



Consultation Response

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

Response by the Royal Institution of Chartered Surveyors (RICS).



Introduction

The Royal Institution of Chartered Surveyors (RICS) is pleased to respond to this consultation by OFCOM.

Established in 1868, RICS is the largest organisation of its kind for professionals in property, construction, land, and related environmental issues, setting and upholding professional standards for 125,000 qualified professionals and over 10,000 firms. RICS regulates both its individual qualified professionals and those firms that have registered for regulation by RICS.

Over 80,000 of our qualified professionals work in the UK, where our goal is to deliver a healthy and vibrant property and land sector as a key pillar of a thriving economy while addressing the need for the creation of green, safe communities.

We are not a trade body; we do not represent any sectional interest, and under the terms of our Royal Charter the advice and leadership we offer is always in the public interest.

RICS role in telecoms

RICS welcomes the opportunity to respond to the consultation on the Electronic Communications Code-Proposed Template Notices resulting from Product Security and Telecommunications Infrastructure Act 2022 amendments to the Code.

RICS recognises the criticality of telecoms to the UK's national infrastructure and our members work in varied roles across this complex and dynamic sector. As a professional body for those working in the built and natural environment, RICS takes an active role in addressing the challenges we face. RICS is a participant of the UN Global Compact, the world's largest corporate sustainability initiative and we are committed to supporting delivery of the Sustainable Development Goals (SDGs) within our sector.

RICS supports this sector in a number of ways, including Dispute Resolution Services, designed to reduce the time and expense of telecoms disputes, through conferences which help set the industry agenda, and through the continuous professional development of our members, all of which help us deliver confidence in the market.

Consultation response

Introduction

- 1.1 While the draft form is accurate and reflects the requirements of the legislation, it is long and complicated, following the updating and development of The Code. This is comprehensible to Operators and others within the industry, but the purpose of the Notice is to inform others, who are unlikely to be interested in or follow the meaning, significance or effect of such a Notice.
- 1.2 We believe that the people most likely to need to know about the Notice are precisely those that are unfamiliar with the Telecom Industry and the legal framework developed to support Operators in the deployment of their networks.
- 1.3 We therefore conclude that it is imperative for both the Notice itself to be simplified and for the accompanying Guidance to be written as if to the person unfamiliar with the relevant legislation.

Purpose

- 2.1 The purpose of the Notice is to alert someone who may be affected by the upgrading or sharing of apparatus to the proposed works.
- 2.2 Having become aware of the proposal, it then allows a potentially affected party to discern whether their interests may be affected by those works to the extent that they: -
 - 2.2.1 will have something more than a minimal adverse impact on the apparatus' appearance¹; or
 - 2.2.2 they may result in an additional burden² on those interests,thereby providing an opportunity to challenge the application of the rights under para. 17 & 17A of the Electronic Communications Code.

¹ Electronic Communications Code para.17 (2) and 17A (3)

² Electronic Communications Code para.17 (3) & (4) and para.17A (4) & (5)

- 2.3 The Notice then provides details of who should be contacted to outline any such adverse impacts or burdens, alerting the Operator to the issue (to which the Operator may respond by changing the design to mitigate the asserted effects or challenge the assertion)
- 2.4 NB. It may be appropriate for a revision of the 2017 Electronic Communications Code Code of Practice to include guidance on what might constitute a “minimal adverse impact”.

Who will be affected?

