

# The value of your property assets could be affected by the new Electronic Communications Code.

## What property owners & their advisers need to know.

Anyone who owns or is thinking of acquiring property for the purposes of investment or redevelopment needs to be aware of any, and all, electronic communications equipment situated in, upon or under the property and the terms upon which it is there.

Professionals undertaking surveys and valuations, especially with regard to acquisition of property, should be diligent to ensure that they identify and report on any apparatus which might have the protection of rights under the provisions of the Digital Economy Act 2017 and the Electronic Communications Code.

Anyone intending to develop a property upon which electronic communications equipment is situated should be aware that the new code introduces a statutory minimum 18 months period for terminating agreements in relation to electronic communications apparatus.

### 1) What is a code right?

- a) A right for the statutory purposes to install or keep electronic communications apparatus on, under or over land.
- b) To inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus.
- c) To carry out works on land for or in connection with the maintenance, adjustment, alteration, repair, upgrading or operation of electronic communications apparatus which is on, under or over the land or elsewhere.
- d) To enter land to inspect, maintain, adjust, alter, repair, upgrade or operate any electronic communications apparatus which is on, under or over the land or elsewhere.
- e) To connect a power supply.
- f) To interfere with or obstruct a means of access to or from land (whether or not any electronic communications apparatus is on, under or over the land).
- g) To lop or cut back, or require another person to lop or cut back, any tree or other vegetation that interferes or will or may interfere with electronic communications apparatus.

### 2) What are the Statutory Purposes?

There are two statutory purposes:

- a) The purpose of providing the operator's network.
- b) The purpose of providing an infrastructure system.

### 3) An operator may want my property for telecoms purposes - should I let them on my property to carry out a survey?

Not without seeking specialist advice first - even if they offer payment. Very careful consideration should be given as to whether it is in your best interests to permit access to your property even for an initial inspection.

### 4) How can operators acquire code rights over my property?

There are only two ways:

- a) By being granted rights by agreement.
- b) By taking you to court.

### 5) Who is bound by code rights granted by an occupier of land?

If the occupier has an interest in the land when the code right is conferred then it also binds:

- a) Successors in title.
- b) A person with an interest created after the right is conferred and out of the occupier's interest.

### 6) Do code rights have to be registered at the land registry?

No. It is therefore important for those acquiring property, especially with a view to redeveloping it, to ensure that they undertake appropriate due diligence to make sure that they are not acquiring property subject to code rights.

### 7) Can code rights be assigned by an operator?

Yes. It is not possible to prevent or limit assignment of code rights to another operator. It is also not possible to attach conditions to an assignment.

### 8) Can an operator share or upgrade apparatus?

Yes. They can share the use of the apparatus with another operator, or upgrade providing the sharing or upgrading does not impose any additional burden on the land owner.

### 9) Can the operators install apparatus on my land without my permission?

They can if they take you to court and obtain an order of the court imposing code rights on you.

**10) How do they obtain a court order imposing code rights on me?**

Where the operator requires you to grant them rights over your property they may give you notice detailing what rights they demand you give them.

If you do not agree to give them what they want within 28 days then they can take you to court.

**11) Will the operator obtain a court order against me?**

That depends on what evidence they put before the court and what you say in reply. In deciding whether to make a court order against you the court will consider whether:

- a) You will be prejudiced by a court order and if so whether you should be compensated.
- b) The public benefit likely to result from the court order outweighs the prejudice to you.
- c) You intend to redevelop the land and could not do so if the order were to be made.

**12) If a court order is made against me will I be entitled to compensation?**

Depending upon the circumstances of your case you may be entitled to compensation. Each case will have to be considered individually.

**13) Will I receive payment for having electronic communications equipment on my property?**

You should receive payment but you should seek specialist advice as to how much you might be entitled to.

**14) If I have an agreement with an operator do they have to remove the electronic communications apparatus when the agreement comes to an end?**

No. Once the term of the agreement has expired the operator has the right to retain their apparatus on your property.

**15) Can I give the operators notice to remove their apparatus from my property?**

Yes. You can give them 18 months' notice but the notice will only be valid if you have one of the following reasons to give notice:

- a) Breaches by the operator of their obligations.

b) Persistent delays by the operator in making payments to the owner.

c) The owner intends to redevelop the property.

d) The operator is not entitled under the legislation to remain on the land.

**16) Will the operator then remove their apparatus after the 18 months' notice?**

Possibly not. Within three months of you giving them notice they can serve a counter-notice saying they will not remove their apparatus and they want further rights to keep apparatus on your property.

**17) If the operator serves a counter-notice on me and I do not agree to what they want what will happen next?**

If you do not agree they can take you to court within a further three months to obtain a court order against you ordering you to let them keep their apparatus on your property. If you still want to remove the apparatus you will have to prove to the court your ground for requiring the operator to remove it.

**18) If the court does not grant the operator an order letting them keep their apparatus on my property will they then remove their apparatus?**

Possibly not. If having been to court the operator has been unsuccessful in securing rights to remain on your property you can then serve a further notice on the operator requiring them to remove their apparatus and to restore the land within a reasonable period of time.

**19) What can I do if the operator does not agree to remove their apparatus?**

You can then issue another court action for an order from the court requiring the operator to remove their apparatus and to restore the land to its condition before the code right was exercised.

**20) What if I already had an agreement in place with an operator when the new code came into force?**

If you already had an agreement in force with an operator when the new code came in to effect then it will be treated as an agreement under the new code except that there are a number of additional specific transitional provisions that will apply.

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## Advice on telecoms law? Make the right call.

To discuss anything included in the above, or for advice from our team of specialist solicitors please contact:



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