We have explicitly included that when an Operator removes apparatus, it should restore the land to its prior condition.	To ensure mutual understanding of what is expected when apparatus is removed.
	We have outlined that when apparatus has been installed by a utility provider, the Site Provider would need to contact that utility provider to discuss removal and that the Operator should assist in this where possible.	To clarify the process for the removal of third party infrastructure.
<b>Renewal of existing sites and the Code</b>	We have added text on what happens when contractual terms end and negotiation of a renewal.	Clarity
	Minor text changes	Clarity
<b>Repairs to a Site Provider's property</b>	Minor text changes	Clarity
<b>Redevelopment by the Site Provider</b>	Minor text changes	Clarity

Topic/ Section	Proposed Change	Explanation
<b>Resolving disputes</b>	We have added new and revised existing sections to deal with the ADR provisions included in section 69 of the PSTIA 2022.	The intention here has been to set out the behaviours of the parties, as well as providing an overview of what ADR is and when parties may wish to consider it. ADR will not always be appropriate either on its own or running in parallel with the service of a formal notice to refer to the Tribunal (e.g. for interim rights).
<b>Schedule A</b>	We have added new paragraphs	To reflect practical issues encountered by industry since the introduction of the Code, and to set out the types of surveys and what activities might be involved. To ensure the site provider knows who is accessing their land.
<b>Schedule B</b>	We have added new paragraphs	To provide more detailed information on access to sites and to allow for better planning.

# A2 Proposed Code of Practice

## About

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- A2.1 This document contains the Code of Practice. The Code of Practice deals with
- the provision of information for the purposes of the **Electronic Communications Code set out in Schedule 3A of the Communications Act 2003 ('the Code')** ~~new Code~~ by operators to persons who occupy or have an interest in land;
  - the conduct of negotiations for the purposes of the Code between operators and such persons;
  - the conduct of operators in relation to persons who occupy or have an interest in land adjoining land on, under or over which electronic communications apparatus is installed; and
  - such other matters relating to the operation of the Code as Ofcom think appropriate.
- A2.2 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.
- A2.3 Electronic communications services (such as landlines, mobile phones and internet services) are now regarded as essential services. In order that these services can be provided where they are needed, The **Electronic Communications Code ('Code')** provides a statutory basis whereby communications providers (known in this context as 'Operators'<sup>10</sup>) can place their Apparatus<sup>11</sup> on land or buildings ~~owned by another person or organisation~~.
- A2.4 **The Code was subject to changes in 2017 by the Digital Economy Act 2017 ("the DEA"), to speed up the roll out of communications apparatus. Amongst other things, the DEA included provisions to remove the previous Code set out in Schedule 2 of the Telecommunications Act 1984 ("the Old Code") and replace it with a new Code set out in Schedule 3A to the Communications Act 2003. The new Code introduced a range of measures to make it easier for Code Operators to roll out electronic communications apparatus. For example, significant changes were made to the way land is valued and an automatic right for Code Operators to upgrade and share their telecommunications apparatus was introduced.**
- A2.5 **As a result of the changes made in 2017, the Code now includes obligations on Ofcom to publish:**

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<sup>10</sup> 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.

<sup>11</sup> 'Apparatus' is a broad term and refers to what is defined in the Code as electronic communications apparatus; it includes such items as antennae for mobile signals, masts, cabinets, cables, ducts and telegraph poles.



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

A2.6 The Code was then further amended by the Telecommunications Infrastructure (Leasehold Property) Act 2021 (TILPA 2021) and Product Security and Telecommunications Infrastructure Act 2022 (PSTIA 2022)) to make it more straightforward for Operators to gain access to the locations they need, to improve coverage, capability and capacity. In view of the ever-increasing and critical needs of local communities (and the UK economy as a whole) to have access to 21st century communications networks, such as high-speed broadband connection or a 4G mobile connection (and 5G in due course), the Code has been reformed under the Digital Economy Act 2017 so as to make it more straightforward for Operators to gain access to the locations they need, to improve coverage, capability and capacity.

## Purpose of the Code of Practice

A2.7 The purpose of this Code of Practice, which has also been established under the Digital Economy Act, is to set out expectations for the conduct of the parties to any agreement made or activities performed under the Code.

A2.8 This Code of Practice is also intended to assist parties in the various negotiations and stages leading up to any formal agreement, in the stages required to enter into a formal agreement and in the exercise of Code rights. It is not a guide to the Code powers or legislation, or the Code regulations, but it is intended to complement them and to make it simple for Operators, Landowners and Occupiers<sup>12</sup> to come to agreement over a range of issues relating to the occupation of a site. ~~References to landowners should also be taken, where appropriate, to encompass Occupiers as defined in the Code~~ For the purposes of this Code of Practice, we use the term "Site Provider" (as defined in paragraph 30(1) of the Code) wherever a reference is applicable to a Landowner and an Occupier, or both. Where a reference applies only to a Landowner, or only to an Occupier, we use whichever of these is appropriate in the context of the relevant provision. It should also be noted that "Site Provider" may also refer more broadly to other persons who can be bound by Code rights (see paragraph 10 of the Code). Agreements under the Code are legally binding on the parties and so Site Providers ~~Landowners~~ may wish to consider seeking independent professional advice before entering into such an agreement (see below).

