
Electronic Communications Code

Proposed Template Notices resulting from Product
Security and Telecommunications Infrastructure Act
2022 amendments to the Code

CONSULTATION:

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1. Overview and introduction

Overview

- 1.1 This consultation seeks views on the form of two notices Ofcom is required to prescribe following amendments to the Electronic Communications Code made by the Product Security and Telecommunications Infrastructure Act 2022 (PSTIA). These notices relate to the upgrading and sharing by an operator of apparatus situated under privately-owned land and are required to be given by the operator before the operator begins to upgrade the apparatus or share its use.

Introduction

- 1.2 The Electronic Communications Code¹ (*the Code*) confers certain rights on operators to whom it has been applied (*Code Operators*) to install and maintain electronic communications apparatus on, under and over land and results in considerably simplified planning procedures. 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).
- 1.3 The exercise of Code rights is subject to conditions and restrictions imposed under regulations made by the Secretary of State.² Ofcom has an enforcement role over compliance with any requirement imposed under the regulations.
- 1.4 The Code was subject to changes in 2017 by the Digital Economy Act 2017 (“the DEA”), to speed up the roll out of communications apparatus. Amongst other things, the DEA included provisions to remove the previous Code set out in Schedule 2 of the Telecommunications Act 1984 (“the Old Code”) and replace it with a new Code set out in Schedule 3A to the Communications Act 2003. The new Code introduced a range of measures to make it easier for Code Operators to roll out electronic communications apparatus. For example, significant changes were made to the way land is valued and an automatic right for Code Operators to upgrade and share their telecommunications apparatus was introduced.
- 1.5 As a result of the changes made in 2017, the Code now includes obligations on Ofcom to publish:
- 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 landowners;³

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

² [The Electronic Communications Code \(Conditions and Restrictions\) Regulations 2003 \(legislation.gov.uk\)](#)

³ The Code of Practice deals with matters such as what information Code Operators should provide to property owners negotiations should be conducted and how Code Operators should manage the various stages of the process.

- b) a number of template notices which may, or must (depending on the circumstances) be used by Code Operators and landowners/occupiers;⁴ and
 - c) standard terms which may (but need not) be used by Code Operators and landowners/occupiers when negotiating agreements to confer Code rights⁵.
- 1.6 Ofcom published a final version of these documents in December 2017, following a consultation exercise.⁶ We intend to undertake a review of aspects of the Code of Practice as a result of representations from a range of stakeholders and in line with our commitment to undertake such a periodic review⁷. We plan to consult on this review during 2023.
- 1.7 The Product Security and Telecommunications Infrastructure Act 2022 (*PSTIA*), which received Royal Assent on 6 December 2022,⁸ makes various amendments to the Code. These include a right for certain operators to upgrade or share apparatus installed below ground.
- 1.8 The right applies in relation to two categories of operator: Code Operators who are a party to a 'subsisting agreement' made under the Old Code, and operators who have apparatus that was installed before 29 December 2003 and are not party to any Code agreement. 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.
- 1.9 Where either category of operator seeks to exercise the new right, various conditions must be met, including a requirement to attach a notice to a conspicuous object on the relevant land in advance of a specified period prior to upgrading or sharing the apparatus.
- 1.10 Ofcom is required to prescribe the form of the notice to be given and must consult operators and such other persons as appropriate before doing so. In accordance with paragraph 90(3) of the Code this consultation seeks the views of all interested parties on the form of the two template notices required under the new Code provisions introduced under the PSTIA.
- 1.11 This Consultation only addresses those parts of the PSTIA that create new notice requirements. Where we are required to do so, Ofcom will consult on other aspects of the PSTIA that impact on the ECC Code of Practice later in 2023.

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

⁵ https://www.ofcom.org.uk/_data/assets/pdf_file/0026/108791/ECC-Standard-Terms.pdf

⁶ <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/policy/electronic-comm-code/private-land-access-code-of-practice>

⁷ See sections 1.5 and 2.33 at https://www.ofcom.org.uk/_data/assets/pdf_file/0027/108792/ECC-Statement.pdf

⁸ [Product Security and Telecommunications Infrastructure Act 2022](#)

We are seeking views on the detailed content included in the two template notices annexed to this document. These template notices are required to be used by relevant operators under the requirements set out in the Code as amended by the Product Security and Telecommunications Infrastructure Act 2022.

- 1.12 This consultation will be open for 6 weeks, closing on **6 March 2023**. After the consultation closes, we will review all submitted responses and, subject to these, publish a final statement and finalised versions of the two template notices on Ofcom’s website.

