

Electronic telecoms code set for reform

by **Scott Logan**

Telecommunications operators, keen to secure new sites and improve network coverage, are increasingly looking at forestry locations as an option. For forestry owners, most site leases are compatible with their own operations and can provide a welcome source of additional revenue. The Electronic Communications Code, which regulates most site leases and similar agreements, is being reformed.

The Digital Economy Act received Royal Assent on 27 April 2017, paving the way for the introduction of the new Electronic Communications Code. It is expected that the new Code will be brought in to effect later this year.

The Code was first introduced in 1984 and provided a statutory basis for telephone companies to place landline telephone equipment on land. The Code was extended in 2003 to cover all electronic communications and further reform has been on the agenda for some time now.

The new Code aims to put in place modern regulation that supports the rapid rollout of digital communications infrastructure, including 4G networks, superfast broadband and future generations of technology.

Under the existing Code there is a delicate balance of interests between landowners on one hand and communications providers on the other, and disputes frequently arise. The new Code will shift that balance firmly in favour of operators, making it easier for them to deploy and maintain their infrastructure with new rights to upgrade and share apparatus. This will allow new technologies to be rolled out quickly as they become commercially viable but this will be at the cost of landowners who, until now, have benefited from additional payments where additional rights have to be secured by agreement.

Scott Logan is managing associate specialising in compulsory purchase, telecoms and utilities at Brodies LLP. scott.logan@brodies.com



Key changes in the New Code include:

Consideration

The payments landowners can expect to receive for having equipment installed on their land will fall because the basis of valuation will shift from market value payments towards a 'no scheme' value where the operator's use of the site for electronic communications is disregarded.

Upgrading & sharing apparatus

Operators will have new automatic rights to upgrade and share apparatus without requiring agreement or making payments to landowners, provided there is minimal adverse visual impact or additional burden on the landowner. This should allow new technologies to be rolled out quickly as they come to market.

Landowners, however, will lose out and can no longer benefit from additional income or 'payaway' in such circumstances.

Assignment/Assignment

The new Code provides for Code rights to be assigned freely without landowners' consent. Landowners will no longer be able to use a requirement for consent to negotiate improved terms.

This also means that landowners will have no control over the future identity of the operator, which will be of considerable concern to landowners, particularly in relation to site restoration and the risk of operator insolvency.

Apparatus termination/removal

The new Code extends the protections given to operators to retain their apparatus on site after any lease or other agreement has expired. Under

existing and new Codes, operators can apply to the Court for new Code rights and these provisions can be invoked to acquire new sites and to retain existing sites where a notice to remove has been served. The new Code extends the notice period for removing apparatus to 18 months and the circumstances in which a notice to remove can be given are limited.

Many landowners have experienced difficulties in recovering possession of sites held by operators under the existing Code. When the new Code takes effect, the extended notice period and limited grounds for removal may well deter landowners from voluntarily entering into such arrangements in the first place.

Contracting out

Contracting out of the new Code is prohibited, ensuring that the Code will underpin commercial negotiations at all times.

Transitional arrangements

Whilst parts of the new Code will apply to existing contracts, the transitional provisions exclude the reassignment of Code rights and the upgrading and sharing provisions from existing agreements. There will be a gradual move to the new Code as existing contracts come up for renewal.

Conclusion

The new Code strengthens the powers of operators and should significantly reduce their rent roll. Landowners, however, will lose out so that the public can benefit from having the improved networks that society demands in the modern digital era.



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England and Wales: Atkinson Ritson Solicitors, www.atkinsonritson.co.uk

Tel: 01228 525221

E: info@atkinsonritson.co.uk

Scotland: Brodies Solicitors, www.brodies.com

Tel: 0131 656 3795

E: Confor@brodies.com