A2.9 'Site' in this Code of Practice is used in a broad sense<sup>13</sup> as any relevant place to install Apparatus, such as on, under or over on top of open the land, the rooftop of a building, a tunnel or a lamp-post.

A2.10 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

<sup>12</sup> The meaning of 'Landowner', 'Operator', and 'Occupier' is as defined in the Code.

<sup>13</sup> 'Site' is equivalent to the term 'Land' in the Code, as set out in paragraph 108.

agreement if not negotiating with the **Site Provider**. **Site Providers** and Operators must respect the needs and legitimate concerns of Occupiers of land when rights under the Code are exercised. Operators ought to be responsible for the behaviour and conduct of any contractors that they instruct to carry out work on their behalf.

## Scope

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A2.11 This Code of Practice:

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

A2.12 While ~~the~~ **is** Code of Practice sets out some clear principles and expectations about how **Site Providers** and Operators should behave towards each other, it should be noted that there are some special regimes in place (e.g. transport land, public maintainable highway and tidal waters), where different specific considerations may apply.

A2.13 This ~~is~~ Code of Practice covers a wide range of scenarios, from the **initial survey through to the construction of an electronic communications structure - full mobile mast to or** the installation of just one **piece of electronic communications apparatus or a line. telegraph pole or a very small length of cable and i** It should be noted that not all the procedural elements ~~should~~ **will** be required in each and every case.

## Communication and contact information

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A2.14 Communication between parties is vital to facilitate effective working relationships. All communications must be kept clear, concise and carried out in a timely manner to ensure active, engaged dialogue. In any event, the Operator should ensure it communicates and keeps the Site Provider informed of its plans.

A2.15 Central to the purpose of this Code of Practice is the maintenance of good communications between the parties in order to facilitate good working relationships.

## Keeping contact information up to date

A2.16 The Operator should ensure that the Landowner, Site Provider and any relevant Occupier of the site or of access routes to the site are provided with up-to-date site and contact information which may include details of the Operator but also those acting on their behalf. This ensures that the Site Provider is aware of who to contact in all the circumstances that may arise, such as:

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

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

A2.17 In turn, the Landowner, Site Provider and Occupier should provide its email address/contact details in writing directly to the registered office of the Operator. It is the responsibility of the Site Provider to notify the Operator of any changes to its contact details so they can be contacted, and ensure the Operator is notified of any changes so that the Operator knows which point of contact to use in all the circumstances which may arise.

## Professional advice

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A2.18 Landowners, Site Providers and Operators may choose to negotiate directly with each other. Alternatively, the parties may wish to seek professional advice from a suitably qualified and experienced person, such as a surveyor or valuer. This could also include taking legal advice before concluding an agreement<sup>14</sup>.

A2.19 Where relevant, the Operator should provide information to the Site Provider on its fees policy to include the detail of when and under what circumstances Site Providers reasonably and properly incurred professional fees would be compensated. The general principle is that a Site Provider should not be left out of pocket for its reasonably and properly incurred costs.

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<sup>14</sup> A list of such advisers can be provided by professional bodies such as Central Association of Agricultural Valuers, Law Society, Law Society for Scotland, Royal Institution of Chartered Surveyors and Scottish Agricultural Arbiters and Valuers Association

## Behaviours

A2.20 ~~In all cases, both~~ Operators, Site Providers and professional advisors ~~Landowners~~ should act in a timely, respectful, consistent, fair and open manner when engaging with each other. ~~in relation to any proposed works.~~

## New agreements for the installation of Apparatus

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A2.21 An Operator may require new sites or to install additional apparatus on existing sites for a number of reasons, such as:

~~A2.22—Additional Apparatus can be required for a number of reasons, such as:~~

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

A2.23 Where an Operator needs to deploy new apparatus on a new site (greenfield, rooftop, and/or street asset), ~~needs to be deployed on a new site,~~ the Operators will follow a sequence of steps, depending on the nature of the apparatus to be installed. For minor installations of apparatus (for example, the placement of a telegraph pole), it may be possible to reach an agreement on standard terms and conditions and without the need for a site visit. For more complex situations (such as a new mobile mast), a site visit may be required to assess the suitability of the location and to find out other background information.