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

The Product Security and Telecommunications Infrastructure Act 2022

- 2.1 The Product Security and Telecommunications Infrastructure Act 2022 (“the PSTIA”)⁹ received Royal Assent on 6 December 2022. One of the aims 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.¹⁰

Upgrading and sharing apparatus

- 2.2 As part of the changes to the Code referred to above, sections 58 and 59 of the PSTIA introduce a right for each of the following two categories of operator to upgrade or share apparatus they keep installed below ground:
- a) Code Operators who are party to a ‘subsisting agreement’ made under the Old Code; and
 - b) operators who have apparatus that was installed before 29 December 2003 and are not party to any Code agreement.
- 2.3 These new rights are set out, respectively, at paragraph 17 of the Code (as modified by paragraph 5A of Schedule 2 to the DEA, as inserted by section 58(4) of the PSTIA); and paragraph 17A of the Code (inserted by section 59(3) of the PSTIA).
- 2.4 For transitional purposes, when the new Code was introduced in 2017, provision was made under paragraph 2 of Schedule 2 to the DEA for any subsisting agreements to be treated as if they were agreements made under the new Code, but subject to the Code modifications that are set out in that Schedule.
- 2.5 Under section 58(6) and 59(6) of the PSTIA, where either category of operator seeks to exercise the new right, the following conditions must be met:
- a) the upgrading and sharing of the apparatus must have no adverse impact on the land; and
 - b) it must 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).

⁹ [Product Security and Telecommunications Infrastructure Act 2022](#)

¹⁰ The PSTIA also provides for regulation-making powers to introduce mandatory security requirements for consumer connectable products sold in the UK. This aspect of the PSTIA is not considered further in this consultation.

- 2.6 In addition, the operator is required to attach a notice to a conspicuous object on the relevant land. This must be done before the beginning of the period of 21 days ending with the day on which the operator begins to upgrade or share the apparatus.
- 2.7 In accordance with section 58(7) and 59(7), the notice must also:
- a) be attached in a position where it is reasonably legible,
 - b) state that the main operator intends to upgrade the electronic communications apparatus or (as the case may be) share its use with another operator,
 - c) state the date on which the main operator intends to begin to upgrade the electronic communications apparatus or (as the case may be) share its use with another operator,
 - d) state, in a case where the main operator intends to share the use of the electronic communications apparatus with another operator, the name of the other operator, and
 - e) give the name of the main operator and an address in the United Kingdom at which the main operator may be contacted about the upgrading or sharing.
- 2.8 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. As explained below, it is Ofcom’s responsibility to prepare and publish these new template notices on the Ofcom website.¹¹ The purpose of this consultation is to provide interested parties with the opportunity, in accordance with paragraph 90(3) of the Code, to comment on drafts of these template notices. Ofcom will carefully consider any comments it receives before publishing any final version of each notice.

What are we consulting on?

Draft template notices

- 2.9 As set out above, where either category of operator intends to exercise their right under the new provisions to upgrade or share apparatus installed under a landowner’s property, various conditions must be met, including a requirement to follow a prescribed process before they can upgrade or share the apparatus. This includes attaching a notice to a conspicuous object on the relevant land 21 days in advance of commencing the upgrading or sharing.
- 2.10 Where the form of a notice is prescribed by Ofcom, paragraph 88(2) of the Code requires that, to be valid, a notice given under the Code must be in the prescribed form.¹² The purpose of this consultation is to provide interested parties with an opportunity, in accordance with paragraph 90(3) of the Code, to comment on drafts of these template notices before they are finalised and published.

¹¹ Paragraph 90 of the Code provides that Ofcom must “prescribe the form of a notice to be given under each provision of this code that requires a notice to be given”.

¹² Paragraphs 89(5) and (6) of the Code envisage that certain other notices may be given in a form other than that prescribed by Ofcom (subject to the party giving the notice bearing the other party’s resulting costs, if any).

- 2.11 In order that both categories of operator can exercise the new right introduced under the PSTIA, we have prepared (and are now consulting on) two new template notices for use under paragraph 17 of the Code (as modified by paragraph 5A of Schedule 2 to the DEA) and paragraph 17A of the Code. Drafts of these two notices can be found in Annexes 1 and 2.
- 2.12 In preparing 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.

Question 1: Do you have any comments on the form of the new template notice as set out in Annex 1?

Question 2: Do you have any comments on the form of the new template notice as set out in Annex 2?

