

The Electronic Communications Code: How the Law has Changed for Operators and Landowners

Digital communications have changed significantly and rapidly since the 1984 Code was introduced, and such is the importance that the government has attached to the availability of modern digital communications, that the law is also changing to support this.

The latest Code, the Electronics Communication Code of 2017, was updated on the 7th of November 2023. It gives rights to code operators, that is those who supply electronic communications networks and systems of infrastructure, to install and maintain electronic communications apparatus on/in/ or under land and buildings.

The new Code gives more powers to operators as against landowners in the previous Code. They may not only install, maintain and upgrade apparatus but are also able to: carry out works to the land; connect to a power supply; interfere with or obstruct access to land; and cut back vegetation that may interfere with their apparatus.

The Code may come into effect by agreement between operators and landowners, but if an agreement is not reached within 28 days of notice by the operator, the operator can seek a tribunal order to apply the code in a particular instance. The order will be granted if the owner is capable of being compensated financially and if the public benefit is deemed to outweigh any detriment to the owner.

The law is also helping operators by introducing lower rents and extending the period of time for termination of the code rights (18 months' notice is now required). Also, operators have the automatic right to upgrade their apparatus if there is no adverse effect on the owner, and the operator can assign their rights to another operator without the owner's consent.

Operators must comply with a code of practice and are regulated by Ofcom. For example, they have to comply with the code of practice provisions with regard to the siting of poles and other equipment.

Of particular interest is the position of those who live in leasehold accommodation. The Telecommunications Infrastructure (Leasehold Property) Act 2021 assists those living in block of flats to access broadband services. There is a new Part 4A process for applying to the court to allow access for operators, even if the freehold owner of a block of flats is resistant. If a service has been requested by a tenant but the landlord is repeatedly unresponsive to requests for access, then a Part 4A order can be made by a court, which imposes a Part 4A agreement to allow the access to take place and infrastructure to be installed.

This is a fast-changing area of law, and the government has provided guidance on its website for the benefit of individuals who are unclear about their rights. This can be accessed via the usual gov.uk website.