## Responding to a Request for Access by the Operator

A2.24 An Operator will notify the Site Provider with details of the proposed access request for the purposes of deploying electronic communications apparatus, and this will typically contain the information detailed in Schedule A, including the identity of the Operator, their contact details, the type of apparatus they intend to deploy and over what timescales.

A2.25 It is important for the Site Provider to respond to this request for access. Where the Operator requests access to land and the Site Provider fails to respond to repeated requests for access, the Operator must, if it is reasonably practicable to do so, consider the use of one or more alternative dispute resolution procedures to reach agreement with the Site Provider. After which, the Operator may apply, following the service of relevant notices to the Site Provider, to a court for an order which can impose an agreement between the parties which confers the relevant Code rights being sought or provides for the Code right to bind the Site Provider. Such an application to the court may have cost consequences for the Site Provider.

### Stage 1: Site Survey

A2.26 Once it has been determined that new Apparatus is required in a given area, the Operator ~~should~~ may identify various options for new sites and survey possible solutions based on technical and planning considerations.

- A2.27 Although access to maps, satellite imagery, building plans etc. can enable much of the site feasibility to be conducted remotely, direct access to a potential site and the ability to discuss practical matters with ~~Landowners~~ **Site Providers is likely to** be required.
- A2.28 Where access is necessary, the Operator should request such access in writing, covering the matters set out in ~~Annex Schedule~~ **A**, where relevant. The Operator should generally request that access is given within a reasonable period **dependent of the use or type of building/ land or asset.** ~~(e.g. this may be a period of around 7 days).~~ The access request should set out the nature of the visit and a basic outline of the proposed installation/s.
- A2.29 To ensure the site survey is productive, the parties may ~~choose to~~ meet on site. At the appropriate moment in the assessment process, the ~~Landowner~~ **Site Provider**, on the Operator's request, should **assist where possible** to provide relevant information such as:
- a) **Who owns/occupies the site and details of any other parties with a known interest in land or access to it;**
  - b) The current use of the site;
  - c) Whether there are any multiple occupancy management arrangements in place;
  - d) **Land management agreements, such as environmental or natural capital related schemes;**
  - e) Any planned change or intended change in ownership, occupation or use;
  - f) Any proposals there may be to change the use of or develop the land, including whether there are any existing planning permissions in place;
  - g) Details of known pipes, drains, cables or structures...etc;
  - h) Whether there is/are any harmful materials, liquids, vegetation, sites of special scientific interest, protected flora, fauna, listed buildings, archaeological considerations or public rights of way on or adjacent to the site;
  - i) Any other rights of public access on the site or adjacent to the site;
  - j) **Details of any professional or managing agent who will act on their behalf.**
- A2.30 **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

- A2.31 The type of apparatus that can be deployed on, over or under a site can vary enormously. It could include, for example:
- a) A telegraph pole being placed in a field;
  - b) A cable being laid in an existing duct in a shopping centre;
  - c) An antenna system for mobile coverage being installed on the roof of a **building, such as an office block;**
  - d) A lattice tower being erected in a wood
- A2.32 Each of these examples could require **a different consultation process** **es due to the variety of impacts to land, different levels of agreement with the Site Providers.**
- A2.33 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 practice<sup>15</sup>.

- A2.34 Where a proposal is straightforward, ~~it may be appropriate for the Operator to send the Site Provider a simple written agreement along with an explanation of the requirement and a site diagram to demonstrate the location of the apparatus for their consideration.~~ ~~with standard apparatus, such as a single cabinet or pole, it may be appropriate for the Operator to send the Landowner a simple written agreement with a request to sign it and return.~~
- A2.35 ~~In cases of complex or impactful proposals, Where the proposal is less simple, a phone call or meeting could be offered where practicable.~~ It may be appropriate for the Operator to send a summary of the proposed terms of an agreement for the ~~Landowner~~ ~~Site Provider~~ to consider and review. In such cases the documentation might include, for example, a plan showing the proposed design, access routes and cable routes; loading calculations for rooftop sites; and proposals for electricity provision.
- A2.36 Before concluding an agreement, the ~~Landowner~~ ~~Site Provider~~ and Operator should ~~agree~~ ~~consider~~ access arrangements for construction, installation, ~~security~~, subsequent planned maintenance, upgrades, ~~provision for emergency generators where appropriate~~ and emergency maintenance to repair service affecting faults. The key points for access arrangements are covered in ~~Annex~~ ~~Schedule~~ B.
- A2.37 Although the Code provides a mechanism for the court to impose terms of occupation on the ~~Landowner~~ ~~Site Provider~~ and the Operator, ~~where an agreement cannot be reached~~, the parties should make every effort to reach ~~voluntary consensual~~ agreement first, ~~including potentially engaging with an ADR process.~~
- A2.38 Whilst some agreements should be expected to be completed within a matter of weeks, and some simple cases might potentially be signed on site during the survey stage, agreements for larger or more complex arrangements may generally take longer, but in all cases the parties should endeavour to respond ~~without undue delay to~~ ~~promptly to~~ correspondence from the other side and aim to complete the process as ~~soon as practicably~~ ~~swiftly as~~ possible.
- A2.39 In the absence of terms being agreed between the parties, ~~Parts Parts 4, 4A and 4ZA of the Code<sup>16</sup> each provide for a process whereby the Operator can apply to the court for an order which imposes an agreement between the parties which confers the relevant code rights being sought or provides for the Code right to bind the Site Provider. However, prior to this, the Operator must, if it is reasonably practicable to do so, consider the use of one or more alternative dispute resolution procedures to reach agreement with the Site Provider. ~~in the circumstances described in paragraph 20(3) of the Code,, the Code provides for a process whereby a court can impose the terms of occupation and/or the conferring of code rights pursuant to paragraph 19 of the Code.~~~~ It must be emphasised, though, that one of the

