
The Electronic Communications Code

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Law
Commission
Reforming the law

The Law Commission for England and Wales

- Section 3 of the Law Commissions Act 1965 provides that:

It shall be the duty of each of the Commissions to take and keep under review all the law with which they are respectively concerned with a view to its systematic development and reform, including in particular the codification of such law, the elimination of anomalies, the repeal of obsolete and unnecessary enactments, the reduction of the number of separate enactments and generally the simplification and modernisation of the law



Rights and obligations of Code Operators in general

- Only a Code Operator, as designated by the Office of Communications (Ofcom), can acquire rights under the Code.
- Paragraph 2(1) of the Code confers general rights. We asked whether the scope of these rights should be extended or reduced.
- We recommend change to the purposes for which Code Rights may be exercised to take account of the existence infrastructure providers as Code Operators.

Code Rights

We recommend that the revised Code should set out a list of Code Rights which will be protected by the provisions of the revised Code. These Code Rights should be:

1. to keep electronic communications apparatus installed on, under or over land;
 2. to inspect, maintain, upgrade or operate electronic communications apparatus on land;
 3. to execute any works on land for or in connection with the installation or maintenance of electronic communications apparatus;
 4. to enter land in order to inspect, maintain or upgrade any apparatus kept installed on that land or elsewhere;
 5. to connect to a power supply; and
 6. to obstruct access to land (whether or not the land to which access is obstructed is the land on which electronic communications apparatus is installed)
- Rights granted to anyone other than a Code Operator should not become Code Rights.



Priority

- We recommend a change to the rules of priority to remove the possibility that a Site Provider can bind someone with a superior interest in the land to Code Rights.



Assignment, upgrading and sharing

- We recommend that any attempt to prevent, restrict or require payment for the assignment of Code Rights to another code Operator shall be void, except for a term requiring the tenant to enter into an authorised guarantee agreement (s16 Landlord and Tenant (Covenants) Act 1995).
- Furthermore, Code Operators should be permitted to upgrade or share electronic communications equipment within a physical structure provided that the sharing cannot be seen from outside the structure and that it imposes no burden on the Site Provider.

The test for the imposition of Code Rights

- The revised Code should enable the tribunal to grant one or more Code Rights to a Code Operator, or to make an order that one or more Code Rights shall bind a landowner, if:
 - the prejudice to the landowner can be compensated in money; and
 - the public benefit that is likely to be derived from the making of the order outweighs the prejudice to the landowner, bearing in mind the public interest in access to a choice of high quality electronic communications services.

Payment

- We recommend that the measure of consideration payable under the revised Code for the imposition of Code Rights should be market value.
- The definition of market value should be taken from the RICS “Red Book” modified so as to embody the assumptions that:
 - there is more than one suitable property available to the Code Operator; and
 - that the Code Operator does not have the entitlement to upgrade or share apparatus or to assign Code Rights.

Moving and removing electronic communications apparatus

- We recommend a new form of security of tenure for Code Operators: Code Rights will continue beyond expiry of the agreement or court order until they are terminated in accordance with the new notice provisions.
- We recommend that the Site Provider should be enabled to bring Code Rights to an end by serving a notice upon the Code Operator.
- The notice must be in a prescribed form, giving at least 18 months' notice of the ending of the Code Rights and must state one of the following grounds of termination:
 - substantial breaches of obligations; persistent delay in payment; intention to redevelop the land; or that the test for the imposition of Code Rights is not satisfied.
- Code Rights will come to an end unless a counter notice is issued and, if necessary, proceedings are initiated in the Lands Chamber.

Dispute resolution and procedural issues

- It was clear from consultation that a swifter and more effective dispute resolution mechanism would be welcomed.
- We recommend that the Lands Chamber of the Upper Tribunal be the designated forum for the resolution of most disputes under the Code.
- We also recommend the introduction of a procedure for the interim grant of rights to Code Operators to enable them to commence the installation of apparatus pending the resolution of disputes over payment.

Special regimes

- In addition to conferring general rights, the Code contains a number of special provisions regarding the following:
 - street works;
 - tidal waters and lands;
 - linear obstacles;
 - the use of certain existing conduits; and
 - undertakers' works.
- We recommend that the special regimes that govern the above areas be retained, with certain modifications, most notably a prohibition on rents exceeding market value in respect of Crown tidal waters and lands.



2003 Regulations

- The 2003 Regulations contain a series of conditions and restrictions to which the exercise of Code Rights is subject.
- We discuss the possibility of reform to the regime for preserving funds to meet specified liabilities under regulation 16.
- We recommend reforms to regulations 8(1) and 18.