A1. Annex 1

STATUTORY NOTICE

REGARDING THE UPGRADING OR SHARING OF ELECTRONIC COMMUNICATIONS APPARATUS UNDER THE ELECTRONIC COMMUNICATIONS CODE AS IT APPLIES BY VIRTUE OF SCHEDULE 2 OF THE DIGITAL ECONOMY ACT 2017 (THE ELECTRONIC COMMUNICATIONS CODE: TRANSITIONAL PROVISION) IN RELATION TO A CODE OPERATOR WHO IS PARTY TO A SUBSISTING AGREEMENT

Paragraph 17 of Part 3 of Schedule 3A to the Communications Act 2003, as modified by paragraph 5A of Schedule 2 to the Digital Economy Act 2017

1. This is a statutory notice pursuant to paragraph 17(6) of the electronic communications code set out in Schedule 3A to the Communications Act 2003 (the “**Code**”), as modified by paragraph 5A of Schedule 2 to the Digital Economy Act 2017 in relation to a Code operator who is party to a subsisting agreement.¹³
2. We, [Insert name of Code operator], are a party to a subsisting agreement¹⁴ [dated***] with [Insert name of site provider] (the “**Agreement**”) pursuant to which we keep [insert brief description of the electronic communications apparatus] (the “**Apparatus**”) installed under the land at [insert address of the land where the Apparatus is installed] (the “**Land**”).
3. We are required to provide this notice because we intend to upgrade the Apparatus that is installed under the Land.

[OR - delete appropriate version of paragraph 3]
3. We are required to provide this notice because we intend to share the use of the Apparatus that is installed under the Land with [insert name of relevant operator].
4. We intend to begin [upgrading OR sharing] [delete as appropriate] the Apparatus on [insert date].

ADDRESS FOR CORRESPONDENCE ABOUT THIS NOTICE

5. We can be contacted about the [upgrading OR sharing] [delete as appropriate] of the Apparatus in writing to:

[insert appropriate UK postal address]

[Insert date of Notice]

¹³ Paragraph 5A of the of Schedule 2 to the Digital Economy Act 2017 permits operators who have Code agreements pre-dating 28 December 2017 to upgrade and share apparatus under limited circumstances. Copies of the Communications Act 2003 and the Digital Economy Act 2017 can be found online at www.legislation.gov.uk.

¹⁴ As defined in paragraph 1(4) of Schedule 2 to the Digital Economy Act 2017

NOTES FOR COMPLETING THIS NOTICE

Paragraph 5A of Schedule 2 to the Digital Economy Act 2017 modifies the automatic rights to upgrade and share apparatus as set out in paragraph 17 of the Code to allow Code operators who are a party to a 'subsisting agreement' to upgrade and share apparatus installed under land in limited circumstances.

What is a 'subsisting agreement'?

A subsisting agreement is an agreement that pre-dates 28 December 2017, when the new Code in Schedule 3A to the Communications Act 2003 came into force.

Paragraph 1(4) of Schedule 2 to the Digital Economy Act 2017, sets out that a subsisting agreement is an agreement for the purposes of paragraph 2 or 3 of the electronic communications code under Schedule 2 to the Telecommunications Act that remains in force, or an order under paragraph 5 of that code that remains in force, in each case at the time the new Code comes into force.

Paragraph 2 of the Schedule sets out that a subsisting agreement is to be treated as an agreement made under the new Code, but subject to the Code modifications that are set out in that Schedule.

Notice requirements

In order to have the power to upgrade or share apparatus, paragraph 17 of the Code (as modified by paragraph 5A of Schedule 2 to the Digital Economy Act 2017) requires you to give notice before you begin to upgrade the electronic communications apparatus or (as the case may be) share its use. This notice must be given before the beginning of the period of 21 days ending with the day on which you begin to upgrade the apparatus or to share its use.

The notice must be attached, in a secure and durable manner, to a conspicuous object on the relevant land, ensuring it is in a position where it is reasonably legible. For these purposes, 'relevant land' means:

- (a) in a case where you have a right to enter the land under which the electronic communications apparatus is installed, that land;*
- (b) in any other case, the land on which works will be carried out to enable the upgrading or sharing to take place or, where there is more than one set of works, the land on which each set of works will be carried out.*

Paragraph 17 of the Code (as modified by virtue of paragraph 5A of Schedule 2 to the Digital Economy Act 2017) requires that the following conditions are also met:

- the upgrading and sharing of the apparatus must have no adverse impact on the land; and*
- it must 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).*

NOTES FOR COMPLETING THIS NOTICE

ADDITIONAL NOTES

Paragraph 17 of the Code (as modified by virtue of paragraph 5A of Schedule 2 to the Digital Economy Act 2017) does not confer any right to enter land for the purpose of upgrading or sharing the use of electronic communications apparatus.

Where the above notice requirements and conditions are met, paragraph 17(9) voids any agreement under Part 2 of the Code to the extent that it prevents or limits the upgrading or sharing of apparatus installed under land, or makes such upgrading or sharing subject to conditions that must be met by the operator (including a condition requiring the payment of money).