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<sup>15</sup> For example: Code of Best Practice on Mobile Network Development in England, <http://www.mobileuk.org/codes-of-practice.html>

<sup>16</sup> See Paragraph 20(3) for Part 4, Paragraph 27D(1) for Part 4A, and Paragraph 27ZE(1) for Part 4ZA.

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

### Stage 3: Deployment stage

A2.40 When the Operator is carrying out works on a **Landowner's Site Provider's** property it should endeavour to cause minimal disruption and inconvenience. The Operator should notify the Landowner of the following:

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

A2.41 Where applicable, the Operator should retain a dated photographic record of the condition of the site prior to the commencement of works and on completion of the works, **which should be made available to the Site Provider, where reasonably requested.**

## **Electromagnetic fields (EMF) exposure Compliance**

A2.42 **Most wireless telegraphy licences issued by Ofcom include a [condition<sup>17</sup>](#) requiring licensees to ensure compliance with the limits in Guidelines issued by ICNIRP (the International Commission for Non-Ionizing Radiation Protection) on exposure to electromagnetic fields (EMF) for the protection of the general public (the "EMF licence condition"). Ofcom refers to these limits as the "general public EMF limits". The EMF licence condition applies to licensees whose radio equipment is currently authorised to transmit at powers higher than 10 Watts EIRP or 6.1 Watts ERP. Operators that are subject to the EMF licence condition will generally be required to comply with the general public EMF limits and hold appropriate EMF records demonstrating their compliance taking into account Ofcom's [Guidance on EMF Compliance and Enforcement](#).<sup>18</sup>**

A2.43 **Health and safety law in the UK places separate duties on persons (including Operators and Site Providers) who create risks relating to work and the workplace including any risks related to EMF exposure. The Health and Safety Executive (HSE) has published [guidance<sup>19</sup>](#) 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)<sup>20</sup>.**

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<sup>17</sup> <https://www.ofcom.org.uk/spectrum/emf/policy>

<sup>18</sup> <https://www.ofcom.org.uk/spectrum/emf/compliance-and-enforcement-guidance>

<sup>19</sup> <https://www.hse.gov.uk/radiation/nonionising/emf.htm>

<sup>20</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0022/214663/emf-implementation-update.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0022/214663/emf-implementation-update.pdf)

A2.44 When negotiating access to a site, Operators and Site Providers should consider how they will cooperate with each other in order to manage any EMF risks and ensure (i) the Operator complies with any EMF licence condition that may apply to it; and (ii) the Operator and Site Provider comply with relevant health and safety legislation. In doing so:

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

## Neighbours and other occupiers

A2.45 Persons with an interest in land adjoining a proposed site may need to be consulted under national regulations, guidelines and any applicable Codes of Practice<sup>21</sup>.

A2.46 Operators should ~~also~~ negotiate access arrangements with the owner and/or occupier of land adjoining a site, where use of that land is required for either constructing ~~and/or~~ maintaining the site. ~~If an agreement cannot be reached, the Operator may seek to exercise its Code rights.~~<sup>22</sup> ~~(using Code powers, if no agreement can be reached).~~

A2.47 Any requirement for access by the Operator with respect to such adjoining land ought to cover the matters set out in ~~Annex~~ ~~Schedule~~ B (i.e. the same considerations as for the ~~Landowner~~ ~~Site Provider~~, where applicable).

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

A2.48 All electronic communications sites are an integral part of a wider network. Individual sites ~~and infrastructure~~ variously provide coverage, capacity and functionality to that wider network and Operators require access to their apparatus in order to be able to maintain a quality of service to their customers. ~~In the case of service affecting faults, access should be required as soon as possible.~~

A2.49 As set out in Stage 2 Consultation Phase, any agreements between the Operator and the ~~Landowner~~ ~~Site Provider~~ should set out how to access sites for operational needs. ~~Annex~~ ~~Schedule~~ B sets out key points for access arrangements. Where necessary, Operators and ~~Landowners~~ ~~Site Providers~~ should meet, prior to entering into a contract, to discuss preferred access routes and processes and agree clear expectations as to what should happen when access is required.

