

1 What is the Electronic Communications Code ('Code')?

The Electronic Communications Code ('Code') was originally introduced as part of the Telecommunications Act 1984 to regulate telecommunications operators' rights to access land for building electronic communications networks. It provides the legislative framework for establishing agreements for designated operators to place, operate and maintain electronic communications infrastructure on land. It seeks to realise the public benefit of having access to high-quality digital communications services whilst striking a balance between the needs of operators to provide coverage efficiently with those of site providers and other parties involved.

2 Why is there a new Electronic Communications Code (the new Code)?

The initial Code was drafted in 1984, at the infancy of mobile network rollout, and quickly became outdated despite some minor updates in 2003. In support of the Government's Digital Strategy for turning the UK into a world-leading digital economy, the Code was updated in 2017 to enable more efficient rollout and upgrade of digital communications infrastructure in the UK. The reform was introduced to bring the existing regulations into line with the rapidly transforming operational environment of the telecommunications sector and the growing demand for digital communications services.

The latest version of the new Code can be viewed here:

<https://www.legislation.gov.uk/ukpga/2003/21/schedule/3A/2020-03-04>

3 How important is the new Code?

With digital communications playing an increasingly vital role in economic and social activities around the globe, the new Code takes on an instrumental role in delivering the Government's ambition to make the UK a world-leading digital economy, and particularly a leader in 5G. The reform of the Code forms a key pillar of this digital strategy by providing the legislative framework to support the telecommunications industry in its rapid rollout of new technologies (e.g. 5G). In fact, the Code is more important now than ever as people turn to digital communications services for many essential aspects of daily life, from work and education to healthcare. For instance, the COVID-19 pandemic has led to a sharp rise in access to digital healthcare services due to social distancing restrictions.

4 What changes does the new Code bring?

The new Code is intended to make it easier for telecommunications operators to deploy and maintain their infrastructure, such as phone masts, on private and public land. The reforms to the Code mean that operators' rights are now more similar to those enjoyed by utilities companies, helping achieve the coverage targets set by the Government to connect even the hardest-to-reach places in the UK. The key changes include:

- adjusting the rents operators pay to site providers to install electronic communications apparatus so they are more in line with utilities providers, such as gas and water;
- a statutory right for operators to upgrade and share their equipment with other operators to help increase coverage;
- a statutory right for operators to assign Code agreements to other operators;
- new provisions regarding how a Code agreement can be brought to an end and the electronic communications equipment then removed;
- a move from County Court to the Lands Chamber of the Upper Tribunal to ensure expertise in these types of cases and a swift dispute resolution process.

5 What impact do these changes have on site providers?

A key objective of the reform is to reduce the costs of installing electronic communications apparatus on private land in order to enable faster and more reliable broadband and mobile services across the country. The new Code values the rights granted to the operator in a Code agreement on a "no scheme" basis which means that the valuation does not take into account the intention of the operator to use the site as part of its network. This generally results in significant reductions in the rents paid by operators as electronic communications apparatus is typically installed on land with limited alternative-use value.

6 Where can I find out more about the new Code?

Ofcom provides a Code of Practice to offer operational guidance concerning agreements for access to private land under the new Code. The Code of Practice is designed to complement the new Code by suggesting best practice to facilitate positive and productive engagement between all parties across a range of issues, roles and responsibilities.

The Code of Practice can be downloaded here:

www.ofcom.org.uk/data/assets/pdf_file/0025/108790/ECC-Code-of-Practice.pdf

7 How does MBNL approach lease negotiations with site providers?

We want to work with our site providers to reach an agreement in line with the new Code's framework and ensure balanced and reasonable terms for the use of their land. In the unfortunate event that agreement on terms of occupation cannot be reached, MBNL has the option to apply to the Court to impose an agreement. We would hope that, in most cases, we are able to conclude Code agreements on a consensual basis and without recourse to litigation.

8 My agreement with MBNL will expire soon, what should I do?

If they haven't already, a member of our lease renewal team will get in touch to initiate the agreement renewal process. MBNL and our partners will work closely with you and provide assistance in navigating the process in a mutually practicable way.

Thank you!
We look forward to working with you
to build Digital Britain.