A2. Annex 2

STATUTORY NOTICE

REGARDING THE UPGRADING OR SHARING OF ELECTRONIC COMMUNICATIONS APPARATUS INSTALLED BEFORE 29 DECEMBER 2003 UNDER THE ELECTRONIC COMMUNICATIONS CODE

Paragraph 17A of Part 3 of Schedule 3A of the Communications Act 2003

4. This is a statutory notice pursuant to paragraph 17A(6) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the “**Code**”) in relation to apparatus installed before 29 December 2003.¹⁵
5. We, *[insert name of operator]*, keep *[insert brief description of the electronic communications apparatus]* (the “**Apparatus**”) installed under the land at *[insert address of the land where the Apparatus is installed]* (the “**Land**”), which Apparatus was installed before 29 December 2003.
6. We are required to provide this notice because we intend to upgrade the Apparatus that is installed under the Land.

[OR - delete appropriate version of paragraph 3]

6. We are required to provide this notice because we intend to share the use of the Apparatus that is installed under the Land with *[insert name of relevant operator]*.
7. We intend to begin *[upgrading OR sharing]* *[delete as appropriate]* the Apparatus on *[insert date]*.

ADDRESS FOR CORRESPONDENCE ABOUT THIS NOTICE

8. We can be contacted about the *[upgrading OR sharing]* *[delete as appropriate]* of the Apparatus in writing to:

[insert appropriate UK postal address]

[Insert date of Notice]

¹⁵ Paragraph 17A of the Code allows operators who have apparatus installed before 29 December 2003 and who are not party to any Code agreement to have a right to upgrade and share that apparatus under limited circumstances. A copy of the Communications Act 2003 is available online at www.legislation.gov.uk.

NOTES FOR COMPLETING THIS NOTICE

Paragraph 17A of the Code allows operators who have apparatus installed under land before 29 December 2003 and are not party to any Code agreement to upgrade and share apparatus under limited circumstances.

In order to have the power to upgrade or share apparatus, paragraph 17A of the Code requires you to give notice before you begin to upgrade the electronic communications apparatus or (as the case may be) share its use. This notice must be given before the beginning of the period of 21 days ending with the day on which you begin to upgrade the apparatus or to share its use.

The notice must be attached, in a secure and durable manner, to a conspicuous object on the relevant land, ensuring it is in a position where it is reasonably legible. For these purposes, 'relevant land' means:

- (c) in a case where you have a right to enter the land under which the electronic communications apparatus is installed, that land;*
- (d) in any other case, the land on which works will be carried out to enable the upgrading or sharing to take place or, where there is more than one set of works, the land on which each set of works will be carried out.*

Paragraph 17A of the Code requires that the following conditions are also met:

- the upgrading and sharing of the apparatus must have no adverse impact on the land; and*
- it must 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).*

ADDITIONAL NOTES

Paragraph 17A of the Code does not confer any right to enter land for the purpose of upgrading or sharing the use of electronic communications apparatus.

A3. Responding to this consultation

How to respond

- A3.1 Ofcom would like to receive views and comments on the issues raised in this document, by **6 March 2023**.
- A3.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-2/electronic-communications-code-proposed-template-notices>. You can return this by email or post to the address provided in the response form.
- A3.3 If your response is a large file, or has supporting charts, tables or other data, please email it to ecccodepowers@ofcom.org.uk as an attachment in Microsoft Word format, together with the [cover sheet](#).
- A3.4 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
- A3.5 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.
- A3.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A3.7 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.
- A3.8 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.
- A3.9 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.

Confidentiality

- A3.10 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 responses on [the Ofcom website](#) at regular intervals during and after the consultation period.
- A3.11 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.
- A3.12 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.
- A3.13 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. This is the Department for Business, Energy and Industrial Strategy (BEIS) for postal matters, and the Department for Culture, Media and Sport (DCMS) for all other matters.
- A3.14 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

- A3.15 Following this consultation period, Ofcom plans to publish a statement in early 2023.
- A3.16 If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

Ofcom's consultation processes

- A3.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 4.
- A3.18 If you have any comments or suggestions on how we manage our consultations, please email us at 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.
- A3.19 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

A4. Ofcom's consultation principles

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

Before the consultation

- A4.1 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

- A4.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A4.3 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.
- A4.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A4.5 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.
- A4.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A4.7 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.

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? _____

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 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)

A6. Consultation questions

- A6.1 The scope of the consultation is limited to two questions, concerning the proposed drafting of the two new template notices and amendments to an existing template notice.

Do you have any comments on the drafting of the new template notice as set out in Annex 1?

Do you have any comments on the drafting of the new template notices as set out in Annex 2?