A2.50 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~~

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<sup>21</sup> 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>

<sup>22</sup> See Paragraph 7 for relevant paragraphs.



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

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

A2.51 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.

~~A2.52 Where Operators are physically sharing a site or using any apparatus on a site, and no additional consents are required under the Code, the Operators should nevertheless notify Landowners of the name and contact details of other sharers and users, so that the Landowner, for security purposes, can know who is in lawful occupation of the site.~~

A2.53 Where access may be required to other parts of the land owned or occupied by the Site Provider Landowner, such as where an area of land is required to use a crane or cherry picker, the access arrangements should cover such scenarios and provide that the Operator should return the land to the condition it was in prior to the land being used or accessed.

A2.54 Operators should seek to ensure that anyone accessing a site on their behalf:

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

A2.55 Operators should, upon reasonable request, provide verification of which contractor was on site at any given point in time and confirmation of why they were there – e.g. to inspect, maintain and effect an emergency repair or physical upgrade etc.

~~A2.56 Operators should adhere to any legal or regulatory requirements for managing location specific risks. This might include notifiable diseases (such as Foot and Mouth, Avian Flu etc.). For sites at sensitive locations, it might include arranging accompanied access to secure areas. Operators should comply with any reasonable procedures implemented by Landowners Site Providers for these purposes. Landowners Site Providers should, so far as is possible, preserve the ability for Operators to access their apparatus, particularly in the case of operational emergency.~~

## Sharing and Upgrading of overground Apparatus

A2.57 Sharing and upgrading telecommunications apparatus is an important part of enabling investment in digital communications infrastructure and ensuring universal access to fast digital communication services.

A2.58 The Code provides Operators with a right to upgrade and share their apparatus, so long as those changes have no adverse impact or no more than a minimal adverse impact on the

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

A2.59 Whilst the Code provides Operators with the rights to upgrade and share their apparatus, they represent the minimum rights that an Operator is to have and it is open to the parties negotiating a Code agreement to agree more extensive rights if necessary.

A2.60 If an Operator wishes to secure more extensive rights, it is for them to explain why. The Operator and the Site Provider are encouraged to negotiate these points where possible to avoid the cost and burden of litigation. If agreement between the Operator and Site Provider is not possible on that point, an Operator is entitled to apply to the Court and ask that those rights be imposed.

A2.61 Operators should consider representations from Site Providers regarding any reasonable requests in respect of sharing or upgrading of the apparatus.

A2.62 Site Providers should not seek to delay the sharing and/or upgrading of Electronic Communications Apparatus (ECA) where either an existing agreement includes terms for sharing or upgrade or where Operators are seeking rights under the Code.

## Sharing and Upgrading of Underground Apparatus between Operators

A2.63 The purpose of this section is to explain the more specific rights which relate to the sharing and upgrading of underground apparatus by Operators. It also explains what Site Providers can expect from Operators.

A2.64 The Code provides rights for Operators to upgrade and share apparatus under existing agreements entered into with Site Providers, however amendments introduced under the PSTI Act now include a right for an Operator to upgrade or share apparatus installed below ground where either the Operator:

- a) is a party to a 'subsisting agreement' made prior to the Digital Economy Act 2017 and 28th December 2017 and therefore made under the Old Code in Schedule 2 of the Communications Act;<sup>23</sup> or
- b) has existing ECA that was installed before 29 December 2003 and is not party to any written Code agreement.

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

A2.65 When an Operator wishes to either upgrade existing electronic communications apparatus under the ground or where another Operator has requested (or is allowed using a regulatory remedy introduced by Ofcom) to share that ECA, they will ensure the upgrading and sharing of the ECA:

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

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<sup>23</sup> For transitional purposes, the statutory framework treats subsisting agreements as if they were agreements that had been made under the current Code, but subject to certain modifications that apply.

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

A2.66 The sharing Operator will engage with the Site Provider within a reasonable time period prior to sharing the host Operator's ECA to:

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

A2.67 In addition, a host Operator can agree to allow another Operator to install and keep lines attached to their poles if the conditions in (a) and (b) above and the relevant conditions under paragraph 74 and of the Code are followed. It is also incumbent on the sharing Operator to ensure they have the permission of the Site Provider to access the land.

A2.68 Where Operators are physically sharing a site or using any apparatus on a site, and no additional consents are required under agreement, the Operators should nevertheless notify Site Providers of the name and contact details of other sharers and users, so that the Site Provider, for security purposes, can know who is in lawful occupation of the site.

