



Gateley / HAMER

The new Electronic Communications Code 2017 (ECC): Guidelines



RICS

The new Electronic Communications Code 2017 (ECC)

The new Electronic Communications Code (ECC) came in to force on 28th December 2017 as a schedule to the Digital Economy Act 2017.

The Code regulates the legal relationships between landowners and operators of mobile and internet networks. It gives rights to the providers of these networks to install and maintain equipment on, over and under land. These are known as Code Rights. These Code Rights apply to the physical equipment that support the Operators' network which comes in a variety of forms, including fibre optic cables, equipment cabinets, mobile phone antennas and masts.

Why is there a new ECC Code?

Growth in the mobile industry as well as the fibre industry has been dramatic, with enormous investment in network expansion and upgrades in recent years. Demand for data usage and consumer demand for digital technologies continues to grow exponentially, and 5G will see a further boom with many innovative services. The need for Operators to easily, quickly and cost effectively upgrade infrastructure to reflect changes in technology has been a major factor in influencing the reforms. The Government wanted to reform the old Code to put in place modern regulations which fully supported the rollout of digital communications infrastructure, recognising digital infrastructure as a strategic necessity for economic growth and citizen wellbeing.

The old Code (in place since 1984) was also in desperate need of reform due to it being outdated, complex and difficult to apply (having also previously been described judicially as..."one of the least coherent and thought-through pieces of legislation on the statute book...").

In establishing a new Code, the Government has purposefully sought to make it quicker, simpler and more cost effective for mobile network operators (MNOs) to deploy and maintain digital infrastructure.

Overview & WM5G

In recognition of the effects of technological changes to daily life and the efficiencies that high-speed broadband connectivity and 5G can deliver for businesses, individuals and public sector organisations, the new Code serves to redress the financial relationship between Operators and Landowners to enable a faster roll-out and improvement of the digital telecommunications infrastructure in the UK.

One of the key objectives of West Midlands 5G (WM5G) is to facilitate and accelerate the roll-out of 5G technology in collaboration with the Mobile Network Operators (MNOs) and the Local Authorities that make up the West Midlands Combined Authority (WMCA). Working together they will embrace the Electronic Communications Code to make the West Midlands one of the easiest regions for MNOs to deploy 5G for the benefits of citizens, the public authorities and the private sector in the West Midlands.

Ofcom Code of Practice (COP)

In parallel with the introduction of the new ECC, Ofcom has produced a COP which is designed to provide guidance and suggest best practice to facilitate positive and productive engagement between all parties. The emphasis being for all parties to arrive at a consensual agreement without referring to the Lands Chamber of the Upper Tribunal.

To see the Ofcom code of practice, [click here](#).



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The Legislation

The key provisions of the new code relate to:

1. **Assignment of rights and sharing of equipment;**
2. **Compensation and consideration;**
3. **Termination and removal of equipment;**
4. **Dispute resolution, and;**
5. **Impact on existing agreements.**

Assignment of rights and sharing of equipment

Under the new Code, Operators are free to assign their agreements and to share or upgrade without reverting to the landowner for consent.

Compensation and consideration

The new Code introduces a fundamental change to the basis on which Code Rights are valued.

Consideration is payable (under Para 24 of the new Code) to reflect the market value of the Code Right calculated with reference to the following assumptions:

- The right granted in the agreement does not relate to the provision or use of an electronic communications network;
- The new Code provision granting the automatic right to assign or upgrade or share equipment is not considered in the valuation;
- The right in all other respects corresponds with the Code Right granted, and;
- There is more than one site for which the Operator could use for the purpose of exercising the Code Right.

In effect, the Consideration payable is to reflect the value of the site in a 'no network' world, which in most cases will result in consideration reflecting the value of the site for its existing use, and in many cases there may be no existing use.

In addition to Consideration, Landowners may also claim Compensation (under Para 25 of the new Code) to reflect any cost, loss or damage sustained as a result of the exercise of the Code Right.

Termination and Renewal

Due to the increasingly important place electronic telecommunications has in today's society the new Code reflects the need to give operators strategic certainty over their infrastructure and network operation.

Under the new Code, Landowners are required to give 18 months notice to terminate a Code Agreement (compared with just 28 days under the old Code) and a further "reasonable" period for the removal of infrastructure and equipment, which might typically be 3 months.

Dispute Resolution

To facilitate a swifter and more efficient process for parties the new Code directs disputes to the Lands Chamber of the Upper Tribunal, noting that the Ofcom guidelines urges both parties to make utmost efforts towards resolution before considering legal action. The Tribunal is required to decide cases within 6 months of a reference being made.

Impacts on existing agreements

The reforms do not have retrospective effect. However, the new Code sets out transitional provisions including limited code rights which will be covered in a future leaflet as the law becomes clearer.

Useful links

DCMS Barrier Busting Taskforce:
www.gov.uk/dcms

WM5G:
www.wm5g.org.uk

To find out more, please contact:

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