

Changes to the Electronic Communications Code

November 2019

The Government has responded to the consultation on the Electronic Communications Code (the “Code”) and introduced legislation to give operators a new route to seek Code rights where landlords are unresponsive. This is part of the wider strategy to deliver nationwide connectivity.

What is the Code?

The Code is a statutory framework allowing telecommunications operators to obtain rights to install equipment on private land.

An updated version of the Code, with stronger rights for operators, came into force in December 2017. This aimed to speed up the installation of telecommunications equipment to increase connectivity.

The current position

The Code already provides for operators to apply to the Upper Tribunal (Lands Chamber) for Code rights where they have been unable to agree with the landlord, but this is a lengthy and costly procedure. The consultation found that it was not widely used, with operators instead removing problem areas from their deployment plans, with the risk of some areas being left behind in the drive for increased connectivity.

Operators have asserted that in their initial deployment programmes for gigabit-capable broadband, 40% of requests for access to apartment buildings received no response.

As these new rights only apply to residential buildings, the existing Code will remain the only route for operators to seek rights over commercial property. This is an active area in the Upper Tribunal (Lands Chamber).

The proposed changes

Following publication of the Government response

to the consultation on changes to the Code on 10 October 2019, the Telecommunications Infrastructure (Leasehold Property) Bill (the “Bill”) was introduced to Parliament on 15 October 2019. The Bill provides a bespoke process for operators to gain access to apartment buildings to deploy, upgrade or maintain fixed-line broadband connections, where a tenant has requested an electronic communication service, but the landlord has repeatedly failed to respond to an operator’s requests for access.

This follows the finding of the Future Telecoms Infrastructure Review of July 2018 that the UK is falling behind in the roll-out of gigabit-capable broadband. In particular, the review found that operators faced significant difficulties in providing broadband services to apartment buildings given the need for landlords to grant access rights.

The Bill aims to provide operators with a fast, cheap, light-touch application process to obtain interim Code rights from the Upper Tribunal (Lands Chamber) where:

- a tenant in the property is requesting a communications service;

- the operator cannot provide the service without the landlord agreeing Code rights and the operator has sought those Code rights from the landlord; and
- the landlord has repeatedly failed to respond to formal notices seeking Code rights from the operator.

These interim Code rights will last for 18 months. Beyond that period, the operator must either reach agreement with the landlord or return to the tribunal to have rights imposed by existing Code procedures.

Implications

The Code seeks to strike a balance between operators and landlords. Neither side seems satisfied with the current position.

For operators, the Code does not go far enough in allowing them to install their apparatus in the best

positions, which conflicts with the Government's desire for nationwide connectivity such as gigabit-capable broadband and 5G networks.

For landowners, the Code infringes on their right to enjoy their property and control who they allow onto it. Although there are benefits to having connected buildings, landlords are concerned that once equipment has been placed on their land, it will be very difficult to have it removed, particularly when required for redevelopment.

The latest consultation and legislation on indicates the direction of travel. It seems increasingly unlikely that ignoring operators' requests will be a successful method of preventing them from installing apparatus.

Although the changes proposed so far relate to residential buildings, there have been indicators that further legislation will be considered if the situation does not improve.



Jane Edwarde
T +44 (0)20 7090 5095
E jane.edwarde@slaughterandmay.com



John Nevin
T +44 (0)20 7090 5088
E john.nevin@slaughterandmay.com



Richard Todd
T +44 (0)20 7090 3782
E richard.todd@slaughterandmay.com