A2.69

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

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A2.70 The Code makes provision for Landowners Site Providers to request the removal of apparatus, either where Code rights have come to an end, or if part or parts of the Code apparatus is no longer required for use on the site, if it is not being used and there is no prospect of it being so.

A2.71 As a general principle, Operators should ensure that redundant sites and apparatus are decommissioned within a reasonable period after use ceases. However, in the case of apparatus below ground (such as ducts for cables), it may be preferable to the parties for the Apparatus to be made safe and left in place. Operators should discuss decommissioning proposals with Landowners Site Providers in order to agree the way to proceed. Where a Site Provider requests that Code apparatus (including ducts and cables) are removed, the Operator should remove them and restore the land to its prior condition to the reasonable satisfaction of the Site Provider.

~~A2.72—When requested to remove redundant apparatus by a Landowner, the Operator should, within a reasonable time, respond, either by explaining that the apparatus will still be needed or by agreeing a date by when the apparatus will be made safe or removed, and the site reinstated, if relevant.~~

A2.73 Where apparatus has been installed by a utility provider, by virtue of a separate wayleave or easement (such as a dedicated electricity supply installed by a recognised statutory electricity undertaker) the Site Provider will need to contact that service provider to discuss its removal. Operators should provide (without charge) assistance and co-operation to Site Provider for the removal of third-party installations such as these.

A2.74—Other

## Renewal of existing sites and the Code

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- A2.75 ~~When an existing site agreement is due to expire, the~~ **The** parties should seek to agree terms for the continued use of the site before the existing agreement comes to an end.
- A2.76 Parties should commence negotiations sufficiently far in advance of the **term end date of expiry of** an existing agreement to allow adequate time for terms to be agreed.
- A2.77 **Following the contractual term end, the Operator's Code rights continue until a new agreement is entered into or Code rights are terminated (by either party) on grounds specified in the Code.**
- A2.78 **Either party may initiate discussions in advance of the expiry of the agreement and/or issue a statutory notice. Both parties should take reasonable steps to ensure any communication is issued properly in accordance with the contact details included in the existing agreement or as otherwise notified.**
- A2.79 **The intention of both parties should be to reach a consensual agreement. To progress these discussions the parties should respond in a timely manner.**

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

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- A2.80 From time to time, **Landowners/Occupiers Site Providers** will have to carry out essential repairs to their property and, where **reasonable possible**, it may be necessary for apparatus to be moved temporarily to effect such repairs. In such circumstances, the parties should negotiate in good faith ~~so as~~ to allow the works to be completed, **and for the Site Provider to minimise to avoid, so far as far as reasonably** possible, any resultant interruption to public communications services ~~and~~ to allow continuity of services. In relation to repairs to the **Landowner's Site Provider's** property, as part of the good faith negotiations, the parties should discuss the detail of the timings, duration and extent of the works.

## Redevelopment by the **Landowner Site Provider**

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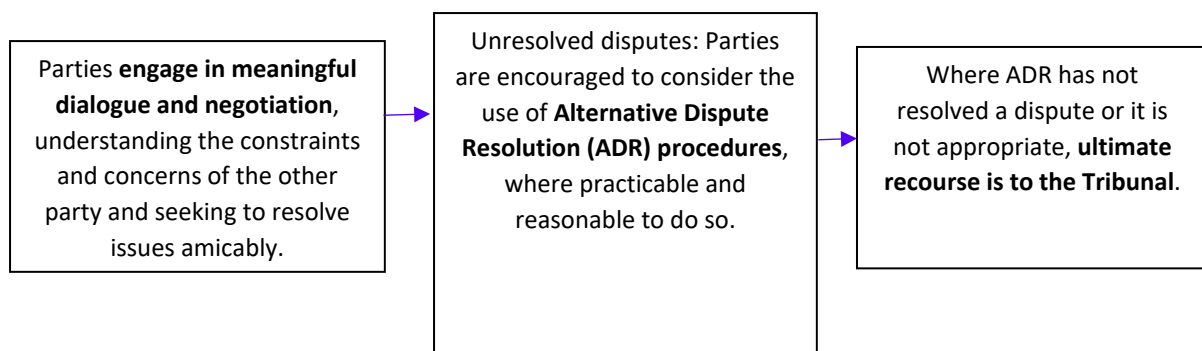
- A2.81 The Code makes provision for **Landowners Site Providers** to redevelop their property (Paragraphs 30-31), requiring that the **Landowner Site Provider** should give **a minimum of 18 months' notice of the intention to redevelop and amend or terminate Code rights.**
- A2.82 Paragraphs 30-31 of the Code are intended for use by **Landowners Site Providers** who genuinely intend to redevelop their property. **Landowners Site Providers** are encouraged to give Operators as much prior notice as possible, in order that adequate time can be afforded to allow the Operator to identify alternative suitable sites. **Early engagement between Site Provider and Operator is likely to best serve the interests of both parties.**
- A2.83 Operators may request to see evidence of the **Landowner's Site Provider's** intention to redevelop but they should act reasonably at all times, so as not to hinder the **Landowner's Site Provider's** progress where there is a genuine intention to redevelop. For example, Operators should act in a timely manner to locate suitable new sites with the principal aim that communications services in a locality can be maintained, with the minimum of disruption to the users.
- A2.84 Where a **Landowner Site Provider** is progressing a redevelopment opportunity, consideration should be given to the possibility of incorporating the communications