- 3.1 The right for the existing apparatus will be provided by a Code Agreement or subsisting agreement; the operator will be under a duty to inform the Site Provider of their intentions under the terms of the agreement and/or the existing Code of Practice (para. 1.37), independent of the Notice.
- 3.2 The Notice, fixed to the site, under para. 17 and 17A, therefore, will be of relevance to people who are not the party to the Agreement with the operator. Pointing out whether or not there is a subsisting agreement will be of limited effect but may be more relevant to the Site Provider themselves. The Notices could therefore possibly be further simplified by having a single Notice to cover both situations. We have proceeded, however, on the basis that a different Notice is provided for the respective clauses of the Schedule.
- 3.3 Operators (or their agents) who have identified the requirement for upgrading or sharing the apparatus will understand their statutory duties for serving the Notice and will not need explanations as the need for the Notice or what a subsisting agreement is.
- 3.4 However, the person physically installing the Notice may not be as familiar with the statutory requirements for installing the Notice and practical directions for them, specifically highlighting what constitutes a satisfactory position for the Notice, would be useful. We have sought to provide this by boldening the relevant text in the Notes.

Practical Issues

- 4.1 Given the complications of the legislative path, the conditions for service and the Code conditions that must be met before Code Rights become available, it is important, and it should be made explicit that the Notes form part of the Notice itself, and should be displayed at the site.

- 4.2 The footnote references on the Notices are corrupted by the footnotes in this document and follow-on from Annex 1 to Annex 2. These footnotes should be re-set and appear independently in each template Notice and the official version of the Templates.

Revised Draft

- 5.1 We submit the draft proposal for templates below, to replace Annex 1 & 2

A1. Annex 1

STATUTORY NOTICE

UPGRADING OR SHARING OF TELECOMMUNICATION APPARATUS

ON A SITE HELD UNDER A SUBSISTING AGREEMENT

(AN EXISTING AGREEMENT UNDER THE TELECOMMUNICATIONS CODE COMMENCING PRIOR TO
28th DECEMBER 2017)

1. This is a statutory notice pursuant to paragraph 17 of the Electronic Communications Code³ (the “Code”), in relation to the right of a Code operator to upgrade or share their network apparatus.
2. We, [*Insert name of Code operator*], keep [*insert brief description of the electronic communications apparatus*] (the “Apparatus”) installed on or 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 installed Apparatus.
[*OR - delete inappropriate 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*]

³ Schedule 3A to the Communications Act 2003 (as amended)

Explanatory Notes

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

This notice must be provided 21 days before the day that the works start or the apparatus is shared.

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, somewhere on the relevant land;
- (b) in any other case, the land on which works will be carried out to enable the upgrading or sharing to take place. A separate Notice is required for each relevant piece of land, if the works extend over more than one area.

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).

If you believe that these conditions will not be met, you should contact the operator whose details are provided on the Notice with an explanation as to why the conditions may not have been met.

Additional Notes

Paragraph 17 of the Code 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, the Code overrides any element of an Agreement between the operator and the site provider to the extent that it prevents or limits the upgrading or sharing of apparatus installed on or 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).

These Notes form part of the Notice

A2. Annex 2

STATUTORY NOTICE

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

1. This is a statutory notice pursuant to paragraph 17A of the Electronic Communications Code⁴ (the “**Code**”), in relation to the right of a Code operator to upgrade or share their network apparatus on a site installed before 29th December 2003⁵
2. We, [*Insert name of Code operator*], keep [*insert brief description of the electronic communications apparatus*] (the “**Apparatus**”) installed on or 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 installed Apparatus.

[*OR - delete inappropriate 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*]

⁴ Schedule 3A to the Communications Act 2003 (as amended)

⁵ 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.

Explanatory Notes

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.

Notice requirements

This notice must be provided 21 days before the day that the works start or the apparatus is shared.

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, somewhere on the relevant land;
- b) in any other case, the land on which works will be carried out to enable the upgrading or sharing to take place. A separate Notice is required for each relevant piece of land, if the works extend over more than one area.

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).

If you believe that these conditions will not be met, you should contact the operator whose details are provided on the Notice with an explanation as to why the conditions may not have been met.

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.

Where the above notice requirements and conditions are met, the Code overrides any element of an Agreement between the operator and the site provider to the extent that it prevents or limits the upgrading or sharing of apparatus installed on or 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).

These Notes form part of the Notice