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

## Escalation procedures **Resolving Disputes**

A2.85 The Code sets out formal dispute resolution procedures.

A2.86 **Nevertheless, where disputes arise, the parties should seek to resolve them informally (i.e. without recourse to litigation). The Code encourages the parties to engage in meaningful and collaborative dialogue, with a view to resolving issues and mitigating disputes wherever possible including the use of Alternative Dispute Resolution Schemes if required. The diagram below illustrates the escalation procedures.**



A2.87 In certain cases, an Operator's notice<sup>24</sup> must:

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

A2.88 Operators are required to consider ADR, if it is reasonably practicable to do so, before making an application to the courts and must make occupiers and Site Providers aware that ADR is available, if a consensual agreement cannot be reached.

A2.89 Importantly, the courts may take into account any unreasonable refusal to engage in ADR when awarding costs in any dispute referred to them, once the dispute has been determined.

A2.90 To facilitate ADR, Operators and Site Providers should share contact details with each other to whom matters of dispute can be raised. Those matters may include failure to abide by this Code of Practice.

A2.91 There may be occasions, though, where either party may need to serve legal notices, while still continuing to pursue an informal resolution.

A2.92 There are a range of ADR solutions available, including independent expert determination, mediation and early neutral evaluation. The type of ADR most suitable will depend upon the nature of the dispute, amongst other factors.

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<sup>24</sup> Note that this only applies to notices prescribed under Section 69 paragraphs 20 and 33.

~~A2.93 — Nevertheless, where disputes arise, the parties should seek to resolve them informally (i.e. without recourse to litigation) in the first instance. There may be occasions, though, where one party or the other may need to serve legal notices, while still continuing to pursue an informal resolution.~~

~~A2.94 — To facilitate this process, Operators and Landowners should make available to each other, and, where applicable, those with an interest in adjoining land, contact details for the relevant person, through whom matters of dispute can be raised. Those matters may include failure to abide by the Code of Practice.~~

## Schedules to the Code of Practice

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### Schedule A – Process for the Site Survey

~~A2.95 — There are several types of surveys that may be required to assess the suitability of any site:~~

~~A2.96 — An initial site visit, usually by the Operator and/or their agent to assess initial suitability and to take a set of photographs of the proposed site,~~

~~A2.97 — A Multi Skilled Visit (“MSV”) is a design visit at which the Operator’s representatives may complete a design survey of the site, which might include things such as:~~

- ~~a) Surveying the site in order to produce drawings;~~
- ~~b) Assessing the access route and whether any upgrade of the route may be required;~~
- ~~c) Identification of a suitable power supply;~~
- ~~d) Ground radar scans and/or test bore holes (although this may take place at subsequent survey stage);~~
- ~~e) Intrusive survey of a building, for example, lifting roof material to examine the construction and structure; if this work is to be undertaken, prior agreement with the Site Provider to such work should be reached; and~~
- ~~f) Take a set of panoramic photographs, which may include use of a drone.<sup>25</sup>~~

~~A2.98 — To ensure that the site survey is productive, the parties may choose to meet on site. This ensures that the site is designed to have the least impact on the Site Provider’s land and use of the land. The MSV also gives the Site Provider the ability to ask any questions or address any concerns they may have.~~

~~A2.99 — Once the MSV has taken place, it is likely that the local power company and/or fibre Operator will require access to the property to assess the route for any cables required to provide the necessary services.~~

~~A2.100 — These surveys, if required, will be arranged in advance with the Site Provider.~~

### Requesting access for a survey

~~A2.101 — At a minimum, the Operator or Operators are expected to provide the following information, except to the extent any item listed below has already been obtained by the Site Provider following an initial Survey carried out by or on behalf of the Site Provider.~~

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<sup>25</sup> Any drone used is operated by a Civil Aviation Authority (CAA) registered and qualified person who carries public liability insurance and operates the drone in accordance with CAA Rules & Regulations

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

A2.102 Operators should seek to ensure that anyone accessing property or land on their behalf:

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

A2.103 Certain land and property will have specific access requirements, particularly where there are operational constraints or sensitive security requirements and these should be followed, as appropriate. For example, these are likely to be sites run by utilities, defence, emergency services (such as police), transport, healthcare and other public sector authorities.

A2.104 Operators should, upon reasonable request, provide verification of which contractor was on site at any given point in time and confirmation of why they were there.

A2.105 Operators should adhere to any legal or regulatory requirements for managing location specific risks. This might include notifiable diseases (such as Foot and Mouth, Avian Flu etc.). For sites at sensitive locations, it might include arranging accompanied access to secure areas. Operators should comply with any reasonable procedures implemented by Site Providers for these purposes.

A2.106 During the survey visit, it may become apparent that an alternative site is more suitable. The Operator may attempt to make investigations with adjoining landowners on the suitability and to undertake a survey at that time.

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

- ~~• Identity of operator, points of contact for operator and any agent~~
- ~~• Areas of search for possible installation of apparatus~~
- ~~• Requirements for initial survey:
 
  - ~~— What access is desired?~~
  - ~~— With what apparatus?~~
  - ~~— Over what timescale?~~~~

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

~~1.2 In some instances, though, when an Operator is surveying at a neighbouring property, and it becomes apparent that the Apparatus would be better suited on an adjoining property, it may 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

A2.107 Access arrangements should cover the following points, where appropriate<sup>26</sup>:

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

A2.108 The parties should agree, and set out within the agreement, what notice (if any) is required for the different types of access requirements. It can often help resolve access issues by acknowledging the difference between the need for emergency access (to fix or prevent service impacting faults) and planned access.

A2.109 Typically for major works (construction, significant upgrade, decommissioning) there may be a requirement for different notice than for a service impacting fault where no or minimal notice should be required.

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<sup>26</sup> Note: for many fixed line installations, this will be covered by an Operators standard wayleave



A2.110 The parties should agree when negotiating a new lease or renewal what necessary information (if any) is to be provided by the Operator or Agents to the Site Provider to accompany access requests.

A2.111 The parties and their agents should think about the respective business needs and treat each other's property with respect.

# A3 Responding to this consultation

## How to respond

- A1.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 7 November 2023.
- A1.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-1/electronic-communications-code-of-practice>. You can return this by email or post to the address provided in the response form.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to [ECCCOP@ofcom.org.uk](mailto:ECCCOP@ofcom.org.uk), as an attachment in Microsoft Word format, together with the [cover sheet](#).
- A1.4 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
- A1.5 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.
- A1.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A1.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A1.8 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.
- A1.9 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 6. 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.
- A1.10 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

- A1.11 Consultations are more effective if we publish the responses before the consultation period closes. In particular, 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 all responses on [the Ofcom website](#) as soon as we receive them.
- A1.12 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.
- A1.13 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.
- A1.14 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

- A1.15 Following this consultation period, Ofcom plans to publish a statement later in 2023 or early 2024.
- A1.16 If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

## Ofcom's consultation processes

- A1.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 4.
- A1.18 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.
- A1.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

Corporation Secretary  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA  
Email: [corporationsecretary@ofcom.org.uk](mailto:corporationsecretary@ofcom.org.uk)

# A4 Ofcom's consultation principles

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

## **Before the consultation**

A1.20 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**

A1.21 We will be clear about whom we are consulting, why, on what questions and for how long.

A1.22 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.

A1.23 We will consult for up to ten weeks, depending on the potential impact of our proposals.

A1.24 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.

A1.25 If we are not able to follow any of these seven principles, we will explain why.

## **After the consultation**

A1.26 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. 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.

# A5 Consultation coversheet

## BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

## CONFIDENTIALITY

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 there is no separate annex, 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)?

## DECLARATION

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 seeks to publish responses on receipt. 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)

# A6 Consultation questions

Consultation Question 1: Do you have any comments on our proposals relating to improving the clarity of the Code of Practice?

Consultation Question 2: Do you have any comments on our proposals relating to including legislative changes in the Code of Practice?

Consultation Question 3: Do you have any comments on our proposals relating to the definition of 'Site Provider' in the Code of Practice?

Consultation Question 4: Do you have any comments on our proposals relating to contact information in the Code of Practice?

Consultation Question 5: Do you have any comments on our proposals relating to professional fees in the Code of Practice?

Consultation Question 6: Do you have any comments on our proposals relating to responding to a request for access in the Code of Practice?

Consultation Question 7: Do you have any comments on our proposals relating to electromagnetic fields exposure in the Code of Practice?

Consultation Question 8: Do you have any comments on our proposals relating to the sharing and upgrading of apparatus in the Code of Practice?

Consultation Question 9: Do you have any comments on our proposals relating to ADR in the Code of Practice?

Consultation Question 10: Do you have any overarching comments on our proposals for the Code of Practice (included in its entirety in Annex 2 above)?